

## INDEX.

	PAGE
Notice of Appeal .....	1
Petition and Grounds of Appeal.....	2
Order to File Amendment by Way of Supplement to Bill .....	5
Addition by Way of Supplement to Null Decree of Divorce .....	7
Bill of Complaint .....	10
Order for Support and Maintenance and Counsel Fee .....	12
Order of Consolidation and Order of Reference .....	13
Answer .....	15, 18
Replication .....	20
Order .....	21
Memorandum .....	22
Final Decree .....	26
Testimony .....	29

### WITNESSES FOR COMPLAINANT.

Alice Dunham,	
Direct .....	32
Cross .....	37
Re-direct .....	38
Arthur G. Woodfield,	
Direct .....	38
Cross .....	58
Re-direct .....	68
Re-cross .....	69
Recalled,	
Direct .....	138

	PAGE
Arthur G. Pilch,	
Direct .....	70
Cross .....	70
Wilbur Harry Cox,	
Direct .....	74
Cross .....	89
Re-direct .....	111
Re-cross .....	137
Recalled,	
Direct .....	141
Cross .....	143
Jean A. White,	
Direct .....	173
Cross .....	175
Recalled,	
Direct .....	282
Cross .....	284
Virginia Cox,	
Direct .....	184
Cross .....	185
Re-direct .....	188
Re-cross .....	188
Viola E. Cox,	
Direct .....	189
Cross .....	197
Re-direct .....	225
Harlow H. Curtis,	
Direct .....	289
Cross .....	290

## WITNESSES FOR DEFENDANT.

Arthur G. Pilch,	
Direct .....	71
Cross .....	73

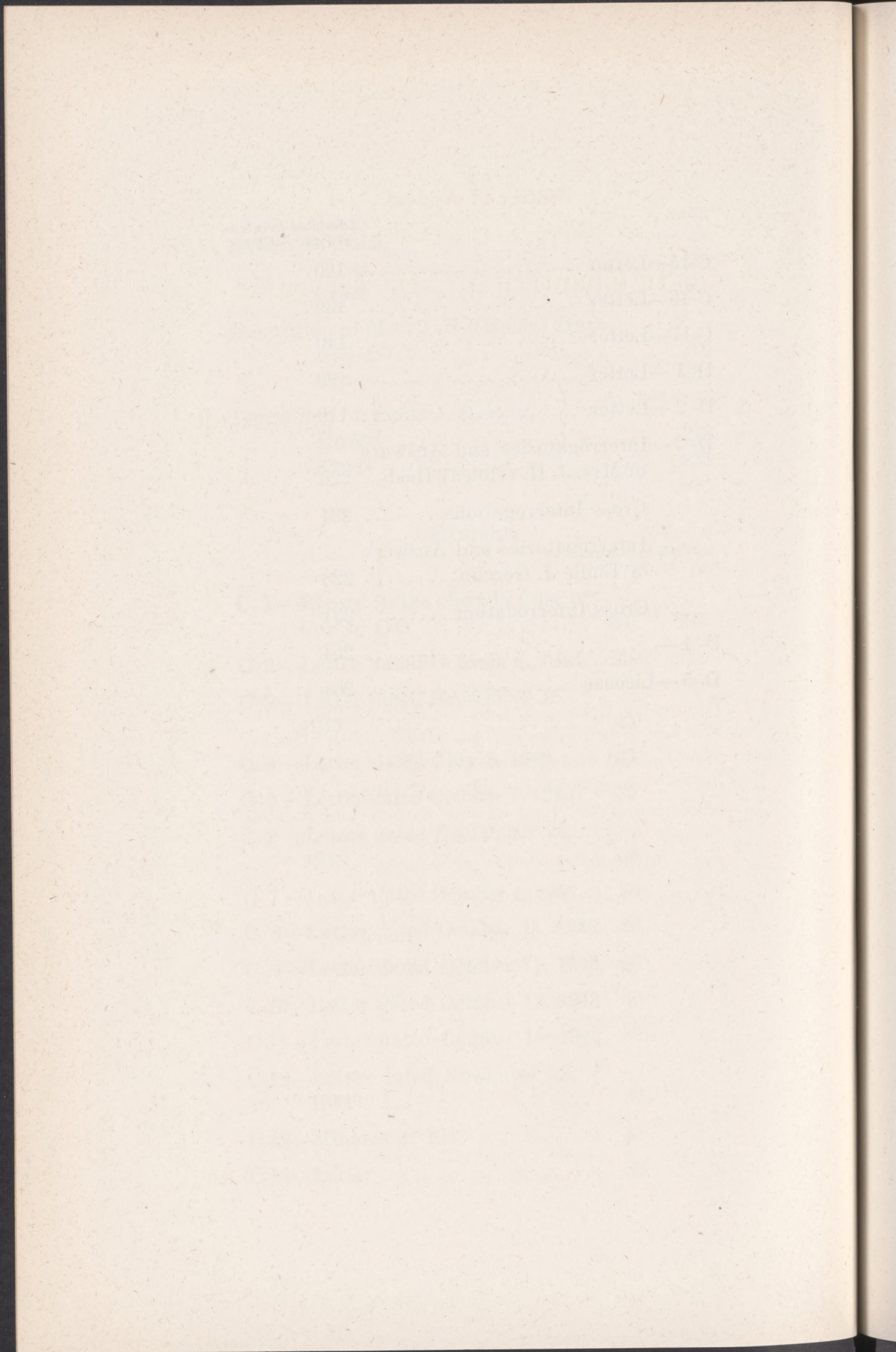
	PAGE
Eugene F. Hoffman,	
Direct .....	235
Cross .....	239
Re-direct .....	242
Recalled,	
Direct .....	254, 256, 295
Cross .....	262
Re-direct .....	262
Lawrence T. Regan,	
Direct .....	243
Cross .....	246
Robert C. Kirkpatrick,	
Direct .....	246
Cross .....	248
Recalled,	
Direct .....	255
Wilbur Harry Cox,	
Direct .....	248
Cross .....	250
Re-direct .....	253
Recalled,	
Direct .....	263, 294
Cross .....	268
Re-direct .....	269
Emanuel Reiter,	
Direct .....	263
Edith I. Washburn,	
Direct .....	270
Cross .....	273
Re-direct .....	275
Willard Washburn .....	277
Harry S. Cox, Jr.,	
Direct .....	277

	PAGE
Arthur R. Thiel,	
Direct .....	278
Cross .....	281
Deposition of Mrs. J. H. (Helen) Hash,	
Direct .....	226
Cross .....	234
Deposition of Emile J. Gezelin,	
Direct .....	228
Cross .....	231

## EXHIBITS.

	<i>Admitted</i>	<i>Printed</i>
	<i>at Page</i>	<i>at Page</i>
C-1—Record in the Nevada Case of Cox v. Cox .....	31	297
C-2—Letter dated October 6, 1943.	35	..
C-3—Letter dated September 18, 1943 .....	35	..
C-4—Letter dated July 8, 1943....	35	..
C-5—Letter dated October 7, 1943..	35	..
C-6—Letter dated September 24, 1943 .....	36	..
C-7—Letter dated October 4, 1943..	36	..
C-8—Letter dated October 11, 1943	36	..
C-9—Letter dated October 11, 1943	36	..
C-10—Letter dated October 13, 1943	36	..
C-11—Letter dated October 15, 1943	37	..
C-12—Letter dated November 23, 1943 .....	37	..
C-13—Minutes of 1943 .....	41	..
C-14—Letter .....	83	..

	<i>Admitted</i>	<i>Printed</i>	
	<i>at Page</i>	<i>at Page</i>	
C-15—Letter .....	120		..
C-16—Letter .....	139		..
C-17—Letter .....	140		..
D-1 —Letter .....	99		..
D-2 —Letter .....	110		..
D-3 —Interrogatories and Answers of Mrs. J. H. (Helen) Hash..	226		..
Cross Interrogations .....	234		..
Interrogatories and Answers of Emile J. Gezelin.....	228		..
Cross Interrogation .....	231		..
D-4 — .....	254		..
D-5 —License .....	264		..



**Notice of Appeal.**

(Filed October 13, 1944.)

**In Chancery of New Jersey**

150-681.

Between	}	On Bill for	10
VIOLA E. COX,		Separate	
Complainant,		Maintenance,	
		etc.	
and	}	On Appeal from	
WILBUR HARRY COX,		the Chancery	
Defendant.	Court.	Notice of	
		Appeal.	

The defendant-appellant, Wilbur Harry Cox, 20  
hereby appeals from the final decree made by the  
Honorable Luther A. Campbell, Chancellor of the  
State of New Jersey, on the advice of the Honorable  
Dougal Herr, Advisory Master, which final  
decree was filed on October 6, 1944, and from the  
whole and every part of said decree, and appeals  
from said decree to the Court of Errors and Ap-  
peals in the last resort of all causes.

Dated: October 10, 1944.

EUGENE F. HOFFMAN, 30  
Solicitor for Defendant-Appellant.

JULES E. TEPPER,  
Of Counsel.

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

JULES E. TEPPER, 40  
Of Counsel with Defendant-Appellant.

**Petition and Grounds of Appeal.**

(Filed November 3, 1944.)

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

10 Between

VIOLA E. COX,  
Complainant-Respondent,

and

WILBUR HARRY COX,  
Defendant-Appellant.

On Bill to  
Annul and  
on Bill for  
Separate  
Maintenance.

On Appeal from  
the Court of  
Chancery.

Petition and  
Grounds of  
Appeal.

20 *To the Honorable the Court of Errors and Appeals in the Last Resort on All Causes.*

The petition of Wilbur Harry Cox, the defendant-appellant in the above entitled cause, respectfully shows that:

1. Petitioner, defendant-appellant, in this cause, finds himself aggrieved by a final decree made by the Chancellor, the Honorable Luther A. Campbell, dated the 6th day of October, 1944, in which the Chancellor, on the advice of the Honorable Dougal Herr, Advisory Master, decreed that
- 30 a certain foreign decree for divorce, which the defendant-appellant obtained on the 15th day of October, 1943, in the State of Nevada, against the complainant-respondent, be declared null, void, and of no force or effect in this State, and the Chancellor on the advice of said Advisory Master did further decree that the defendant-appellant pay to the complainant-respondent the annual sum
- 40 of \$1,560.00, in equal weekly installments of \$30.00, of which said sum \$15.00 is to be for the support

*Petition and Grounds of Appeal.*

and maintenance of Virginia Cox, daughter of complainant-respondent and defendant-appellant, who presently attends college.

2. And petitioner appeals from the decree of the Chancellor, which decrees as aforesaid, upon the ground that the same is erroneous, in that: 10

(a) The finding in said decree that the defendant-appellant procured the Nevada decree for divorce against the complainant-respondent by fraud and imposition of defendant-appellant upon the Second Judicial District Court of the State of Nevada, was unjustified, unwarranted, illegal, improper, and unsupported by the evidence.

(b) The Chancellor, upon the advice of the Honorable Dougal Herr, Advisory Master, erred in his refusal to give full faith and credit to the foreign decree for divorce obtained by the defendant-appellant. 20

(c) The finding in said decree awarding complainant-respondent support and maintenance against the defendant-appellant, was unjustified, illegal, improper, and unsupported by the evidence.

(d) The provision in said decree awarding the weekly sum of \$15.00 for the support of Virginia Cox, the daughter of the complainant-respondent and defendant-appellant, who attends college, was unjustified, unwarranted, illegal, improper, and unsupported by the evidence. 30

Petitioner, therefore, prays that the said decree may be, in the particulars aforesaid, reversed, 40

*Petition and Grounds of Appeal.*

set aside, and for nothing holden, and that petitioner may have such other relief in the premises as to this court shall seem proper.

EUGENE F. HOFFMAN,  
Solicitor for Defendant-Appellant.

10  
JULES E. TEPPER,  
Of Counsel.

---

Service of a copy of the within petition and grounds of appeal is hereby acknowledged this 2nd day of November, 1944.

20  
HERRIGEL, LINDABURY & HERRIGEL,  
Solicitors for Complainant-Respondent.

30

40

**Order to File Amendment by Way  
of Supplement to Bill.**

(Filed December 8, 1943.)

IN CHANCERY OF NEW JERSEY.

Between

VIOLA E. COX,  
Complainant,

*and*

WILBUR HARRY COX,  
Defendant.

10

On Bill, Etc.  
Order to File  
Amendment by  
Way of  
Supplement  
to Bill.

On application of Herrigel, Lindabury & Herrigel, solicitors of complainant herein, and it appearing to the court by the affidavits now presented and filed, that the defendant, Wilbur Harry Cox did, on the 15th day of October, 1943, appear in person and by his attorney before the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, and did then and there secure a final decree in the action there pending wherein he, the said Wilbur Harry Cox was plaintiff, and the complainant in this cause, Viola E. Cox, was defendant, contrary to and in defiance of the restraining order heretofore issued in this cause, of which he had notice, and that the said Wilbur Harry Cox returned to the State of New Jersey, and entered into a contract of marriage with one Mildred Hamilton, in the State of New York.

20

30

And the court being satisfied that it is proper that the said facts arising since the filing of the

40

*Order to File Amendment by Way of  
Supplement to Bill.*

original bill be set forth in the form of an addition separately filed by way of supplement to the original bill;

10 It is, thereupon, on this 8th day of December, 1943, on motion as aforesaid, ORDERED that the complainant have leave to file an addition by way of supplement to her original bill herein, setting forth the requisite allegations as aforesaid and appropriate prayers thereon, and that a copy of said addition, which may be certified as a true copy by the solicitor of the complainant, be served upon defendant herein, and that the said defendant have twenty days after such service or mailing in which to file his answer or other appearance to said addition by way of supplemental bill,  
20 and that in case he shall not so appear and answer the said addition within the time hereinbefore limited, the same be taken as confessed against him, the said Wilbur Harry Cox, and that in case of such default such decree may be made against him as the Chancellor may deem equitable and just.

Respectfully advised,

30 ROBERT D. GROSMAN,  
A. M.

C.

**Addition by Way of Supplement to Null  
Decree of Divorce.**

(Filed December 8, 1943.)

IN CHANCERY OF NEW JERSEY.

Between

VIOLA E. COX,  
Complainant,

*and*

WILBUR HARRY COX,  
Defendant.

10

Addition by  
Way of  
Supplement to  
Null Decree of  
Divorce.

The complainant, by leave of court first had and  
obtained, respectfully shows the following facts 20  
by way of supplement to her original bill herein:

1. A true copy of the order to show cause made  
hereon on the 21st day of September, 1943, and re-  
turnable on the 1st day of October, 1943, which  
was continued from time to time, restraining and  
enjoining the defendant, Wilbur Harry Cox, from  
proceeding further with the action brought by him  
in the Second Judicial District Court of the State  
of Nevada, in and for the County of Washoe, and  
from instituting and prosecuting any other pro- 30  
ceeding against the complainant herein for di-  
vorce or involving the matrimonial status of the  
parties in the State of Nevada or elsewhere than  
in New Jersey pending this suit, and until the  
further order of this court, was not served person-  
ally on the defendant herein, but pursuant to the  
terms of the said order, certified copies of the  
same were mailed by registered mail, return re-  
ceipt requested to Albert Hilliard, Esq., Reno,  
Nevada, and to Mr. Wilbur Harry Cox, c/o Albert 40

*Addition by Way of Supplement to Null  
Decree of Divorce.*

Hilliard, Reno, Nevada. The said Albert Hilliard returned the papers directed to him with a letter stating that he was withdrawing as Mr. Cox's attorney and he would inform him to that effect if and when he saw him. He also returned the envelope addressed to the defendant, stating that he  
10 was unable to locate him.

2. The complainant was reliably informed that the defendant had knowledge of the said order to show cause and avoided service thereof, and that, thereafter in defiance of the said injunctive order of this court, the said defendant and his substituted Nevada attorney, George E. McKernon, appeared in person the 15th day of October, 1943,  
20 before the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, and did, then and there, secure a final decree of divorce of the bond of matrimony there pending wherein the said Wilbur Harry Cox was plaintiff and the plaintiff herein, Viola E. Cox, was defendant.

3. Thereafter, upon securing the final decree of divorce, the defendant returned to the State of New Jersey, and on the 6th day of November,  
30 1943, entered into a contract of marriage with one Mildred Hamilton, a resident of this State, and cohabited with the said Mildred Hamilton as husband and wife in the Township of Hillside, County of Union, State of New Jersey, and elsewhere, and continues to cohabit and is now cohabiting with the said Mildred Hamilton as husband and wife.

4. That between the time of the institution of the said action for divorce in the State of Nevada, the defendant returned to the Township of Hillside and made application to his superiors in the  
40 Township of Hillside School System for an ex-

*Addition by Way of Supplement to Null  
Decree of Divorce.*

tension of the leave of absence previously granted to him, and upon receiving same, returned to the State of Nevada, and pursued his action for divorce there pending and remained there until the decree was entered on October 15th, 1943, when he again returned to the Township of Hillside, and reported to his superiors in the Township of Hillside School System that he was ready to assume his regular duties as principal of the Hillside Township High School. 10

The complainant is without adequate remedy in the courts of law, and therefore, in addition to the prayers contained in her original bill, prays:

1. That the said decree of divorce entered in the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, wherein the said Wilbur Harry Cox, the defendant herein, was plaintiff and the said Viola E. Cox, the complainant herein, was defendant, be decreed to be of no force and effect in this State. 20

2. That the alleged marriage thereafter contracted by the said defendant, Wilbur Harry Cox, with the said Mildred Hamilton on the 6th day of November, 1943, as aforesaid, be decreed to be void and of no effect in this State. 30

3. That the relations between the said defendant and the said Mildred Hamilton be decreed to be adulterous, and that it be decreed that defendant is the lawful husband of complainant.

4. That complainant may have such other relief as may be just.

HERRIGEL, LINDABURY & HERRIGEL,  
Solicitors for and of Counsel with 40  
Complainant.

**Bill of Complaint.**

(Filed September 12, 1943.)

## IN CHANCERY OF NEW JERSEY.

*To His Honor, Luther A. Campbell, Chancellor of  
the State of New Jersey:*

10 Complainant, Viola E. Cox, residing at 126 Virginia Street in the Township of Hillside, County of Union, and State of New Jersey, respectfully shows that:

1. Complainant was lawfully married to Wilbur Harry Cox, the defendant herein, on the 9th day of October, 1925, by Reverend E. C. Makoskey, a minister of the gospel, in Newark, New Jersey.

20 2. Following the said marriage, complainant and defendant cohabited with each other until on or about the 18th day of July, 1943, at which time the defendant abandoned the complainant. Since the last mentioned date, he has at all times refused and neglected, and still refuses and neglects to maintain and provide for complainant or for the infant child of their marriage, namely: Virginia Cox, aged 16, contrary to the statutes in such case made and provided. Since on or about  
30 the first day of March, 1941, the defendant has contributed only a small amount of money weekly, namely: \$15.00 per week for the maintenance and support of complainant and their infant daughter.

3. Complainant is forty years of age and is without means, other than such money as she may earn, for the maintenance and support of herself and the infant child.

40 4. The defendant is now forty-four years of age and his occupation is that of principal of the

*Bill of Complaint.*

High School of the Township of Hillside, County of Union, State of New Jersey, and his salary is approximately \$375.00 per month, as closely as complainant has been able to ascertain, and he is able to maintain and provide for complainant and child in a manner suitable to their station in life.

10

Complainant, therefore, prays:

1. That the said Wilbur Harry Cox, defendant herein, may answer this bill of complaint and each statement made therein.

2. That he be ordered and decreed to provide such suitable support and maintenance from his income or to be made out of his property as the court shall fix and determine for complainant and said infant child.

20

3. That the defendant be ordered and decreed to furnish reasonable security for the payments thereof, from time to time, under the orders and decrees of this court.

4. That in case defendant cannot be found in this State to be served with process, his estate, property and effects in this state be sequestered to compel his appearance and performance of such orders and decree as shall be made herein.

5. That the defendant be compelled to pay to complainant a proper amount for counsel fees, and that she may have such other relief as may be adjudged proper in the premises.

30

6. That a writ of subpoena be issued against defendant to answer this bill of complaint and to abide by such decree as this court may make herein.

HERRIGEL, LINDABURY & HERRIGEL,  
Solicitors for and of Counsel  
with Complainant, Viola E. Cox.

40

**Order for Support and Maintenance and  
Counsel Fee.**

IN CHANCERY OF NEW JERSEY.

10

Between

VIOLA E. COX,  
Complainant,

*and*

WILBUR HARRY COX,  
Defendant.

On Bill, Etc.  
Order for  
Support and  
Maintenance  
and Counsel Fee.

20

This matter being opened to the Court by Fred Herrigel, Jr., of Herrigel, Lindabury and Herrigel, Esqs., of counsel with the complainant, Viola E. Cox, and in the presence of Jules E. Tepper, Esq., of Tepper and Tepper, Esqs., of counsel with Wilbur Harry Cox, and it appearing that due notice of this application has been given to the said Wilbur Harry Cox, and the court having duly considered the argument of counsel, from which it appears to the satisfaction of the court that the complainant is not entitled to alimony *pendente lite* and counsel fee upon this application and good cause being shown:

30

It is, on this 7th day of January, 1944, ORDERED, that the matter of the application for alimony *pendente lite* and for counsel fee thereon be continued to the date of final hearing in this cause; and

40

It is further ORDERED that Wilbur Harry Cox, the above named defendant, pay to Viola E. Cox, for the support and maintenance of Virginia Cox,

*Order of Consolidation and Order of Reference.*

the infant child of the marriage in her custody, the sum of Fifteen Dollars (\$15.00) per week from September 21st, 1943, the date of the filing of the bill for maintenance and support until the further order of this Court; and

It is further ORDERED that the said Wilbur Harry Cox pay to the said Viola E. Cox, or her solicitor, a counsel fee of Fifty Dollars (\$50.00) for the legal representation of said minor child, Virginia Cox. 10

Respectfully advised,

ROBERT D. GROSMAN,  
A. M.

**Order of Consolidation and Order of Reference.** 20

(Filed February 21, 1944.)

IN CHANCERY OF NEW JERSEY.

150-681.

150-691.

Between

VIOLA E. COX,  
Complainant,

*and*

WILBUR HARRY COX,  
Defendant.

Order of  
Consolidation  
and Order of  
Reference.

30

This matter being opened to the Court by Herrigel, Lindabury & Herrigel, solicitors of the complainant, and it appearing that the complainant 40

*Order of Consolidation and Order of Reference.*

has filed a bill for maintenance and support and has also filed her bill to enjoin a pending foreign suit for divorce and addition by way of supplement to annul a foreign divorce, against the defendant herein;

10 And it further appearing that the said causes can best be determined by consolidating the same for hearing,

It is on this 21st day of February 1944, ORDERED that the causes of action above referred to now pending between the parties hereto, be and the same are hereby consolidated; and

20 It is further ORDERED that the causes be and the same are hereby referred to Honorable Dougal Herr one of the Advisory Masters of this Court to hear the same for the Chancellor and to report thereon to him, and advise what order or decree should be made therein.

LUTHER A. CAMPBELL,  
C.

Consent is hereby given to the making of the foregoing order.

30

EUGENE F. HOFFMANN,  
Solicitor for Defendant.

JULES E. TEPPER,  
Of Counsel.

40

**Answer.**

## IN CHANCERY OF NEW JERSEY.

Between	}		
VIOLA E. COX,		Addition by	10
Complainant,		Way of	
<i>and</i>		Supplement to	
WILBUR HARRY COX,		Annul Decree of	
Defendant.		Divorce.	
		Answer.	

Answer of Wilbur Harry Cox, defendant, to the  
bill of complaint of Viola E. Cox, complainant. 20

1. Defendant has no knowledge that an order  
to show cause was issued out of this court re-  
straining and enjoining him from proceeding with  
his petition for divorce brought by him against  
the complainant in the Second Judicial District  
Court of the State of Nevada, in and for the  
County of Washoe, nor does said defendant have  
any knowledge that, pursuant to any order of this  
court, certified copies of an order were mailed to  
Herbert Hilliard, Esq., Reno, Nevada, and to Mr. 30  
Wilbur Harry Cox, c/o Albert Hilliard, Reno,  
Nevada.

2. Defendant admits that he and his attorney  
appeared in person before the Second Judicial  
District Court of the State of Nevada, in and for  
the County of Washoe, on the 15th day of October,  
1943, and that at said time and place he secured  
a final decree of divorce from the bonds of ma-  
trimony which had theretofore existed between 40  
the complainant and the defendant. In all other

*Answer.*

10 respects the defendant denies the allegations contained in paragraph two of the said bill of complaint. Defendant denies that he had any knowledge of any order issued out of this court against him, or that he avoided service of any order, or that he performed any act in defiance of any order of which he had any knowledge.

20 3. Defendant denies that he returned to the State of New Jersey upon securing the final decree for divorce against the present complainant. After he left the State of Nevada defendant resided in the State of New York, after which he returned to the State of New Jersey to defend the several actions instituted against him by the present complainant. That portion of paragraph two of the said bill of complaint, wherein it is alleged that this defendant entered into a marriage contract with Mildred Hamilton and is now cohabiting with her as husband and wife, in the Township of Hillside, County of Union, and State of New Jersey, is admitted.

30 4. Defendant admits applying for and receiving an extension of his leave of absence from the Hillside, New Jersey, School System, and he admits that thereafter he requested leave to assume his regular duties as principal of the Township High School. Defendant's only purpose in returning to Hillside, New Jersey, after the entry of the final decree for divorce against the present complainant in Nevada, was for the purpose of defending himself against a multiplicity of actions instituted by the complainant against the said defendant. As a result of his arrest under a writ of *ne exeat*, issued out of this court upon the application of the complainant, and the sequestering of his assets in New Jersey, defendant had no  
40 other means of support for himself and his pres-

*Answer.*

ent wife, and did not possess the financial ability to defend said actions, and was therefore compelled to return to his employment as a high school principal in order to earn enough moneys for said purposes.

5. Defendant says that on the 7th day of Sep- 10  
 tember, 1943, he filed a petition for absolute di-  
 vorce against the present complainant, in the Sec-  
 ond Judicial District Court of the State of  
 Nevada, in and for the County of Washoe, said  
 court being a court of record and having jurisdic-  
 tion over the subject matter of his said petition;  
 that at the time of the filing of said petition this  
 defendant was, and had been for a long time prior  
 thereto, a bona fide resident of the State of  
 Nevada, and within the jurisdiction of said Sec- 20  
 ond Judicial District Court of the State of  
 Nevada, in and for the County of Washoe; that  
 the present complainant was duly served with no-  
 tice to appear in said suit as is prescribed by the  
 laws of the State of Nevada; that thereafter such  
 proceedings were duly had and taken in the said  
 Second Judicial District Court of the State of  
 Nevada, in and for the County of Washoe; that on  
 the 15th day of October, 1943, by a decree made  
 and entered in said cause, this defendant was di- 30  
 vorced from the bonds of matrimony from the  
 present complainant and the marriage existing  
 between them was duly dissolved; and that said  
 decree remains in full force and effect, not hav-  
 ing in anywise been revised, annulled or modified.

Defendant prays that said bill of complaint may be dismissed.

EUGENE F. HOFFMAN,  
 Solicitor for Defendant.

JULES E. TEPPER,  
 Of Counsel.

**Answer.**

## IN CHANCERY OF NEW JERSEY.

10	Between  VIOLA E. COX, Complainant,  <i>and</i>  WILBUR HARRY COX, Defendant.	}  }  }  }	On Bill for Separate Maintenance. Answer.
----	---	------------------------------	--

20        Answer of Wilbur Harry Cox, defendant, to the bill of complaint filed herein by Viola E. Cox, complainant.

1. This defendant admits that complainant and defendant were married as in said bill of complaint is alleged.

30        2. Defendant admits that he cohabited with the complainant until on or about the 18th day of July, 1943, and that he contributed \$15.00 a week for the maintenance and support of the complainant and the infant daughter of the marriage while the complainant and the defendant were husband and wife. In all other respects paragraph two of the bill of complaint is denied.

3. Defendant believes the complainant's age to be correctly stated in her bill of complaint. In all other respects paragraph three of the bill of complaint is denied.

40        4. Defendant admits that he is forty-four years of age, a high school principal, and that his salary is approximately \$375.00 per month.

*Answer.*

5. Defendant further says that on the 7th day of September, 1943, he filed a petition for absolute divorce against the present complainant, in the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, said court being a court of record and having jurisdiction over the subject matter of his said petition; 10  
 that at the time of the filing of said petition this defendant was, and had been for a long time prior thereto, a bona fide resident of the State of Nevada, and within the jurisdiction of said Second Judicial District Court of the State of Nevada, in and for the County of Washoe; that the present complainant was duly served with notice to appear in said suit as is prescribed by the laws of the State of Nevada; that thereafter such proceedings 20  
 were duly had and taken in the said Second Judicial District Court of the State of Nevada, in and for the County of Washoe; that on the 15th day of October, 1943, by a decree made and entered in said cause, this defendant was divorced from the bonds of matrimony from the present complainant and the marriage existing between them was duly dissolved; and that said decree remains in full force and effect, not having in anywise been revised, annulled or modified.

Defendant prays that said bill of complaint may 30  
 be dismissed.

EUGENE F. HOFFMAN,  
 Solicitor for Defendant.

JULES E. TEPPER,  
 Of Counsel.

**Replication.**

IN CHANCERY OF NEW JERSEY.

10	Between  VIOLA E. COX, Complainant,  <i>and</i>  WILBUR HARRY COX, Defendant.	}	On Bill, Etc. Replication.
----	---	---	-------------------------------

20           The complainant joins issue on the answer of  
 the defendant.

HERRIGEL, LINDABURY & HERRIGEL,  
 Solicitors of Complainant.

30

40

**Order.**

IN CHANCERY OF NEW JERSEY.

150-681-691.

Between

VIOLA E. COX,  
Complainant,

*and*

WILBUR HARRY COX,  
Defendant.

10

On Bill for  
Separate  
Maintenance.  
Order.

This matter being opened to the court by Jules E. Tepper, Esq., of counsel with the defendant, in the presence of Herrigel, Lindabury and Herrigel, Esqs., by Fred Herrigel, Jr., Esq., solicitors for and of counsel with the complainant, and it appearing that due notice of this application has been given to the complainant, according to the Statute in such case made and provided; and it appearing by the duly verified petition of the said defendant that Emile J. Gezelin and Mrs. J. L. Hash are material witnesses for the defendant in the above entitled cause, and that said witnesses are residents of the City of Reno, County of Washoe, and State of Nevada, and that defendant deems it necessary that he have the benefit of their testimony; and other good cause being shown; it is, on this 14th day of April, 1944,

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ORDERED, that a commission issue out of and under the seal of this court, directed to Frances M. Scott, Esq., of the City of Reno, County of Washoe, and State of Nevada (a Master of this court and a member of the bar of the State of

40

*Order.*

Nevada), authorizing him to examine *de bene esse* the said Emile J. Gezelin and Mrs. J. L. Hash on oath or affirmation, upon the interrogatories annexed to said commission, and to reduce such examination to writing and to return the same, annexed to said commission, into this court.

10 Respectfully advised,

A. M.

C.

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**Memorandum.**

(Not for publication in any reports.)

IN CHANCERY OF NEW JERSEY.

20

150/681-691.

Between

VIOLA E. COX,  
Complainant,

*and*

WILBUR HARRY COX,  
Defendant.

On Bill for  
Separate  
Maintenance,  
etc.

On Final  
Hearing.  
Memorandum.

30

MESSRS. HERRIGEL, LINDABURY AND HERRIGEL,  
for complainant.

MR. EUGENE F. HOFFMAN, for defendant (MR.  
JULES E. TEPPER, of counsel).

HERR, A. M.

40 On September 21, 1943 complainant filed two bills of complaint herein, one for separate main-

*Memorandum.*

tenance for herself and for the daughter of the parties, Virginia, 17 years of age, and the other for a decree restraining and enjoining the defendant from prosecuting a suit for divorce in the courts of the State of Nevada, instituted by him on September 7, 1943. An Amendment by Way of Supplement to the separate maintenance bill was filed, by leave of court, on December 23rd, 1943. All proceedings were afterwards consolidated and heard together. Defendant by his answers puts in issue all of the material allegations contained in both bills and sets up in defense of the separate maintenance action a decree for absolute divorce granted to him in the Nevada proceedings on October 15th, 1943. 10

The parties were married in New Jersey on October 9, 1925. For the last 23 years the defendant has been continuously employed by the Board of Education of the Borough of Hillside, Union County, New Jersey, and is now principal of the high school there. For about 17 years and until July, 1943, the parties lived together as husband and wife at 126 Virginia Avenue in Hillside and were owners by the entirety of that property, where the complainant and Virginia still live. In July, 1943 defendant left this home and went to Reno, Nevada, where he secured the decree for divorce now set up in defense. Complainant was not served with process in the State of Nevada, nor did she appear there in answer to defendant's suit. 20 30

The evidence is convincing that defendant, an inhabitant of the State of New Jersey, went to the State of Nevada in order to obtain a decree of divorce for a cause which occurred while the parties resided in this state, in contravention of the public policy of this state (R. S. 2:50-35), and 40

*Memorandum.*

it follows that his Nevada decree is of no force or effect in this state unless it comes within the protection of Art. IV sec. 1 (the "full faith and credit clause") of the Federal Constitution. *Sprague vs. Sprague*, 131 N. J. Eq. 104; *Thompson vs. Thompson*, 89 N. J. Eq. 70, 75; *Andrews vs. Andrews*, 188  
 10 U. S. 14; *Mascola vs. Mascola*, 134 N. J. Eq. 48; *Wolff vs. Wolff*, 134 N. J. Eq. 8.

A decree for divorce, although rendered by a court of competent jurisdiction and based upon procedural due process and upon evidence that the petitioner therein was domiciled in the state of the forum, against a defendant domiciled elsewhere (the bona fides of petitioner's domicile in that state not having actually been litigated in that suit) is not entitled to full faith and credit  
 20 when challenged in a subsequent suit between the same parties for a different cause of action in another state, if it is proved that such petitioner was not in fact domiciled in the state where the decree was rendered, but that he falsely and fraudulently simulated such domicile. *National Exchange Bank vs. Wiley*, 195 U. S. 259, 267, 49 L. Ed. 184, 190; *Bell vs. Bell*, 181 U. S. 175, 45 L. Ed. 804; *Streitwolf vs. Streitwolf*, 181 U. S. 179, 45 L. Ed. 807; *Wolff vs. Wolff*, *supra*;  
 30 *Sprague vs. Sprague*, *supra*; *Mascola vs. Mascola*, *supra*; *Thompson vs. Whitman*, 85 U. S. 457, 21 L. Ed. 807.

Fraud in the simulation of domicile may consist either of the presentation of false evidence or of the suppression of evidence of relevant and material facts and circumstances. *Sprague vs. Sprague*, *supra*, and cases therein cited.

A transcript of the evidence taken in the Nevada proceedings on October 15, 1943 shows that the  
 40 only evidence there adduced on the question of de-

*Memorandum.*

fendant's domicile was his own testimony that he had lived continuously in the City of Reno from July 24th to September 9th, that on October 15, 1943 he was living in Reno, that it had been his intention since July 24th to make Reno his permanent home and that he maintained no home elsewhere. As to his actual residence in Reno from July 24th to September 9th he was corroborated by the testimony of a Mrs. Hash, from whom he rented living quarters during that period. No disclosure was made to that court of many significant facts and circumstances bearing upon the question of his alleged Nevada domicile now in evidence here, which clearly lead to the conclusion, without any reasonable doubt, that Mr. Cox never established a domicile in Nevada, and that on the contrary his domicile has remained at all times in this state. 10 20

The Nevada decree is therefore of no force or effect in New Jersey and constitutes no defense to complainant's bill for separate maintenance.

A decree in her favor will be advised. As to the amount of allowances, I will hear counsel further. September 28, 1944.

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**Fianl Decree.**

IN CHANCERY OF NEW JERSEY.

150-681-691.

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Between

VIOLA E. COX,  
Complainant,

*and*

WILBUR HARRY COX,  
Defendant.

On Bill to  
Annul and  
on Bill for  
Separate.  
Maintenance.  
Final Decree.

20

These causes having been consolidated, and coming on to be heard in the presence of Fred Herrigel, Jr., of the firm of Herrigel, Lindabury & Herrigel, solicitors for and of counsel with complainant, and Jules E. Tepper, solicitor for and of counsel with the defendant, upon bills, answers, and proofs taken in open court, and the court having duly considered the pleadings and proofs and having heard and considered the argument of counsel, from all of which it now appears satisfactorily to the Chancellor that the complainant and defendant herein were lawfully married on or about the 9th day of October, 1925, as alleged in said bills of complaint, and that ever since the said marriage, complainant and defendant have been domiciled first in Essex County, and subsequently in Hillside Township, Union County, in this State, and

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It further appearing that the defendant was granted a decree of absolute divorce by the Second

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Judicial District Court of the State of Nevada, in

*Final Decree.*

and for the County of Washoe, on the 15th day of October, 1943, upon the petition of defendant herein alleging extreme cruelty and bona fide legal residence in said State of Nevada; and

It further appearing that said decree of divorce was procured by fraud and imposition of defendant herein upon the said Second Judicial District Court of the State of Nevada, in and for the County of Washoe, in that jurisdiction to determine said cause in the State of Nevada was founded and predicated upon bona fide legal residence of defendant therein, when as a fact from the evidence adduced herein defendant never did establish a bona fide legal residence in said State of Nevada; and

It further appearing that the cause for divorce alleged in defendant's petition in the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, was extreme cruelty, predicated upon acts and conduct committed while the parties were residing together in the State of New Jersey;

And the court being satisfied in the premises that the prayer of complainant should be granted, in that said decree of divorce of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, was procured, and was intended to be procured, by the fraud and imposition of the defendant herein upon the said Second Judicial District Court of the State of Nevada, in and for the County of Washoe; and

It further appearing that the defendant without any justifiable cause, abandons the complainant and separates himself from her and refuses and neglects to maintain and provide for her;

It is on this Sixth day of October, 1944, ORDERED, ADJUDGED and DECREED that the said decree of

*Final Decree.*

absolute divorce granted by the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, dated the 15th day of October, 1943, be and the same is hereby declared to be null, void and of no force or effect in this State; and

10     It is further ORDERED, ADJUDGED and DECREED that the defendant do pay to the complainant, or to her solicitors, the annual sum of \$1,560.00, in equal weekly installments of \$30.00, commencing upon the 6th day of October, 1944, \$15.00 of which shall be for the support and maintenance of Virginia Cox, the daughter of complainant and defendant; and

20     It is further ORDERED that the defendant pay to complainant, or to her solicitors, the costs of these suits to be taxed, and also the sum of \$750.00, which is hereby adjudged and ordered to be a reasonable counsel fee for the solicitors of the complainant, and that the said complainant do have execution for said costs and counsel fee according to the usual practice of this court.

Respectfully advised,

30     DOUGAL HERR,  
A. M.

LUTHER A. CAMPBELL,  
C.

**Testimony.**

IN CHANCERY OF NEW JERSEY.

150-681.

150-691.

Between

VIOLA E. COX,  
Complainant,

*and*

WILBUR HARRY COX,  
Defendant.

On Bill, &c.  
Minutes of  
Final  
Hearing.

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Chancery Chambers, Elizabeth, N. J.  
April 25, 1944.

Before HONORABLE DOUGAL HERR, Advisory Mas-  
ter.

Appearances:

MESSRS. HERRIGAL, LINDABURY & HERRIGAL,  
Solicitors of complainant;

EUGENE F. HOFFMAN, Esquire,  
Solicitor of defendant.

JULES TEPPER, Esq., of counsel.

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Mr. Herrigel: If your Honor please, this is a  
suit for separate maintenance brought by Viola  
E. Cox against Wilbur Harry Cox, and simultane-  
ously with bringing the separate maintenance suit 40

*Colloquy.*

we brought a bill to enjoin the prosecution of the Reno divorce suit. Subsequently the defendant returned to Reno and obtained his divorce. When we learned of that we filed a supplementary bill in which we asked to have that set aside on the ground of fraud and on the ground that the facts  
 10 set up to obtain the divorce there were not grounds for divorce in the State of New Jersey. In other words, we have two grounds on which we seek to set it aside.

Mr. Tepper: Do I understand Mr. Herrigel makes the point that the grounds upon which the decree was entered in Nevada were not grounds for divorce in New Jersey.

The Court: I so understood.

Mr. Tepper: So I understood him to take that  
 20 position, too. I think the first action that should be disposed of is the bill to annul, it seems to me, followed by the separate maintenance.

Mr. Herrigel: I don't know whether that is so.

Mr. Tepper: Because if he does not prevail on the first, the second one falls of its own weight. But of course since Mr. Herrigel has outlined his case, I must more or less outline my defense. My defense, of course, is the full faith and credit clause of the Federal Constitution Article 4, Paragraph 1, under which full faith and credit must be  
 30 given to the decree of the State of Nevada, of course subject to the cases in this state on the subject. So that our defense, of course, is constitutional, the full faith and credit clause of the United States Constitution; and coupled to that we shall demonstrate that there was no abandonment in the State of New Jersey, if we shall fail in that suit.

The Court: Logically the attack upon the Ne-  
 40 vada decree comes first.

*Colloquy.*

Mr. Tepper: That is right.

The Court: Customarily these cases are brought all at once, because as a rule some, if not all of the testimony adduced upon the matrimonial cause of action is applicable also to the other situation, speaking now of the question of domicile, facts relating to domicile, and so forth. 10

Mr. Tepper: Yes; in order to expedite this hearing I consented to that, to have both cases consolidated.

The Court: Before counsel proceed—

Mr. Tepper: Pardon the interruption. Of course if they were tried separately there might be some objections to certain questions in the one case which would not be valid objections in the other case. In that connection, of course, I will rely upon the court to separate the two. 20

The Court: There should not be much conflict.

Mr. Tepper: I am not concerned with that.

The Court: Before you proceed I think I ought to inform counsel that the Attorney-General's office was in touch with me with respect to one of the levies made under the writ of sequestration.

Mr. Herrigel: Yes; we have an order, your Honor, ready for your signature.

Mr. Tepper: Yes; I always felt that that was an illegal levy, and I am prepared to consent to an order. 30

The Court: Very good.

Mr. Herrigel: If your Honor please, I wish to introduce the record in the Nevada case of Cox v. Cox, that has been consented to.

The Court: If there is no objection it will be received.

(Marked Exhibit C-1.)

*Alice Dunham, for Complainant—Direct.*

Mr. Tepper: May I ask if the answers to the interrogatories which were allowed by order of this court have been returned to the court? Mr. Herrigel says he has checked and they have not been returned. Of course that will be unfinished business after we have finished here.

10 The Court: They were taken on both sides, I suppose.

Mr. Tepper: On application of the defendant; your Honor will recall that the complainant did not choose to file any cross interrogatories; but thereafter they changed their mind and we permitted those cross interrogatories to go down, subject to an order to be entered by this court. We consented.

20 The Court: Very good.

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ALICE DUNHAM, SWORN:

*Direct examination by Mr. Herrigel:*

Q. What is your occupation? A. I am District Clerk of the Board of Education of Hillside.

Q. As such do you have charge of all the records? A. Yes.

30 Q. At the school? A. Yes.

Q. Do you have in your charge a minute book? A. Yes.

Q. In that minute book are the minutes of all the meetings of the Board of Education kept? A. Yes.

Q. The book is in your charge? A. Yes.

Mr. Herrigel: May I offer this book in evidence.

40 Mr. Tepper: Of course I object to the minute book going into evidence. I would

*Alice Dunham, for Complainant—Direct.*

not object to certain resolutions if they are peculiar to the issues.

Mr. Herrigel: I want to call Mr. Woodfield later on to prove by him later that he was District Clerk at the time certain records were made. That is all I want to refer to.

10

Mr. Tepper: Permit me to ask Miss Dunham a few questions.

By Mr. Tepper:

Q. Did you type these minutes? A. I did.

Q. Were you present at the meeting? A. No.

Q. When these minutes were taken? A. Only after March 1st.

Q. Well, where did you get the information from? A. Mr. Woodfield dictated them to me. 20

Q. Later on? A. The next morning, usually, the morning after the meeting.

Mr. Tepper: I object to the minutes.

By Mr. Herrigel:

Q. How long have you been District Clerk, Miss Dunham? A. Since March 1st, 1944.

Q. Who was District Clerk prior to that? A. A. G. Woodfield. 30

Mr. Herrigel: I want to show by Mr. Woodfield the recordations that were made while he was District Clerk. It is only for that purpose that I want to offer the book into evidence, or maybe marked for identification.

By the Court:

Q. Do I understand that since March 1st did you say— A. Yes. 40

*Alice Dunham, for Complainant—Direct.*

Q. —you have attended the meetings yourself?

A. Yes.

Q. And have transcribed the resolutions themselves into this book? A. That is right.

Q. The following day? A. Yes.

10 The Court: Is there any objection to the minutes since that date being introduced by this witness?

Mr. Tepper: Since March 1st, 1944?

The Court: Yes.

Mr. Tepper: No objection to the minutes after March 1st, 1944.

The Court: You may introduce those minutes after March 1st.

Mr. Herrigel: There is nothing in those.

20 The Court: You may mark the book for identification as to the prior minutes.

Mr. Herrigel: I will.

The Court: Mark the book for identification as to the prior minutes.

(Book marked Exhibit A for Identification.)

By Mr. Herrigel:

30 Q. Have you also in your charge the letters and correspondence of the Board of Education? A. Yes.

Q. Do you have a copy of a letter dated October 6, 1943, from the Board of Education to Mr. Wilbur H. Cox? A. Yes.

Q. I show you a letter on the stationery of the Board of Education of Hillside, signed A. G. Woodfield, District Clerk, and ask you whether that is the original, of which you have a copy? A.  
40 Yes; it is.

*Alice Dunham, for Complainant—Direct.*

Mr. Herrigel: I will ask that this be marked for identification. This is the letter that you gave me, Mr. Tepper, on the notice to produce.

The Court: Is there any objection to it going into evidence?

Mr. Tepper: I have no objection. 10

(Marked Exhibit C-2 in evidence.)

Q. Do you have a letter from Mr. Wilbur H. Cox to A. G. Woodfield, dated September 18, 1943?

A. Yes.

Mr. Herrigel: I offer that in evidence.

Mr. Tepper: No objection.

(Marked Exhibit C-3 in evidence.) 20

Q. Miss Dunham, do you have a letter dated July 8th, or about that time, addressed to the Board of Education from Mr. Cox? A. Addressed to Mr. Woodfield.

Mr. Herrigel: I offer that in evidence.

Mr. Tepper: No objection.

(Marked Exhibit C-4 in evidence.)

Q. Do you have a letter dated October 7th, 1943, 30  
addressed to the Board of Education from Eugene F. Hoffman? A. Yes.

Mr. Herrigel: I offer that in evidence.

Mr. Tepper: No objection.

(Marked Exhibit C-5.)

Q. Do you have a copy of a letter dated Sep-  
tember 24th from the Board of Education, ad-  
dressed to Mr. Cox? A. I have.

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*Alice Dunham, for Complainant—Direct.*

Q. I show you an original letter from the Board of Education, signed A. G. Woodfield, and ask you whether that is the original of the copy which you hold? A. It is.

Mr. Herrigel: I offer that in evidence.

Mr. Tepper: No objection.

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(Marked Exhibit C-6 in evidence.)

Q. Do you have a letter from Dr. A. G. Pilch, dated October 14, 1943, addressed to the Board of Education? A. Yes.

Q. And another addressed to the Board of Education dated October 11, 1943? A. Yes.

Mr. Herrigel: I offer those letters in evidence.

20

Mr. Tepper: No objection.

(Letter dated October 4, 1943, marked Exhibit C-7 in evidence.)

(Letter dated October 11, 1943, marked Exhibit C-8 in evidence.)

Q. Do you have a letter dated October 11, 1943, from Mr. Cox, addressed to the Board of Education or Mr. Woodfield? A. Yes.

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Mr. Herrigel: I offer that in evidence.

Mr. Tepper: No objection.

(Marked Exhibit C-9 in evidence.)

Q. Do you have a letter from Eugene F. Hoffman, addressed to the Board of Education, dated October 13th? A. Yes.

Mr. Herrigel: I offer that in evidence.

Mr. Tepper: No objection.

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(Marked Exhibit C-10 in evidence.)

*Alice Dunham, for Complainant—Cross.*

Mr. Herrigel: We have a copy of a letter here from Board of Education addressed to Mr. Wilbur Cox, dated October 15, 1943.

Mr. Tepper: I consent to it going in. The original isn't here.

The Court: The copy may be substituted for the original. 10

(Marked Exhibit C-11 in evidence.)

Q. Do you have the original letter from Mr. Cox, dated November 23, 1943? A. Yes.

Mr. Herrigel: I offer that in evidence.

Mr. Tepper: No objection.

(Marked Exhibit C-12 in evidence.)

Q. Miss Dunham, are there any references to any of these letters in your file? A. No. 20

Q. Is there any recordation in the minutes of things pertaining to these letters? A. I think so; that is as I recall it.

*Cross examination by Mr. Tepper:*

Q. You said that you don't have a record of replies to these letters which have gone into evidence and which were enumerated as various exhibits; is that correct? A. I don't understand your question. 30

Q. Do you find any correspondence in the files replying to some of these letters, which were written by Mr. Cox? A. I have three letters; I think they are copies of the originals presented here; September 24th, October 6th and October 15th.

Q. These letters were written to Mr. Woodfield, were they not? A. By Mr. Woodfield. 40

*Alice Dunham, for Complainant—Re-direct.*  
*Arthur G. Woodfield, for Complainant—Direct.*

Q. To Mr. Woodfield from Mr. Cox, some of them. A. I don't know; the ones we have written by Mr. Cox were there.

10 Q. You don't know whether Mr. Woodfield has replied to some of these letters and those replies are not in your file? A. I know nothing about that; no.

*Re-direct examination by Mr. Herrigel:*

20 Mr. Herrigel: Miss Dunham mentioned three letters of which she has a copy. I want to make that plain to the court that two of the letters are accounted for by the originals which we have put into evidence, and the third was consented to; so that we are not holding back any correspondence.

The Court: I understand that.

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ARTHUR G. WOODFIELD, SWORN:

*Direct examination by Mr. Herrigel:*

30 Q. Mr. Woodfield, what is your profession? A. I am Supervising Principal of the Schools of Hillside.

Q. For how long a period have you been connected with the Hillside school system? A. Since 1913.

Q. During the year 1943 were you District Clerk for the District of Hillside? A. I was.

Q. As such did you have in your charge the records of the district? A. I did.

40 Q. And of the Board? A. I did.

*Arthur G. Woodfield, for Complainant—Direct.*

Q. I show you a letter dated July 8, 1943, addressed to you and sent by Mr. Cox—I will withdraw that question. A. (No answer).

Q. Mr. Woodfield, during the year 1943 you said you were in full charge of the records— A. Yes.

Q. —Of the Board of Education? A. Yes.

Q. Is this the book which records the minutes of the meetings of the Board of Education of Hillside (indicating)? A. It is. 10

Q. And it records the minutes for the year 1943? A. Yes.

Q. Were those minutes written up under your supervision and direction? A. They were.

Mr. Herrigel: I will offer this minute book in evidence, as written up for the year 1943 under Mr. Woodfield's direction.

The Court: So far as they relate to this matter. 20

Mr. Herrigel: So far as they relate to this matter.

Mr. Tepper: I would like to cross examine on that.

By Mr. Tepper:

Q. Were those minutes transcribed by you? A. No; they were dictated from my notes and transcribed by my secretary, who at that time was Miss Dunham. 30

Q. When were they dictated with relation to the date of the meeting? A. The day following the meeting.

Q. You say you dictated them from your notes? A. From my notes.

Q. Have you preserved those notes? A. No.

Q. Did you have notes which set out verbatim the proceedings from which you dictated? A. I don't quite understand. 40

*Arthur G. Woodfield, for Complainant—Direct.*

Q. In other words, at the meeting did you take notes at length of all the proceedings of the meeting, and then the following day dictate from those notes to your stenographer? A. Yes.

Q. You had them written out verbatim? A. No, not in complete form.

10 Q. How were they written out? A. I made a memorandum.

Q. What form would the memorandum take with respect to certain business transacted at the meeting? A. Certain of the business would have occurred in the form of a recommendation; others would be a matter of routine business simply and a note made.

20 Q. In other words what they told you of what conclusion the board arrived at, and you enlarged upon it in dictating the minutes; is that correct? A. Yes.

Mr. Tepper: I object to the minutes going into evidence.

By the Court:

30 Q. After these minutes were written up were they read at the next subsequent meeting of the Board of Education and acted upon? A. They are mimeographed and each member of the board is provided with a copy.

Q. Does your minute book show, as to any of these resolutions, any objections entered by any member of the board as to any of them? A. I think not. I would have to examine the book also for that.

The Court: Objection overruled.

By Mr. Herrigel:

40 Q. You signed these minutes and you wrote them up from time to time? A. Yes.

*Arthur G. Woodfield, for Complainant—Direct.*

Q. Upon receipt of this letter of July 8th from Mr. Cox, was that matter brought before the Board of Education of Hillside? A. Yes.

Q. That is Exhibit C-4 which is in evidence. And as a result of that was a minute made in the meeting which followed the receipt of that letter? A. Yes.

10

Q. What was the date of that meeting, will you turn to that book and ascertain? A. What is the date of the letter?

Q. The date of the letter is July 8th.

(Minutes of 1943 marked Exhibit C-13.)

A. It should be under date, I suspect, of July 9th, but I fail to see a memorandum of it. I beg your pardon; I was in the wrong year.

Q. On page 517, I believe, Mr. Woodfield. A. Yes.

20

Q. Will you please first let me read this letter to you: It says, "Mr. A. G. Woodfield, Supervising Principal, Hillside, N. J. Dear Mr. Woodfield: For the past two months I have spent several week-ends and many extra hours preparing the schedule for 1943-1944. As a result I have nearly completed the work requiring my presence in the building this summer. What work remains can be done anywhere. If I desire it, may I have an additional three or four weeks of vacation? I assure you of my untiring service in 1943-1944. Respectfully yours, Wilbur H. Cox". Now what is the minute for that meeting as a result of that letter? A. (Reading) "A communication from Mr. Wilbur H. Cox, Principal of the Senior High School, citing the fact that by devoting considerable extra time, he has been able to prepare the schedule for 1943-1944 and that any additional work will be performed elsewhere than in the

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*Arthur G. Woodfield, for Complainant—Direct.*

High School office, in view of which he requests that if he should so desire, the Board grant an additional three or four weeks vacation this summer, was read. Upon motion of Mrs. White, seconded by Mr. King, it was resolved that the request of Mr. Cox for an additional vacation be  
10 granted”.

Mr. Tepper: I wonder if I can ask Mr. Woodfield a question before this is marked.

The Court: If it goes to the competency of the proof.

Mr. Tepper: Only that.

By Mr. Tepper:

20 Q. You stated before that mimeographed copies of the minutes were sent to various members of the board and if no objections were voiced the minutes stood approved as read. A. They were approved by motion at the following meeting.

Q. You also stated that if there were objections, those objections would be recorded in the minutes. A. Yes.

Q. Now do objections to the cost of repairs go into the minutes? A. If it is in the form of a resolution; yes.

30 Q. Do you mean if it relates to a resolution duly passed at a meeting? A. No; if it relates to a motion that has to be voted on, it is certain to be recorded in the minutes.

Q. I don't quite understand. Assuming today that there was a resolution passed to repair a school building to cost \$10,000. You made a mimeograph of the resolution, would you not? A. Yes.

40 Q. And you would then send mimeograph copies to the members of the board. What would happen if some member of the board objected to the

*Arthur G. Woodfield, for Complainant—Direct.*

\$10,000. repair bill with respect to the minutes?

A. The minutes are not mimeographed until they have been duly passed by majority vote of the board; then they are transcribed and sent to each member of the board for his examination.

Q. What would happen if any one member of the board objects to a form of resolution or its substance? A. He would make that objection at the subsequent meeting of the Board of Education. 10

Q. And it would be recorded in the minutes? A. Yes.

Q. Have there been any objections to the cost of repairs?

Mr. Herrigel: I object to that as immaterial. 20

The Court: I don't see the materiality as to the cost of repairs.

Mr. Tepper: The point I make is this: That they have a meeting; Mr. Woodfield is the clerk; he gets the sense of what they are talking about and he makes some memorandum that he made the day before and he goes into his office the day following and from that memorandum dictates copious minutes to some girl, and if such minutes were proper minutes of the board it would entitle this book to go into evidence then, of course and the objection must be overruled. 30

The Court: Well, I think in your statement you don't give us exactly what the testimony was with regard to the method of keeping this book.

Mr. Tepper: Very well.

The Court: Let me restate it as I understand it. The clerk attends the meetings of the board; the clerk takes down in the form 40

*Arthur G. Woodfield, for Complainant—Direct.*

10 of written notes the resolutions that may be offered, and the disposition of those resolutions. The following morning, while his memory is fresh, and with the use of his notes, he dictates those resolutions and the results of them for the official record; whereupon copies immediately are sent to all the members of the board, and at the following meeting if there is any objection to the form or substance of any of those resolutions it is expressed there in another minute that is taken and transcribed in the same manner; and I understand this witness to say that as far as the Cox matter is concerned there never has been any objection to any of these resolutions, to the form or substance, of his copies of the resolutions.

20

Q. My question is, Mr. Woodfield, whether these minutes relating to the Cox transaction were ever read to the members of the Board of Education of the Hillside system and were they ever orally approved as read? A. They were approved as printed.

30 Q. Well, how would you record that; how is that recorded in the minutes? A. By resolution.

Q. Will you turn to the meeting dealing with any one of these letters? A. On August 12th, 1943, upon motion of Mr. King, seconded by Mr. Earle, the minutes of the meeting of July 8th were approved as printed.

Q. Does that deal with the Cox matter? A. One of the resolutions that we spoke about.

40 Mr. Tepper: In view of the subsequent approval of these minutes I haven't any objection.

*Arthur G. Woodfield, for Complainant—Direct.*

Mr. Herrigel: I then offer it.

By Mr. Herrigel:

Q. This letter of July 8th, 1943, was received by you, was it, while you were District Clerk? A. Yes.

Q. I show you Exhibit C-3, dated September 17th addressed to you, and ask you whether that was received by you while you were District Clerk? A. Yes. 10

Q. I show you letter marked Exhibit C-6, dated September 24th addressed to Mr. Cox and signed by you, and ask you if that letter was sent out by you? A. It was.

Q. And a letter dated October 6th on the stationery of the Board of Education, addressed to Mr. Cox, Exhibit C-2, and ask you if you sent that out? A. I did. 20

Q. I show you Exhibit C-7 and ask you whether that was received by you while you were District Clerk? A. It was.

Q. I show you Exhibit C-5, being a letter of Eugene F. Hoffman to the Board of Education, and ask you if you received that in behalf of the Board of Education while you were District Clerk? A. I did.

Q. I show you Exhibit C-8, addressed to the Board of Education by Doctor Pileh, and ask you if you received that while you were District Clerk? A. I did. 30

Q. And I show you Exhibit C-9, dated October 11th addressed to you and signed by Mr. Cox, and ask you whether you received that while you were District Clerk? A. I did.

Q. And Exhibit C-10, from Eugene F. Hoffman; did you receive that while you were District Clerk? A. I did. 40

*Arthur G. Woodfield, for Complainant—Direct.*

Q. And Exhibit C-11, a copy of a letter sent by you as District Clerk to Mr. Wilbur Cox, and ask you if you sent him the original of that? A. I did.

Q. And I show you Exhibit C-12, addressed to you by Mr. Cox, and ask you whether you received that while you were District Clerk? A. I did.

Q. Exhibit C-3 is dated September 18, 1943, and at the top of the letter it appears to come from 44 Sumner Avenue, East Roselle Park, New Jersey, and it is addressed to Mr. Arthur G. Woodfield, Supervising Principal, Hillside, New Jersey.

Mr. Tepper: Pardon the interruption. I have recorded here C-3 is dated July 8th. Am I in error?

Mr. Herrigel: You are in error. Exhibit C-4 is dated July 8th.

Mr. Tepper: All right.

Mr. Herrigel: It reads: Dear Mr. Woodfield: During the summer I suffered from numerous ailments and loss of weight which not even a prolonged vacation corrected. I returned to Hillside to assure myself that school was opening successfully. However, my health is not good and upon the advice of a physician familiar with my health history over a long period of years I am requesting a leave of absence. A leave at this time would benefit all concerned. My constant interest is Hillside High School and if I can promote its successful operation in any way I shall relish the opportunity. I have the utmost confidence in the ability of Mr. Donham to carry forward our program during my leave. Very sincerely, Wilbur H. Cox.

*Arthur G. Woodfield, for Complainant—Direct.*

Mr. Herrigel: Exhibit C-6, dated September 4, 1943, on the stationery of the Board of Education, written by Mr. Woodfield, is addressed: "Dear Mr. Cox: This is to acknowledge the receipt of your letter requesting a leave of absence due to illness. Your legal right to sick leaves takes care of your absence during ten days of the current year and five days each year for the unused days for the past six years. In order to secure this you must submit your doctor's certificate and make application to the Board of Education for any extension of your leave after November 9th. Sincerely yours, A. G. Woodfield." 10

Mr. Herrigel: Referring to Exhibit C-2, on the stationery of the Board of Education of Hillside, New Jersey, dated October 6th, 1943: "Mr. Wilbur H. Cox, care of Mrs. Willard S. Washburn, 44 Summer Avenue, East, Roselle Park, New Jersey. Dear Mr. Cox: At a meeting of the Board of Education as a committee of the whole held October 5, 1943, it was the consensus of opinion of the members present that because of your unauthorized absence from duty you be suspended from your position as principal of the Hillside High School as of October 14th, 1943, at which time the matter will be considered officially. It is furthermore the unanimous opinion of the members that for the good of all concerned you be requested to submit your resignation on or before October 14, 1943. Yours sincerely, A. G. Woodfield, District Clerk." 20 30

Mr. Herrigel: I have Exhibit C-7, dated two days before the last letter—I should 40

*Arthur G. Woodfield, for Complainant—Direct.*

10 have read it before—it is from Doctor Arthur G. Pilch, to the Hillside Board of Education, Hillside, New Jersey. “Gentlemen: Mr. Wilbur Cox is quite ill. He is suffering from a general breakdown and a persistent loss of weight. Mr. Cox will require a vacation of some time. Very truly yours, Arthur G. Pilch, M. D. F. A. C. S.”

20 Mr. Herrigel: And I have Exhibit C-4, a letter from Eugene F. Hoffman, Counselor at Law, 744 Broad Street, Newark, New Jersey, to the Board of Education, Hillside High School, Hillside, New Jersey. “Dear Sirs: In your recent letter addressed to Wilbur H. Cox, Principal of the Hillside High School, you refer to his so-called “un-authorized absence”. Since I am thoroughly familiar with Mr. Cox’s inability to be present in school, I am taking the liberty of replying to that portion of your letter.

30 Mr. Cox requested a leave of absence for reasons of health and he received from your Board a letter granting such leave on the basis of time for same having been accumulated over the years of past service. No condition was imposed upon this leave of absence except that it was naturally based upon the necessity for same arising from poor health.

Mr. Cox had been in ill health for quite some time and consulted Dr. Arthur Pilch of Bloomfield for a complete diagnosis. As you may know, Mr. Cox resided in Bloomfield up until the time he started teaching in Hillside and Dr. Pilch had been his former family physician.

40 Dr. Pilch found him to be in a poor physical condition and advised a temporary

*Arthur G. Woodfield, for Complainant—Direct.*

cessation of his duties. On this advice, Mr. Cox requested the leave and immediately set about to obtain the rest which he needed. Dr. Pilch told me and Mr. Cox that he had written to your Board confirming this. Apparently there was some error in transmittal for I understand that his report did not reach your attention up until the time of your recent special meeting. I have just talked with Dr. Pilch and he is sending you another signed copy of his letter. 10

In view of the foregoing, I respectfully suggest that Mr. Cox's absence was in no way "unauthorized".

Yours very truly,  
Eugene F. Hoffman." 20

Mr. Herrigel: I have Exhibit C-8, from Arthur G. Pilch, M. D. dated October 11, 1943, to the Board of Education, Hillside High School, Hillside, New Jersey, attention of Mr. Arthur G. Woodfield:

"Gentlemen:

With reference to my recent letter to you regarding the physical condition of Mr. Wilbur Cox, Principal of Hillside High School, dated October 4, 1943, I wish to state that my examinations of Mr. Cox were made on September 16th and September 20, 1943. It was on these dates that I advised him that he needed a complete rest in order to regain his health. 30

Yours very truly,  
Arthur G. Pilch, M. D." 40

*Arthur G. Woodfield, for Complainant—Direct.*

Mr. Herrigel: Exhibit C-9, dated October 11, to Mr. A. G. Woodfield, Supervising Principal, Hillside, New Jersey:

“Dear Mr. Woodfield:

10 Inasmuch as I am in no condition to resume my duties, I am requesting an indefinite leave. I shall procure the necessary physician’s testimony.

Respectfully,

Wilbur H. Cox.”

Mr. Herrigel: Exhibit C-10, on the stationery of Eugene F. Hoffman, Counselor at Law, 744 Broad Street, Newark, New Jersey, dated October 13, 1943:

20 “Board of Education,  
Hillside High School,  
Hillside, New Jersey.

Dear Sirs:

Mr. Wilbur H. Cox, principal of Hillside High School, is submitting herewith a request for an extension of his leave of absence. His health does not permit him to return at the present time.

30 I believe that Dr. Arthur Pilch of Bloomfield has already submitted to you letters supporting the original request for the leave of absence and very shortly we will send to you another physician’s report, bringing Mr. Cox’s condition up to date.

Yours very truly,

Eugene F. Hoffman.”

40 Mr. Herrigel: Exhibit C-11, on the stationery of the Board of Education, Hillside,

*Arthur G. Woodfield, for Complainant—Direct.*

New Jersey, A. G. Woodfield, Supervising Principal, dated October 15, 1943, addressed to Mr. Wilbur H. Cox, care of Mrs. Willard S. Washburn, 44 Summer Avenue, East, Roselle Park, New Jersey:

“Dear Mr. Cox:

At the regular meeting of the Board of Education held October 14, 1943, the following resolutions were unanimously adopted: 10

1. Resolved, That the Board of Education recognize the right of Mr. Wilbur H. Cox to sick leave, up to and including November 9, 1943.

2. Resolved, That the request of Mr. Wilbur H. Cox of October 11, 1943, for indefinite leave of absence be denied. 20

Very truly yours,

A. G. Woodfield,  
District Clerk.”

Mr. Herrigel: Then Exhibit C-12, a letter addressed to Mr. Arthur G. Woodfield, Supervising Principal of Schools, Hillside, New Jersey:

“Dear Mr. Woodfield: 30

The shock of November 9th and subsequent days is dragging me down to the level of poor health which incapacitated me for duty in September.

I shall appreciate immediate reinstatement and a leave of absence without pay for three months to take effect immediately.

Respectfully yours,

Wilbur H. Cox.” 40

*Arthur G. Woodfield, for Complainant—Direct.*

Q. Mr. Woodfield, on October 11th Mr. Cox asked for an indefinite leave of absence; was that matter brought up before the Board of Education at one of its meetings? A. I would have to refer to the minutes.

10 Q. Will you please refer to the minutes? I think if I asked you to refer to page 554 of October 14th it may be helpful. A. Yes.

Q. What is the resolution on it, or what is the recordation of the action of the Board, if there is any? A. There are two actions here.

20 Q. Will you read them? A. On motion of Mrs. White, seconded by Mr. Earl, it was Resolved, that the Board of Education officially approve the communication of the District Clerk of October 6th, addressed to Mr. Wilbur H. Cox." That was the communication following the committee meeting of the Board of Education.

Q. That was in reply to a communication received from Mr. Cox, do I understand that correctly? A. No; it was giving authority to the communication which I sent to Mr. Cox at the request of the Board of Education meeting as a committee, informally.

30 Q. When was that communication received from Mr. Cox? A. It was not a communication from Mr. Cox; it was a communication sent to Mr. Cox.

Q. Is there a record of that communication? A. I think you have it.

Q. You refer to Exhibit C-2. And the action of the Board was what? A. It wasn't a formal legal meeting of the Board; it was a committee meeting; it was the request of the members of the Board present that I state to Mr. Cox the opinion of those members.

40 Q. That was an informal meeting? A. Yes.

*Arthur G. Woodfield, for Complainant—Direct.*

Q. And as a result of that you sent to Mr. Cox this letter which is marked Exhibit C-2; is that correct? A. Yes.

Q. What is the other note that you have there?  
A. "Upon motion of Mrs. White, seconded by Mr. Otto, the following resolution was unanimously adopted:

10

Resolved, That the Board of Education recognize the right of Mr. Wilbur H. Cox to sick leave, up to and including November 9, 1943.

Upon motion of Mrs. White, seconded by Mr. Haefner, the following resolution was unanimously adopted:

Resolved, That the request of Mr. Wilbur H. Cox of October 11, 1943, for indefinite leave of absence be denied."

20

Mr. Tepper: What is the date of that meeting?

A. October 14, 1943.

Q. Was Mr. Cox subsequently suspended? A. Yes.

Q. Can you refer to the minutes and tell us the date of his suspension; page 565. A. Yes.

Q. Will you please read it? A. On motion of Mr. Otto, seconded by Mr. Haefner, it was resolved that Mr. Wilbur H. Cox be suspended as principal of Hillside High School beginning Wednesday morning, November 10, 1943, at eight o'clock, the suspension to continue until the Board of Education votes at a special meeting to consider his case.

30

Q. Was he later reinstated? A. Yes.

Q. What date in 1943 was Mr. Cox's vacation over? What date was he supposed to return to school?

40

*Arthur G. Woodfield, for Complainant—Direct.*

Mr. Tepper: I object to the form of the question, what date was he supposed to return to school.

The Court: You mean what date his leave was over; his sick leave; November 9th.

10 Mr. Herrigel: No, if your Honor please, that isn't what I am after.

Q. What date was his vacation over? A. September 7th.

Q. 1943? A. Yes.

Q. Did he return to school on September 7th, 1943? A. He did not.

Q. Prior to September 7th did you receive a telegram from him? A. I did.

20 Q. On or about what date did you receive that telegram? A. It was September 9th or 10th.

Q. Do you have a copy of that telegram? A. No, I have not.

Q. Was a copy of it delivered to you? A. No.

Q. How did you receive the message? A. By telephone.

Q. From what company, do you know? A. I am not sure whether it was Western Union or Postal.

30 Mr. Herrigel: Counsel for the defendant will admit that we had subpoenaed the man from the office of the Western Union Telegraph Company and that he would say that they keep no records of telegrams received here, and that the office only keeps them for about three months, and therefore we could not possibly get the original, and that is important for the purpose of asking Mr. Woodfield to state substantially what was in that telegram.

40 Mr. Tepper: Based upon Mr. Herrigel's representations to me that he made an in-

*Arthur G. Woodfield, for Complainant—Direct.*

vestigation, I am willing to consent to that.

Mr. Herrigel: We have.

Q. Will you please state substantially what was in that telegram?

Mr. Tepper: I object to him stating substantially what was in the telegram. Mr. Woodfield keeps such copies for his records and everything else, and he must surely have a copy of that telegram and I think we are entitled to see the telegram. 10

By the Court:

Q. Did you report the contents of the telegram and the fact that you received it to the Board of Education? A. I did not. 20

Q. So that there is no memorandum of it anywhere? A. Not to my knowledge.

The Court: The objection is overruled.

Mr. Tepper: It is purely hearsay.

The Court: Oh, no.

Mr. Tepper: I say that is hearsay. Here is a man who was told by somebody over the telephone.

Mr. Herrigel: By the agent of the defendant Cox. 30

Mr. Tepper: How does he know he was the agent?

Mr. Herrigel: I thought you admitted that and consented to the evidence.

Mr. Tepper: No; I said I would admit that if the representative of the company were here that he would testify that the company does not keep any records or copies of telegrams beyond three months. That is based upon the statement made by 40

*Arthur G. Woodfield, for Complainant—Direct.*

Mr. Herrigel. I don't admit that particular telegram.

10 The Court: Don't you have to prove agency? Don't you have to prove that this man, whoever called from the Western Union, read a telegram which had been sent from some place by Mr. Cox and not by somebody else?

Mr. Herrigel: Well, I supposed if we are compelled to do that we will bring him here. We tried to save the man's time.

Mr. Tepper: I tried to agree with Mr. Herrigel. We admit that there was a telegram.

20 The Court: You do. If you admit that, how can you object to Mr. Woodfield's testimony?

Mr. Tepper: Except we don't agree upon what the telegram stated. I said if we could agree upon that I would admit that evidence.

The Court: You admit a telegram was sent.

Mr. Tepper: Absolutely; by Mr. Cox.

The Court: All right now; this witness it going to tell us what was in that telegram.

30 Mr. Tepper: Well, if he can tell us when the telegram was received and the place.

The Court: He said on the 9th or 10th. Mr. Cox, when he gets on the stand, can state what he said in the telegram if it differs from what Mr. Woodfield says.

Mr. Tepper: I object to this as hearsay.

The Court: Objection overruled.

40 A. As I recall it, he said that he would return to duty on the 13th of September.

*Arthur G. Woodfield, for Complainant—Direct.*

Q. When did the school year begin in 1943? A. You mean the actual local fiscal year?

Q. The fiscal year. A. July 1st, 1943.

Q. Were salaries set prior to that time? A. Yes.

Q. Was Mr. Cox notified by you of what salary he was to receive? A. Yes. 10

Q. And is it customary to notify the principal each year that he is reappointed, or what is your modus operandi? A. The principal has tenure and he is simply notified that his salary for the ensuing year is such and such figure.

Q. Mr. Cox was sent that notice by you? A. Yes.

Q. Did you speak to Mr. Cox after you had sent out the notification to him? A. Which notification? 20

Q. The notification that he was reappointed for another year and that he was to receive a certain salary for the year 1943-1944.

Mr. Tepper: Which is it?

The Court: I think he said that he sent out a notice saying what the salary would be for the year.

A. That is right; every teacher receives that notice. 30

Q. After you sent that to Mr. Cox did he speak to you concerning it? A. Not to my knowledge; not as far as I recall.

Q. Do you know what date in November he returned to Hillside High School? A. I think he returned on November 9th or 10th.

Q. Do you remember the date on which he returned in September? A. The 13th of September.

Q. That is all. 40

*Arthur G. Woodfield, for Complainant—Cross.*

*Cross examination by Mr. Tepper:*

Q. Mr. Woodfield, there isn't any doubt in your mind, would you say, that Mr. Cox was quite ill?

Mr. Herrigel: I object to that.

The Court: What is the point?

10

Mr. Tepper: Well, there has been a lot of testimony here about action being taken by the board upon representations made by Mr. Cox that he was ill, a lot of statements about doctors testifying to this, that and the other thing.

Mr. Herrigel: I think the doctor would be the best one to testify to that.

20

The Court: Well, the witness may be examined as to what he knows. Do you know anything about that?

A. I have no expert knowledge of it.

Q. Have you any knowledge at all of it, expert or not expert? A. I would say Mr. Cox did not look particularly vigorous and rugged at that time.

Q. You don't know if he was ill? A. Only so far as my observation goes inexpert.

30

Q. Yes; based upon your inexpert observation of Mr. Cox; did he look well? A. I just answered that. I didn't think he looked particularly well.

Q. You know that Mr. Cox suffered from some very serious complications, do you not?

Mr. Herrigel: I object to that as a leading question.

40

The Court: I don't think the witness is qualified to testify as to the condition of his health, except from his observation, which he has already done.

*Arthur G. Woodfield, for Complainant—Cross.*

Mr. Tepper: I will ask this again of the witness; does he not know of his own knowledge that Mr. Cox was suffering from a very serious disease.

The Court: I heard the question. How can he know from his knowledge if he is not an expert. I will overrule the question. 10

Q. Do you remember that Mr. Cox was operated upon? A. Yes.

Q. You know he was operated on for cancer, do you not?

Mr. Herrigel: I object to that.

The Court: Objection sustained.

Q. Were you ever told by any doctor that Mr. Cox was operated on for cancer? A. No. 20

Q. How long have you known Mr. Cox? A. Twenty-three years.

Q. He had tenure of office, did he not? A. He did.

Q. And as such he was entitled to certain accumulated sick leave, was he not? A. Yes.

Q. And he was also entitled to certain retirement benefits if he should become disabled is he not? A. Yes.

Q. And if Mr. Cox is totally disabled right now he would be entitled to retirement pay, would he not? A. Yes. 30

Q. When he left the State of New Jersey did he have certain rights to which he was entitled, whether he left the system or not? A. Well, rights of tenure, you mean?

Q. Yes. Suppose Mr. Cox had resigned his position in May, or June, or July, 1943, and left the State of New Jersey, and then it developed that he had become totally disabled; would he have 40

*Arthur G. Woodfield, for Complainant—Cross.*

been entitled to retirement pay, after having resigned? A. I can't answer that definitely. That would be determined by the rules governing the pension and annuity fund of the State of New Jersey.

10 Q. Are you a member of the pension and annuity fund? A. I am.

Q. Don't you know that if a member resigns, all his rights go out of the window with him? A. I don't understand the question exactly.

Q. Don't you know that if a member of the pension fund resigns, all of his rights and benefits terminate? A. Not necessarily.

Q. Well, in what case would they not terminate? A. He can remain inactive for a period of two  
20 years.

Q. After resigning? A. Even if he resigns from one position he still remains a member of the fund in an inactive way, that is he is not a contributing member, for a period of two years. It has been ruled that after two years his rights cease and he must then ask for the return of his contributions.

Q. Even though he moves outside of the State of New Jersey? A. Oh, yes.

30 Q. Now with respect to sick benefits, sick leave; is one who resigns entitled thereafter to the benefit of the accumulated sick leave? A. No.

Q. Is he entitled to the accumulated vacations if he resigns? A. On actual resignation he loses all of those.

Q. He loses all of those? A. Yes.

Q. How long was Mr. Cox in the system? A. Twenty-two years.

Q. He had accumulated considerable sick leave, had he not? A. All the sick leave he could ac-  
40 cumulate would be thirty days.

*Arthur G. Woodfield, for Complainant—Cross.*

Q. How about vacations? A. Vacations have never been definite for principals or administrators.

Q. They are understood to be cumulative, are they not? A. No.

Q. I beg your pardon. A. No.

Q. Don't you understand them to be? A. Generally speaking one under full time employment is entitled to three weeks vacation during the Summer period. 10

Q. Well, don't you know that people in the school system receive sabbatical leaves for one year or half a year? A. In some school systems, yes.

Q. Doesn't that obtain in your school system? A. No; it doesn't.

Q. You don't recognize sabbatical leave at all? A. No. 20

Q. Do you recognize any leave, on half pay or full pay? A. Certain leaves are granted by the Board of Education but under no particular rule or regulation; that is by request.

Q. That is discretionary, is it not? A. Discretionary with the board.

Q. Under that discretionary power they may even grant an indefinite leave or one year, may they not? A. Yes. 30

Q. During which period of time the member of the school system receives his salary? A. It is entirely within the power of the board to so grant leave.

Q. It has been done, has it not? A. Not in the school system in Hillside.

Q. But they have power to do it? A. They have power to do it; yes.

Q. You said something about having received a telegram over the telephone? A. Yes. 40

*Arthur G. Woodfield, for Complainant—Cross.*

Q. Is that the only telegram that you received from Mr. Cox? A. I think so.

Q. You say you received it about September 9th or 10th? A. Yes.

Q. Tell us what that telegram said, as nearly as you can remember? A. I don't remember exactly, but it gave me information that I could expect him on the job on the 13th of September, on a Monday.

Q. Did it say anything—

The Court: You mean November, don't you?

Q. Did it say anything about returning to duty? A. I don't recall.

20 The Court: You mean November?

A. No; in September.

Q. You say you have no such knowledge, that it stated to return to duty on September 13th?

A. No.

Q. Why did you testify before that it was your best recollection that he stated in that telegram that he would return to duty on September 13th?

30 A. Well, it might have been to return to school, or return to the job.

Q. Or to return to make application for an extended leave? A. Well, I naturally supposed, since he was due to return to his position, that the telegram saying that he would be there on the 13th would answer that question.

Q. Well, did it state that he would be there on the 13th? A. I don't know; it was read over the telephone. All that I was interested in was knowing whether he would be back or not.

40 Q. Well, you know he didn't return on the 13th, don't you? A. Oh, he did return on the 13th.

*Arthur G. Woodfield, for Complainant—Cross.*

Q. He did return on the 13th? A. According to our records.

The Court: Of September?

A. Of September.

Q. You are quite sure about that? A. The records are available on that, I think. 10

Q. Have you those records here? A. We have attendance records.

By the Court:

Q. If he returned on September 13th did he remain at school for any length of time? A. For, I think, three days, then he was to report ill.

By Mr. Tepper:

20

Q. Now, Mr. Woodfield, when does the principal of the Hillside School, as a rule, prepare his schedule for the new year? A. During the month of July.

Q. So that during the month of July, 1943, the schedule for 1944 was being made out? A. The fiscal year of 1943-1944 is from July 1st to June 30th.

Q. Exactly. A. Yes.

Q. And in around June or July, or the beginning of the year, the schedule for the next succeeding year is made out; is that right? A. That is right. 30

Q. So that in the early part of 1943, Mr. Cox was preparing his 1944 schedule, was he not? A. He was preparing the schedule for the school term that begins in September, 1943, and ends in June, 1944.

Q. But he was preparing a schedule which ran through the year 1944? A. To June 30th. 40

*Arthur G. Woodfield, for Complainant—Cross.*

Q. Of 1944? A. 1944.

Q. When he refers to a schedule of the year 1943 to the year 1944, he means from June, 1943, until June, 1944, does he not? A. Right.

Q. Now Mr. Cox did apply for an indefinite leave, did he not?

10

The Court: One of the letters so states.

Mr. Tepper: There are two letters; one applying for an indefinite leave and one for an extended leave.

Q. Was there one application for leave without pay? A. Yes.

Q. That was denied, was it not? A. Yes; it was.

20 Q. Now when you speak of an unauthorized absence in connection with Mr. Cox, what did you mean by that? A. I think that the term came from the maker of the motion, a member of the board, did it not.

Q. Let us see if it did. I show you Exhibit C-13 and ask you if you can find that. A. I hardly know what I am looking for.

30 Q. I think you will find it in Exhibit C-2. A. This was at a committee meeting and the word was practically dictated by members of the board present at that time to have me write to the effect that Mr. Cox was absent and no doctor's certificate had yet been received; in order for that absence to be authorized as sick leave the rules of the board require a physician's certificate.

Q. Thereafter you did receive such physician's certificate? A. I did.

Q. Is the substance of that letter, or the meat of it, recorded in the minute book, C-13? A. I think not.

40 Q. Was that an official act of the Board of Education of Hillside? A. It was not; no.

*Arthur G. Woodfield, for Complainant—Cross.*

Q. Well then would you say that the letter written by you was an unauthorized letter? A. It was not an official letter; it was a letter written at the request of a group of members not constituting an official meeting.

Q. Now you stated, I believe, that Mr. Cox has tenure of office in the school system of Hillside? 10  
A. Yes.

Q. Therefore it is not necessary for anybody to tell him that he is going to continue on for another year, is it? A. No.

Q. That is automatic? A. Automatic.

Q. Even if you don't send out a notice of what salary he was going to receive for the following year, he would, nevertheless, receive his salary, would he not? A. Yes.

Q. When you do send out such notices aren't they customarily sent out in April or May? A. 20  
Yes.

Q. Is that what happened this year of 1943?  
A. I think so.

Q. So that the notice that was sent out to Mr. Cox, together with the notices to other members of the Board of Education, went out in April or in May, 1943? A. By referring to the minutes you find when that notice was sent out; customarily in April or May. 30

Q. That was before, quite some time before, Mr. Cox left the State of New Jersey? A. Yes.

Q. Didn't Mr. Cox pledge to you before he left that he would assist in every way in the completion of the schedule for the school year of 1943-1944? A. He so stated in his letter.

Q. He so stated in that letter? A. Yes.

Q. Is it not a fact that in September, when Mr. Cox paid the school a visit in the State of New Jersey, in Hillside, that he was there for that 40

*Arthur G. Woodfield, for Complainant—Cross.*

purpose, to fulfill that promise? A. Not only that promise, but to take up the administration of the high school as principal.

Q. He did fulfill his promises, did he not, to complete the schedule and whatever remained undone for the school year of 1943-1944. A. I think

10 the schedule was completed.

Q. Thereafter Mr. Cox submitted medical proof of illness on his part, did he not? A. Yes.

Q. And he received, as a result of that medical proof, a sick leave? A. He did.

Q. Was that sick leave for a specific term? A. Sick leave is credited on a basis of ten days for the current year, plus five days for each year for the last six years; making a total of forty school days credit.

20 Q. And that is what he was entitled to? A. Yes, sir.

Q. Is that correct? A. Yes.

Q. When he left in July, 1943, he was likewise entitled to certain accumulated period, was he not? A. There is no such thing in the rules of the Board of Education of Hillside.

Q. That is discretionary, is it not, that part? A. Discretionary; yes.

Q. You stated that before. A. Yes.

30 Q. You don't question the power of the board to grant sick leave of absence, do you? A. No.

Q. You have extended leave without pay, for that matter? A. Yes.

Q. Mr. Woodfield, I presume that recently you have refreshed your recollection about all these happenings between Cox and the School Board, have you not? A. Well, most of them I have.

40 Q. You did refresh your recollection for the purpose of coming here today to tell the story whatever you knew about it? A. So far as I was able to anticipate what might be asked.

*Arthur G. Woodfield, for Complainant—Cross.*

Q. You tried to anticipate that, didn't you? A. Yes; surely.

Q. Now do you recall an effort on your part during the early days of this controversy to have Mr. Cox resign outright? A. On my part personally?

Q. Well, as directed by the board.

Mr. Herrigel: I object to that because it does not state any dates. 10

The Court: He is not asked for dates; he is asked for his recollection.

A. You have correspondence to the effect that the Board of Education suggested that he resign.

Q. Yes. A. Yes.

Q. With that in mind, you tried to carry out the Board's instructions in that respect, did you not? 20

A. Why, surely.

Q. Now referring to C-7, which is the letter from Doctor Pilch under date of October 4th advising the Board that Mr. Cox is quite ill, whether or not the Board had Mr. Cox examined, or whether the Board relied upon that certificate? A. They relied upon this certificate.

Q. The Board was satisfied that he was ill, was it not, officially? A. Yes.

Q. Now referring to C-9, which is the letter dated October 11, 1943, addressed to Mr. Woodfield, supervising principal, that letter refers to a request for an indefinite leave, does it not? A. Yes. It so states. 30

Q. Thereafter Mr. Cox also tried to get an extended leave, did he not, without pay? You testified to that before, I believe. A. Yes. I don't know the particular sequence of this.

Q. Yes; there were a number of such applications on Mr. Cox's part, were there not? A. 40

*Arthur G. Woodfield, for Complainant—Re-direct.*

There was one, yes, and another one asking for leave without pay.

Q. An extended leave. A. That was in reference to reinstatement.

Q. When you say reinstatement, that does not tell the whole story, does it? A. So far as I know  
10 it was in reply to—

Q. In other words, did he ask for reinstatement and immediate leave thereafter? A. Yes.

Q. If that had been granted that would have preserved all of his rights under the pension fund, retirement benefits, and so forth, would it not? A. Surely.

*Re-direct examination by Mr. Herrigel:*

Q. Mr. Woodfield, did he at any time during the  
20 year 1943 resign as principal of Hillside High School? A. He did not.

Q. You state that he reported on the 13th of September and stayed there several days; is that correct? A. Three days, if I am not in error.

Q. During those three days did he take charge as principal of the school? A. He did.

Q. And thereafter he obtained sick leave, did he not? A. The third day I discovered that he had reported by telephone being ill; he was not in  
30 school.

Q. And the sick leave was granted? A. Sick leave was granted after he had presented a physician's certificate.

Q. When did that sick leave expire? A. As I remember, at the end of forty days, which would be November 9th.

Q. On November 9th did he return to the Hillside school system? A. Yes.

Q. He took up his position as principal of the  
40 Hillside High School?

*Arthur G. Woodfield, for Complainant—Re-cross.*

Mr. Tepper: I object to the form of the question, and also submit that it is not re-direct.

The Court: He has already testified to it; what difference does it make.

Q. In the Hillside school Mr. Cox holds a twelve months per year job, does he not? 10

Mr. Temper: I object to that. He is in under tenure of office.

Q. What does the school year consist of, Mr. Woodfield? A. It consists, for an administrative position, such as high school, from July 1st to June 30th, twelve months.

Q. That is all. 20

*Re-cross examination by Mr. Tepper:*

Q. Does the school year consist of an entirely different period for other people? A. Yes.

Q. For whom? A. Teachers.

Q. What is the school year for teachers? A. The teacher begins in the early part of September, whatever date has been decided upon for the opening of school, and continues until in June, a date decided upon for the closing of school. 30

Q. Is that under some form of contract? A. Well, it may be a contract, but if the teacher has got tenure it simply becomes a regular appointment; but the ordinary school year is for ten months. Take in the case of Mr. Cox, Mr. Cox has an administrative position and had duties outside of the required contract during the active school year.

Q. Well, where is that prescribed, that the school year is from June until June? A. It is 40

*Arthur G. Pilch, for Complainant*  
—Direct—Cross.

prescribed in the minutes of the board for several years past.

Q. You say that those minutes are in C-13? A. Oh, no; those are minutes of perhaps fifteen years ago.

10 Q. But you have personal knowledge of such minutes? A. Oh, yes; I saw them.

Q. No further questions.

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ARTHUR G. PILCH, SWORN:

*Direct examination by Mr. Herrigel:*

20 Q. Doctor Pilch, where do you live? A. Bloomfield, New Jersey, sir.

Q. Doctor Pilch, I show you Exhibit C-8 and ask you if that was written by you? A. It was, yes, sir.

Q. According to that exhibit you examined Mr. Cox on September 16th and 20th, 1943; is that correct? A. That is correct; yes, sir.

Q. That is all.

*Cross examination by Mr. Tepper:*

30 Q. Doctor, prior to those dates had you ever seen Mr. Cox professionally? A. A great many years before; yes.

Q. And when you examined him did you obtain from him a medical history?

Mr. Herrigel: I object to that.

The Court: That is not proper cross examination. He was put on only for the purpose of fixing the dates of his examinations.

*Arthur G. Pilch, Recalled, for Defendant—Direct.*

Mr. Tepper: Well, I will make him my own witness, if you don't mind.

Mr. Herrigel: That isn't in proper order, but I have no objection to it.

The Court: All right.

Mr. Herrigel: May I ask Doctor Pilch one other question? 10

By Mr. Herrigel:

Q. Doctor Pilch, where did you make these examinations? A. At my office.

Q. In Bloomfield? A. In Bloomfield; yes.

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ARTHUR G. PILCH, recalled.

*Direct examination by Mr. Tepper:* 20

Q. Did you ever receive a medical history from Mr. Cox? A. Am I qualified?

Q. Yes. A. Why, yes, I did.

The Court: Do you admit his qualifications?

Mr. Herrigel: I will admit his qualifications.

The Court: You are now Mr. Tepper's witness, doctor. 30

A. Yes; I examined Mr. Cox on the 16th of September, 1943.

Q. Did you receive from him a medical history?

A. I did.

Q. Was there any history there of cancer?

Mr. Herrigel: I object to that; he cannot testify to what condition existed prior to that examination. 40

*Arthur G. Pilch, Recalled, for Defendant—Direct.*

The Court: Well, Mr. Tepper is now making the doctor his own witness, just as though he was put on in the defense. I can't say what his defense is going to be, but I will permit it.

- 10 A. Mr. Cox gave a history of having a testicle removed by teratoma some sixteen years or so previous; this, he said, was done by Doctor Carl Ill. When he came to see me he complained of having intestinal grippe during the summer; he was in poor condition and he had lost a good deal of weight. To me it seemed as if he was having nervous kidney pains and I told him inasmuch as he lost so much weight, the only way to regain it was by rest, and I suggested that he take a needed
- 20 rest. The next time I saw Mr. Cox was on the 20th of September. He weighed 138 pounds. His usual weight, as he explained it, was 154. And I told him that it was about time he went away. I wrote a letter to the Board of Education and suggested that, and told them that he was to have a leave of absence, that he was ill.

Q. Did he at that time tell you that he was having marital difficulties? A. I didn't get that report at all until his attorney phoned me.

- 30 Q. When was that? A. That I can't give you the date; I don't know; it was some time after the 16th; some attorney phoned me and said that he was Mr. Cox's attorney, and he was having marital difficulties.

Q. So that at the time of your examination and your advice to Mr. Cox, and your certificate to the Hillside Board of Education, you had no knowledge of his marital difficulties? A. That is correct.

*Arthur G. Pilch, Recalled, for Defendant—Cross.*

Q. Now you say that you examined him on October what? A. September 16th and 20th.

Q. September 16th. A. And the 20th.

Q. When you examined him on September 20th did you notice any improvement in his condition; was it better or was it worse? A. On September 20th?

10

Q. Yes. A. No; he was about the same, Mr. Tepper.

Q. As he was on the 16th? A. That is correct; yes.

Q. Since there is some question about this, Doctor, you are a practicing physician of the State of New Jersey?

The Court: There is no question. His qualifications are admitted.

20

*Cross examination by Mr. Herrigel:*

Q. Doctor, did Mr. Cox tell you that he had been away on vacation before he came to you? A. No; he didn't say that.

Q. What was the last time prior to September 16, 1943, that he had been to you for advice? A. That I couldn't give you; I don't know.

Q. That is all I care to ask. A. I think the truth is it was some years prior.

30

By Mr. Tepper:

Q. Did Mr. Cox tell you when he visited you that he had been treated by Doctor Seidler of Montclair? A. No; I can't recall that he did; I haven't any recollection of that.

Q. Do you have any recollection of Mr. Cox telling you that he had been examined by Doctor Seidler in May, June or July, of 1943? A. I haven't that down in my records; I can't say.

40

*Wilbur Harry Cox, for Complainant—Direct.*

Q. You have no recollection about that? A. I have no recollection of that.

Q. Thank you, sir.

10 WILBUR HARRY COX, SWORN.

*Direct examination by Mr. Herrigel:*

Q. When were you and Viola Cox married? A. October, 1925.

Q. By whom were you married? A. By Doctor McClusky, in Newark.

20 Q. Where were you married? A. In the Methodist Protestant Church in Clinton Avenue, Newark.

Q. What is your profession, or what is your occupation? A. Educator.

Q. Where are you employed? A. Hillside Board of Education.

Q. How long have you been employed by the Hillside Board of Education? A. Twenty-three years.

Q. What is your position there? A. Principal of the high school.

30 Q. As such what is your salary? A. \$4,600 a year.

Q. And bonus? A. \$100 last year, I believe.

Q. Did you receive your salary for the entire year of 1943? A. I did.

Q. Prior to July, 1943, where did you live, Mr. Cox? A. 126 Virginia Avenue, Hillside.

Q. And the house is owned by whom? A. By Viola Cox and me.

40 Q. How long had you two owned the house, approximately? A. Seventeen years.

*Wilbur Harry Cox, for Complainant—Direct.*

Q. Is the property free and clear? A. No, sir; it is not.

Q. How much mortgage is on the property? A. \$2,700.

Q. Who holds the mortgage? A. Presently?

Q. Presently. A. Hillside National Bank.

Q. For some months past have you been paying your interest and sums of money to apply on your indebtedness? A. Yes. 10

Q. How long have you been doing that? A. \$70 a month prior to October, and \$43 to \$50 a month since that time.

Q. What was the last date in July that you performed your duties as principal of the Hillside High School?

Mr. Tepper: I object to that question. What year, to begin with? 20

The Court: 1943, is the question.

A. July 20th.

Q. Prior to July 20th had you obtained a vacation leave, to go on vacation, from the Board of Education? A. I had.

Q. How long a vacation were you given by the board? A. There was no definite time placed on it.

Q. It was an indefinite period? A. Three or four weeks beyond my regular vacation. 30

Q. What was your regular vacation? A. Approximately 21 to 23 days, pending on the week-ends.

Q. What was the date that you were required to return to the Hillside High School?

Mr. Tepper: I object to that question as being improper; from leave of absence of vacation; what is the question. 40

*Wilbur Harry Cox, for Complainant—Direct.*

The Court: I will sustain the objection as to the form of the question, because there is some uncertainty about the dates.

Q. How long a vacation did you receive from the Hillside Board of Education last summer? A.  
10 There was no limit placed on it.

Q. You mean you had an indefinite vacation?  
A. No; it could have been seven and a half or eight weeks, or nine weeks; pardon me; it could have been nine weeks.

Q. Nine weeks would have taken you to what date? A. Depending on the time I started it.

Q. On July 20th where did you go? A. Chicago.

Q. When did you start? A. Started July 20th.

Q. From Chicago where did you go? A. Reno.

20 Q. When did you get to Reno? A. The night of the 23d.

Q. While you were there did you institute suit for divorce against your wife, Viola Cox? A. Eventually.

Q. How soon after you had arrived in Reno was that suit instituted?

Mr. Tepper: I object to that question as being wholly immaterial, as to how soon after he arrived in Reno did he institute divorce proceedings.  
30

The Court: Under the text of the United States Supreme Court cases, that is wholly material.

Mr. Tepper: Do you mean the Williams case?

The Court: Williams *v.* North Carolina; the question of domicile may be gone into; and I think counsel should be restricted in his examination to the question of domicile, and only domicile.  
40

*Wilbur Harry Cox, for Complainant—Direct.*

Mr. Herrigel: Don't you think the length of sojourn has something to do with the question of domicile?

Mr. Tepper: I respectfully submit that the cases hold that the length of sojourn means absolutely nothing. If he went to Nevada and if he divorced himself of all things in New Jersey and intended to make Nevada his domicile, it is immaterial as to whether he started his suit fifteen minutes after he got to Nevada, provided Nevada permitted him to do it, or whether he waited twelve years; and the *Williams v. North Carolina* case is authority for the statement that the fact that the stay in the state not for long is not necessarily fatal to the existence of a domicile, since the essential fact that raises the change of abode to a change of domicile is the absence of any intention to live elsewhere. 10 20

The Court: Well, I agree that it is not necessarily material on the question, but it may be material, depending upon the other facts and circumstances adduced.

Mr. Herrigel: I believe the *Sprague* case makes that clear and also the *Mascola* case.

Mr. Tepper: Well, the *Baker* case and the other cases, and even the *Sprague* case, stand for the proposition that you can not by mere suspicion declare that there was anything like a wrong intention. The point I am trying to make is this, so that we don't go afield, there is only one question before Your Honor, and that is as to whether or not there was a domicile established in the State of Nevada, and whether that was a permanent domicile. 30 40

*Wilbur Harry Cox, for Complainant—Direct.*

10           The Court: I suppose if it appeared by evidence here that Mr. Cox had lived in Nevada for twenty years, that that objection might be well taken, but he only lived there, according to the evidence here, about six weeks, or whatever the minimum time was. Between the time he got there and the time he got his decree.

          Mr. Tepper: No, sir.

          The Court: Whatever the minimum time was.

          Mr. Tepper: No, it was not the minimum time; there is no such evidence. I am sorry, I don't mean to contradict.

20           The Court: By evidence I refer to the exemplified copy of the proceedings out there.

          Mr. Tepper: I see.

30           The Court: In other words, there is no testimony as to how much time elapsed between the time he went there and the time he filed; but the point I make is that counsel should be restricted to the questions relating to domicile only. And that objection is overruled. I hold that the question of length of residence may have, not of necessity, but it might well have a bearing upon that question of domicile; but on this record itself, which is here, that shows the dates.

          Q. How long were you there when suit was instituted in your behalf? A. Seven weeks.

          Q. Was it September 7th? A. Yes, sir.

          Q. After suit was instituted did you return to New Jersey? A. I visited New Jersey.

40           Q. Did you return to New Jersey?

*Wilbur Harry Cox, for Complainant—Direct.*

Mr. Tepper: He said he visited New Jersey.

Q. I ask him again. What is your answer? A. I visited New Jersey.

Mr. Tepper: That is an answer. If he visited he must have returned. 10

Q. Now before you went to Reno did you resign from your position as principal of Hillside High School? A. I did not.

Q. You had certain rights of tenure which you had obtained over a period of some eighteen or twenty years; is that correct? A. Yes, sir.

Q. Did you give those rights up? A. I did not.

Q. Did you give up your right to the pension? A. I did not. 20

Q. Upon your return did you go to the Hillside High School? A. Not immediately.

Q. When did you go to the Hillside High School? A. I returned on the night of the 12th and went to Hillside High School on the 13th; that was Monday.

Q. Were you there any other days besides the 13th? A. The 14th and the 15th.

Q. Did you then obtain a sick leave from the Hillside Board of Education? A. It was automatic. 30

Q. Did you obtain it? A. I did.

Q. When did that sick leave expire? A. November 9th.

Q. After you obtained sick leave did you return to Nevada? A. No.

Q. After you obtained sick leave in November did you return to Nevada? A. You mean after November? 40

*Wilbur Harry Cox, for Complainant—Direct.*

Q. No; did you obtain sick leave before November 9th? A. Yes.

Q. Upon obtaining your sick leave from Hillside did you return to Nevada? A. Eventually.

Q. On what date did you return to Nevada? A. Approximately the 29th of September.

10 Q. When did your divorce hearing come up for trial? A. October 15th.

Q. On that date you were awarded a decree? A. Yes, sir.

Q. How long did you remain in Reno, after you had obtained the decree?

Mr. Tepper: I object to that as being immaterial.

20 The Court: On the same grounds that you raised before?

Mr. Tepper: Exactly, sir.

The Court: Objection overruled.

A. Approximately ten or eleven days.

Q. During that time did you get reservations to return to the East? A. No, sir; I did not.

Q. When did you return to Hillside, New Jersey? A. November 7th.

30 Q. When did you assume your duties as principal of Hillside High School in November, 1943?

A. I came to the school on November 8th.

Q. You assumed your duties, did you, as principal, on that day? A. Yes, sir.

Q. Up to that time had you ever resigned from the Hillside school system? A. No, sir.

Q. Had you ever given up your rights that you had gotten under the tenure laws of the State of New Jersey? A. No, sir.

40 Q. Did you ever give up any of your rights under the pension system? A. No, sir.

*Wilbur Harry Cox, for Complainant—Direct.*

Q. You are still in the Hillside school system?

A. Yes.

Q. You are principal there? A. I am.

Q. I think I asked you, Mr. Cox, did I not, whether or not you had received your salary for 1943? A. 1943; yes, sir.

Q. You had received your entire year's pay? 10

A. Yes, sir.

Q. Did you tell the court in Reno that you were principal in the Hillside school system?

Mr. Tepper: I object to that question. The decree is here, and outside of the question of domicile, full faith and credit must be given to that decree under our Federal constitution; and I don't believe that Mr. Herrigel can ask this witness what happened before the judge of a court in Reno. 20

The Court: You have the evidence here, Mr. Herrigel.

Mr. Herrigel: I realize I have the transcript here; but I realize, too, that the cases say that it would be considered as in evidence along this line.

The Court: Well, I am not so sure of that; I am not prepared to say. That is a matter for argument later. Your question is not directed to an inquiry respecting domicile, but to an alleged fraud in another respect upon the court in Nevada. 30

Mr. Herrigel: Well, I will withdraw that question.

The Court: Has this court any right to go into those questions outside of the question of domicile, under the Bell case, and Streitwolf?

Mr. Herrigel: I will withdraw the question. 40

*Wilbur Harry Cox, for Complainant—Direct.*

10 The Court: Just a minute, before you withdraw that question. It was said by the Court of Errors and Appeals in the case of *Sprague v. Sprague*, that the defendant in that case must have misrepresented or failed to disclose facts before the foreign tribunal or else that tribunal could not have come to the conclusion it did in that case. The court, in the *Sprague* case, did not have before it the transcript of the testimony in the foreign jurisdiction, so it was a matter of speculation as to what the testimony might have been. As I understand it, the inquiry, whether the transcript is here or not, must be limited to the question of domicile. Do you think I am wrong about that?

20

Mr. Herrigel: No. I am not too much concerned about it, because your Honor has the entire record here and it will show of itself just what the situation is here.

Q. Were you suspended as principal of Hillside High School? A. Yes.

Q. Do you remember the date of your suspension? A. November 9, 1943.

30 Q. Were you subsequently reinstated? A. Yes, sir.

Q. Did you marry Mildred Hamilton? A. I did.

Q. On what date did you marry her? A. November 6th.

Q. 1943? A. 1943.

Q. Where were you married? A. New York State.

Q. I show you a signature and ask you if you recall that signature. Do you know whose signature that is? A. That is mine.

40

*Wilbur Harry Cox, for Complainant—Direct.*

- Q. It is your signature? A. Yes.  
 Q. Did you write this letter? A. I did.  
 Q. To whom is it addressed? A. To Mildred.  
 Q. Who is Mildred? A. Mildred Hamilton.  
 Q. The girl that you married? A. Yes, sir.

Mr. Herrigel: I offer that letter in evidence. 10

Mr. Tepper: I object to it going into evidence at this time.

The Court: We will take a short recess.

Mr. Tepper: I understand from Mr. Herrigel that he has approximately four or five witnesses in number. I have certain witnesses on call. They are men, one in particular who is engaged in very vital industry. It seems to me that these five witnesses should consume the better part of the afternoon and I would not like to call them at this time. 20

The Court: Do you think they will take the afternoon?

Mr. Herrigel: I think that they will last through until about three-thirty.

The Court: That is substantially the day. You have some other evidence, I suppose, that you can put in this afternoon. 30

Mr. Herrigel: Oh, yes; I have.

The Court: I see no reason why you should call any of the others. Is there any objection to the offer of that letter?

Mr. Tepper: No, sir.

(Letter marked Exhibit C-14.)

Mr. Herrigel: I want to be sure that it will get into the record, so I desire to read it.

The Court: You may read it. 40

*Wilbur Harry Cox, for Complainant—Direct.*

Mr. Herrigel: This is on Sigma Nu stationery; it says:

#1 to New Bern.

Reno, Nevada,  
August 26, 1943.

10

Mildred Dearest:

20

Loved One, I'm so lonely too. I'll be very courageous though, Sweetheart. I can fight this thing through. I want you, and as I wrote to Mother, I can be a Launcelot pursuing the Holy Grail (You). I'm concerned now about you. For more than a week I have felt well. I'm packing away all the food I can shove down, and I'm observing good rules of health. Now, Pal, you aren't rested. You must face the music without me. I certainly hope you won't deny me, but if you ever feel you can't go on without dropping me, I'll accept the verdict. If you can't go on without me, and want me, I'll welcome you with open arms as soon as you can get to me, and be as peaceful as an angel then with you. But I hope you can exhibit good health, poise, charm, and great strength as you represent us in Hillside. You've got the stuff, Pal. Carry on for us. Things look black for the present. I had word that she is shooting off her mouth around town that she'll never consent to a decree, but saying that and stopping it are two different things. Gene says in a letter "*Don't worry—we'll win in the end. It's a question of time*". So no matter how black things look when you return, remember what he says from that end,

30

40

*Wilbur Harry Cox, for Complainant—Direct.*

and remember on this end I'll be fighting like a demon for us. I think with your good works in town plus the sympathy I'll get for what she is doing to Virginia and me, we'll make some progress. As far as the job goes, Pal, between you and me I'm counting that out for the people aren't going to stand for "shenanigans" and she is on the ground stirring things up. However, I think I still have A. G. R. R. K. Earle, Walker, Legion, if it counts for anything, Lodge if it counts, and maybe Elks plus a lot of people. So I'll be "cagy" and play my cards as well as possible. This I do feel. The town isn't big enough for her and me, and if I can win with this handicap, my victory will be complete. Well, away with that.

I'm ever so grateful for all your thoughts and feelings expressed in the 3 letters arriving today. It was more comforting than I can tell. Don't ever forget, Pal, that my love for you is greater than the whole world. I really mean I want you more than *anything*, more than *everything*. Life without you is unthinkable.

Darling, about Virginia, I love you so that even she couldn't come between us. But I do feel grateful that you bear the child no malice. I am glad you are glad I heard, and I must confess that I didn't know how you felt since she has given you the "works". But, dearest, you are grand to feel the way you do.

If I can get my freedom in Washington I'll go there, or Mexico, or Argentina. Don't know what on, but I will. I want complete freedom and you. It must be; it will be.

*Wilbur Harry Cox, for Complainant—Direct.*

I'll talk to A. H. about E. H. and F. H. tomorrow. I agree with your theory. But remember hers is not a normal mind.

10 I didn't mean by "intimacy" anything except that she's probably been fully informed about our close association at school. All the other stuff is circumstantial. However, Pal, I feel that we'll have to "take" anything. I know I can. I won't be panicky. I'll be patient, suffering and very strong—all for us, Sweet-my mate. You speak about Seal level and me next summer. Would I come? Darling, I'd go to Sea Level, "Podunk" or anywhere with you for as long as you wished. And I don't care if the roof leaks! Just so long as we are dry (from above). Thanks, Pal, beyond words for the thought "If I close up the storehouse of love, that I'll have to open it soon for you". If I ever go down again about love I'll remember that. Angel, Sweetheart, I adore you.

20

Mate, wish I'd been there when you pretended to put both arms around. Did you cry for me like I cried for you at 5:30 A. M. today? Could have at 8 too. Those farm animals set a bad (?) example! Oh it is Sough Sweet.

30

Now about mail. Not because I care a rap, but for our own good—I'll take precautions. I'll limit myself to 1 a day until you are safe in Hillside and I'll number them. Labor Day week-end will be bad with Edith still away, but I'll try to get word to you. When you feel most lonely, try what I have this summer — sit down and pour it out to me in an extra. I'll

40

*Wilbur Harry Cox, for Complainant—Direct.*

send mail via Roselle Park. Maybe you could type up some large envelopes addressed to yourself and send them to Edith to forward mine in. If our affair becomes a big item of, Town Talk, maybe the P. O. people will be watching for Reno postmarks. But I guess we're over-fearful. I really don't give a darn except that the more we wave a "red flag" in her face, the more she'll fight back—damn her. 10

So my love, you face a week of fewer letters. But Darling Angel if ever a girl had a man to love her, you are she. Is that conceited? I don't mean it to be. I simply meant to say that I can't love anymore, can't be any more true or faithful, can't worship you anymore—or can I? Oh if I only get the chance to demonstrate in other ways soon. 20

Here is my all to you Previous Precious Sweetheart. Kisses, teeth, B. B.—may I please  $\frac{1}{4}$ ?—I'm completely lost too Darling—Part of me—Oh take care of me. Your loving mate, Wilbur.

(Over)

S. E. (x x x x) FF 30  
44 !!

Schedule to Sea Level

#62	Mailed	Aug. 21	)		
#63	"	" 21	)	Some air	
#64	"	" 21	)	some	
#65	"	" 22	)	regular	
#66	"	" 22	)		
#67	"	" 23	)		
68	"	" 23	(air)	(I think)	
69	"	" 23	(air)		40

*Wilbur Harry Cox, for Complainant—Direct.*

	70	“	“	24	(air)
	71	“	“	24	
	72	“	“	24	
	72	“	“	24	
	73	“	“	25	
	74	“	“	25	(air)
10	75	“	“	26	
	76	“	“	26	(air)

This is #77—#1 to New Bern.

---

Received:

Sun. Nite #1—Air.

“ “ 2 Air Special

20 Mon. “ 2 Air (1 day at least ahead  
of schedule so I'll probably draw a blank  
tomorrow! This one came in 2 days!

---

So So So So So much—ad inf!

More more more

Always—Forever and a say

Inseparable

Unquenchable like my Reno Thirst!

Not starving but or so lean.

30 Q. On the second page of that letter you refer  
Earle. To whom is that reference made? A. Ed-  
ward Earle, of the Board of Education.

Q. You refer to Walker; to whom is that refer-  
ence made? A. Frank Walker, of the Board of  
Education.

Q. That is the Hillside Board of Education? A.  
Right.

Q. You refer to RRK; to whom is that refer-  
ence made? A. That is Mr. King.

40 Q. You refer to AG; to whom is that reference  
made? A. AG; that is something else.

*Wilbur Harry Cox, for Complainant—Cross.*

- Q. Is that AG (indicating)? A. I don't know.  
 Q. What is it? A. It looks like——  
 Q. Well, you wrote it, did you not? A. Yes.  
 Q. Do you remember what the reference is to?  
 A. It must be.  
 Q. It must be what; AG? A. It doesn't look  
 like AG; it refers to Mr. Woodfield. 10  
 Q. You refer to lodge; what do you mean by  
 that? A. Friends.  
 Q. You refer to Elks; what do you mean by  
 that? A. Just friends.  
 Q. And Elks? A. Friends.  
 Q. Are you a member of the Elks Lodge? A.  
 Yes.  
 Q. I refer you to page 3, in which you say, "I'll  
 talk to AH about EH and FH"; what is that in  
 reference to? A. That must be Hilliard, Albert 20  
 Hilliard.  
 Q. Who is Albert Hilliard? A. He is an attor-  
 ney in Reno.  
 Q. Was that the attorney that represented you  
 when you instituted your suit in Reno? A. He  
 was.  
 Q. Who is EH; the reference to EH? A. I  
 don't know what that is in there.  
 Q. Do you know what FH refers to? A. No.  
 Q. That is all. Cross examine. 30

*Cross examination by Mr. Tepper:*

Q. You stated on direct examination that you  
 performed your last duties as principal of the  
 Hillside High School on July 20th, 1943; is that  
 correct?

Mr. Herrigel: I object to that; he didn't  
 so testify.

The Court: He said that he was at school 40  
 until July 20th. I take it to mean that he

*Wilbur Harry Cox, for Complainant—Cross.*

was attending to his duties there until that date.

Q. In 1943, in the month of July, before you left the State of New Jersey, when did you complete your duties as principal that month? A. July 20th.

10 Q. Then what happened? A. On July 20th?

Q. Yes. A. I left New Jersey to make Nevada my domicile.

Q. How did you come to leave New Jersey to make Nevada your domicile; what did you do?

A. I sold my car; took whatever money I had, left enough to cover outstanding checks, and resigned certain positions with organizations, and tried to leave things in shape for people to carry on, left 20 money with my brother-in-law to pay the bills at 126 Virginia Street.

Q. For the benefit of Viola Cox? A. Yes, sir.

Q. Now you tendered your resignation, did you not, to the American Legion of Hillside? A. Of Union County.

Q. Of Union County? A. The Union County organization.

Q. You were an official of that organization? A. Yes, sir.

30 Q. You tendered your resignation to that organization? A. Yes, sir.

Q. Did you assign any reason? A. That I was sick and was leaving the state to go elsewhere.

Q. Did you say when you would be back? A. No, I didn't say; I said I was going to leave New Jersey and wasn't coming back.

Q. Did you say where you were going to live? A. No.

40 Q. You were also an official of the Masonic lodge? A. Yes, sir.

*Wilbur Harry Cox, for Complainant—Cross.*

Q. Did you discuss plans for relinquishing that office? A. Yes, sir.

Q. Were you Chairman of the Teachers Credit, or President of the Teachers Credit Association of Union County? A. Yes, sir.

Mr. Herrigel: I wonder whether this is all cross. 10

The Court: It is in the nature of direct.

Mr. Tepper: Well, I submit that it is cross, in the light of questions by Mr. Herrigel, which apparently impressed the court. I am trying to do the same.

The Court: He was called as a witness for the complainant.

Mr. Tepper: Yes.

The Court: And as such his examination was in the nature of a cross examination, although binding, of course, upon the complainant. Now he is your client, and under those circumstances I suggest that you should not lead too much. 20

Mr. Tepper: I appreciate that. I didn't intend to lead; but in view of his testimony that he resigned from certain organizations I did not consider that as leading.

The Court: I don't think there is any objection to that question. 30

Mr. Herrigel: No; there is no objection to that question.

Q. Did you not ask to be relieved of your duties as President of the Teachers Credit Association of Union County? A. Yes, sir.

Q. Now you didn't resign your post as principal of the high school? A. No, sir.

Q. Why not? A. Because I wanted to preserve the benefits to which I was entitled. 40

*Wilbur Harry Cox, for Complainant—Cross.*

Q. To what benefits do you refer? A. Well, in the first place, I had a vacation coming to me; and in the second place, I have certain important pension rights in the pension and annuity fund which I wanted to protect; in case of my serious illness I was entitled to retire on approximately 35/70ths.  
 10 of my salary, derived from the number of years of my service.

Q. How would that affect your resignation from the pension fund? A. Well, if I resigned from my position as principal of Hillside High School then I would be through with the pension fund, or the pension fund would be through with me.

Q. Then do I understand you to say if you had resigned from the pension fund and as principal of the Hillside school system, all of these benefits  
 20 would have terminated? A. Yes, sir.

Q. You say that is the reason why you did not resign as principal and from the pension fund?  
 A. Yes, sir.

Q. Any other reason? A. Well, although I had made out a schedule for the coming year, there were some things that had not been completed, and I wanted to preserve my professional standing and secure letters of recommendation when the time came to take another position. For that reason I wanted to see to it that everything was in  
 30 good order.

Q. Well, did you take any steps to obtain another position elsewhere? A. I did.

Q. Where? A. In Nevada.

Q. Where did you do that; with what organization? A. With the State Department of Public Instruction there and with the Deputy Superintendent's office, with the office of the Reno City superintendent, and with business organizations.

40 Q. Where? A. Southern Pacific Railway.

*Wilbur Harry Cox, for Complainant—Cross.*

Mr. Herrigel: I don't believe that any of this is cross.

Mr. Tepper: Whether it is cross or not, it is material.

The Court: Proceed.

Q. Where, Mr. Cox? A. Southern Pacific Railroad. 10

Q. Yes. A. Western Pacific Railroad; International Correspondence school; and of course I was reading the ads. every day.

Q. Just when did you decide that you were going to live in Nevada?

Mr. Herrigel: If the court please, I object to that. He hasn't said that he decided.

Mr. Tepper: Of course he has. 20

The Court: Well, he was saying so in effect when he applies for a position somewhere else.

Mr. Herrigel: Well, it isn't certain, the date that he testified that he was to remove himself from the State of New Jersey; and make Nevada his domicile.

The Court: It isn't exactly in that form in the testimony. You had better ask him that question and then go on from there. 30

Q. Back again, Mr. Cox, to July 20, 1943; what happened then? A. I left New Jersey on the 20th of July, 1943.

Q. Why did you leave New Jersey? A. Because my health was bad.

Q. For what purpose did you leave New Jersey? A. I wanted to get away from everything and everybody and take up residence far away.

Q. Where did you decide to take up such domicile? A. In Nevada. 40

*Wilbur Harry Cox, for Complainant—Cross.*

Q. When you left the State of New Jersey did you intend to go to Nevada, or did you intend to go somewhere else? A. I intended to go to Nevada.

10 Q. Had you any idea in your mind that you would go anywhere other than to Nevada? A. No, sir.

Q. Had you any mental reservations about establishing your domicile in Nevada? A. I was never more serious in my life.

20 Q. Now you say that you applied for those positions in Nevada; then you said something about maintaining your professional standing in New Jersey; what did you mean by that? A. Well, I meant by that if I changed my position I would want letters of recommendation from the last place where I worked.

Q. Now what was the state of your health when you left New Jersey in July, 1943? A. It was bad.

Q. In what way? A. Well, nervous, irritable; every little trouble that I had previously seemed to be aggravated.

30 Q. Specify what seemed to be aggravated in your condition? A. Well, naturally, I always feared, and I have feared periodically a disturbance from the trouble I had some eight years ago.

Q. What was that trouble? A. That was a cancerous condition.

Q. Did you have an operation performed, as a result of which a lamina cinera was removed from your person? A. I did.

Q. You say that periodically you feared that that was flaring up again? A. When I would not feel well, yes.

40 Q. Now, when you got to Reno, Nevada, what was the state of your health? A. It was bad; very bad.

*Wilbur Harry Cox, for Complainant—Cross.*

Q. Explain that, please? A. Well, I had no energy; I was tired; I had headaches; I would have aching legs; I had a temperature; the only thing that would remove the temperature was to get off my feet.

Q. Did you get off your feet? A. I did.

Q. Where, and how? A. In Reno, at the house 10  
where I stayed. As soon as I got out there I went to bed; off and on until the time I saw an attorney.

Q. How long were you ill in Reno, Nevada, before you did anything with respect to seeing an attorney? A. Well, I was ill even after I saw the attorney, but I didn't do anything about seeing an attorney for ten days or two weeks.

Q. Well, was it because you were ill, or because you hadn't thought about seeing an attorney; which was it? A. Well, it was both. I went out 20  
there to establish my residence, that was the primary purpose, and then after I had been there a few weeks I came to the decision.

The Court: I don't understand that answer.

A. The primary purpose of my going to Nevada was to establish a domicile. After I had been there I decided I was going to get a divorce.

Q. You say that your primary purpose was to go to Nevada and establish a domicile there? A. 30  
Yes, sir.

Q. After you had established a domicile there and you were there for a while you decided to see an attorney; is that what your testimony was? A. Right.

Q. You say that you were ill for about two weeks? A. Yes, sir.

Q. Who took care of you? A. Mrs. Hash. 40

*Wilbur Harry Cox, for Complainant—Cross.*

Q. Is that the woman with whom you lived? A. Yes, sir.

Q. Did you have any talks with her about Nevada? A. Several.

Q. What did you tell her?

10 Mr. Herrigel: I object to that.  
The Court: Objection sustained.

Q. What steps did you take to establish a domicile in Nevada such as you describe to us? A. Well, as soon as I was able to I began to make friends, and tried to visit organizations with which I had been affiliated in the East; attended the convention of the American Legion, Department of Nevada; eventually attended some lodge meetings; went to the Rotary Club; made friends  
20 wherever I could.

Q. At that time did you have any occasion to leave the State of Nevada? A. No, sir.

Q. Had you made any plans when you arrived in the State of Nevada to establish your domicile there, to return to the State of New Jersey? A. No, sir.

Q. Or to leave for another state? A. No, sir.

Q. When you arrived there and established  
30 your domicile, did you have any idea or notion that you might remove yourself from the State of Nevada and go to a neighboring state to that of Nevada? A. No, I did not.

Q. Are you definitely and unequivocally positive that your intention was to stay there? A. Absolutely.

Q. You didn't carry out that intention, did you, Mr. Cox; you did leave Nevada some time after you arrived there, didn't you? A. I established  
40 my residence, my permanent residence, in the State of Nevada, to which I went.

*Wilbur Harry Cox, for Complainant—Cross.*

Q. Now did you thereafter visit the State of New Jersey again? A. I did.

Q. Under what circumstances and when did that occur? A. I visited New Jersey on the 13th, 14th and 15th of September.

Q. 1943? A. 1943.

Q. Why did you visit New Jersey? A. I went to see that the schedules for the year had been made; there was one teacher who had not been hired and we had difficulty in finding teachers in June and July, 1943. 10

Q. What concern was that of yours? A. Well, I promised to put things in shape before I left.

Q. To whom did you make that promise? A. The supervising principal.

Q. Did you write him a letter to that effect? A. Yes, sir. 20

Q. Was one of the reasons why you came back to fulfill that promise? A. That was one of the reasons; there were other reasons.

Q. What were the other reasons? A. Sir?

Q. Enumerate them, please? A. I did want to see my daughter; I hadn't seen her, and I wanted to see if my presence here in person would assist in finishing up a proceeding which I had instituted in Nevada, namely, the securing of a signature. 30

Q. The securing of what? A. The securing of a signature agreeing to the action which I had taken in the State of Nevada.

Q. Was the second reason why you came up from Nevada to see if you could personally prevail upon Viola Cox to enter an appearance in the proceedings in Nevada? Is that correct? A. Yes, sir.

Q. Why did you do that? A. For one reason to bring out a father's duty, and the second reason, 40

*Wilbur Harry Cox, for Complainant—Cross.*

I was anxious to get the matter finished without further expense.

Q. Did you have any other reason? A. Well, only that I could make my plans for the future as far as employment was concerned.

10 Q. Among those plans did you try to or did you make application for any sort of leave of absence without pay? A. Oh, yes; I applied several times for various kinds of leave, with and without pay.

Q. Did you make that application in person? A. I did.

Q. Was that leave granted? A. Leave was.

Q. I show you Exhibit C-8 and ask you if that is one of the letters requesting an indefinite stay?

A. Yes, sir.

20 Q. Why didn't you resign when they refused to give you that indefinite leave of absence? A. Well, I was interested in preserving my rights in that pension fund; furthermore, it got to a point by that time that I had to defend my reputation, which had been attacked.

Q. Who attacked your reputation? A. It was attacked when I was suspended by the Board of Education.

30 Q. Was that another reason that you came back? A. Yes, sir; that was the reason I came back the last time.

Q. To fight that out? A. To fight that out; to clear that up.

Q. When you came up here to New Jersey, for the reasons related by you, did your plans call for staying in New Jersey if Mrs. Cox had consented to this decree? A. No, sir; I had filed application for a position in Nevada.

40 Q. Well then, do you mean to tell us that if Mrs. Cox had entered an appearance in the Nevada courts that you would have remained in Nevada, nevertheless?

*Wilbur Harry Cox, for Complainant—Cross.*

Mr. Herrigel: I object to that as a self-serving declaration.

The Court: Naturally they are self-serving; but I think that is objectionable because it calls for a hypothetical answer. Still I am going to allow it in order to get at this man's state of mind.

A. Yes, sir.

10

Q. I show you a letter on the stationery of the State of Nevada, Department of Education, Carson City, dated October 20, 1943, signed by the city superintendent of instruction, addressed to you at Reno, Nevada, and ask you if you received that communication from the Nevada Department of Education? A. Yes, sir.

Mr. Tepper: I offer that in evidence.

Mr. Herrigel: No objection.

20

(Marked Exhibit D-1.)

Q. Now is this another educational department that you made application to for employment? A. That is the top office, the head office of the educational system of the State of Nevada, and is different from the district office, where I also applied and filed application that I mentioned previously, after I had applied to the city superintendent.

30

Q. In other words you applied to the city superintendent? A. Of Reno.

Q. The district office of Nevada and the department of education at Carson City? A. Yes, sir.

Q. This letter read as follows: "Dear Mr. Cox: Since your annual salary of \$4,600 is considerably higher than that of practically any school superintendent in the State of Nevada, I must reply to your letter of the 18th instant by advising that there are apparently no opportunities in this state

40

*Wilbur Harry Cox, for Complainant—Cross.*

for placement in your professional field on a monetary standpoint. Should you be interested in seeking a position in the Nevada schools where there are many opportunities for fine service despite the comparatively small compensation I shall be glad to discuss this point with you later.

10 Yours very truly, Mildred Price, State Superintendent of Public Instruction." Did you thereafter make application for a job that pays a lower salary than this? A. Yes, I did.

Q. Were you willing then to accept a job of lesser importance? A. Yes, sir.

Q. Did you communicate to any member of your family the fact that salary was of no consequence with you at that time when you were living in Nevada? A. I did not discuss the salary question

20 at all.

Q. With anybody? A. No, sir.

Q. Now then, referring to Exhibit C-14, which is this letter that Mr. Herrigel read into the record, and about which he questioned you, I now ask you what you meant by this statement, "You must face the music without me"? A. Well, the situation was creating a stir, would create a stir when the young lady came back; I knew the young lady would come back to Hillside and I would not

30 be with her.

Q. Where were you? A. I was in Nevada.

Q. What did you mean by "without me"? A. I just wouldn't be here.

Q. What did you mean by the language, "If you can't go on without me and want me, I will welcome you with open arms as soon as you can get to me"? A. I had hoped that she would come out there.

40 Q. Didn't you have any idea that you were going to leave Nevada and come back here to her? A. No, sir.

*Wilbur Harry Cox, for Complainant—Cross.*

Q. Are you sure about that? A. Absolutely.

Q. Is that what you meant by this language, that she would have to come out to you? A. She would have to come out to me.

Q. Now had you decided that you wanted to give up your job in Hillside? A. Yes, sir.

Q. This language in this letter, "As far as the job goes, Pal, between you and me, I am counting that out", and so forth. A. Well, I knew the furor that a situation of this kind would create in a small town and I felt that that was the end of it as far as the job went; I knew that before I went to the State of Nevada. 10

Q. You had no idea that you were coming back to this job? A. No; no idea.

Q. Did you ever think of coming back to this job after having left for Nevada? A. I wanted no part of that situation that I left. 20

Q. Then again I ask you, why didn't you resign? A. Well, I couldn't resign, because, in the first place, I came back to complete this unfinished business.

Q. Yes. A. And I came back as I said in September to see my daughter and get the signatures, and the second time I found out there were certain actions that had been instituted in this state against me with reference to the job and with reference to support and one thing and another, and I came back to face those. 30

Q. In coming back to face those, had you any plans for staying here if you were successful in defending those actions? A. No; my plan was to clean things up, resign, and go back.

Q. Go back where? A. To Nevada.

Q. With reference to these benefits about which we have had so much testimony, how long did you intend to avail yourself of them? A. Well, I in- 40

*Wilbur Harry Cox, for Complainant—Cross.*

tended never to give those up until I had to; in other words, I was seeking, as a matter of fact, in that application in Reno, I had left blank the question of state of health.

10 Q. Yes. A. If I was going to be permanently disabled I expected to draw a pension from the State of New Jersey, that I have to go to physicians in the East who knew my condition, then to find my health clear, then clear myself with the Board of Education and I would be all set then to go back and accept a position.

Q. It was then that you intended to resign? A. Yes.

20 Q. Did I understand you to say that your state of mind was such that you wanted to avail yourself of the last bit of protection that you could get under your pension rights, and so forth, until such time as you were convinced that your health was favorable enough for you to resign? A. Yes.

Q. Why didn't you go back when you came to New Jersey the last time? A. I couldn't get back.

Q. To finish up this business, as you say. A. I couldn't get back.

Q. Why not? A. Because they slapped me in jail and instituted these suits.

30 Q. You say you were slapped in jail? A. Yes, sir.

Q. Who slapped you in jail? A. The attorney for the complainant in this case, I presume.

Q. Do you refer to the writ of *ne exeat* which was executed against you? A. All the writs, whatever they were, *ne exeat*, separate suits.

Q. Sequestration? A. Sequestration.

Q. Were you put under bond? A. Yes, sir.

40 Q. You say that for those reasons you were unable to leave, to go back to your home in Nevada? A. That is right.

*Wilbur Harry Cox, for Complainant—Cross.*

Q. Well, of course, they didn't compel you to go back to your position as high school principal, did they? A. No, but I had to make a living somehow, and I still was principal of the high school, and I continued to avail myself of the opportunity to make a living.

Q. In order to do what? A. To defend myself from those suits and to make money to live with. 10

Q. Was that why you sought and obtained a reinstatement as principal of the high school? A. That, together with the fact that I wanted recommendations to get another position.

Q. Can you leave the State of New Jersey now? A. Not yet.

Q. Why not? A. Because these actions have not been liquidated.

Q. You are under bond? A. Yes, sir. 20

The Court: Is that the old form of bond or the new form?

Mr. Tepper: I really don't know.

Mr. Hoffman: I think I can answer that. We put up a surety bond.

The Court: What form does it bear?

Mr. Hoffman: That he is to appear and answer the proceedings instituted by the complainant.

The Court: It is the old form, then. 30

Mr. Herrigel: That doesn't prevent him from going outside the state.

The Court: That is what he thinks.

Q. In or about July, 1943, had you lost any weight? A. Yes, sir.

Q. About how much weight, would you say? A. Ten or fifteen pounds.

Q. Referring again to Exhibit C-14, will you explain to the court what you mean by this lan- 40

*Wilbur Harry Cox, for Complainant—Cross.*

guage: "If I can get my freedom in Washington I will go there, or Mexico, or Argentina"; what did you mean by that? A. Just a figure of speech; I wanted my freedom.

Q. Had you decided at that time that if Nevada did not suit your purposes that you would go  
10 elsewhere? A. No; I had gone out there to establish a residence in Nevada; that was used as a figure of speech.

Q. Was that to show how much you care for the lady? A. Well, that was it.

Q. Now, Mr. Woodfield testified to an alleged telegram received by him over the telephone from you while you were in Nevada, and I believe that he said that that telegram was received by him on  
20 either the 9th or 10th of September. Did you send a telegram to Mr. Woodfield on the 9th or 10th of September, 1943? A. I truly don't know; I sent lots of telegrams to different people; I know I sent a telegram before school opened.

Q. What is your best recollection of what that telegram said? A. I wouldn't know.

Q. You don't recall?

Mr. Herrigel: He said before school opened.

30 The Court: You don't recall what was in it?

A. No, sir; I recall that I said that I would be in Hillside and maybe I said I might arrive in Hillside on the 13th.

Q. Is it your recollection that that telegram referred to an application for leave? A. I referred to my general condition, yes.

Q. Yes. A. That I did say definitely, that the  
40 purpose of the telegram was to inform him that I would be in Hillside.

*Wilbur Harry Cox, for Complainant—Cross.*

Q. Yes; what did you say about a leave? A. I don't know.

Q. Now I refer to Exhibit C-3, which is a letter written by you to Mr. Woodfield under date of September 18, 1943, stating among other things as follows: "I returned to Hillside to assure myself that school was opening successfully. However, my health is not good and upon the advice of a physician familiar with my health history over a long period of years I am requesting a leave of absence". What did you want that leave of absence for? A. First I was still protecting my pension rights; I wanted to be in Nevada where I had taken up my domicile. 10

Q. You were trying to get whatever benefit you could out of your status as principal having tenure of office? A. Yes, sir. I was preserving my rights. 20

Q. Now, Mr. Cox, all of these communications which passed between you and the Board of Education, or representatives of the Board of Education, did they have a common purpose? A. They did.

Q. What was that purpose?

Mr. Herrigel: I object to that. They speak for themselves. 30

The Court: I will allow it.

A. To get me out.

Q. To get you out of what? A. Out of my position.

Q. I mean the letters that you wrote to the Board of Education and to their representatives, asking for leaves or extensions of leaves; did they have a signal purpose? A. So that I could stay in Nevada and still preserve the benefits that I had 40

*Wilbur Harry Cox, for Complainant—Cross.*

in the pension and annuity fund. I was sick and after all I was entitled to it.

Q. You say that you were entitled to it? A. Absolutely.

10 Q. Are you sure that you did not intend to come back if, when and as you had finished some business in Nevada? A. I made application out there and I looked far and wide at the ads. in the papers.

Q. I want yes or no to that question. Are you sure you did not have any other purpose when you came back here? A. I am sure.

Q. Quite sure? A. Positive.

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

Q. In the State of Nevada? A. Yes, sir.

20 Q. When did your health begin to decline? A. It has been ever since the time I was first married.

Mr. Tepper: May it please the court, in view of your suggestion that I could call Mr. Cox later on direct-examination, I might just as well get it over with now.

The Court: I think you had better.

Mr. Herrigel: I understand that most of these have been direct-examination questions anyway; that is why I have not objected.

30 Mr. Tepper: I presume there isn't any objection to my going into the main case then.

The Court: No; I think it would be better if you do that, as long as you have him on the stand.

40 Mr. Tepper: All right, sir. Of course I reserve the right to recall Mr. Cox when my defense goes in in both actions if I should require him later. I am talking of direct now.

*Wilbur Harry Cox, for Complainant—Cross.*

Q. Now, Mr. Cox, you say that your health commenced to decline immediately after your marriage with the complainant? A. Yes, sir.

Q. Will you explain that; what happened?

Mr. Herrigel: I object to that. That goes back eighteen or twenty years; I think that is too far in the past. I think we are concerned with July, 1943. 10

The Court: What is the purpose of that?

Mr. Tepper: It seems to me that Mr. Herrigel has a bill for separate maintenance pending.

The Court: Yes.

Mr. Tepper: It seems to me that under that bill for separate maintenance it alleges abandonment and failure to support. 20

The Court: Yes.

Mr. Tepper: It seems to me that I have a right to prove that it was this man who was abandoned and thrown out, and not the complainant.

The Court: Have you pleaded justification?

Mr. Tepper: I deny that there was an abandonment or that at any time there was a refusal to support. 30

The Court: There is no justification pleaded, as I understand it.

Mr. Tepper: No; I am not trying to justify anything.

The Court: Then what is the materiality of it?

Mr. Tepper: I am merely going to prove as part of my defense that there was no abandonment. In order to prove that I have to go into the historical background of the 40

*Wilbur Harry Cox, for Complainant—Cross.*

married life between the complainant and defendant.

The Court: This complainant and defendant lived together, as I understand it, until July, 1943.

10 Mr. Tepper: That is right.

The Court: He went to Reno to get a divorce.

Mr. Tepper: No, sir; I am going to prove that before he went to Reno that he fled from that house in fear of his life.

The Court: All right.

Mr. Tepper: That is, was thrown out.

20 The Court: Suppose he did. It is not pleaded that he did. He is in the position of having left his wife voluntarily and obtained a decree of divorce against her.

Mr. Tepper: Yes.

The Court: Now, if that decree of divorce is invalid it constitutes no defense to the suit for separate maintenance so far as the abandonment is concerned. It seems to me that the bill for separate maintenance should abide the suit to annul, naturally.

Mr. Tepper: That suits me.

30 The Court: That is, this testimony will be for the purpose of determining the validity of the decree in the State of New Jersey. There is no other question presented.

Mr. Tepper: Yes.

The Court: In other words, *Richman v. Richman* applies.

Mr. Tepper: I agree with that. If that is the plan it is all right with me.

40 The Court: That being so, I will sustain the objection.

*Wilbur Harry Cox, for Complainant—Cross.*

Q. When you left the State of New Jersey to take up your domicile in Nevada, as you have testified, did you leave a place for Viola Cox, the complainant, to live in? A. I did.

Q. Where was that place? A. 126 Virginia Street, Hillside.

Q. Did you make provisions for maintaining that property? A. Ample provisions; yes, sir. 10

Q. For her use and occupation? A. Yes, sir.

Q. Did you leave any money with your brother-in-law for that purpose?

Mr. Herrigel: I object to that. That is irrelevant and immaterial whether he left money with his brother-in-law. The question is did Viola Cox or his daughter get it.

Mr. Tepper: I am only referring to the property that they live in now. 20

The Court: I am going to permit that testimony to be taken.

A. I did.

Q. Have you maintained your mortgage in good standing up to the present time? A. Yes, sir; right through March.

The Court: Did you in April? 30

A. I was unable to make the payment in April.

Q. You have been paying for the support of your daughter, have you not? A. Yes, sir.

Q. Under a consent order? A. Yes, sir.

Mr. Herrigel: If your Honor please, I want to straighten that consent order out, so that your Honor may not be misled. We brought proceedings and we received an order from the court to receive \$15 a 40

*Wilbur Harry Cox, for Complainant—Cross.*

week for the support of the daughter. We had to apply to the court to get it; so I don't know whether it can be classified as a consent order. We appeared before the Advisory Master on it.

10 Mr. Tepper: Application was made for alimony pendente lite and support. We never questioned the support of the daughter.

Mr. Herrigel: Naturally not.

The Court: Well, the record itself will show that situation.

20 Q. Now, Mr. Cox, you did not establish a domicile outside of the State of New Jersey prior to July, 1943, did you? A. No, sir.

Q. In October, 1942, were you occupying the same home with the complainant? A. Yes, sir.

Q. I show you a letter under date of October 28, 1942, addressed to you at the Hillside High School, over the signature of Herrigel, Lindabury and Herrigel, and ask you if you received that letter? A. Yes, sir.

Mr. Tepper: I offer that in evidence.

Mr. Herrigel: No objection.

30

(Marked Exhibit D-2 in evidence.)

Mr. Tepper: D-2 reads as follows:

“Mr. Wilbur H. Cox,  
Hillside High School,  
Hillside, New Jersey.

Dear Mr. Cox:

40 I would like at your earliest convenience to discuss a matter of importance with you. If you will therefore call me on the tele-

*Wilbur Harry Cox, for Complainant—Re-direct.*

phone and make an appointment with me I will appreciate it very much.

Very truly yours,

HERRIGEL, LINDABURY & HERRIGEL,  
By FRED HERRIGEL, JR."

Q. Were you treated by a physician in Nevada? 10  
A. Yes, sir.

Q. What is his name? A. Doctor Tuttle.

Q. Did you have another appointment to go back to see him at any particular date? A. He told me to see the physician who had taken care of me.

Q. Did he ask that this physician report to him; or that you should report to him? 20

Mr. Herrigel: I object to that as leading

*Re-direct examination by Mr. Herrigel:*

Q. You said one of the reasons why you returned from Nevada was to see your daughter; is that correct? A. Yes, sir.

Q. Did you see your daughter when you returned in September? A. No; I didn't.

Q. When you returned on November 9th did you see your daughter then? A. No; I didn't. 30

Q. You didn't see her at any time during the month of November? A. No, sir.

Q. What was the first time that you saw her? A. This afternoon.

Q. Did you write her and ask her to come to see you? A. Yes, I did.

Q. When did you write her and ask her to come to see you? A. Do you want the chronological order? 40

*Wilbur Harry Cox, for Complainant—Re-direct.*

Q. Yes; if you can tell me. A. The first wasn't a written request. I went down to see her one morning before I left the second time.

Q. Was she there? A. The locks of the house had been changed and I couldn't even get in the place.

10 Q. That was after you had been to Reno? A. Yes, sir.

Q. That was the natural thing to do, wasn't it, to have the locks changed? A. Possibly it was.

Q. You didn't see her that morning, did you? A. No, sir.

Q. You didn't have a chance to speak to her then? A. No, sir.

20 Q. When did you write to her after that or try to get in touch with her? A. I wrote her letters periodically.

Q. In those letters you asked her to see you at some certain place? A. Yes.

Q. Can you give us the dates of those letters? A. I know after I had come back the second time I wrote to her and asked if she wouldn't have dinner with me the following night in Elizabeth.

Q. When was that? A. After I came back the second time.

30 Q. That was after the time you came back in November? A. In November or December; I don't recall that.

Q. Did she reply to your letter? A. She did not.

Q. Now, Mr. Cox, you said you took care of your daughter. What means did you take to take care of her financially after you left on July 20th?

Mr. Tepper: I object to that. The question was relating to the house and the mortgage.

*Wilbur Harry Cox, for Complainant—Re-direct.*

Mr. Herrigel: Oh, I am sorry. I am sorry  
I misunderstood.

Q. What did you do concerning the house? A.  
I left money for the mortgage, to be paid monthly.

Q. When you returned from Nevada in November had the mortgage been taken care of; had the interest on the mortgage been taken care of? 10

A. Yes, sir.

Q. Hadn't you, before that was done, received notice from the Hillside National Bank, saying that they would foreclose if the interest was not paid?

Mr. Tepper: When was this, Mr. Herrigel?

Mr. Herrigel: In November.

Mr. Tepper: 1943?

20

Mr. Herrigel: 1943.

A. I know I had the mortgage money in August, July and September, I believe, by my brother-in-law; I left the money for that.

Q. What happened to the September payment then? A. Well, I say in the course of my going back and forth I was late in the payment.

Q. So they threatened to foreclose? A. They threatened to foreclose on it.

30

Q. Then from July until December what did you do concerning the support of your daughter?

A. Well, in the first place, in September, I had asked her—

Q. What did you do in July; did you do anything toward her support in July? A. In July she was at camp.

Q. Was she a counciler at camp? A. Yes.

Q. How much money did you send her while she was in camp in July? A. I had given her money before she left. 40

*Wilbur Harry Cox, for Complainant—Re-direct.*

Q. What part of July was that; the first of July or before the first of July? A. Well—

Q. When did you make the next payment to her? A. I sent her two small checks from Reno.

Q. That was in— A. Pardon me, sir; I sent her a check in July while I was still in Hillside and then I sent her some checks from Hillside; small ones.

Q. How small? A. I sent one for two or three dollars and I sent one for ten.

Q. When did you send one for ten? A. In August, 1943.

Q. So that between July and August you sent her one check for two or three dollars and one check for ten dollars; is that right? A. That is right.

Q. Did you send her anything else up until the time the order of the court was made? A. Yes.

Q. When did you send her something further? A. As I said, I was keeping a roof over their heads and before September I paid the electric bills and telephone bills and light bills.

Q. Did you pay for any groceries? A. I had left money for her needs.

Q. With whom did you leave the money? A. I left money with Mr. Hoffman.

Q. Did Mrs. Cox get it? A. I don't know.

Q. Who paid for the first semester in college for your daughter?

Mr. Tepper: I object to that question. In the first place, there is no duty on the part of the father to pay for her higher education or college education.

The Court: It may be as a matter of law, but we want to have the facts. Is the daughter attending college?

*Wilbur Harry Cox, for Complainant—Re-direct.*

A. Yes, sir; Newark State Teachers College. When she sent the bill for tuition and for other expenses, I sent her, or my brother-in-law sent her a check for \$35. and in addition to that my sister or brother-in-law paid the tuition for the first term.

Q. Did they pay directly to the college or reimburse someone else who had paid? A. No, sir; they paid direct to the college, as I recall. 10

By the Court:

Q. Was that out of the money that you furnished? A. No, sir; the \$35. may have been out of the money that I furnished, but the other money they advanced.

Q. Was that your brother? A. My brother-in-law and sister. 20

Q. Your sister and her husband? A. Yes, sir.

By Mr. Herrigel:

Q. Have you returned to Nevada since you came on from there in November? A. No, sir.

Q. Mr. Cox, I show you Exhibit D-1, which is a letter from the State of Nevada; that letter is dated October 20th, 1943, is it not? A. Yes, sir.

Q. Is that when you made application for a position there? A. To Miss Pray; yes, sir. 30

Q. You didn't make any before that time?

The Court: What is that date?

A. Not to Miss Pray.

Mr. Herrigel: That is dated October 21st.

A. Not to Miss Pray.

Q. This was after you had returned to Nevada after having been here in September, 1943? A. Yes, sir. 40

*Wilbur Harry Cox, for Complainant—Re-direct.*

Q. While you were here did you consult your attorney here? A. On that matter; no, sir.

Q. Did you consult your attorney concerning your Reno divorce?

Mr. Tepper: I object to that question.

The Court: You may answer yes or no.

10

Mr. Tepper: Just answer yes or no.

A. I don't know for the moment.

Q. Now before you left for Reno did you write out there for a position?

Mr. Tepper: I object to that as immaterial and irrelevant. There was no duty on him to do that.

The Court: Objection overruled.

20

A. Before I left?

Q. While you were still in New Jersey did you write to Reno for a position? A. In July?

Q. Yes. A. No, sir.

Q. So that when you left here you had no position in Nevada, in July? A. No; I had a position here.

Q. Did you have any private income outside of your income from the Board of Education? A.

30

No, sir.

Q. Did you have any means of support in Reno other than your income from the State of New Jersey, or the Board of Education of Hillside, rather? A. No, sir.

Q. Before you left in July you said you resigned from several organizations; is that correct? A. Yes, sir.

Q. Did any of them pay you a substantial salary? A. No salary attached to any of them.

40

*Wilbur Harry Cox, for Complainant—Re-direct.*

Q. You retained your rights, your tenure rights, in the pension fund in New Jersey, did you not?

A. Yes, sir.

Q. You said that you did not intend to come back to New Jersey, did you not? A. Yes, sir.

Q. Well, if you didn't intend to come back to New Jersey wouldn't it have been logical for you to resign as principal of Hillside High School? A. No, sir. 10

Q. Why not? A. Because I wanted those pension rights.

Q. You wanted to be in a position so that no matter what happened, you could come back here and continue your job; isn't that so? A. I was sick.

Q. That is right. A. I was sick.

Q. The only place that you could make use of those rights was in Hillside; is that right? A. No; I could make use of those rights in Nevada if I retired on a pension because of disability. 20

Q. Wouldn't you have to continue to teach here in Hillside to get the benefit of those rights? A. No, sir.

Q. Wasn't it necessary under the circumstances about which you have spoken for you to come back to New Jersey to maintain those rights; to continue those rights? A. No, sir; it was not necessary. 30

Q. If you had not returned from Reno on September 13th and had continued in the system, after that time you would have lost your rights, wouldn't you? A. No; I wouldn't.

By the Court:

Q. Let me ask you a question or two at this point. You said in your direct, or under examina- 40

*Wilbur Harry Cox, for Complainant—Re-direct.*

tion by Mr. Tepper, that you now live in Reno, Nevada. A. Yes, sir.

Q. You consider yourself domiciled in Reno. A. Yes, sir.

Q. Have you a home there? A. No, sir.

Q. When you were out there during the time  
10 you were getting this decree, did you board? A.  
Yes, sir.

Q. Did you acquire any affiliations at all, business affiliations, in Nevada? A. (No answer).

Q. I will withdraw that question. Did you actually get a position in Nevada? A. No, sir; because I still had the one here.

Q. Did you have any assurance from anyone that you would secure a position? A. I had reasonable assurances from two people that there  
20 were vacancies existing for which I had a good chance; yes, sir.

Q. Those were vacancies in some school system? A. One in a school system and one in business.

Q. Did you accept either one of them? A. No, sir; because I came East.

By Mr. Herrigel:

Q. Mr. Cox, before you left on the 20th of July  
30 did you tell Mr. Woodfield you were leaving the town of Hillside not to come back again?

Mr. Tepper: I object to that question as being immaterial.

Mr. Herrigel: He is the supervising principal of the school system.

The Court: Well, of course, the evidence is that he didn't. Isn't that perfectly clear on the record?

40 Mr. Herrigel: Yes, sir.

*Wilbur Harry Cox, for Complainant—Re-direct.*

By the Court:

Q. Outside of the school system in Nevada, did you make application there to any other agencies?

A. Yes, sir, the International Correspondence Schools.

Q. In Reno? A. There was a vacancy for the Reno area as representative of the International Correspondence School. 10

Q. Well, assuming that no matter what assurance you may have had that you might get a position in Nevada, or assuming that you failed to, you would not have been able to live in the State of Nevada, were you? A. There was plenty of employment there; yes, sir.

Q. Yes; but unless you got a position you would not have been able to continue to live there, would you; you were dependent upon making a living 20

A. Yes; unless somebody came to my aid.

Q. All right.

By Mr. Herrigel:

Q. You said, I believe, that you had discussed money matters with your daughter; is that so?

A. I discussed matters with my daughter?

Q. Yes. A. I didn't say that; I don't believe I said that. 30

Q. What did you say when that question was asked? A. Yes; I discussed money matters, I presume, with my family; my mother, my father, my sister and brother-in-law.

Q. I understood it was with your daughter. A. Then I gave the wrong answer if I did.

Q. When did you discuss money matters with her? A. Oh, I believe it was toward the end of August. 40

*Wilbur Harry Cox, for Complainant—Re-direct.*

Q. In what manner did you discuss money matters with her? A. I wrote her a letter.

Q. Is this the letter (indicating)? A. It looks like it.

Q. Is that your signature? A. Yes, sir.

10 Q. It is from the Lone Star Ranch, Reno, Nevada? A. Yes, sir.

Q. It is in your handwriting? A. Yes, sir.

Mr. Herrigel: I offer that in evidence.

Mr. Tepper: No objection.

(Marked Exhibit C-15.)

The Court: What is the date?

20 Q. I think he said—what date did you send this letter? A. Toward the end of August.

Mr. Herrigel: May I read this into the record:

Lone Star Ranch, Reno, Nevada.

Dear Chicken:

30 Little Pal, I have tried not to put you in the middle of a nasty situation. However, I've got to talk plain facts. I earn \$4,600 a year. If I start a career all over again, I'll slip back to a bare subsistence salary which would enable *me* to live. But if I have to cut my income to \$2,000 a year it will affect your standard of living as well as mine. In other words while I'm down at the bottom of the ladder again, I'll be getting \$50 a week less than I can make now in Hillside.

40 I believe you should not be made to take a cut in living standards simply because of a

*Wilbur Harry Cox, for Complainant—Re-direct.*

*thoroughly incompatible marriage. That just isn't sense.*

If I were you I'd talk common sense to your mother in a hurry. She can cut off her nose to spite her face if she wants, but I don't want her fooling around with your nose.

10

And don't you give up ideas about N. T. C. After this war, teaching opportunities will be grand but business and industry will be fierce.

I mean business, Chicken, but I'm taking care of you. Never lose sight of that.

If you get a chance, send me my ration books (plural) I owe stamps.

Hope you are O. K. and I wish this might be settled amicably so that I could see you soon.

20

Love,

Daddy."

Q. This was written after you had returned to New Jersey from Nevada? A. Yes, sir.

Q. It was written while you were in Nevada, was it not? A. Yes, sir.

Q. For what purpose was it written? A. For pressure on her mother.

30

Q. Why did you want pressure on her mother? A. Because I wanted that divorce.

Q. You wanted that divorce, and you also wanted to come back to New Jersey for the \$4,600 job, did you not? A. No.

Q. What did you mean then when you said, "I earn \$4,600 a year. If I start a career all over again I will slip back to a bare subsistence salary", and so forth? A. I wrote that—

40

*Wilbur Harry Cox, for Complainant—Re-direct.*

Q. Was that \$4,600 the salary that you obtained and received from Hillside? A. That is right.

10 Mr. Tepper: I object to that interpretation of the letter. It is very clear. The man says he would have to take a cut down to \$2,000.

The Court: Now you get the explanation that he is asked to give.

Mr. Tepper: No; Mr. Herrigel in his question is trying to interpret that letter.

The Court: He is trying to get the witness to explain what appears to be an inconsistency.

Mr. Herrigel: Yes.

20 Mr. Tepper: At least it does to Mr. Herrigel.

Mr. Herrigel: Let the witness explain it.

The Court: Objection overruled.

Q. Doesn't that mean, Mr. Cox, that you could have earned more out there after an amicable settlement and things were getting bad?

By the Court:

30 Q. You wrote that letter to your daughter so that she would bring pressure to bear upon her mother? A. Yes.

Q. So that her mother would consent to your having this Reno decree; that is, she would not raise any objection to it; so that you might keep your \$4,600 a year position in Hillside? A. No, sir; so that I may get a decree.

40 Q. Well, didn't you promise your daughter there that if she could put some sense in her mother's head you would still get the \$4,600? A. No. What I meant was that if the thing is settled

*Wilbur Harry Cox, for Complainant—Re-direct.*

amicably my reputation is preserved and that I would still be able to earn a good salary.

Q. Whether that salary came from Hillside or some other place? A. Exactly; yes, sir.

By Mr. Herrigel:

Q. At this time had any suits been started in New Jersey? A. Not to my knowledge. 10

Q. So that in August when this letter was written, the only suit that you had was the Reno suit?

A. Yes; I thought she would consent.

Q. You wanted her to sign a consent and she would not do it? A. Right.

Q. What was the reputation that you were worrying about in August? A. Well, I still wanted that recommendation from Hillside when I departed. 20

Q. If you had resigned you could have gotten it, could you not? A. The state of my health was bad and that I could not put in any application for anything if I was not immediately available for a position. There was an uncertainty about what I was going to do; I was ill.

Q. You didn't answer my question. Will you please answer? A. I wasn't in any position to resign.

Q. How much money did you leave with your sister-in-law for Viola Cox, your wife? A. For her? 30

Q. Yes. A. I left money for the mortgage for two or three months; that would be \$140 or \$210. How much else I can't remember at the time.

Q. Did you leave anything for groceries or clothing? A. With Mr. Hoffman I left \$200.

Q. For Mrs. Cox? A. Yes, sir.

Q. Did you ever have a report whether or not any was disbursed? A. For their needs, whatever they might be. 40

*Wilbur Harry Cox, for Complainant—Re-direct.*

Q. Was anything disbursed for her needs? A. Not to my knowledge.

The Court: Did the complainant know that you had left money with your brother to take care of her?

10 A. I didn't tell her.

Q. You said in your testimony on a question from Mr. Tepper, that you wanted to come back and fight it out with her; is that correct? A. I had to come back.

Q. You had to come back? A. I was placed——

Q. You had to come back from Reno? A. Yes, sir.

Q. What did you have to fight her for? A. I had to fight those actions that were instituted against me.

20 Q. When were those actions instituted against you? A. I don't know.

Q. Well, you knew that they had been instituted against you? A. Yes, sir.

Q. You came back on the 9th of November? A. Yes, sir; I came back to Hillside on the 8th of November.

Q. When were you served with those papers? A. About December 2d.

30 Q. So that long before you were served with the papers you knew that you had that on your hands; is that right? A. That is right.

Q. Who told you about that? A. About what?

Q. About the fight that you had on your hands in Hillside? A. Well, I heard that I was faced with this support and other orders.

Q. Who told you? A. I had a letter about it.

Q. From whom? A. I don't know.

Q. You don't remember who it is from? A. 40 No, sir; it might have been from Mr. Hoffman; it might have been from my sister.

*Wilbur Harry Cox, for Complainant—Re-direct.*

Q. Could it have been from Mr. Hilliard, your attorney out there? A. No, sir.

Q. Mr. Hilliard withdrew from your case, did he not? A. Yes.

Q. He withdrew after he received notice, did he not, of a suit restraining you from proceeding with that suit?

10

Mr. Tepper: I object to that question.

The Court: It doesn't harm you, does it?

Mr. Tepper: No, it doesn't harm me, except the witness is becoming confused not only as to happenings but as to dates.

The Court: You can straighten him out if he is confused.

Mr. Tepper: I certainly will have to.

A. He didn't furnish me with that information; no, sir.

20

Q. Did he ever tell you why he refused to go ahead with your suit? A. No, sir.

Q. When you returned to Nevada after having been here from July until some time in October, did you go to his office? A. Mr. Hilliard's office?

Q. Yes. A. On my return the second time?

Q. Yes. A. Yes, sir; I did.

Q. When you returned to him what did he say to you? A. He said, "I am sorry I can no longer represent you."

30

Q. Did he give you any intimation why he could not represent you? A. No, sir; I asked him why and he said, "I don't care to discuss it with you."

Q. Had you paid him a retainer? A. I paid him a retainer; yes, sir.

Q. Then what attorney did you go to? A. Mr. McKernan.

Q. Is his office in the same office with Mr. Hilliard? A. No, sir.

40

*Wilbur Harry Cox, for Complainant—Re-direct.*

Q. Did you have to pay him a retainer, too?

Mr. Tepper: I object to that question. I can't see how material that is.

10 Mr. Herrigel: We are discussing now what transpired in November, as a step in the case of his obtaining his divorce; and as I argued at the beginning of this session, the only thing that the courts of New Jersey are concerned with would be the domicile of this man in New Jersey and whether or not any fraud was practiced upon that court in that case.

20 Mr. Tepper: It seems to me that Mr. Herrigel is going far afield. We have got to stop that cross examination somewhere; and I submit it is not even proper cross examination.

The Court: It may go to his state of mind. I will let it go in. Objection overruled.

A. I did.

Q. Did Mr. Hilliard give you a rebate? A. No, sir.

Q. Had you paid him in full for obtaining the divorce? A. Yes, sir.

30 Mr. Tepper: I object to that.

The Court: Objection overruled.

Q. Who went with you to Mr. McKernan?

Mr. Tepper: I object to that question.

The Court: For the same reason?

Mr. Tepper: No, sir; for the reason that it is immaterial as to who sent him to the other attorney, Mr. McKernan.

40 The Court: If it is immaterial it doesn't harm you. I will allow it.

*Wilbur Harry Cox, for Complainant—Re-direct.*

A. I had friends who were represented by Mr. McKernan.

Q. What are the names of those friends? A. Catherine Campbell Yates.

Q. Any other friends? A. Betty Bishop.

The Court: Who is Campbell Yates?

10

A. She was a girl who was living out there while I was there.

Q. Is that the girl that accompanied you here to Hillside High School not so long ago? A. No, sir; it is not.

Q. Who was that?

Mr. Tepper: I object to that.

The Court: Objection sustained.

20

Q. Mr. Cox, you said you spoke in a figure of speech in this letter that you wrote, of August 26th; what is a figure of speech?

Mr. Tepper: I must object to that.

The Court: I will allow it.

A. A metaphor, or simile—

The Court: You mean that it is not to be taken seriously.

30

A. No, sir; after all, I would not be going to Argentina or Patagonia, or whatever I said.

The Court: How about Mexico?

A. No, sir; I am sure I did not mean Mexico; I had no such thought.

Q. Do you know that Mexico is one of the places that is reputed to be a place to get a divorce very easily?

40

*Wilbur Harry Cox, for Complainant—Re-direct.*

Mr. Tepper: I object to that.

The Court: I think we can take judicial notice of that. I will sustain the objection.

Q. By saying you wanted your complete freedom, you meant you wanted a divorce, did you not? A. Yes.

Q. You said, "It must be, it will be"? A. Yes.

Q. And you were determined to get it at any cost according to the tenor of this letter.

Mr. Tepper: I object to that.

The Court: Objection sustained.

By the Court:

Q. I take it that your life with your wife was not a happy one? A. No, sir; it was not.

Q. Had you thought of divorcing her before you left the State of New Jersey? A. No, sir; I thought of going to Reno to establish a domicile.

Q. Not for the purpose of getting a divorce? A. My primary purpose was to get away, to get out of that situation.

Q. Why did you pick out Nevada as a future home? A. Well, in the first place, it is mountain country; I like a high climate, and I have heard lots of fine things about the hot springs and even temperature almost all the year round except for the winter months and the fine amusements and attractions of the city.

Q. The fact that the divorce laws out there are reputed to be rather lax did not have anything to do with your making up your mind to go there? A. No, sir; because I have always heard that there were other states where you could get a divorce in the same period of time.

*Wilbur Harry Cox, for Complainant—Re-direct.*

Q. Well, within two weeks or less from the time you arrived in Reno, you did make up your mind to get a divorce? A. Yes.

Q. What was it that led you to make up your mind in those two weeks to get a divorce when you hadn't thought of that condition when you left New Jersey? A. I was determined to get out of this situation. 10

Q. The situation with your wife? A. Yes, sir.

Q. Weren't you just as determined when you left New Jersey to get out of that situation as you were two weeks later, determined to get away from that situation? A. Yes.

Q. Well then, nothing occurred in those two weeks to change your mind at all one way or the other? A. No; when I went out there I had left and not go elsewhere but to establish my domicile; that was uppermost in my mind. 20

Q. You had formed that intention not to stay in your home, as I understand it, and when you lived in New Jersey you made up your mind to get out of there? A. Yes, sir.

Q. Yet you didn't make up your mind until two weeks later to get a divorce? A. No.

Q. What happened in those two weeks to make you change your mind and make you think you wanted a divorce as a means of getting out of this situation? A. Well, I knew I wanted to get away from the situation, but I went out there because I liked the country, I liked the place. 30

Q. Did anything happen during those two weeks to make you change your mind about it? A. Well, I just had opportunities to think plenty while I lay there.

Q. So without any suggestion from anybody else, without talking to anybody else, and without anything happening, you just thought it over 40

*Wilbur Harry Cox, for Complainant—Re-direct.*

for two weeks and thought, "Now that I am here I might as well get a divorce"? A. I looked into the situation.

Q. When did you first consult any solicitor out there? A. About ten days or two weeks after I got there.

10 Q. You were sick in that interval of ten days or two weeks? A. Yes.

Q. One more question. You testified before the Court in Reno, Nevada, on the 15th of October, 1943; did you not? A. Yes, sir.

Q. In your suit there? A. Yes, sir.

Q. Were the following questions asked of you and did you reply to them as follows: "When did you establish your home and residence in Washoe County, Nevada? A. July 24th, 1943". Is that correct? A. Yes, sir.

20

Q. "And where? A. At the Lone Star Ranch". Is that correct? A. Yes, sir.

Q. "And for how long a time did you reside there? A. A period of six and a half weeks". Is that correct? A. Yes, sir.

Q. "Were you there from July 24th down to September 9th of this year? A. I was." A. I was; yes, sir.

30 Q. "Each and every day? A. Each and every day"? A. Yes, sir.

Q. Did you so testify? A. Yes, sir.

Q. I understood you to say in your testimony here that on one occasion between July 24th and September 9th you were on here to New Jersey. Am I correct? A. No, sir.

Q. It was after September 9th? A. Yes, sir.

By Mr. Herrigel:

40 Q. Mr. Cox, before you left for Reno did you discuss the matter of a Reno divorce with your attorney in New Jersey?

*Wilbur Harry Cox, for Complainant—Re-direct.*

Mr. Tepper: I object to that question.

The Court: You may answer yes or no.

A. No; I told my attorney I was going away.

Mr. Tepper: That is privileged.

The Court: Don't tell us what you told  
him. 10

A. I did not; no.

Q. As a matter of fact, you had consulted Mr. Hoffman before you left, had you not?

The Court: Yes or no.

A. I had consulted Mr. Hoffman; yes.

Q. You had consulted him about a Nevada divorce, had you not? 20

Mr. Tepper: I object to that.

The Court: I will sustain the objection.  
I think it is privileged.

Q. Did you discuss a Reno divorce with your wife before you left?

Mr. Tepper: I object to that.

A. No, sir. 30

The Court: Objection overruled.

By the Court:

Q. Did you discuss a Reno divorce with anybody before you left? A. No, sir.

By Mr. Herrigel:

Q. I believe that on your examination by Mr. Tepper you said you could not stay in Reno be- 40

*Wilbur Harry Cox, for Complainant—Re-direct.*

cause you had to complete unfinished business.

A. I couldn't what?

Q. You could not stay in Reno, because you had to complete unfinished business.

10 Mr. Tepper: I object to that. That wasn't the answer at all.

The Court: That was one of the reasons.

Mr. Tepper: That was one of many reasons; he had to protect his pension rights.

A. That was one of the reasons; yes, sir.

Q. As a matter of fact, you could have resigned, could you not?

20 Mr. Tepper: I object to that, because that has been gone into time and time again.

Mr. Herrigel: He asked the question on direct-examination. This is my opportunity for cross.

The Court: That is all right.

A. I could have resigned on sixty days notice, Mr. Herrigel.

Q. Now you said something about being slapped in jail; were you ever slapped in jail? A. That is what the papers said; arrested.

30 Q. I am asking you the question, were you put in jail? A. I wasn't put behind bars, no; they tried to take me down there.

Q. When you were served, what happened? A. They wanted to take me to Newark.

Q. Where did they take you? A. Down before a magistrate.

Q. They took you before a magistrate in Newark? A. They wanted to put me in jail.

40 Q. What happened there? A. The papers were served.

*Wilbur Harry Cox, for Complainant—Re-direct.*

Q. Your attorney had arranged to have the matter taken care of in Newark; isn't that the answer? A. Yes, sir.

Q. So that you were not actually slapped in jail? A. I wasn't put behind bars; no.

The Court: A figure of speech.

10

Q. I don't know whether I had asked you this question or not: When did you leave Nevada; upon what date did you leave Nevada in September, 1943? A. It must have been September 10th.

Q. September 10th; your suit had been instituted on September 7th; is that correct? A. That is right. It couldn't have been the 10th; it must have been the 9th.

Q. It must have been the 9th, because you were in school on the 13th; it takes four days to get here? A. Yes, sir.

20

Q. In your communication dated September 17th, marked Exhibit C-3, to Mr. Woodfield, you say, "My constant interest is Hillside High School, and if I can promote its successful operation in any way I shall relish the opportunity". A. Yes, sir.

Q. Is that correct? A. That is right.

Q. That is all.

30

*Re-direct examination by Mr. Tepper:*

Q. Mr. Cox, when you used that figure of speech, slapped in jail, were you actually taken into custody by the officer of the court? A. That is what I thought; yes.

Q. You were? A. Yes.

Q. You were restrained by him there; you didn't have freedom of locomotion when he took you into custody, did you? A. No, sir.

40

*Wilbur Harry Cox, for Complainant—Re-direct.*

Q. You were required to put up bail, were you not? A. Yes, sir.

Q. Now you said something in response to a question propounded by Mr. Herrigel that you did not see your daughter when you came to Hillside. Did you make an effort to see her? A. I did; I  
10 went down to the house.

Q. Referring to Exhibit D-1, which is the letter from the Department of Education of the State of Nevada, to which Mr. Herrigel questioned you, and during which time he pointed out that the letter was dated October 20th, 1943, Mr. Herrigel then asked you if that refers to an application made by you about that time, October 20, 1943; what was your answer to that question? A. It did.

Q. Prior to October 20, 1943, had you made  
20 application to any other branch of the educational system of the State of Nevada? A. I had; to the—I called the deputy superintendent's office.

Q. Was that in July, 1943? A. I believe it was in August, 1943.

Q. That was before you made your visit back to New Jersey? A. Yes, sir.

Q. Did you make any other applications before you made that visit back to New Jersey? A. I had  
30 inquired of business, opportunities in business out there.

Q. Were you prepared, if necessary, to leave the profession of teaching and take a position, as a matter of fact, in some other field? A. I was.

Q. You said something about coming back to New Jersey to defend yourself. Mr. Herrigel asked you when you first knew of action being taken against you. I show you Exhibit C-3 and ask you whether this letter from the Board of  
40

*Wilbur Harry Cox, for Complainant—Re-direct.*

Education, which is dated October 6th states that actions were being taken against you? A. Yes, sir.

Q. Did you also receive a clipping through the mail?

Mr. Herrigel: I object to that; this is something entirely irrelevant. 10

Mr. Tepper: I am referring to anything which this man had to come back to face and to do what he said, to straighten his record out.

The Court: I will permit anything along that line.

Q. Did you receive a clipping from a newspaper in Hillside to the effect that action had been taken against you? A. I don't remember whether 20  
it was a clipping or a letter, to tell you the truth; all I know is it was there.

Q. Referring to that letter addressed to your daughter, C-15, did you intend by this letter to imply that under any circumstances you would come back to New Jersey? A. No; that was a pressure letter, plan and simple.

Q. Did your statement, "I will slip back to a bare subsistence salary, which would enable me to live" have anything to do with your applications 30  
in Nevada for employment? A. No; because the International Correspondence School position paid almost as much as I was getting here.

Q. Now in response to a question propounded by the Court, I think the question asked you whether you cared whether you got the salary in New Jersey or in Nevada, did you intend to create the impression that if those things were straight-  
ened out, in other words, if your wife consented 40

*Wilbur Harry Cox, for Complainant—Re-direct.*

to enter an appearance in your action in Nevada, that you would welcome the idea of coming back to New Jersey to earn this \$4,600? A. I think I said that I was determined to live in Nevada; I thought I made no reference to an alternate salary from Nevada.

10

The Court: Well, that was not the purpose of the question, the implication that you state.

Mr. Tepper: Oh, I see.

The Court: That wasn't implicit in the question, I can assure you, although you might have misunderstood it.

20

Q. Now, in response to a question propounded by the Court you said that you were ill for two weeks, after which you went to see a physician; were you too ill during those two weeks to see a physician if you had wanted to see one during that two weeks?

Mr. Herrigel: You mean a lawyer.

30

Q. I am sorry; a lawyer, rather; you said that you were ill for two weeks. A. No; I wasn't thinking of that at all; I was thinking of rest at that time, and to establish my domicile. And I rested and I tried to avoid thinking of those things which were unnerving me at the time; that was the only thing; I tried to put my mind at ease.

Q. Then thereafter you decided; you made a decision? A. Yes, sir.

Q. When did you make that decision? A. Oh, it was approximately five weeks after.

Q. I presume you were thinking about it; during the two weeks had you been thinking about it?

40

*Wilbur Harry Cox, for Complainant—Re-cross.*

A. I hadn't; I heard conversations concerning divorce.

Q. You mean all around you? A. All around me; I hadn't planned any steps up to that time.

Q. Now you also stated a moment ago to Mr. Herrigel that on a certain day when you were here you could have resigned? A. Yes. 10

Q. You said yes, you could have resigned; but could you have resigned at that time without foregoing these pension rights, retirement, loans and so forth? A. No, sir; I could not.

*Re-cross examination by Mr. Herrigel:*

Q. You said you were prepared to go to another field? A. Yes, sir.

Q. You didn't go to some other field, did you? A. No, sir. 20

Q. Even though you were away out in Nevada? A. Right.

Q. You said you thought of nothing but rest; is that right? A. Yes.

Q. You weren't feeling well; you wanted rest? A. Right.

Q. Couldn't you have rested somewhere nearer here, in New Jersey or Pennsylvania?

Mr. Tepper: I object to that. 30

Q. Just as well as in Reno, Nevada?

The Court: Objection sustained.

Q. That is all at this time.

*Arthur G. Woodfield, Recalled, for Complainant  
—Direct.*

ARTHUR G. WOODFIELD, recalled.

*Direct examination by Mr. Herrigel:*

10 Q. Mr. Woodfield, when Mr. Cox was given a vacation to begin July 20th, 1943, when was he required to return?

Mr. Tepper: I object to that. The letter granting the leave speaks for itself; it is in evidence; it is there.

Mr. Herrigel: I don't believe it does.

The Court: I think he covered the whole subject pretty thoroughly when he was on the stand this morning.

20 Mr. Herrigel: Well, I think Mr. Cox on the stand said that it was an indefinite leave; that he was not required to return any particular time.

Mr. Tepper: There were two leaves that he applied for. One he got; the other he didn't get.

30 Mr. Herrigel: He received a vacation that July, from the 20th of July until, I think it was, the 7th of September. That is the one I think he testified to if my memory serves me correctly; he said it was not an indefinite leave.

The Court: I think it is all in there, but ask him if there is any doubt about it.

A. I think if you will refer to the minutes you will find that his request was granted, and the request was for an extended vacation of three or four weeks.

Q. You testified so this morning, didn't you?

40 A. Yes. And the four weeks in addition to the

*Colloquy.*

three weeks that was granted would carry it to about the 7th of September.

Q. That is what I wanted to get it. I don't think the record is clear on that. That is all.

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Hearing continued to June 8th, 1944, at the Court House, Elizabeth, N. J., at ten o'clock in the forenoon. 10

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Chancery Chambers, Elizabeth, N. J.,  
June 8th, 1944.

Hearing continued in the presence of counsel for the respective parties.

Mr. Herrigel: I wish to offer in evidence a letter dated August 24, 1943, from Eugene F. Hoffman to me. 20

The Court: Is there any objection?

Mr. Tepper: No objection.

(Letter marked Exhibit C-16.)

Mr. Herrigel: The letter reads:

“Dear Fred:

Mr. Cox has asked me to communicate with you again to ascertain whether or not you have heard from his wife. Hope you have something to report. With kindest personal regards, I remain, 30

Yours very truly,

Gene. Eugene F. Hoffman.”

Mr. Herrigel: I wish to introduce a letter written by me, dated August 31, 1943, 40

*Wilbur H. Cox, Recalled, for Complainant*  
*—Direct*

to Honorable Eugene F. Hoffman, 744  
 Broad Street.

Mr. Tepper: No objection.

(Marked Exhibit C-17.)

10 Mr. Herrigel: And the letter reads:

“Dear Gene: I spoke to Mrs. Cox this  
 week, and she advised me that it would  
 make no difference what Mr. Cox would  
 agree to do concerning the insurance poli-  
 cies or anything else, for she would still  
 contest any suit for divorce that he may  
 bring. Very truly yours,

Fred. Herrigel, Jr.”

20 Mr. Herrigel: I will recall Mr. Cox, may  
 it please the court, for a few questions.

---

WILBUR H. COX, recalled:

*Direct examination by Mr. Herrigel:*

30 Q. Mr. Cox, I wrote you a letter, I believe it  
 was during the latter part of the year 1942; is  
 that right? A. Yes, sir.

Q. And as a result of that letter did you come  
 to my office? A. I did.

Q. When you came to my office what was the  
 topic of our conversation? A. You told me that  
 the complainant in this case had come to see you.

Q. All right; go ahead. A. She said she was  
 not satisfied and wanted some solution to the  
 problem.

40 Q. To what problem; what problem existed at  
 that time? A. Marital difficulties.

*Wilbur H. Cox, Recalled, for Complainant*  
—Direct

Q. You weren't getting along together very well, were you? A. We were not.

Q. Were you? A. We were not getting along at all, because she would not do the things that were necessary to bring about harmony.

Q. And as a result of that, and during the course of the conference didn't I suggest that there be a reconciliation? A. You stated that a reconciliation was desirable, but if I would not make a reconciliation it would be a very costly process. 10

Q. What would be a very costly process? A. Litigation, I presume.

Q. What kind of litigation? A. We didn't discuss that.

Q. Didn't you say that under no circumstances could a reconciliation be effected? 20

Mr. Tepper: I object to that as immaterial. How is that material to this issue?

Mr. Herrigel: Well, it is material to this issue because I want to clear up—you have opened the door by putting in a letter that I wrote to him, and I want to show that as a result of that he came to my office, and what transpired in my office.

Mr. Tepper: Very good; I will withdraw the objection. 30

A. I did not; as a matter of fact, you told me to go home and think it over; those were the last words you said.

Q. Certainly, I told you to go ahead and think it over because you thought no reconciliation could be effected; isn't that true? A. No, sir.

Q. As a matter of fact, since 1940 you have given Mrs. Cox the silent treatment, have you not? A. What treatment? 40

*Wilbur H. Cox, Recalled, for Complainant*  
—Direct

Q. Silent treatment.

10 The Court: Mr. Herrigel, what materiality is it to consider what may have been the relation of the parties toward each other prior to this bill? There is no issue, is there?

Mr. Tepper: I might say at this time if Mr. Herrigel opens the door to that I propose to go into it.

The Court: Not if it isn't material.

Mr. Tepper: No, of course not; not if it isn't.

20 The Court: It seems to me there is only one issue in this case; this bill for support and maintenance. Under the case of Richman v. Richman, there must be a decree for separate maintenance in this case if the Reno decree is invalid in New Jersey; and that depends upon whether or not the defendant was domiciled in Nevada when that decree was made. Isn't that the only issue?

Mr. Herrigel: That is all.

30 The Court: Why go back. Richman v. Richman holds that where the parties are living apart by mutual consent, or by the acquiescence of the husband, it is immaterial to inquire why.

Mr. Herrigel: I will withdraw the question then.

40 Q. Mr. Cox, when you appeared in court in Reno on October 15th, 1943, did you tell the court that you were in the employ of the Township of Hillside?

*Wilbur H. Cox, Recalled, for Complainant*  
—*Cross.*

Mr. Tepper: I object to that. The record is here before the court; the transcript of the testimony is here before the court. That is the best evidence.

The Court: Why go into that then.

Mr. Herrigel: I will withdraw the question. 10

Q. That is all.

*Cross examination by Mr. Tepper:*

Q. In response to a question propounded by Mr. Herrigel you stated that you could not get along at all with Mrs. Cox; what did you mean by that?

Mr. Herrigel: If your Honor please, I want to object to that for the reason that it is not necessary to go into that. That is why I desisted. 20

The Court: I think you heard the ruling that it is not material; didn't you?

Mr. Tepper: That is right.

The Court: I so ruled.

Mr. Tepper: May I be heard?

The Court: Surely. 30

Mr. Tepper: The state of mind of this defendant is of paramount importance; that is, one of the most important elements in this case is this man's state of mind.

The Court: Yes.

Mr. Tepper: Why he left the State of New Jersey, and the conditions surrounding that, and the conduct of Mrs. Cox may have culminated in this man's arriving at a certain state of mind which caused him to make a certain decision, and that deci- 40

*Wilbur H. Cox, Recalled, for Complainant*  
—Cross.

10 sion was to remove himself from the State of New Jersey and domicile himself elsewhere permanently. Now his health, through circumstances, of her treatment of him, may have caused him to come to that conclusion, to make that decision. This question is directed to show this man's state of mind when he moved from the State of New Jersey into Reno, Nevada. The only purpose is to prove his state of mind.

The Court: What do you say, Mr. Herrigel?

Mr. Herrigel: I have no objection to that.

The Court: Very good; you may go into it, then.

20 Q. What did you mean by that? A. Well, as far back as 1939 she told me it was too bad that God hadn't taken me when I was sick in 1936 with the cancerous condition; and in 1940 she told me to get the hell out; she begged me to go to my friend, Mr. Hoffman, and make some sort of agreement for divorce, for maintenance or whatever it was that was in her mind; she nagged and berated me on every occasion; and in September, 30 1941, for four days, from the 17th to the 21st, I heard nothing but a continual outpouring of abuse; I was called the vilest possible names in the presence of my daughter, who should not have known of this condition, certainly should not have heard it coming out of the mouth of her mother.

Q. You say that you are suffering from cancer?

A. I am.

Q. When did that condition first manifest itself? A. Well, the symptoms—

40 Mr. Herrigel: I object to that.

*Wilbur H. Cox, Recalled, for Complainant*  
—Cross.

The Court: Why?

Mr. Herrigel: Well, we are talking about the state of mind.

The Court: It seems to me the door is wide open now.

A. The symptoms of that disease must have been apparent in the early twenties, because they were the very symptoms that brought about the condition for the operation in 1936.

10

Q. In 1936 were you operated upon? A. I was operated upon in July, 1936.

Q. For cancer? A. For cancer.

Q. After that operation where were you when you were receiving your post-operative treatment?

A. I was at 126 Virginia Street, Hillside.

20

Q. What transpired during that period between you and Mrs. Cox? A. Well, it was during that month I started to go to New York daily for X-ray treatments and by the time I got home I was violently sick, and night after night I lay there on the couch turning inside out, alone, without care, while she was out playing bridge and running around; and during that period of time I got my own meals.

Q. Did Mrs. Cox take care of you in any way at all during that period of post-operative treatment? A. Well, as I said, she was out on many of those nights when I came home sick, which was sometimes late.

30

Q. Thereafter did you become ill with influenza? A. I was ill last February with influenza.

Q. Who took care of you while you were in bed? A. No one.

Q. Did you have a temperature? A. I ran a temperature the first Saturday in February; I

40

*Wilbur H. Cox, Recalled, for Complainant  
—Cross.*

stayed in bed all day Sunday; I got my own food that day; the next day I was left in the cold house unattended, with a high temperature; I had the doctor, who found me unattended.

Q. Which doctor? A. Doctor Still.

10 Q. When Doctor Still came to visit you was there any heat in the house? A. There was no heat.

Q. Was Mrs. Cox there? A. She was not there.

Q. What effect did all this have upon you? A. Oh, it had been wearing me down during this entire period, because it was playing havoc with my nerves, I was unable to do the work that my position required me to do; in addition to the neglect of myself and my child, I was constantly nagged;  
20 I was told that I stayed at school too long; I was told I spent too much time at night at school; I just wasn't in a position to do my day's work.

Q. Now what caused you therefore to go to Reno, Nevada? A. Well, I made up my mind in June, 1943, that I was going to move from this state and take up my permanent residence, live permanently in the State of Nevada. I finished the school year under circumstances that were harrowing. On commencement night my own  
30 daughter was graduated from the school. There is no occasion that I looked forward to more than commencement night; and this particular night my own daughter graduated, which was the more mindful to me. I told the daughter that I had a basket, there was a basket of flowers for her in my office, because it was not our custom to give out flowers in the exercises; I had them there where she could get them after the ceremony and take them home. I watched her go off the stage  
40 and she winked at me as she left the stage, and

*Wilbur H. Cox, Recalled, for Complainant*  
—Cross.

that is the last I saw of her; she was whisked out of the building.

Q. By whom? A. By her mother. My own parents, her grandparents, of whom she was very fond and who were very fond of her and took care of her on many occasions, were not even invited to the commencement, nor was any other member of my family. My sister, whom she worshipped because she kept such a nice home; none of those people was invited. My brother came because I specifically invited him. They left the building; the flowers were there and I took them home. When I got home no one was at home. I retired; and some time later, eventually they came in. That was in the middle of June. The rest of June was a nightmare. In July I went to my sister's house. 10 20

Q. Before you get to that, I want to know just how Mrs. Cox treated you from the time that you were operated on for this cancerous condition down to the time that you made up your mind that you were going to leave and move to Reno, Nevada? A. It was that constant nagging, berating, belittling; she even went so far as to threaten my life; she was of an impetuous, violent nature. In August, 1941, she threw toast at me and threatened to throw a pot of hot coffee at me, and made a menacing gesture with a knife in her hand. 30

Q. What kind of knife was it? A. It was a carving knife, for cutting meat. And in July, 1943, it was a hot night, around the 10th of July, and I had sought refuge in the back bedroom, which was cool. My daughter and her had come in; I had gone asleep; and about one-thirty or two o'clock in the morning it seemed she came in, and 40

*Wilbur H. Cox, Recalled, for Complainant*  
—Cross.

from the light in the hall she saw in the back bedroom and she said "What the hell are you sleeping in there for? I just cleaned the sheets". Then she started another one of her tirades.

10 Q. Had she ever threatened your life prior to that? A. She had on the other occasion before when she stood before me menacingly with this knife and she said, "I could kill you".

Q. When was this? A. This was in September, 1941.

20 Q. Now thereafter did she threaten your life, after September, 1941? A. Well, she had made allusions to my death in one way and another; she hadn't actually threatened it between September, 1941, and this night I am speaking of when she entered the bedroom and started this tirade about one-thirty in the morning, accusing me of being unbalanced and insane, and saying that I would not dare submit to an examination by a psychiatrist; I don't know what she held in her hand; I was on my stomach; I saw the shadow, that is all I could see in the mirror.

Q. How much did your wife weigh, approximately? A. 165 or 170 pounds.

30 Q. How much did you weigh? A. About 130 at the time.

Q. How tall is your wife? A. Five eight.

Q. How tall are you? A. Five eight and a half.

40 Q. Now what effect did all this treatment have upon you in your desire to remove yourself from the State of New Jersey? A. I slid away down, it got me down for years, so that by the Spring of 1943 I had made up my mind that I was going to live elsewhere, so that I could get back my health and start life anew.

*Wilbur H. Cox, Recalled, for Complainant*  
—Cross.

Q. When you say that you made up your mind to live elsewhere, what do you mean by that; did you make up your mind where you wanted to live?

A. I did in about May, at the end of May, 1943, I decided I would go to Nevada.

Q. You decided what? A. I would go to Reno, Nevada. 10

Q. That was when? A. May, 1943.

Q. Why did you pick Reno, Nevada? A. Well, there were several good reasons. In the first place the climate, it is a high altitude, which I knew would agree with me, and I felt that my condition would be much improved.

Q. You mean your cancerous condition? A. Yes. My weight, well, it was—I want to explain it in this way, that the only thing that the doctor warned me of, Doctor Russell Ferguson, is, “Don’t lose weight”; and I know that the mountain air had always agreed with me and I selected Reno for its altitude and its good climate, it is cultural, it has a State University, it has more churches than any other city of its size in the country, it has attractions of all kinds. 20

Q. Were you considering any other states, or did you decide to go to Reno? A. No; I decided to go to Reno. 30

Q. What did you intend to do there? A. I intended primarily to regain my health, and from that point to work if I could; if I couldn’t work I expected to retire on a disability pension and spend my days there.

Q. When you speak of a disability pension, to what do you refer? A. I refer to the pension to which I am entitled under the New Jersey pension laws.

Q. As school principal? A. Yes; any teacher is entitled to it. 40

*Wilbur H. Cox, Recalled, for Complainant*  
—Cross.

Q. Did you give any consideration at the time that you left for Reno, Nevada, to the fact that you might not be able to get a position in Reno, Nevada, or in the State of Nevada, as teacher?

10 A. I was not concerned with whether or not I could get a position as teacher in Reno, Nevada; my first job was to regain my health; that was what I was primarily interested in.

Q. What did you have in mind for yourself, if you had anything in mind, after you regained your health? A. Well, that was immaterial; I would just as soon drive a horse and wagon out there to be happy, as to stay here and be unhappy and in ill health.

20 Q. Would you mind repeating that, please? A. I said I would just as soon drive a horse and wagon out there and be happy and in good health, rather than be here and in ill health.

Q. Was that your honest state of mind, your honest opinion at that time? A. That is why I went West.

Q. When you say went out there, what do you mean? A. To Reno, Nevada.

30 Q. How did you expect to support yourself at the time without a job in Reno, Nevada? A. My first thought was this pension and annuity fund; if I were permanently disabled I would have an income.

Q. Would you receive that income whether or not you lived in the State of New Jersey? A. Oh, yes.

Q. You would receive that income? A. I would receive that no matter where I lived.

40 Q. Did you have any other place where you could receive financial assistance if you required it? A. Well, I could have received temporary assistance from my relatives, which I did.

*Wilbur H. Cox, Recalled, for Complainant*  
—Cross.

Q. Did you have a talk with your relatives before you went to Reno, Nevada? A. I did.

Q. With whom did you speak? A. I spoke with my sister, my brother, my mother, father, brother-in-law.

Q. What did you tell your sister? A. I told her I was leaving New Jersey to take up my permanent domicile in Nevada. 10

Q. What did you tell your mother? A. I told her the same thing.

Q. Tell us as nearly as you can remember what you did tell her? A. Why, I told my mother that I was sorry that I had to leave, but it was quite necessary.

Mr. Herrigel: If your Honor please, I think these are self-serving declarations, and I move that they all be stricken. 20

Mr. Tepper: I think there has never been a question more material and more pertinent than this question. This deals with residence.

The Court: I think the objection might be good if urged against the mother testifying that her son told her that. I think he is privileged to say what he said and did. 30

Mr. Tepper: Of course in that connection that might be an exception to the hearsay rule if the mother were on the stand to tell that.

The Court: You can argue that at the time; I think there is a distinction there, or there may be.

Q. What did you tell her? A. I told her that I was sorry to go so far away, but it was absolutely 40

*Wilbur H. Cox, Recalled, for Complainant*  
—Cross.

necessary for me to go out there on account of my health and to start life anew.

Q. What did you say as to when you were coming back? A. I told her I didn't know when I would see her again, I wasn't coming back, I was  
10 going out there to live permanently.

Q. Did you discuss your decision with any other member of your family? A. Well, my sister and my brother-in-law, and my brother.

Q. What did you tell your brother? What is his name? A. Harry S. Cox, Jr.

Q. Is he in court? A. He is.

Q. What did you tell him? A. I told him, I just said good-bye, "I am saying good-bye, I am leaving for Nevada, I don't know when I will see you  
20 again."

Q. Did you say anything about coming back, to him? A. No, I didn't.

Q. Now did you hold office in some fraternal organizations? A. Several fraternal organizations; yes, one.

Q. Were you an officer of the American Legion? A. Yes.

Q. What did you do about that office that you held? A. I resigned that office.  
30

Q. When was that? A. That was Memorial Day, 1943, when I told the County Vice-Commander or the County Commander that I wanted to give up that position because I was moving out of the state to take up my permanent residence in the State of Nevada.

Q. Is that what you told him? A. I did.

Q. What is his name? A. Lawrence T. Regan.

Q. Is he related to you? A. No.

40 Q. In any way? A. No.

*Wilbur H. Cox, Recalled, for Complainant  
—Cross.*

Q. Or connected with you in any business ventures? A. No, sir.

Q. Who else was present at that time? A. Robert Kirkpatrick.

Q. Did he take part in this conversation? A. He overheard it.

10

Q. Was he related to you? A. No.

Q. What else did you do to carry out your intentions to move out of the State of New Jersey?

A. I resigned as President of the Union County Federal Credit Union—Teachers Credit Union.

Q. What office did you hold there? A. President.

Q. Proceed. A. I resigned my position with the lodge?

Q. What lodge? A. Masonic Lodge.

20

Q. What position did you hold in the Masonic Lodge? A. Senior Master of Ceremonies.

Q. Yes; what else did you do? A. Do you mean with respect to positions?

Q. With respect to preparing for your permanent removal from the State of New Jersey. A. Well, I sold my automobile; took the money out of the bank that I had; put my work in as good order as I could get it to leave.

Q. Now did you have any other reason in mind, any other purpose in mind, when you moved from the State of New Jersey to Reno, Nevada, than what you have related to us? A. I cut loose all ties and went out there to live permanently.

30

Q. You came to that decision when? A. In the Spring of 1943.

Q. Where do you consider that you reside now? A. South Burley Road, Reno, Nevada.

Q. You came back to the State of New Jersey, of course, as you testified before, was it in September, 1943? A. Yes.

40

*Wilbur H. Cox, Recalled, for Complainant*  
—Cross.

Q. How does that square with your testimony that you intended to live permanently in Reno, Nevada? A. I came back to New Jersey in September, 1943, for the purpose of seeing my physician, to clean up whatever work I could at the school, and see my daughter; and I also wanted to get a further leave of absence, or whatever rights I was entitled to under the pension and annuity fund laws, whatever grant I could get from the Board of Education.

10  
20  
Q. Why were you so concerned with cleaning up your school affairs if you left the State of New Jersey permanently? A. Well, had I been able to work again I certainly would have sought a position in the schools first. To get a position in the schools, naturally, I would have to have recommendations from the authorities with whom I last worked, and consequently I wanted to leave my affairs in good shape, and not just depart without proper notice; sever connections, I would say, without proper notice, because I had already departed.

Q. When you came back, that was after the school term had opened; isn't that so? A. Yes; that is right.

30  
Q. You were not there at the opening of the school term? A. No.

Q. Had you promised any member of the school system of Hillside that you would clean up everything in time for the opening of the term? A. I told them that I would see that things were in shape; I didn't promise to be back on any specific date, or if I would return.

40  
Q. How long did you remain in New Jersey when you came back in September, 1943? A. Three days.

*Wilbur H. Cox, Recalled, for Complainant*  
—Cross.

Q. What happened at the end of the third day?  
A. Well, I requested five days leave; it was five days, that time I was sick and I went to my mother's and I saw a physician in the meanwhile, and as soon as I was able to travel I went to New York State and rested; then I went back home. 10

Q. Yes; why didn't you resign your position, Mr. Cox, as school principal? A. Because I wanted to protect my rights; I wanted that pension.

Q. Did you really have that pension in mind when you went to Reno, Nevada? A. That I have the pension in mind?

Q. Yes. A. Before I went to Nevada I had the pension in mind.

Q. Did you feel yourself disabled? A. I knew I was disabled; I had been suffering from this cancerous condition for years. 20

Q. Is that really the reason that you didn't resign your position from the school system? A. That is the exact reason.

Q. Now, added to that, you were entitled, were you not, to accumulated vacation time? A. That would be at the discretion of the Board of Education; vacations have been granted.

Q. In other words, they could have given you sick leave, couldn't they? A. Yes, sir. 30

Q. That would be with full pay, wouldn't it? A. Yes.

Q. Is that what you wanted to receive as long as you could? A. Absolutely.

Q. Naturally you were going to resort to an application for retirement, as you told us? A. Right.

Q. Is that your explanation for not resigning from the school system? A. Yes; it was that pension and the state of my health; that is to say, if 40

*Wilbur H. Cox, Recalled, for Complainant*  
—Cross.

my health had improved eventually in the State of Nevada, I would have sought and I would have taken up employment, because I had already made applications for positions. I couldn't accept when I went out there, I was sick, mentally and physically sick.

10 Q. Now you then returned to Nevada, didn't you? A. Yes.

Q. When you returned to Nevada did you go to live, or did you return to the same place where you lived before you came back to New Jersey?

A. No; I went to a different place.

Q. Why? A. Well, the first place was a large boarding house; that is, there were a great number of boarders there, and I wanted to stay at a small place that would be a family like home with a few people.

20 Q. Why were you looking for a smaller place with family like surroundings? A. Well, if I was going to make that my home, that is, if I was going to make that house my place where I lived, I didn't want to—I don't want to get this wrong word in here, that is to my domicile or residence business—I want to give the proper term.

30 The Court: Never mind trying to use technical terms now; just state it in your language.

A. If I was going to live at that house I wanted it to be home-like, I wanted it to be small; as a matter of fact I took care of the activities of the household, I did the shopping and chores when I was able to and became a member of the family.

Q. Now thereafter you testified that you came back again in the State of New Jersey? A. Yes.

40 Q. When was that? A. November 7th, 1943.

*Wilbur H. Cox, Recalled, for Complainant*  
—Cross.

Q. Well now, you stated you came back the first time because you wanted to leave, as you termed it, with a clean record at the Hillside High School; you wanted to see your office cleaned, to do a little odds and ends, and see your daughter. Why did you come back to New Jersey in November, 1943, if Reno, Nevada, was your permanent home? A. Well, some time after I secured my decree I notified my sister that I had obtained a decree and told her where I was. She sent me a letter at that time that the Sheriff was looking for me and that someone was seeking to attach my property, my pension fund and my salary had been attached; it was for that reason that I came to New Jersey to straighten out those matters. 10

Q. Who was it that reached you to do that? A. My sister. 20

Q. What is her name? A. Edith Washburn.

Q. Did you receive word from her to that effect after your decree? A. Oh, yes; it was some time after the decree.

Q. How long after the decree? A. It must have been ten days at least after the decree.

Q. In other words, after your decree you remained in Reno, Nevada, at this address you have given us before? A. Yes. 30

Q. About ten days thereafter you received word from your sister? A. Yes, sir.

Q. That litigation was instituted against you in New Jersey? A. I don't remember just what she said, except that the Sheriff was looking for me, that they were after my pension fund and seeking to attach whatever property I had.

Q. But you are sure that she said that they were seeking to attach your property? A. Yes, she did. 40

*Wilbur H. Cox, Recalled, for Complainant*  
—Cross.

Q. You are sure she spoke of your pension fund rights? A. Yes, sir; that is what concerned me a great deal.

10 Q. What did you decide to do? A. I decided that I would come here and find out what that was all about, and try to clear my good name.

Q. Did anybody else write you about this action that was pending, too; did you receive a newspaper clipping? A. I received a newspaper clipping; I don't remember who sent it.

20 Q. Were you advised that a sequestrator had been appointed? A. It wasn't stated in that language; it was stated that they were after my money, the pension and annuity fund, seeking to get hold of my contingent annuity fund; the sheriff was after that. There were certain court actions that weren't made clear to me at that time.

Q. You say you came back to New Jersey again— A. Yes.

Q. —to fight these actions? A. And also to see my physicians, because in October I was ill again; extremely ill.

30 Q. What happened when you arrived in New Jersey, in November, 1943, after receiving word from your sister that those suits had been instituted against you? A. First I was suspended by the Board of Education; later I was served with papers to answer pleadings; my money was still tied up.

Q. Did you find that actually a sequestrator had been appointed in order to take charge of your affairs? A. Oh, yes; whatever I had in the credit union was taken out; my salary checks were attached; efforts had been made to take up my insurance policies, in some way.

40 Q. Your life insurance policies? A. My life insurance policies.

*Wilbur H. Cox, Recalled, for Complainant*  
—Cross.

Q. Did you know that actually an effort had been made to attach your pension rights? A. I did.

Q. Now, were you then taken into custody? A. I was taken into custody.

Q. Thereafter were you released on bond? A. 10  
Yes; I took out bonds of two or three descriptions, one to take out my money, and I took out bonds to insure my appearance here.

Q. Now after that had been done why didn't you return to Reno, Nevada? A. Well, I was forced to stay in the State of New Jersey on these bonds to face these court actions.

Q. Who told you that? A. That is what the bond said.

Q. Is that what you honestly believe? A. That 20  
is what I put up the bond for.

Q. Now why did you ask for reinstatement in your school position? A. Well, after all, I was here under compulsion and I had to live. By that time I was borrowing money because my salary checks were tied up, I was borrowing money for my attorney and I had to live, and consequently I resumed my position, I reported to work; and furthermore, as I first stated before, it seemed the logical condition, since I was here under 30  
compulsion, I wanted to get their O. K. and the best thing to do was to work while I was here; I really had to live and to get those recommendations that I wanted.

Q. At that time what were your plans with respect to going back to Reno, Nevada? A. To go back as soon as I was able to leave; as soon as I was released.

Q. As soon as these actions had been disposed of? A. Yes. 40

*Wilbur H. Cox, Recalled, for Complainant*  
—Cross.

Q. What did you intend to do then with respect to your school position? A. Then I was going to offer my resignation and put in my application for retirement under the disability clause of the pension and annuity laws.

10

*Cross examination by Mr. Herrigel:*

Q. Mr. Cox, in June, 1943, did you sign a contract to continue in school for the year 1943-1944?

A. I had signed that very early in the Spring.

Q. You didn't sign it in June? A. Well, contracts are usually made in April, or May at the latest.

20

Q. But in 1943 it wasn't issued until June, was it? A. I have no recollection of the exact date.

Q. You may have signed it in June? A. I signed the contract in 1943; it may have been in June; it could have been.

Q. Mr. Cox, when you returned from Reno you were married to Mildred Hamilton, were you not? A. Yes, sir.

Q. When were you married to Mildred Hamilton? A. The 6th of November.

Q. 1943? A. Right.

30

Q. So that there were other reasons for your return to the East besides the school term; marriage was one of the reasons for your return, was it not?

Mr. Tepper: I don't think that is proper.

Mr. Herrigel: He said it was.

Mr. Tepper: That is a very general question. You may refer to any marriage.

40

The Court: Was this second marriage of yours one of the reasons why you came back to New Jersey?

*Wilbur H. Cox, Recalled, for Complainant*  
—Cross.

A. No, sir; I didn't have that in mind when I came East; I hadn't asked the girl.

Q. In 1940 or 1941, when you say things didn't go along so well in your home, did you tell Mrs. Cox you didn't love her? A. I didn't tell her that.

10

Q. Did you ever tell her that? A. Not in those words.

Q. What did you say; what were your words? A. I don't know. She certainly would not have expected me to love her after she had done those things; that is obvious.

Q. Please tell us what you told her? A. I don't know what I told her.

Q. Do you deny that you told her you did not love her? A. I told her that she had destroyed all my respect for her.

20

Q. Do you deny that you told her you didn't love her? A. I don't remember that.

Q. Did you tell her that you transferred your affections to Miss Hamilton? A. I did not.

Q. Are you sure you did not tell her that in 1941? A. Absolutely no, I did not.

Q. From 1941 until July, 1943, did you speak to her any more than was actually necessary while you were under the same roof with her? A. Yes.

30

Q. You did? A. Yes.

Q. When you spoke to me at my office in 1943, didn't you say that you could not get along with her? A. I said we did not get along.

Q. Didn't you say that there was no opportunity for you two to get together? A. I don't recall making that statement, Mr. Herrigel.

Q. And in July 17th, 1943, did you have a talk with Mrs. Cox? A. Yes.

40

*Wilbur H. Cox, Recalled, for Complainant*  
—Cross.

Q. What did you say at that time? A. I asked her when she was going to get that divorce that she told people she was after.

Q. What did she tell you? A. Well, she said she would consider it.

10 Q. What did you say? A. I told her to consider it.

Q. To consider it? A. Is that necessary, your Honor?

The Court: The question is not objected to.

Mr. Tepper: Well, I didn't want to break in on this examination, because I didn't think—

20 The Court: Do you object?

Mr. Tepper: Yes; I object.

The Court: On what ground?

Mr. Tepper: I object on the ground that it is immaterial.

The Court: How is that material, Mr. Herrigel?

Mr. Herrigel: It is material to show the state of mind, so your Honor would get the reason for the divorce.

30 The Court: Yes, but that wouldn't make this particular question a material one. You have the information now that a divorce was talked about.

Mr. Herrigel: I want to go further and show just exactly what was said; I want to bring out the conversation between him and his wife. He has gone very far in that.

40 The Court: I will sustain the objection to that particular question. You may ask him about the conversation.

*Wilbur H. Cox, Recalled, for Complainant*  
—Cross.

Q. Tell us what further took place in the course of that conversation with Mrs. Cox? A. Well, that was it; that was about all there was to it.

Q. You discussed divorce; is that right? A. I asked her when she was going to get that divorce she was after.

10

Q. Didn't you ask her to go to Reno for a divorce? A. No; I never asked her that.

Q. Didn't you tell her you would pay all expenses for her if she went to Reno? A. No, sir; I did not; I never told her that.

Q. You swear on your oath you didn't say that? A. Absolutely, I do.

Q. As a matter of fact, that conversation was on the 17th was it not? A. Yes, sir.

20

Q. Didn't you say to her, "If you don't go out there, I will"? A. No.

Q. Didn't you a few days after start on your way to Reno? A. Yes; on the 20th.

Q. But before you went you discussed divorce with her? A. I just asked her that.

Q. You said a little while ago that you had definitely made up your mind to go to Reno for a divorce in May? A. No; I didn't say that.

Mr. Tepper: I object to that as being entirely improper.

30

A. I didn't say that I was going to Reno for a divorce.

Q. That you made up your mind to go to Reno to live? A. That is right.

Q. You made up your mind in May? A. Yes.

Q. Yet on July 17th you told us that you discussed with Mrs. Cox the proposition of getting a divorce?

40

*Wilbur H. Cox, Recalled, for Complainant*  
—Cross.

Mr. Tepper: I object to that. The witness testified he made up his mind in May; the witness testified he made up his mind early in the Spring.

The Court: I will overrule the objection.

10

Q. On the 20th—was it the 20th or 21st that you left for Reno? A. On the 20th.

Q. On that same day you had been in school? A. Yes.

20

Q. Now, Mr. Cox, it was in May, was it not, that you presented a report to the Board of Education, in which you had stated that you had been doing a great deal of work out of school time, and that you expected to do a great deal more, and for that reason you asked for a vacation that was longer than usual; isn't that so? A. No; I said, "I assure you of my untiring efforts for 1943-1944", is that what you mean?

Q. No; there was a report, I believe, that you made to the Board of Education in May, 1943, and in that report had stated that you had done a great deal of extra work and therefore requested a vacation longer than usual.

30

Mr. Tepper: I say the report is here and that is the best evidence.

Q. Please refresh your mind on that.

Mr. Tepper: Let Mr. Cox look at the report.

Q. I show you Exhibit C-13. A. That isn't my report; that is Mr. Woodfield's report to the Board of Education.

40

Q. The report says: "A communication from Mr. Wilbur H. Cox, Principal of the Senior High

*Wilbur H. Cox, Recalled, for Complainant*  
—Cross.

School, citing the fact that by devoting considerable extra time, he has been able to prepare the schedule for 1943-1944 and that any additional work will be performed elsewhere than in the High School office, in view of which he requests that if he should so desire, the Board grant an additional three or four weeks vacation this Summer". 10

Mr. Tepper: Just a moment.

The Court: What is the question?

Mr. Herrigel: The question is whether in May, 1943, he made a report to the Board of Education in which he stated those facts.

A. The answer is no.

Q. In May, 1943, did you make a report to the Board of Education of Hillside? A. I have no recollection of any report in May, 1943. 20

Q. Did you make a report to the Supervising Principal in May, 1943? A. No; only the customary periodic letters, and practically all were sent from September to June.

Q. Do you mean to tell us that you sent no letter to the principal of the high school, in which you set forth the facts that are here stated in this resolution? A. You mean the supervising principal of the system. 30

Q. The supervising principal of the Board of Education.

Mr. Tepper: I object to that; if there is such a communication it should be produced.

Mr. Herrigel: If the court please, there is such a report, otherwise it wouldn't be in the record.

Mr. Tepper: Show it to the witness. 40

*Wilbur H. Cox, Recalled, for Complainant*  
—Cross.

A. I can explain it if you want.

Q. Explain it then. A. That was taken from a communication of the supervising principal in July, 1943, a letter requesting as much a vacation as I could get.

10 Q. So except for the date, that statement is correct, is it, as to what you asked for? A. Yes; but it wasn't reported to the board.

.Q. Whatever it was; that is what you asked for? A. Yes.

Q. You asked for it in July? A. In July.

The Court: What is the date of the report?

Mr. Herrigel: In the minutes of July 8, 1943.

20 The Court: I think we have it straightened out now.

Q. Did you make a report to them in May? A. No, sir.

Q. Was this your first report? A. Yes, sir.

Q. Mr. Cox, you made a statement in which you said that you had been disabled for years— A. Yes, sir.

Q. —because of cancer? A. Yes, sir.

30 Q. If you had been disabled for years, would you or would you not have been entitled to a pension?

Mr. Tepper: I object to that.

Q. While you had been under that disability?

Mr. Tepper: When, for years?

Mr. Herrigel: His words are that he had been under disability for years because of cancer.

40

*Wilbur H. Cox, Recalled, for Complainant*  
—Cross.

The Court: Reframe the question; because it is not clear.

Q. If you had been under disability for years, while you were under that disability would you have been entitled to a pension? 10

Mr. Tepper: That is not answerable.

The Court: I will sustain the objection.

By the Court:

Q. Would you have been entitled to a pension at any time or for any reason while you were still holding your position and were actively at work?

A. Yes, sir; if I were considered permanently disabled for the position. 20

Q. Do you mean to say you would still do your work and draw your salary, and get a pension, too? A. No.

Q. That is the question. As long as you held your job and did your work, you were not entitled to a pension, no matter what your condition of health was? A. No. I didn't understand the question.

By Mr. Herrigel:

Q. Under the rules of your organization would you be entitled to a pension, if you were disabled and were working? A. If I could no longer work I could retire on a pension. 30

Q. No; that isn't my question. If you were disabled from cancer would you be entitled to make application for a pension? A. It is a matter of degree, Mr. Herrigel; if this reaches a certain point when I could no longer go, then I would be entitled to the pension. 40

*Wilbur H. Cox, Recalled, for Complainant*  
—Cross.

Q. You state that when you returned to New Jersey, one of the reasons why you came back was to see your daughter.

Mr. Tepper: When, Mr. Herrigel. Fix the date.

10 Mr. Herrigel: That was the first time.

Mr. Tepper: I believe that was the five day visit.

Q. Did you see your daughter when you came back? A. No; I went to see her but I couldn't get in; there was no response.

Q. Since you came back to New Jersey have you seen her? A. I tried on several occasions.

20 Q. Where have you tried to see her? A. I wrote her a letter in December; I wrote her a letter in November; on her birthday I called her up and told her that I had a gift for her and wanted to see her; she said, "I don't care to see you, Daddy."

Q. Then— A. Pardon me. I want to be very fair to her; she said, "I don't feel much like seeing you, Daddy". Those were her words.

30 Q. Have you called her since that time? A. I wrote her a letter and told her I would like to have luncheon with her in Newark, Elizabeth, or anywhere she suggested, but she wasn't of a mind to see me. I wasn't going to cause her any additional strain; I wasn't going to force the issue.

Q. Did you attempt to see her over at the school which she attends?

Mr. Tepper: I object to that as immaterial.

40 A. No.

The Court: Objection overruled.

*Wilbur H. Cox, Recalled, for Complainant*  
—Cross.

Q. You say you were ill with influenza in February, 1943? A. Yes, sir.

Q. While you were ill with influenza was Mrs. Cox working? A. Not when I was taken ill.

Q. She had a position, did she, at that time? A. No, sir.

Q. While you were in Reno you wrote the letter marked Exhibit C-13 to "Dear Mildred"? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. In that letter you state that notwithstanding the fact that the Board of Education would not stand for shenanigans that you had Earle, King, Mr. Woodfield and others that you could depend upon, or words to that effect.

Mr. Tepper: I object to that; the letter is in evidence. 20

The Court: Do you remember writing such a letter?

A. Yes, sir.

Q. You said that you went to Reno, intending to make that your permanent residence.

Mr. Tepper: That isn't what he said; he didn't use the language, permanent residence, at all. 30

Mr. Herrigel: Permanent home.

Q. And that before you left you made up your mind to stay there, even if you got a position only to drive a horse and buggy? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. You didn't get a job driving a horse and buggy, did you?

Mr. Tepper: I object to that. 40

*Wilbur H. Cox, Recalled, for Complainant*  
—Cross.

Mr. Herrigel: Well, did he?

The Court: I will allow it.

A. I didn't get a job driving a horse and buggy.

10 Q. Did you get any other job? A. I was lining up jobs; I was on the verge of one if I was able to take a job.

Q. You didn't get that job there? A. I had two offers.

Q. Did you get a job there? A. I didn't take any contract, because when I got the letter that these court actions were pending and the Sheriff was after me, I came back.

20 Q. The fact is you didn't get a job in Reno? A. I didn't take a job; I didn't take any position.

Q. You say the second time you went there you went to a quiet sort of place? A. Yes, sir.

Q. Yet you obtained your decree for divorce on the 15th of October, did you not? A. I did.

Q. And within a few days thereafter you were on your way East, were you not? A. No.

30 Q. To be exact, within how many days thereafter did you start your trip East? A. It must have been close to two weeks; I was out there several days before I found out about those actions, then it was a, I think, a matter of three days to come East. That was the period when I was working very actively on those applications.

Q. On what date were you married? A. November 7th.

Q. Your divorce was granted— A. October 15th.

40 Q. —October 15th. So you didn't have very much time between the date of your marriage and the date of your divorce.

*Wilbur H. Cox, Recalled, for Complainant*  
—Cross.

Mr. Tepper: I object to that.

The Court: Objection sustained.

Q. Now at the previous hearing when I asked you the question when you first learned about or through whom you learned about these actions here, I believe your answer was that you didn't know; is that correct? 10

Mr. Tepper: I object to that question. The record will show.

The Court: Objection overruled.

Q. Did you at the last hearing say that you didn't know?

The Court: Is the question clear? 20

A. Yes. I said I wasn't sure at that time; I said I had two or three letters and I had clippings; I don't remember what I said now.

Q. You didn't mention your sister, though, did you? A. As far as I can recall.

Q. Why didn't you mention your sister's name?

A. Well, it would come from my sister or brother or the family, because no one else was communicating with me.

Q. Mr. Hilliard, your first attorney, didn't tell you about it, did he? A. No. 30

Q. He didn't tell you why he was getting out of the case, did he? A. No.

Q. You had paid him a retainer? A. Right.

Q. Yet he got out of the case and you had to get another attorney? A. (No answer).

The Court: Is that right?

A. That is right.

*Wilbur H. Cox, Recalled, for Complainant*  
—Cross.

Q. When did you first make up your mind to get a divorce in Reno? A. About two weeks after I was there I consulted an attorney to discuss it.

Q. How long after you were out there was the action instituted? A. Approximately seven weeks.

10 Q. Six and a half weeks, to be exact, wasn't it?  
A. Six and a half.

Q. Are you now an officer of the Masonic lodge?  
A. Yes, sir.

Mr. Tepper: I object to that as immaterial.

The Court: He has answered it.

Q. Before you left Hillside did you offer your resignation as principal of Hillside High School?

20 A. I did not.

Mr. Tepper: I object to that as being repetitious.

The Court: Why make so many objections. These are all material matters.

Q. What is your answer? A. I didn't submit my resignation; no.

30 Q. Did you tell the Board of Education that you were going to Reno to make it your permanent home? A. I did not.

Mr. Tepper: I object to that as immaterial what he told the Board of Education with respect to that.

The Court: I think it is quite material, or it might be.

Q. That is all.

*Jean A. White, for Complainant—Direct.*

JEAN A. WHITE, SWORN:

*Direct examination by Mr. Herrigel:*

Q. Where do you live, Mrs. White? A. 14 Looker Street, Hillside.

Q. Are you a member of the Board of Education of the Township of Hillside? A. I am. 10

Q. Do you know Wilbur Cox, the defendant in this case? A. I do.

Q. How long have you known him? A. Oh, considerably more than fifteen years.

Q. During the month of November was there a special meeting of the Board of Education? A. November 9th; yes.

Mr. Tepper: What year?

Mr. Herrigel: 1943. 20

Q. Is that not right; November, 1943? A. That is right.

Q. At that meeting what action was taken with respect to Mr. Wilbur Cox?

Mr. Tepper: I object to that; the minutes are here and are the best evidence.

The Court: Haven't you got that.

Mr. Herrigel: That is satisfactory. 30

Q. And on November 15th, 1943, was another special meeting held? A. That was not a special meeting; that is what we term a committee meeting.

Q. That was on November 15th? A. November 15th.

Q. Who were present at that meeting? A. All the members of the Board.

Mr. Tepper: I object to that on the same grounds. 40

*Jean A. White, for Complainant—Direct.*

A. There were no minutes of that meeting.

Q. No minutes were taken? A. No minutes were taken.

The Court: I will allow it.

10 Q. Was Mr. Cox or his attorney, Mr. Hoffman, present at that time? A. They were.

Q. At that meeting did Mr. Cox make a statement to the members of the board that were present? A. Mr. Cox read a statement.

20 Q. Can you tell us substantially what was in that statement? A. A general outline of his marital difficulties, and then he said that he had gone to Nevada and got a divorce and then remarried, and he felt that now he could give better service to the Board of Education than he had ever previously given.

Q. Did he at that meeting tell why he had gone to Reno? A. I don't recall that he said where he went; he simply said that he was friends with Mrs. Hamilton and the friendship grew——

Mr. Tepper: I object to that.

A. —Stronger——

30 Mr. Tepper: I object to that as immaterial, about Mrs. Hamilton.

The Court: Objection overruled.

A. The friendship grew stronger, so he decided to have a divorce and it would settle him better and he would be married, and for that reason he would give better service to the board on his return.

Q. And that he had gone to Reno and procured a divorce? A. Yes.

*Jean A. White, for Complainant—Cross.*

Mr. Tepper: I object to that. I don't think the witness so testified. It is leading.

The Court: You may cross examine on that.

*Cross examination by Mr. Tepper:*

Q. You were quite active in your efforts, were you not, to get Mr. Cox out of the school system? 10

Mr. Herrigel: I object to that as irrelevant and immaterial.

The Court: Objection sustained.

Q. You say this was a special meeting? A. Right.

Q. No minutes were taken? A. Seldom any minutes are taken. 20

Q. Who was present? A. Every member of the board.

Q. Name the members? A. Mr. Reiner, President; Mr. Harold Curtis; Mr. Herbert R. Otte, Mr. Frank Walker, Mr. Edward Earle; Mr. Frank Haefner; Mr. George Reiner and myself, as members of the Board; Mr. Walter Sadlosky, the attorney for the Board, Mr. Hoffman and Mr. Cox.

Q. Now then, this, you say, took place in November, 1943? A. Yes, sir. 30

Q. That was at a meeting where Mr. Cox sought reinstatement, was it not? A. No, sir.

Q. What was the purpose of the meeting? A. The notice of that meeting came dated November 10, 1943.

Q. Have you a copy of that notice? A. Yes.

Q. Did you know in advance of the meeting what business was going to be transacted there? A. I hadn't the slightest idea.

Q. Well, you knew that this letter relating to Mr. Cox was to be presented, didn't you? A. 40

*Jean A. White, for Complainant—Cross.*

That Mr. Cox would make a statement at the meeting, or he would like to make a statement before the board.

Q. Then you did know that the business to be transacted at that meeting related to Mr. Cox, didn't you? A. Definitely; it says there.

10 Q. When you received this notice did you have any talks with other members of the board about the coming meeting? A. Not any to my recollection, because that was a Friday, a week-end period.

Q. Had anybody else spoken with you, who was not a member of the board, about this meeting at which Mr. Cox was going to appear? A. No, sir.

Q. You say this was in November, 1943? A. Yes, sir.

20 Q. That was after Mr. Cox was arrested, was it not? A. I don't know that Mr. Cox was arrested.

Q. Didn't you know that Mr. Cox's body had been attached under an action instituted by his wife? A. I did not.

Q. Did you ever have any talk with Mrs. Cox about this situation? A. I did not.

Q. At no time did you ever talk with her? A. I did not.

30 Q. Did you know when Mr. Cox returned from Reno, Nevada? A. At what time?

Q. After he had obtained a decree. A. Yes; he came back to school on November 8th; that was a Monday.

Q. Yes, and then he was suspended, was he not? A. On November 9th.

Q. Yes. A. At a meeting of the board.

Q. You voted for his suspension? A. I did.

40 Q. Did you present the motion of suspension? A. No, sir.

*Jean A. White, for Complainant—Cross.*

Q. Now, is it not a fact that thereafter your board received a notification from Mr. Hoffman, who represented Mr. Cox, of his application to the Board of your township for reinstatement?

Mr. Herrigel: I object to that because it is not proper cross.

The Court: I don't see that it does much harm. 10

A. I haven't any recollection of any communication from Mr. Hoffman seeking reinstatement. What date was that?

Q. After November 9th and before the meeting of the 15th of November, about which you have just told us. A. I wouldn't see it until the next meeting.

Q. Did you ever see such a communication? A. I don't recall; I can't recall which he is speaking of. 20

Q. Have you any knowledge of the fact that such an application was made? A. For reinstatement?

Q. Yes. A. I can't recall it.

Q. So that you don't know at this time that Mr. Cox ever, through a letter, statement or otherwise, made application to your board for reinstatement? A. No. 30

Q. How do you account for the fact that he did thereafter come back to the school system as principal? A. At which time he came back are you talking of now?

Q: After you suspended him; you voted for his suspension? A. Yes.

Q. How do you account for the fact that after you had voted for his suspension and he had been suspended, that he suddenly found himself again principal of the high school of Hillside? A. After 40

*Jean A. White, for Complainant—Cross.*

due discussion of various members of the Board of Education and everything was given a clear and upright consideration, it was taken from all angles, and the board had several meetings behind closed doors, that was the position at which the board arrived in the meeting here; it was a  
10 unanimous decision.

Q. That was the application, was it not? A. Not necessarily; after Mr. Hoffman's application.

Q. Well, would you say then that the board, on its own motion— A. Yes, sir.

Q. The board of its own accord reconsidered the suspension and reinstated Mr. Cox? A. Yes, sir.

Q. Without any move on his part to ask you to consider it? A. Yes, sir.

20 Q. Now is it not a fact that Mr. Cox was reinstated on December 2d, 1943? A. Yes.

Q. That is a fact, is it not? A. Yes.

Q. Is it not a further fact that from November 9th, 1943, down to December 2d, 1943, there were efforts made on the part of Mr. Cox's attorney to cause your board to reinstate him? A. Not to my knowledge.

Q. Not to your knowledge? A. No.

30 Q. Is it not a further fact, and don't you know, Mrs. White, that at the meeting of November 15th, 1943, Mr. Hoffman and Mr. Cox appeared before your board and furnished such facts in support of his application for reinstatement in order to cause your board to reinstate him? A. I wouldn't say so.

Q. What occurred at that meeting? A. Mr. Cox read a prepared statement before the board; the board never got a copy of the prepared statement.

40 Q. Have you since that meeting and before your coming here this morning, refreshed your

*Jean A. White, for Complainant—Cross.*

recollection about what transpired at that meeting, by consulting with other members of the board? A. Not necessarily, because I recollect what was said; I happened to be sitting right next to him.

Q. You did consult with other members of the board, did you not? A. No, sir. 10

Q. Did you talk to any other member of the board before coming here this morning? A. Well, I talked to some members of the board last night; we had a committee meeting; but not to discuss this.

Q. You didn't discuss it before coming here this morning? A. No, sir.

Q. With anyone? A. No, sir; not a member of the board. 20

Q. Well, did you discuss it with any person other than a member of the board?

Mr. Herrigel: I object to that; I don't see how it is relevant or material.

The Court: I will allow it. Did you discuss it with anyone else besides a member of the board?

A. I said good-night to someone last night and I wished this person good luck; the person said, "Well, I wish you good luck"; that is the only way that it was discussed. 30

Q. Was that person Mrs. Cox? A. No.

Q. Was that person her solicitor? A. No, sir.

Q. It did, I suppose, relate to your coming here this morning? A. Yes; to a certain degree.

Q. To what degree? A. I am just wondering what the effect of the trial would be.

Q. Was that person a member of the board? A. No, sir. 40

*Jean A. White, for Complainant—Cross.*

Q. Did you discuss your coming here this morning with any other person? A. No, sir.

Q. Well, how did you know that you were required here this morning? A. I had a subpoena previous to this and when we were dismissed the judge said that all who had been subpoenaed should come back here today.

10 Q. When did you first receive your subpoena? A. Two or three days before the last trial.

Q. At that time did you have any discussion with any person about this case? A. Many persons I talked about this case with.

Q. About your coming to testify? A. I said I had been subpoenaed.

Q. Didn't you then go into the case itself with them? A. No, sir.

20 Q. Did you discuss it with the person who subpoenaed you? A. Yes, sir.

Q. Who gave you your subpoena? A. I don't know the man's name.

Q. Where were you when you were subpoenaed? A. In my office.

Q. At the school? A. At the school; at the Hillside Avenue school.

Q. Weren't documents in the possession of your board also discussed at that time? A. Not when I got the subpoena. You speak about when I was given the subpoena?

30 Q. Well, do I understand from you that the documents in the possession of the board were discussed with you at some other time? A. I talked that matter over once with Mr. Sadlowsky, the attorney of the board.

Q. Yes; anybody else? A. I may have with some of the members of the board; perhaps with the president.

40 Q. Any representative of Mr. Cox? A. Any representative of Mr. Cox; no, sir. Of Mr. Cox?

*Jean A. White, for Complainant—Cross.*

Q. Yes. A. No, sir.

Q. At no time? A. No, sir.

Q. Down to the present moment? A. No, sir.

Q. Didn't you have a conference at the high school in Hillside with Mr. Herrigel, Mr. Higgins and others? A. No, sir.

Q. At no time? A. Never at the high school. 10

Q. Where was that conference held? A. I wouldn't know; you mean wherever I spoke about the documents; I never talked with Mr. Herrigel in the high school.

Q. Where did you talk with Mr. Herrigel about this case? A. I had talked with Mr. Herrigel on various occasions when he was here at the last hearing; he asked me if I would come earlier to the last meeting, the last court trial, to come here early for any suggestions that might have to be made, and I came here early at the last trial, at nine o'clock. 20

Q. Was that when you received the suggestions you refer to? A. I don't know what suggestions you refer to.

Q. I am speaking of your own statement, that you were asked to come early to be available for any suggestions which might be necessary. A. Your question is not clear.

Q. All right; let me put it to you this way: You stated before that you never had any conversation with any representative of Mr. Cox down to the present time relating to this case. Your recollection has been refreshed to the extent of your testifying now that you did have some conversation with Mr. Herrigel. 30

Mr. Herrigel: I am not Mr. Cox's representative; I happen to be Mrs. Cox's representative.

The Court: Objection sustained. 40

*Jean A. White, for Complainant—Cross.*

Q. Did you have any conversation with any representative of Mrs. Cox? A. Yes, sir.

Q. Relating to this case? A. Yes, sir.

Q. At the time that you were served with the subpoena? A. Yes, sir; when I got the subpoena. Word came to me that I was to meet Mr. Herrigel  
10 here early in the morning of the trial; but any testimony that I am giving now is from my own knowledge and my own experience as a member of the Board of Education.

Q. Well, what makes you think I think otherwise? A. I don't think you think otherwise; I have no way of knowing what you think.

The Court: Mr. Tepper, the only reason for my letting in this evidence was to test  
20 the possible bias of this witness.

Mr. Tepper: I am pursuing that line.

The Court: Don't you think you have pursued it long enough?

Mr. Tepper: All right, sir; I will desist now.

Q. What took place at the meeting of November 15, 1943, dealing with the reinstatement of Mr. Cox? A. Mr. Cox read a prepared statement; whose attorney, Mr. Hoffman, asked the members  
30 of the board if they had any questions to ask of Mr. Cox; there was not a single question asked by anyone.

Q. Did you say that there was reference in that statement to the effect that Mr. Cox lost his affections for Mrs. Cox and had become enamoured of another woman? A. He recited his marital difficulties in detail and he asked when he read that statement to the board—previous to his reading it he asked the confidence of the board that they  
40 would not divulge what was in his statement.

*Jean A. White, for Complainant—Cross.*

Q. Did Mr. Cox tell you at that time how he was getting along with Viola Cox, the complainant?

A. He told the board.

Q. He told the board that? A. Yes.

Q. What did he say with respect to that? A. Well, the first thing, that he had come home to cold meals and to a cold house, just various small details that in his point of view, that they had marital troubles. 10

Q. Did he relate his physical condition to the board; the cancerous condition? A. I don't recall.

Q. Did you know that he had cancer? A. I know that he had an operation for that; yes.

Q. All that he told your board was that he had obtained a decree for divorce in Reno, Nevada; isn't that so? A. And married. 20

Q. And remarried? A. Yes.

Q. Was there anything else that he told your board with respect to that? A. Oh, yes; he told us now he felt that he could give the board finer service than he had ever done before.

Q. Is it or is it not a fact that he told your board about these actions that were pending and that he had to defend? A. That I don't recall.

Q. Would you say that he didn't say that? A. I wouldn't say he didn't and I wouldn't say he did; I don't recall. 30

Q. Now, Mr. Cox didn't tell you or your board that he did not move permanently to Nevada, did he? A. No, sir.

Q. That is all.

*Virginia Cox, for Complainant—Direct.*

VIRGINIA COX, SWORN.

*Direct examination by Mr. Herrigel:*

Q. Virginia, you are the daughter of the complainant and defendant in this matter? A. Yes.

Q. How old are you? A. I am seventeen.

10 Q. Where do you live? A. 126 Virginia Street, Hillside.

Q. With whom do you live there? A. My mother.

Q. Up to what time had your father been living home with you? A. Until July, 1943.

Q. Did you graduate from Hillside High School in June, 1943? A. I did.

Q. You heard your father testify about having a basket of flowers for you? A. I did.

20 Q. Will you please tell the court why you did not get the basket of flowers? A. My father had made an announcement in front of the entire student body of the school once that there were to be no flowers sent to the high school on the night of the graduation or any other night, because it was not proper; so I was very much embarrassed. That is why I did not want to get any flowers.

30 Q. Did your mother whisk you away after the graduation exercises? A. She did not. When we finished the graduation exercises my mother was across the street and I went over to meet her.

Q. From July, 1943, at the time your father left, until December, did your father pay anything towards your board and maintenance at school? A. No; he did not.

Q. Then after that, of course, an order was made to pay fifteen dollars a week for your support; that is correct, isn't it? A. Yes.

40 Q. Do you have any private income of your own? A. No, I do not.

*Virginia Cox, for Complainant—Cross.*

Q. Where do you go to school? A. New Jersey State Teachers College, at Newark.

Q. Who pays for your schooling? A. Well, I have a student loan, so really I do.

Q. Some money may have been used toward your education from the money that has been given to your mother by your father? A. Well, 10 that isn't enough for my education.

Q. From July, 1943, until December, 1943, approximately how much spending money did your father give you? A. Well, he sent me an average of about one dollar a week; that was my allowance, because I was at camp and I was working for my maintenance.

Q. That was during the Summer? A. Yes.

Q. Then after the Summer was over and until December did he give you or send you any money 20 from time to time? A. No; he did not.

Q. About how many letters have you received from him since last July? A. Well, I really don't know; I guess about eight.

Q. Have you replied to any of them? A. No; I have not.

Q. Were you told by anyone not to reply to them? A. No.

Q. Why didn't you reply to them? A. Well, some letters I couldn't reply; really they were a little 30 hazy, they didn't seem to make much sense.

Q. Has your father come to see you since last July? A. No; he has not.

Q. That is all.

*Cross examination by Mr. Tepper:*

Q. When did you enter Teachers College? A. On September 23d, 1943.

Q. Prior to July, 1943, were you supported by your father? A. Yes; he gave that money to my 40

*Virginia Cox, for Complainant—Cross.*

mother; occasionally he would give me money for clothes, but not very often.

Q. He maintained the home, did he not; I mean, you lived at his home, did you not? A. I did.

Q. In the Summer of 1943, which is the year of the separation between your father and mother,  
10 you went to camp, did you not? A. I did.

Q. And at camp you received compensation in addition to being maintained there, did you not? A. At the end; I didn't know, though, that I was going to be paid.

Q. Yes; but you were being maintained there, were you not? A. Yes, sir.

Q. You went there when in July? A. July 3d.

Q. That was the month that your father and mother separated? A. Yes.

20 Q. Is that correct? A. Yes.

Q. So that from July down to September, 1943, you were maintained at the camp? A. That is right.

Q. You received your food, incidentals, and some compensation? A. Yes.

Q. Now when you entered school in September, 1943, didn't your father's sister pay your tuition? A. After a great deal of trouble; after I had entered college they sent something.

30 Q. Didn't she pay the tuition? A. I don't know who paid the tuition.

Q. Well, you know it came from your father's side, do you not? A. I don't know who paid my tuition.

Q. Would you say now that the tuition did not come from your father's side? A. I couldn't say, because I don't know.

Q. You don't know? A. No, sir.

40 Q. Now thereafter did your father give you at the same time that this tuition was paid by his

*Virginia Cox, for Complainant—Cross.*

sister or your father, did he give you any money with which to buy your books? A. I believe a check came through from my uncle for \$35 which was supposed to cover my books and some clothing I had asked for.

Q. Then you received \$35? A. Yes, sir.

Q. In other words, from July to September you were at camp, being maintained there; prior to July you lived with your dad right up to the time that you went to camp; and when you entered school in September your tuition was paid and you received \$35 from your father for books; isn't that so? A. \$35 from my uncle. 10

Q. Well, didn't your uncle tell you that it came from your father? A. No; there was nothing said about it. 20

Q. You are speaking now of some sister, are you not; your father's sister? A. I am.

Q. So that from the same source that you received the tuition in September, you also received a check for \$35 to cover your books? A. Yes.

Q. And that carried you up to September, 1943, when you entered school? A. Yes.

Q. Now you said before that you didn't have a private income? A. Yes; that is right. 30

Q. Aren't you employed by the Hillside school system? A. But I have no income; I am employed.

Q. Aren't you entitled to income there? A. I haven't worked yet.

Q. But you have a position there, do you not? A. Yes.

Q. You have an appointment started June 19th and that appointment carries with it \$400 for the Summer, does it not? A. No. 40

*Virginia Cox, for Complainant*  
—*Re-direct—Re-cross.*

Q. How much are you paid for that? A. \$25 a week; I think that is up until August 11th; which would be about \$200.

10 Q. In other words, so long as you can continue to work there from June 17th you will be entitled to be paid at the rate of \$25 a week, is that so? A. That is right.

Q. You say that you didn't reply to your father's letters because they were vague? A. Yes.

Q. Is that the only reason you didn't reply to them? A. Well, there was nothing I wanted to say.

Q. There was nothing that you wanted to say to him? A. No.

20 Q. That is all.

*Re-direct examination by Mr. Herrigel:*

Q. Virginia, did you ever hear your mother abuse your father? A. No, I did not.

Q. Did you ever hear her use abusive language? A. Oh, no.

Q. Did you ever hear your father tell your mother that he loved her? A. No, I did not.

Q. That is all.

30 *Re-cross examination by Mr. Tepper:*

Q. You went to school all day, didn't you? A. Oh, yes.

Q. You were at school during the day time? A. I was.

Q. And at camp in the Summer time? A. Yes.

Q. You would go out in the evening, too, wouldn't you? A. Oh, no.

40 Q. Never go out in the evenings? A. Occasionally I would go to the movies; I didn't go over night.

*Viola E. Cox, Complainant—Direct.*

Q. Yes; that is what I mean. A. Yes.

Q. That is all.

VIOLA E. COX, SWORN.

*Direct examination by Mr. Herrigel:*

10

Q. Mrs. Cox, when were you and Mr. Cox married? A. In October, 1925.

Q. By whom? A. We were married by Reverend McCluskey.

Q. Where? A. At the First Methodist Protestant Church in Newark.

Q. How long have you been residing in Hillside? A. Seventeen and a half years.

Q. At what address had you and Mr. Cox resided there? A. At 126 Virginia Street. 20

Q. Who owned that property? Who owns it? A. Mr. Cox and me.

Q. Is that property now under foreclosure? A. Yes; it is.

Q. You received notice that it was being foreclosed? A. I did.

Q. What is Mr. Cox's occupation? A. He is principal of the high school at Hillside.

Q. In Hillside? A. Yes.

Q. How long has he been in the system? A. 30  
Twenty-three years.

Q. How many children were born of your marriage? A. One.

Q. That is Virginia? A. That is Virginia.

Q. She is how old? A. Seventeen and a half.

Q. In whose custody is she? A. Mine.

Q. Where does she go to school? A. New Jersey State Teachers College, in Newark.

Q. What does it cost to send her to school and maintain her, approximately? 40

*Viola E. Cox, Complainant—Direct.*

Mr. Tepper: I object to that as being immaterial. There is no duty on the father to educate.

The Court: Is that material now? She is about to take a position, she says.

Mr. Herrigel: Just a temporary position.

10 The Court: Just for the Summer; she goes back to school in the Fall.

Mr. Herrigel: All right.

The Court: I will allow it.

Q. Is Virginia's job a permanent position? A. No; it is just a Summer playground position that she has been appointed to.

Q. You expect her to return to college? A. I would like to very much.

20 Q. About what does it cost for her tuition and maintenance?

Mr. Tepper: I object to that. There is not, under the laws of the State of New Jersey, any duty on the part of the father to furnish higher education to his children. There are numerous cases on that subject. It is all voluntary on the part of the father.

Mr. Herrigel: It depends upon the station in life, I presume.

30 The Court: I don't think it does depend upon the station in life; I think that is the law; and as long as the defendant stands upon his strict legal rights I will rule in his favor.

Q. Substantially what does it cost to maintain Virginia? A. Well, for just her food and clothing?

40 Q. Food, clothing, amusement, and everything else except schooling. A. Well, considerably

*Viola E. Cox, Complainant—Direct.*

more than the court has allowed, which was the sum of fifteen dollars they allowed per week.

Q. What would you say was the approximate amount? A. About thirty dollars.

Q. Per week? A. Per week.

Q. Just for Virginia? A. Yes.

Q. After your marriage to Mr. Cox, how did you get along? A. Very well. 10

Q. Until what time? A. Until about 1940.

Q. Then what happened? A. I received an anonymous telephone call.

Mr. Tepper: I object to that, of course.

The Court: Don't tell us what was in it.

Q. As a result of that telephone call did you say anything to Mr. Cox? A. Yes; I asked Mr. Cox to come home. 20

Q. Can you fix the approximate date; what year was it? A. It was 1940.

Q. Was it Spring, Fall, or Winter of that year, do you remember? A. I am not sure.

Q. What did you say to him after you received that telephone call? A. I told Mr. Cox that I had received this call; they told me that he was getting a divorce.

Mr. Tepper: I object to what was told to her. 30

Mr. Herrigel: This is what she told her husband.

Mr. Tepper: Yes; it is another way of getting in an alleged conversation with somebody else; a telephone conversation.

The Court: Objection overruled.

A. I told Mr. Cox that I had heard that he was trying to get a divorce; was that true; he said no, it was not true. And I said, "Do you have any in- 40

*Viola E. Cox, Complainant—Direct.*

tention of getting a divorce?" He said no, none. Then I said, "Are you going to stay here?" He said, "Yes, but I don't love you any more". And I said, "You love this other woman" and he said, "Yes, I do."

10 Q. Did he mention her name, or did you mention her name? A. He just mentioned the other woman; he said he loved her now; he was tired of me after sixteen or seventeen years and he was going to try someone else and start a new life, that he expected to make himself a self-made man; that he was going to live his own life the way he wanted; that he was through with the church; that he didn't believe in God; he was going to live his own life with this other woman that he got.

20 Q. From that time on how did he conduct himself about the home? A. He said he didn't ever expect to speak to me again unless it was absolutely necessary, in regard to handing him some book, or something like that to the point.

Q. From that time on until July, 1943, did he converse with you often? A. No; he never conversed with me; I tried to talk to him on several occasions and he refused.

30 Q. Did he stay around home very much in the evenings? A. He was home five to seven nights out of the three years, I believe.

40 Q. In July, 1943, on July 17th, 1943, did you have a discussion with him? A. Yes; Mr. Cox had been away from home a little over a weekend; I didn't know where he was; he didn't tell me; he came in the house all dressed up to go and he got out; and I was ill that day; he said, "Are you ready to go to Reno for a divorce?" I said, "Reno". He said, "Yes, Reno, for a divorce". I said, "I have no expectation of going to Reno on what I got". He said, "I will provide the money

*Viola E. Cox, Complainant—Direct.*

for you". I said, "I am not going to Reno; I have no reason for getting a divorce". He said, "If you don't get it, I will". I said, "I don't know what you are going to get it on". He said, "I don't know either, but I will make something up. I am going to Reno for a divorce".

Q. After that what happened? A. He left the house; that is all he said. 10

Q. Where did he go? A. I don't know.

Q. What was the next time you heard from him? A. When I was served with papers for divorce, and I understood he was in Reno.

Q. On what date were you served with papers; do you recall? A. September 14th.

Q. 1943? A. 1943.

Q. When these papers were served, where was he? A. He was in the high school. 20

Q. In Hillside? A. Yes.

Q. When you received these papers what did you do? A. I gave the papers to you.

Q. And as a result of that, these proceedings were started? A. We started proceedings.

Q. Did you ever use vile and abusive language to Mr. Cox? A. No, I didn't; I loved him very much.

Q. When he was ill with influenza did you permit the house to get cold and neglected? A. I did not. 30

Q. Were you home at that time? A. No; I had contracted for a position; and he was taken ill on a Saturday and I received my telegram to come to work on Monday; and up to that time he hadn't given me any money or to my daughter for clothing or for necessities, so I had to go to work. I spoke to him and told him I would have to go on Monday, but I am making arrangements, to have her come home in the middle of the morning; at 40

*Viola E. Cox, Complainant—Direct.*

noon I arranged for her to take care of the fire; we have an arrangement that the fire could be opened up; I took care of the bed and his clothing when he was ill; everything was actually taken care of; under the doctor's orders he was to have nothing but grapefruit juice, which I prepared,  
10 and Virginia came home two or three times each day, and I was home at four o'clock.

Q. From 1940, until July, 1943, did he give you any moneys to replenish your linens and household articles? A. No; he did not.

Q. How was your health then, Mrs. Cox? A. It wasn't very good.

Q. What was your condition? A. I had had a bad fall.

20 Q. When? A. Just about that time; I can't be exactly sure.

Q. And what happened as a result of that fall? A. A sacro iliac infection, where I couldn't move.

Q. Were you under the doctor's care? A. Yes; I was.

Q. Do you have a position now? A. I still have the same position.

Q. When did you take that position? A. February 10, 1943.

30 Q. What was your physical condition on that date when you took the position? A. It wasn't very good.

Q. Why did you take that job? A. I had to take the position in order to buy my daughter the things that she needed and my own clothing.

Q. Are you still employed? A. I am.

Q. What is the name of the concern? A. Western Electric Company, at Kearny.

40 Q. Approximately what is your weekly income there? A. Approximately \$25 a week.

*Viola E. Cox, Complainant—Direct.*

Q. Where does Mr. Cox live now? A. He lives on Conant Street, Hillside.

Q. With whom does he live? A. With Miss Hamilton.

Q. That is the woman that he married after he came back from Reno? A. That is right.

Q. Since Mr. Cox left you in July, 1943, has he supported you? A. No; he has not. 10

Q. Has he given you any money whatsoever? A. No.

Q. What is your physical condition now, Mrs. Cox? A. I still have the same back condition.

Q. Are you under the doctor's care? A. I have to take osteopathic treatments and visit some medical men, too.

Q. Who are your doctors? A. Well, I see Doctor Kerrigan, and Doctor Still. 20

Q. How often do you see one or the other? A. Well, it isn't regular; it is something that has to be taken care of when it bothers me.

Q. Do you receive pay from your employer when you are out on sick leave? A. No; I work at an hourly basis.

Q. Have you been ill and not at business since you have taken a position? A. Yes; I have.

Q. About how often have you been out? A. I had only taken the position a very short time when I was carried out on a stretcher, and I was out for almost five weeks from the time I had been taken out on a stretcher again; with the same back condition it is quite difficult for me to get up; I have to get up at five o'clock in the morning in order to get to my position; I have to start work at seven o'clock in the morning. 30

Q. Where is this place of employment? A. Kearny, New Jersey.

Q. Western Electric Company is the name of the place? A. That is right. 40

*Viola E. Cox, Complainant—Direct.*

Q. Will they permit you to continue the work at this plant?

Mr. Tepper: I object to that.

The Court: I will sustain the objection.

10 Q. Mrs. Cox, approximately how much does it cost you to operate your home? A. To operate my home and keep my daughter in college, everything included, about \$300 a month; that includes taxes and everything.

Q. That is based upon the fact that you have to take care of the taxes and interest on the mortgage on your home at the present time? A. That is right.

Q. Isn't that under foreclosure? A. (No answer.)

20 Q. Do you contemplate in those figures any rent charge? A. Yes, I do; that was about the same rent that I would have to pay any place else, \$50 interest; the only thing that would be eliminated would be the taxes, insurance on the home, and repairs on the house which I would have to make, you know.

Q. Approximately fifty dollars a month? A. Well, that would be more than that.

30 Q. How much more? A. Do you mean to operate that home or rent to someone else?

Q. No; I mean to rent some other home. A. I couldn't get rent, I am sure, for less than fifty dollars a month, if I could get it.

40 Q. Did Mr. Cox have to get his own meals while he lived at your home? A. He never had to get his own meals, except breakfast, which he wanted to do; I didnt sleep very well and he always offered to get his own breakfast; he said, "I eat very little, a cold cereal; to keep things in order is easy to do", he said, "I want you to sleep."

*Viola E. Cox, Complainant—Cross.*

Q. That is all.

*Cross examination by Mr. Tepper:*

Q. When do you say that you received this alleged telephone call? A. I really don't remember exactly when it was.

Q. What year was it? A. I believe Fred. asked me that question before, but I am not sure. 10

Q. Well, you did testify, did you not, Mrs. Cox, that at that time you confronted him with what you had heard over the telephone? A. That is right.

Q. And that he came in all dressed up and said to you, "Come, are you ready to leave for Reno, Nevada" and you said, "What for", and he said, "For a divorce". A. No; that wasn't the same day; that was before that time. 20

Q. Well, when did that happen? A. The phone call came two or three nights before he stopped speaking to me, and the day that he asked me to go to Reno for a divorce was July 17th, 1943; I know that day very well, because I was going to a very special party on that day and so was he.

Q. Can't you fix with some degree of certainty the approximate date of this telephone call? It was a pretty important telephone call to you, was it not? A. It certainly was. 30

Q. Didn't you make a record of it? A. No; I don't make records of things like that.

Q. You don't keep any records? A. Not of anything like that; no.

Q. You don't keep records of household expenses? A. Yes; I do.

Q. Now using your best recollection, when would you say it was that you received this telephone call? 40

*Viola E. Cox, Complainant—Cross.*

Mr. Herrigel: If your Honor please, she said 1940.

The Court: Is that near enough for your purpose?

10 Q. Now what did you do about this telephone call, other than to speak to your husband about it?

A. I didn't do anything.

Q. Nothing at all? A. No.

Q. Didn't you threaten him? A. He said there was nothing to be done about it.

Q. Didn't you threaten to get a divorce against him? A. I didn't threaten to get a divorce against him; I never wanted a divorce and I didn't speak of any divorce.

20 Q. Didn't you consult counsel about this thing around that time? A. Not then; no.

Q. When did you consult counsel? A. I think it was in 1941.

Q. 1941? A. I believe so.

Q. At that time didn't you say that he would have to get a divorce or you would get a divorce?

30 A. I never mentioned divorce, I felt afraid; I went to Fred. because I thought help me in talking to Mr. Cox but Mr. Cox refused to open his mouth and talk the thing over; I thought he had the man alone he could have done so, but instead of talking it over he said "I have nothing to say; whenever I said, will you speak to my father; will you speak to the minister; he said no; so then I knew I had to get counsel, and I asked Mr. Herrigel to speak to Mr. Cox, either with me being there or alone; he said, "I think it would be better if I spoke to him alone, I shall write Mr. Cox a letter", and Mr. Cox went to see him and I said, "Fred, do everything in your power for a reconciliation" and he said, "I will". Mr. Herrigel  
40 wrote me and he said that is definitely out.

*Viola E. Cox, Complainant—Cross.*

Q. I don't want you to tell us what Mr. Herigel told you; I just want to know what you did about it at that time. A. That is all I did.

Q. Now you didn't do anything else about it, did you? A. No.

Q. You say that you loved Mr. Cox dearly? A. Very much. 10

Q. Are you sure about that? A. I am pretty sure.

Q. Why was it that in August, 1940, you left Mr. Cox? A. I left him?

Q. Yes. A. I never left him.

Q. You never left him? A. I did not.

Q. Did you leave him in January, 1941? A. With his knowledge, yes; I went out only one night, in Newark.

Q. Well, you did leave him then. A. Just that one night; and he knows all about it. 20

The Court: You did speak about it?

A. Yes; that was entirely over a family affair.

Q. You left him then, did you not, in January, 1941? A. I didn't leave him, no; I went to Newark; I spent one night in Newark.

Q. Where? A. On Fulton Street, Newark.

Q. Where on Fulton Street? A. In Newark; I don't know the exact number; I know it was Fulton Street; it is a very short street; only about two houses on it. 30

Q. You stayed in a furnished room there, did you? A. Yes; I did; Mr. Cox knew where I was; he knew all about it; he gave me the money to spend the night and everything.

Q. I didn't ask you that. I just wanted to know whether you did, in 1941, leave Mr. Cox, and stay at a furnished room on Fulton Street, in Newark. Your answer was that you did. A. I went to this 40

*Viola E. Cox, Complainant—Cross.*

house and stayed over night, but I didn't leave him.

Q. It wasn't a friend's house, was it? A. No, sir; it was not.

Q. You didn't know anybody who lived in that house, did you? A. No, I didn't.

10 Q. Who stayed with you that night? A. No one.

Q. I beg your pardon. A. No one.

Q. Were you there all alone? A. I don't know who else was in the house; I had a room by myself.

Q. What number Fulton Street was that?

Mr. Herrigel: She has already testified she doesn't know the number.

20 Q. Was it nearer Mulberry Street or was it nearer Park Place?

Mr. Herrigel: I object to this. I don't see the purpose of the materiality of it.

Mr. Tepper: I am testing this witness' credibility.

The Court: Objection sustained.

30 Q. Now then, did you on another occasion leave him? A. I left him many times; I spent a good time in the hospital; I have been to my father's home many nights; I have been to other places; and so has he.

Q. I am not speaking of that kind of leaving; I am asking now did you ever leave your husband at any time and stay overnight at any place other than your home or at your family's home. A. No; that one night was the only night.

Q. Never before that? A. No.

40 Q. And never after that? A. No.

*Viola E. Cox, Complainant—Cross.*

Q. Isn't it a fact that in January, 1941, you left your home and your husband? A. No.

The Court: You mean with intent to stay away; is that it?

Mr. Tepper: Yes.

The Court: The answer is what?

10

A. No.

Q. Did you after an argument with your husband, pack up and go to your father's house, in 1940? A. No.

Q. Did you ever after an argument with your husband pack up and go to your father's Summer cottage? A. We never had an argument; Mr. Cox never spoke when he got mad; he was very sullen.

20

Q. You say you never had an argument with Mr. Cox? A. No; I never had an argument with Mr. Cox.

Q. I presume you never threatened to kill him? A. I certainly did not.

Q. Did you ever throw a tantrum when he wanted you to do certain things? A. No.

Q. At no time? A. At no time.

Q. You knew your husband was a sick man, didn't you? A. I did.

30

Q. You knew that he suffered from cancer, did you not? A. I did.

Q. Do you remember when he was operated on in 1936? A. I do.

Q. Do you remember the period after that during which he required post-operative treatment? A. Very well.

Q. Do you recall the period during which he required X-ray and radium treatment in New York? A. I do.

40

*Viola E. Cox, Complainant—Cross.*

Q. Do you also recall that when he would come home from those treatments that he was exhausted and sometimes fainted away? A. He never fainted, but he was very, very ill.

Q. During that period of time he really required constant attention, didn't he? A. He did.

10 Q. Why didn't you give him that attention? A. I did; I gave him every attention I possibly could give him. There wasn't anything that was within my power that I didn't do for him.

Q. Did you feed him when he was ill lying in bed? A. I did.

Q. Do you say now that you didn't leave the home without heat in the house in February, 1942? A. I never left the house cold.

20 Q. You remember when he was lying ill with a temperature, do you not? A. I do.

Q. He had a temperature of 102, did he not? A. I took his temperature and I gauged it with the doctor.

Q. When did you see the doctor? A. When he came; I think I only missed one day.

Q. Isn't it a fact that you were told that the doctor was there and found that your house was without food? A. The house has never been without food in August.

30 Q. I don't mean that. He was at that time lying in bed, wasn't he, running a high temperature? A. He was.

Q. He couldn't get out to take his own food, could he? A. No.

40 Q. And you weren't there to feed him, were you? A. I testified that while he was ill I took care of him; I prepared his dinner and put the table next to his bed and in a few minutes he could get whatever he had; and his mother arrived every day at noontime; so he was never alone in the house, and the house was never cold.

*Viola E. Cox, Complainant—Cross.*

Q. When you went out during that period you said you went to seek employment somewhere? A. I didn't seek it; I had a position offered me and I had to start in on Monday on it.

Q. What would have been the consequence if you had not started that Monday? A. I might have lost the position. I spoke to Mr. Cox and I said, "Shall I go", but he didn't answer; he never answered. 10

Q. In order to get the position you were required to take a physical examination, were you not, before you were engaged? A. I was.

Q. And you did receive such physical examination, did you not? A. I did.

Q. And after that physical examination you were employed? A. I was. 20

Q. What type of work do you do there? A. I work on very secret work, technical work, in regard to radio.

Q. What is your base pay per hour? A. Seventy-three cents an hour.

Q. Is that seventy-three cents per hour gross? A. Yes.

Q. How much overtime do you get there? A. No overtime.

Q. Straight forty-eight hours a week? A. Well, 30 time and a half for Saturdays.

Q. Time and a half for Saturday? A. That is right.

Q. So that for Saturdays you get over a dollar an hour? A. That is right.

Q. How many hours per day do you work? A. Eight.

Q. Six days a week? A. That is right.

Q. Do you work Sundays at times? A. No; never. 40

*Viola E. Cox, Complainant—Cross.*

Q. So that you work six days a week, eight hours a day, and receive seventy-three cents gross pay during the week and time and a half or over a dollar an hour; is that right? A. That is right.

10 Q. How do you figure then that you earn twenty-five dollars a week? A. I said I receive approximately twenty-five dollars; after that you get all deductions; compulsory bond buying and a few other things; my pay is never more than twenty-five dollars.

Q. How much was deducted from your pay weekly for bond buying? A. \$3.75; between the new bond drives you have to buy an extra bond, so they take off seven dollars.

Q. Seven dollars a week for bond buying? A. Yes.

20 Q. Do I understand from you that it is compulsory for you to buy seven dollars worth of bonds per week from your salary? A. Pretty near, yes; it is on a percentage basis.

Q. What is the percentage? A. Well, I don't know.

Q. Don't you know; haven't you paid any attention to that? A. It used to be ten per cent. but they have changed that percentage.

30 Q. Don't you know that on the basis of ten per cent that your income would not be under seventy dollars a week? A. I said they change the percentage from time to time.

Q. What is your gross pay before deductions, the average per week? A. Every week it is different, especially if I am out sick.

Q. Well, don't let us go into minute details; how much was your pay envelope last week, gross, before deductions? A. I don't know offhand; I would have to look at my envelope.

40 Q. You have no idea? A. No, I can't tell, because there would be income tax, Red Cross dona-

*Viola E. Cox, Complainant—Cross.*

tions, bonds and social security; oh, there are fifteen deductions at least.

Q. Do they take Red Cross donations from your salary? A. Yes, they did, because we offered a cash donation.

Q. You made a voluntary contribution? A. That is right. 10

Q. And they deducted that? A. Yes.

Q. Are they also deducting money that you save? A. I don't save anything there except bonds, that is all.

Q. Only bonds? A. I haven't anything else to save.

Q. How much do you receive net in your pay envelope? A. Last week I think thirty-one something. 20

Q. Thirty-one something last week? A. Something like that; I am not sure of that.

Q. I beg your pardon. A. I am not sure; I would have to look at the envelope.

Q. Could it have been more? A. (No answer.)

Mr. Herrigel: You keep your envelopes, don't you?

A. Yes; I do.

Q. They go back for quite some time? A. Yes. 30

Q. You say these pay checks indicate the gross and what deductions are made from your weekly salary? A. Yes.

Q. You say you have them? A. I have them.

Q. How long have you been employed now? A. Seventeen months.

Q. You filed an income tax return last year, did you not? A. I did.

Q. How much did you show as gross earnings in the income tax return of last year? A. It 40

*Viola E. Cox, Complainant—Cross.*

wasn't a full year; I think it was, I am not exactly sure, I think it was \$1,435.

Q. For what fraction of a year was that? A. Minus one month; minus January.

Q. One month? A. Yes; I started the first week in February.

10 Q. Was that your gross? A. That is my gross pay.

Q. You say you have all of those checks? A. I do.

Q. And you are willing to produce them? A. I certainly will produce them at the next session here in court.

Q. Now, Mrs. Cox, you said something about that property being under foreclosure? A. I did.

20 Q. Do you know how soon after the interest payment was defaulted in that the foreclosure proceedings were instituted?

Mr. Herrigel: If the Court please, I object to that as immaterial and irrelevant. Those proceedings have been instituted by the bank.

Mr. Tepper: I will connect that up, if the court please.

The Court: I will allow it.

30 A. They started to foreclose, I think, on the 25th of April.

Q. That was exactly one day past the time, the grace period, for the payment of interest; isn't that so? A. I don't know that; I know I received a letter from the bank, a duplicate or copy that they sent Mr. Cox, saying if he didn't pay by the 18th that they would start proceedings on the 25th.

40 Q. You had talked about that foreclosure, did you not, with the bank? A. I spoke to Mr. O'Neil; yes.

*Viola E. Cox, Complainant—Cross.*

Q. You arranged with Mr. O'Neil to file a bill for the foreclosure of that mortgage, did you not?

A. No.

Q. You had those arrangements made with him, didn't you? A. No; I did not.

Q. Did you know of any arrangement with the bank for the foreclosure of this mortgage? A. I had no control over that. 10

Q. I realize that you have no control over that. My question to you was, didn't you have an arrangement with the bank under which there will be a foreclosure of this mortgage, which will enable you thereafter to continue possession of this property? A. No.

Q. You have no such understanding? A. No.

Q. Did you have any such talk with anybody about that? A. No. 20

Q. You say you didn't have a talk with Mr. O'Neil about foreclosing this mortgage? A. No; I just spoke about how long a time I would be allowed to stay there during the foreclosure and all that sort of thing.

Q. Didn't you ask that this mortgage be foreclosed, Mrs. Cox? A. Definitely not; it is my home.

Q. Now you say that you require thirty dollars a week to maintain your daughter Virginia and you. Will you break that down for us; how do you arrive at that? A. Well, that is her college education, her tuition, her transportation, her lunches, her clothes and everything. 30

Q. What is your average food bill now in the house? A. May I look at that slip with the budget on it? I don't remember.

Q. I don't want your budget; I want it from actual experience; I want to know how much the food bill was at the house? 40

*Viola E. Cox, Complainant—Cross.*

The Court: Can you state without looking at the notes you made?

A. Well, I had about fifteen dollars a week for food.

10 The Court: You may refresh your recollection from that memorandum if you have difficulty in answering any of the questions.

Q. How much do your clothes cost on an average during the year? A. Well, we figure clothing approximately \$25 a month for the two of us.

Q. How much do you figure your rent? A. \$50.

Q. \$50 a month? A. And interest.

20 Q. That is on the basis of continuing the mortgage which you presently have on that house; isn't that so? A. That is right.

Q. That house you own jointly with your husband? A. I do.

Q. Do you know how much is due on that mortgage? A. I believe he paid up until the 1st of April; then he stopped.

Q. Do you know how much the balance due under that mortgage is? A. It is very close to \$3,000.

30 Q. Have you had any real estate man tell you the value of that property? A. No.

Q. Have you inquired about it? A. No.

Q. Have you had anybody offer to buy that property from you? A. No.

Q. Now in addition to this \$50 a month for maintaining your home, what else do you and Virginia require? A. Well, there is taxes on the house, there is coal, there is insurance.

Q. Well, we are not discussing that; you say the house is under foreclosure. I am speaking of rent.

40 A. You said what else.

*Viola E. Cox, Complainant—Cross.*

Q. Well, I am not speaking about that.

The Court: Never mind the house. What else besides clothing and food?

A. Doctors and medical supplies.

Q. What do you estimate your general requirements are in that respect? A. Well, my doctors treatments are about \$10 a month at least. 10

Q. What do they consist of? A. Well, when my back becomes bad I have to have treatments, the doctor applies osteopathy.

Q. That is when it becomes bad? A. Yes.

Q. What has been your experience in that connection? A. I never know when it goes bad.

Q. You have had that condition you say for over a year? A. Yes; more than that. 20

Q. Who is your doctor? A. Doctor Lillian and Doctor Still.

Q. How much was your medical bill with Doctor Lillian for the last year; how much did you actually pay him? A. I couldn't tell you that.

Q. Approximately? A. I don't know.

Q. You have no idea? A. No.

Q. How much did you pay Doctor Still last year? A. At one time I paid him \$20 another time I think it was \$18 and the other bill I think Mr. Cox paid, because I was ill right after he was. 30

Q. That was for last year? A. Yes; in February.

Q. Your figure of \$10 is purely a guess on your part, is it not? A. That is the average, yes; I think I will need that, but of course I might need more.

Q. You want to be safe; you want to have an upset figure, you want to have a safe figure, do you not? A. That is right. 40

*Viola E. Cox, Complainant—Cross.*

Q. What else do you recall? A. Well, there is prescriptions, and lunch for both of us, we have the daughter's tuition and books, her amusement and church.

10 Q. Just omit the tuition and the books, school books or anything like that. Take the necessary requirements of food, clothing, medical attention, rent and so forth. A. I have church dues.

Q. How much do they amount to? A. Do I have to tell there.

The Court: No; I don't see why; they are not necessary for maintenance; I mean there is no obligation to pay that.

20 (At this point a recess was taken until two o'clock, at which time the witness resumed the stand for further cross examination.)

By Mr. Tepper:

Q. Now, Mrs. Cox, before we recessed you had given us certain figures dealing with your requirements and the requirements of Virginia; and the last item you gave us as I recall it was ten dollars a month for medical expenses. Now in addition to those items can you think of anything else which you and Virginia require by way of support? A. (No answer).

30

Q. What is that paper you are looking at? A. That is just a few notations that I was trying to make a budget, a tentative budget.

Q. Did you make it up before coming here to testify? A. I just wrote down some of the things that are necessary to maintain the home, because I couldn't carry them in my mind.

40 Q. Yes; go ahead. A. I mentioned church, I presume for two of us, and there was the cleaning bill.

*Viola E. Cox, Complainant—Cross.*

Q. Tell us what they are, please? A. You didn't want me to give that church amount, did you?

Q. No; I think not. A. Hair dresser would come to about ten dollars a month for the two of us.

Q. Is that the figure that you had been paying for that service prior to this date? A. Yes; that includes both of us. 10

Q. Well, what I mean is, while you were living with Mr. Cox were you spending ten dollars a month for the hair dresser? A. Not at that time.

Mr. Herrigel: I object to that; that is not the point; because her husband—

Mr. Tepper: Well, I think the station in life is what counts.

Mr. Herrigel: Although, as a matter of fact she testified that she was not getting anything from Mr. Cox. 20

The Court: That is right \$15 a week or so prior to 1940.

Mr. Herrigel: Well, Virginia was quite some younger then.

Q. Well, you yourself prior to 1940, how much did you spend to care for your hair? A. I went about every week or ten days; it was a great deal less than it is now; that is why it is a little more now than it was. Then Virginia has to have liver and iron pills and I don't know what the other is, there are three different kinds of vitamin pills, which cost four dollars a bottle. 30

Q. Were those bottles of pills prescribed by the doctor? A. Yes; they were.

Q. Who was the doctor? A. Doctor Lillian. She has a very low blood count and under the X-ray from college they found her lungs to be not exactly as they should be and she required medical treatment. 40

*Viola E. Cox, Complainant—Cross.*

Q. When did Virginia visit Doctor Lillian last?

A. I think it was about a month ago.

Q. Was it at that time that he prescribed the vitamin capsules? A. No; it was before that that they were prescribed, the last time that she was there, that was about a month ago.

10 Q. Anything else? A. Well, there is lunches for the two of us each day.

Q. You have already testified to \$15 a week for food? A. Well, that doesn't include her lunch.

Q. Why not? A. Because it doesn't.

Q. That is in the cafeteria, is it not? A. No.

Q. Anything else?

The Court: What is that amount?

20 A. Well, lunches would be approximately fifty cents a day for each; that would be a dollar a day for lunches.

The Court: You spoke of prescriptions; how much was that?

A. I haven't got that figure. For me it is \$3 a week and for Virginia it is about \$1.20 a week.

30 Q. Anything else? A. Amusement; that would be, I would say, about ten dollars a month; her own insurance policies which I carry about seven dollars a month.

Q. Insurance policies for what; on her life? A. Life insurance policies, Virginia's and mine; her father refused to pay for them.

Q. Who is the beneficiary under those policies? A. Virginia is the beneficiary on my policy.

Q. Yes. A. I am the beneficiary on hers.

Q. In the event of a common disaster who is the beneficiary? A. I can't answer that.

40 Q. Anything else? A. Dentist; there is now a \$40 dentist bill which was sent to her father and

*Viola E. Cox, Complainant—Cross.*

which he refused to pay; that has to be paid; and my own dentist.

Q. Is that for Virginia? A. That is for Virginia; yes.

Q. When was that incurred, about? A. Last year; she has gone to one dentist, that was her father's dentist, and when the X-rays were taken there were thirteen cavities, and then I had another dentist X-ray them and he says there is \$40 worth of treatment. Then there is Virginia's allowance on there, \$2 a week that I give her for incidentals that she might have. 10

Q. You mean that in addition to the one dollar for lunch, in addition to the transportation, in addition to the amusements, and in addition to the charges to go to the hair dresser and in addition to her tuition at school, you give her two dollars a week for pin money; is that correct? A. I didn't say I gave her a dollar for lunch; I said a dollar for both of us. 20

Q. Under those circumstances, in addition to the money that you gave her for her hair dresser and other expenses, did you give her two dollars a week for spending money? A. I have to allow her that; she has tickets to buy, she has many things, she has to belong to different fraternal societies and organizations in the school. 30

Q. While you and Mr. Cox were living together, say prior to 1940, what was her allowance? A. When her father wanted to give it to her it was a dollar a week, but he didn't give it to her every week.

Q. What did it average? A. Very little; I wouldn't know what it averaged; it was so uncertain; he never was quite sure.

Q. She didn't have any stated allowance? A. No, she did not. 40

*Viola E. Cox, Complainant—Cross.*

Q. Anything else? A. Well, there was tuition and books, which you ruled out, also.

Q. I didn't ask you the cost of books; I didn't ask you for the cost of tuition. Outside of that, what other expenses can you think of? A. I think that is all.

10 Q. Do you know that all of these items which you have given us, some of them being for Virginia's higher education, totals \$212 a month? A. Does that include interest on mortgage and everything else on the house? It totals more than that.

Q. How do you figure that? A. You didn't ask me all the things I have to pay.

Q. Let us see; you said seven dollars for insurance, did you not? A. Yes; there are many things on my list that you haven't requested; gas,  
20 electricity, water, and things like that; I also have to pay for water; you count that, don't you; I have to pay them.

Q. I asked you whether there were any other items but you didn't give us any other items. Tell us what they are? A. Well, there is gas and electric.

Q. Tell us what the amounts are, Mrs. Cox, as you go along, please? A. Gas \$4 a month; electric \$4 a month; water about \$1 a month; coal  
30 \$8.50 a month.

Q. \$8.50 throughout the year? A. I averaged as a year, yes.

Q. All right. A. Household insurance \$2 a month; miscellaneous \$10 a month.

Q. What do you mean by that? A. Well, miscellaneous covers a great deal of territory; there are things that aren't ordinary, I just can't quote you any particular thing; it might be the child's birthday; it might be someone else's birthday, it  
40 might be her own father's birthday; I never for-

*Viola E. Cox, Complainant—Cross.*

get my sister, she has three children; I figure ten dollars for miscellaneous to cover that.

Q. Anything else? A. That is all.

Q. Now, Mrs. Cox, while you were living with Mr. Cox how much were you receiving from him per week to cover household expenses? A. All I had was food money, \$15 a week; that is all he ever gave me. 10

Q. What did you do for the balance of it? A. I didn't pay any of the bills.

Q. I beg your pardon. A. I didn't pay any other bills.

Q. Didn't you have any of these other bills that you now seek from him when you lived with him?

A. What bills do you refer to?

Q. Such as hair dresser treatment and things of that sort? A. He paid the doctor's bills; the only bill I paid was the hair dresser, which I managed to scrape together out of my food allowance. 20

Q. Well, did he pay for your transportation? A. I was only working a few months before he left.

Q. All of that which you have just enumerated, together with the last figures you gave us, cover \$245. Is that the amount? A. Have you clothing in there?

Q. Yes; you gave us \$25 a month for clothing. 30  
A. That was for Virginia you asked for; approximately five dollars a week for my clothing; I didn't count my own clothing in there.

Q. You say Virginia's clothing cost averaged \$300 a year? A. I would say so; that is Winter coats, Summer coats and things that she needed; she was in a very destitute condition when Mr. Cox left us.

Q. While you were living together with Mr. Cox how much was the cost of Virginia's clothing per 40

*Viola E. Cox, Complainant—Cross.*

year? A. It was almost negligible, because she had very few new things.

Q. So that under the standard established in your home while you lived with Mr. Cox, the cost of clothing for Virginia was so much less than that that it was practically negligible? A. Yes; it was.

Q. These other items were also practically negligible with the exception of the \$15 a week that he was giving you toward the food; is that right? A. That is right.

Q. That is the way he was buying things while you were living with him; is that correct? A. That is right.

Q. Now then, Mrs. Cox, you say that you never threatened your husband's life? A. I never did.

20 Q. Did you ever go after him with a carving knife? A. No.

Q. Did you ever take pills and tell him that you had taken poison? A. No.

Q. Did you ever threaten to break him financially? A. No.

Q. Did you ever, while you were living with Mr. Cox, have a charge account in the department store? A. Yes; I did.

30 Q. Didn't you use that charge account freely? A. No; I didn't use it freely.

Q. Why not? A. Because I wasn't allowed to.

Q. But notwithstanding the fact that you had a charge account you didn't find it necessary to use that charge account, or you didn't use it? A. I used it; yes.

Mr. Herrigel: She didn't say she didn't use the charge account; she said not freely.

40 Q. You were privileged to use it? A. I was privileged to use it, but not freely.

*Viola E. Cox, Complainant—Cross.*

Q. Well, just how were you permitted to use it; under what circumstances were you permitted to use the charge account? A. Whenever I needed an essential part of my wardrobe or Virginia's I talked it over with Mr. Cox and asked if it was all right to buy it, and if he agreed that it was all right. There was never a luxury put on that account for me or Virginia, and it was there for one reason so as to give gifts to the rest of the family. 10

Q. You were always considered fairly well dressed, weren't you? A. I wouldn't know.

Q. Well, did you consider yourself dressed shabbily while you lived with Mr. Cox? A. I wasn't considered shabbily dressed and I wasn't considered well dressed.

Q. Now do you recall saying to Mr. Cox in the early part of 1943, "God should have taken you in 1936 when you were operated on"? A. No. 20

Q. You never said that? A. No.

Q. Did you ever go to public taverns with anybody other than Mr. Cox? A. No.

Q. What? A. No.

Q. At no time; ever? A. At no time.

Q. Now in August, 1942, didn't you tell Mr. Cox that you had had an invitation and that you were going to drink with a prominent man in the community at any time you wanted to? A. No. 30

Q. You never told him that? A. No.

Q. You said in direct examination that Mr. Cox was seldom at home? A. That is right.

Q. That he was out a number of nights each week; that he was away from home a number of nights each week; is that correct? A. That is right.

Q. Did you know that he was an officer of the American Legion? A. I did. 40

*Viola E. Cox, Complainant—Cross.*

Q. Did you know that that required his attending certain meetings? A. Yes; I did.

Q. Did you know he was on the Advisory Board of the Selective Service? A. I know that one.

10 Q. Did you know he was one of the trustees of the Community Chest of Elizabeth? A. Yes; he was a very important man.

Q. Did you know that he was a member of the Memorial Day Celebration Committee? A. Oh, yes.

Q. You also knew that he was Chairman of the Teachers Welfare Committee, didn't you? A. No; I wouldn't know that.

20 Q. Did you know that he was chairman of any committee which had for its purpose the interest of teachers? A. I only know what publicity he had in the papers.

Q. You also know that his position required him to attend certain functions, didn't you? A. Oh, yes.

Q. All of those functions required his being away evenings? A. Evenings, yes; but not all night.

Q. Well, when did you ever know him to be away all night? A. On many occasions.

30 Q. Were there occasions when you had left and stayed away all night? A. No.

Mr. Herrigel: I object to that.

The Court: Objection sustained.

Q. You did stay away all night from your husband, didn't you, on occasions? A. One night I did.

40 Q. Didn't you stay away at your father's home, too? A. You said aside from my father's relatives.

*Viola E. Cox, Complainant—Cross.*

Q. No; I am asking you— A. I stayed away one night aside from my fathers.

Q. Do you recall telling the neighbors and storekeepers a number of things about your husband?

Mr. Herrigel: I object to that as immaterial and irrelevant. 10

The Court: I will sustain the objection.

Q. While your husband was receiving these X-ray treatments he was subject to frequent vomiting, wasn't he? A. That is right.

Q. During those spells he would be very ill, wouldn't he?

Mr. Herrigel: If your Honor please, we went through this this morning. I object to it as repetitious. 20

The Court: It seems to be so.

Mr. Tepper: I don't see anything repetitious about that. I am just testing her credibility. She has testified on a number of occasions how devoted she was to Mr. Cox, and I want to show otherwise. She has told us exactly what she did on those occasions. She came home every day at four o'clock; she made up his grapefruit juice for him before she left; she had her daughter come in twice a day; that is when he was ill with influenza; she testified with respect to that. 30

The Court: All right; you may ask her.

A. Yes; he would.

Q. Mrs. Cox, did you interview any members of the Board of Education of Hillside?

Mr. Herrigel: I object to that. I don't see how that is material. 40

*Viola E. Cox, Complainant—Cross.*

Mr. Tepper: I haven't completed my question.

Mr. Herrigel: I am sorry.

Mr. Tepper: This goes to the proof of his state of mind.

10 The Court: It seems to me that almost all of this matter that you are inquiring about is matter that probably should be brought out in defense. You are questioning her as to things she has not testified to in chief, trying to make her admit certain things which presumably you are able to prove. That proof should come out first.

20 Mr. Tepper: The scope of the direct examination was such as to justify my going into this, because Mr. Herrigel asked her whether she was a devoted wife, whether she took care of him, and whether she gave him his meals.

The Court: All right.

Mr. Tepper: Therefore it is proper cross examination.

30 The Court: I am going to restrain you until your proof is in, because otherwise I don't see when we will get through with this case. If there is any proof that you have to the contrary, if you have any proof as to the things you are trying to make her admit, put your proof on first, and then if she does not deny it we will save time.

Mr. Tepper: I am willing to follow that procedure; but the witness testified on direct examination to certain conditions in the household and I got to cross examine now, and probably these statements are proper cross examination.

40 The Court: Well, if you insist on it I will permit it.

*Viola E. Cox, Complainant—Cross.*

Q. With respect to having Mr. Cox dismissed from the school system? A. I did not.

Q. At no time? A. At no time.

Q. Mrs. Cox, did you see your husband on or about July 20th which is the date he left the State of New Jersey? A. I saw him on July 17th.

Q. Where was it that you saw him? A. In our home. 10

Q. I beg your pardon. A. In our home.

Q. On July 17th? A. Yes.

Q. Isn't it a fact that prior to July 17th he had already left your home? A. He had been gone about two weeks or ten days, but he came in that day.

Q. Did you know where he was during that time? A. I did not.

Q. Didn't you know that he was at Roselle Park, at his sister's home? 20

Mr. Herrigel: I object to that; she has answered that she didn't know.

The Court: Objection sustained. She said she doesn't know.

Q. Where did he come from when he came to confer with you on July 17th, do you know? A. Somebody drove up in a car; I don't know where he came from. 30

Q. Did he tell you where he had been? A. I never talked to him.

Q. What did he come to the house for, do you know? A. He came to tell me that he wanted me to go to Reno for a divorce.

Q. You say he was all dressed up? A. Yes.

Q. Did he say that he wanted you to go with him? A. No.

Q. What did he say? A. He said, "Will you go to Reno for a divorce?" I said "I haven't any 40

*Viola E. Cox, Complainant—Cross.*

intentions of getting a divorce, in the first place, and in the second place, what would I go on", because he knew I didn't have much money; he said, "I will provide the money for you to go to Reno to get the divorce". I said, "I am not going to get a divorce", and he said, "Then I will go".

10 Q. Had you ever threatened prior to that time that you would get a divorce? A. I never threatened to get a divorce.

Q. Do you know an Alice McCard? A. Yes.

Q. That is Alice McCard (indicating)? A. Yes.

Mr. Herrigel: I object to that as not proper cross examination.

The Court: Objection sustained.

20 Q. You testified on direct examination that your husband said that he did not believe in God? A. That is right.

Q. Had you ever heard a statement like that from him prior to that time? A. Yes, sir; he made that statement about a year before that; he had refused to go to church; I asked him why and he said it was a lot of ritual, he didn't believe in it anyway, and he said, "You go on ahead". Then I said, "No, I don't want to go to church alone". I know he had gone out every single night of the week at either meetings or social affairs and if

30 he could go out every night of the week he could go to church for one hour; I didn't want to go alone to disgrace him, so I stayed home.

Q. Were you ever present when your husband conducted religious services in certain functions?

Mr. Herrigel: If the Court please, I have to object to that.

The Court: I will hear it.

40 A. I never heard him conduct religious services.

*Viola E. Cox, Complainant—Cross.*

Q. Did you know that he was chaplain of the American Legion? A. I didn't know that; no.

Q. Didn't you attend a veterans service with your husband? A. He was commander.

The Court: Assuming he was, he changed his mind, apparently, in 1943, according to the witness. She testified he said he didn't believe in God; that was in 1943. 10

A. He went to church every Sunday previous to that.

Q. Mrs. Cox, when did you first learn that your husband instituted proceedings in Nevada for a divorce? A. When I was served with the divorce papers.

Q. How were you served? A. By personal service. 20

Q. By the Sheriff? A. By one of his aides; I don't believe it was the Sheriff.

Q. You mean by a deputy of the Sheriff; a man deputy Sheriff of Union County? A. That is right.

Q. You did receive that personal service? A. That is right.

Q. Now did you bring with you at this session those checks dealing with your income from your employment? 30

Mr. Herrigel: She didn't go home to lunch.

Q. You will produce them, you said? A. I will.

Q. You are not in a position to tell us now definitely what your income from your employment has been? A. Well, it varied every week.

Q. You are not in a position to tell us what your average income is for the past year? A. I said it would average \$25 approximately per week. 40

*Viola E. Cox, Complainant—Cross.*

Q. And that, you say, doesn't take into consideration the seven dollars a week which is being deducted for bonds? A. No; that is outside.

Q. \$25 is what you get each week? A. Yes, sir.

10 Q. Added to that, of course, is the seven dollars that you save for bonds? A. Certainly before it would be \$7 a week to apply for a bond; ordinarily it is \$3.75 every week.

Q. It has been averaging \$7 you say? A. Yes.

Q. You have those bonds? A. Yes; I do.

Q. How much do they amount to? A. I don't know; I receive a bond every ten weeks, because it was \$37.50; I bought \$50 bonds; and I had bought an extra bond, a special war bond.

20 Q. How much do you now own in bonds? A. I can't tell you that offhand.

Q. Of course down to the present time you are not required to pay any rent? A. No.

Q. You don't pay any rent? A. No.

Q. You don't pay any water charges? A. I do.

Q. You pay water charges now? A. I do.

Q. You are not paying any taxes? A. I don't.

30 Q. Had you seen your husband immediately prior to the time that you made the affidavit to have him held to bail here in New Jersey? A. I saw my husband on July 17th, 1943, and then again on April 25th a month ago, the last day of April; that is the only time I saw him.

Q. At the time that you made your affidavit you felt that he was not coming back to New Jersey, didn't you? A. Mr. Cox always ran things his own way before, so I felt so at this time.

Q. That is the way you felt? A. Yes, sir; I did.

40 Q. That is all.

*Viola E. Cox, Complainant—Re-direct.**Re-direct examination by Mr. Herrigel:*

Q. I am not sure, Mrs. Cox, whether you told us what you figured for your own personal clothing allowance; will you tell the court? A. I did; I told him \$5 a week for each of us; that would be \$10 a week.

Q. Did you add anything for church dues for you and Virginia? A. Yes; I did. 10

Q. How much does that amount to? A. I pay one dollar a week for myself and fifty cents a week for Virginia.

Q. Making the total \$6 a month? A. That is right.

Q. That is all.

Mr. Herrigel: We rest, your Honor.

The Court: Outside of this witness whose testimony may be objected to on the ground that it is not competent, have you anything further? 20

Mr. Tepper: Yes, sir.

The Court: By the way of evidence?

Mr. Tepper: Yes.

The Court: How long will it take you to put that in?

Mr. Tepper: Well, outside of this witness, I would have Mr. Cox; I want to recall him, naturally, we have to have some rebuttal to the testimony already offered, and I have Doctor Pileh and I have Mr. Hoffman, who I am now required to put on the stand due to the testimony of Mrs. White, a member of the Board of Education. So assuming that the testimony of this other witness will be admissible, and I hope to be able to persuade your Honor that the testimony is admissible by citing cases, we ought to take al- 30 40



*Deposition of Mrs. J. H. (Helen) Hash—Direct.*

First Interrogatory: Do you know the defendant, Wilbur Harry Cox? A. I do.

Second Interrogatory: Did the said defendant, Wilbur Harry Cox, discuss with you, on or about July, 1943, his plans for the future in the State of Nevada? A. He did.

10

Third Interrogatory: Did the said Wilbur Harry Cox tell you, at said time and place, that he was in Nevada because of the advice of his physician? A. Yes, he did.

Fourth Interrogatory: Did the said defendant tell you that his physician advised him to move to a dryer climate than that of the State of New Jersey? A. Absolutely.

Fifth Interrogatory: Have you any knowledge of any action taken by the said defendant to establish himself permanently in the State of Nevada? A. Yes, I have.

20

Sixth Interrogatory: Did you, in response to a question by the defendant, advise him that there was no better place in the United States to earn a living and to remain happy than in the State of Nevada? A. Yes, I did.

Seventh Interrogatory: Did the defendant, Wilbur Harry Cox, ever advise you that he was in Nevada for the primary purpose of procuring a divorce? A. No.

30

Eighth Interrogatory: Did the said defendant ever state to you that he intended to leave the State of Nevada as soon as he procured a divorce? A. Oh, no.

Ninth Interrogatory: Did the defendant while living in Nevada tell you that he was making application to the Department of Education, of the State of Nevada, for employment? A. Yes.

40

*Deposition of Emile J. Gezelin—Direct.*

Tenth Interrogatory: Did the said Wilbur Harry Cox tell you of a number of actions instituted against him by his former wife, Viola E. Cox, in the State of New Jersey? A. Yes, he did.

10 Eleventh Interrogatory: In discussing these suits did the defendant tell you he was going back to face and defend said actions? A. Yes, he did.

Twelfth Interrogatory: Do you know whether or not the defendant in coming to Nevada bought a round trip ticket from New Jersey to Nevada or a single trip ticket to Nevada? A. I do not know.

20 Thirteenth Interrogatory: Did the defendant, Wilbur Harry Cox, discuss with you his plans for starting life over again in the State of Nevada? A. Yes; he did.

Fourteenth Interrogatory: Did the defendant ever tell you or by his conduct indicate that he was temporarily in the State of Nevada? A. No; he did not.

30 Mr. Tepper: These are the questions and answers to the interrogatories which were propounded to and the answers of Emile J. Gezelin:

First Interrogatory: Do you know Mr. Wilbur Harry Cox? A. I met him once in my office.

Second Interrogatory: On or about July, 1943, did you have occasion to discuss with Mr. Cox his plans for and his future activities in Reno, Nevada? A. No.

40 Third Interrogatory: At said time and place did Mr. Cox apply to the Department of Education of the State of Nevada, for

*Deposition of Emile J. Gezelin—Direct.*

a permanent position in the educational system of the State of Nevada? A. It was in October that he came into my office—October, 1943—between October 15th and 21st.

Fourth Interrogatory: In making said application did Mr. Cox state the location of his permanent abode? A. He stated his permanent residence as being Route 2, Box 231, Reno, Nevada. 10

Fifth Interrogatory: Where did Mr. Cox state where he resided permanently? A. Route 2, Box 231, Reno, Nevada.

Sixth Interrogatory: In applying for said position did Mr. Cox by word or conduct indicate in any fashion that he ever intended to return to the State of New Jersey? A. He told me at the time that he had to return to New Jersey for a brief period of time and would return to Nevada. I believe he mentioned that he had to go back to take care of some business affairs; that he had come out here on his health; and was still under contract to teach in New Jersey, that is to teach in schools. 20

Seventh Interrogatory: Did Mr. Cox in discussing said position ever indicate, by word or conduct, that he had any plans for leaving the State of Nevada? A. Well, just temporarily. 30

Eighth Interrogatory: Did the defendant make an application for a permanent position with the educational system of the City of Reno, State of Nevada, at any time other than July, of 1943? A. I don't know that he made any in July. I wasn't in the office at that time. I took over this office at 40

*Deposition of Emile J. Gezelin—Direct.*

around October 15th, 1943, when I moved from the Third District to the Reno District, and he filed his application in my office on October 25th, 1943.

10 Ninth Interrogatory: Did the defendant, Wilbur Harry Cox, in application for said position with the educational system of the City of Reno, State of Nevada, ever state that he was in Nevada for the express purpose of procuring a divorce? A. I don't recall that he did tell me that.

Tenth Interrogatory: Did the defendant, Wilbur Harry Cox, state to you at any time that he intended to return to New Jersey after procuring a divorce? A. No.

20 Eleventh Interrogatory: Did the defendant, Wilbur Harry Cox, tell you that in coming to Nevada he did so upon the advice of his physician? A. Yes.

30 Twelfth Interrogatory: Did the defendant, Wilbur Harry Cox, tell you that his physician advised him to live in a dryer climate than that of the State of New Jersey? A. I don't recall whether his advice was to live in a dryer climate or not, but he had been advised by his physician to move to another climate, and I imagine that the Nevada climate was what the physician had prescribed, since he came here.

40 Thirteenth Interrogatory: Did the defendant, Wilbur Harry Cox, advise you that he was returning to the State of New Jersey for the purpose of defending himself against a multiplicity of suits instituted by his former wife, the complainant, Viola E. Cox? A. No.

*Deposition of Emile J. Gezelin—Cross.*

Fourteenth Interrogatory: Did you advise the defendant, Wilbur Harry Cox, that the actions pending against him in New Jersey, reflecting upon his professional reputation and character as a husband, would have to be cleared by him before final action could be taken upon his application for employment by the Department of Education of the State of Nevada? A. I didn't know anything about his marital troubles. 10

Those are the question and the answers to the interrogatories. Now we have cross interrogatories here.

Mr. Herrigel: Cross interrogatories propounded to Mr. Emile J. Gezelin: 20

First Cross Interrogatory: What is your occupation and official position with the school system in the City of Reno and State of Nevada? A. I am Deputy State Superintendent of Public Instruction of the Fourth Supervision District.

Second Cross Interrogatory: Does your position authorize you to employ school personnel for the school system in the City of Reno and State of Nevada? A. No, not for Reno. Local school boards do their own hiring. 30

Third Cross Interrogatory: If your answer to the First Interrogatory propounded by the defendant is "Yes", how long have you known Mr. Cox? A. I just met him the one time, as I stated there in the first question. In fact, our conversation lasted about fifteen minutes, and that's the only time I have ever seen him. 40

*Deposition of Emile J. Gezelin—Cross.*

Fourth Cross Interrogatory: If your answer to the Second Interrogatory propounded by the defendant is "Yes", on or about what date did you have said discussion with him? A. It was between the 15th and 21st of October, 1943, but I don't know exactly what day that was.

10 Fifth Cross Interrogatory: If your answer to the Third Interrogatory propounded by the defendant is "Yes", what action, if any, was taken by you or the officials of the school system of the City of Reno and State of Nevada, on the application, and what was the final outcome? A. His application was filed in my office on October 25th, 1943, and placed in the applicant file. Nothing was done about it, because there were no vacancies.

20 Sixth Cross Interrogatory: If the defendant filed an application for a position with the school system of the City of Reno and State of Nevada, did he state in said application, or in any discussion regarding same that he had resigned his position as Principal of the Hillside High School, and that he was available for services in the City of Reno and State of Nevada? A. Now, they mention the City of Reno, State of Nevada. In making this application with my office he wasn't making application for the Reno City Schools. When people come into my office and make application, the application is put on file and when a vacancy occurs in any of the schools of my district, for which the applicant can qualify, I notify the Board of Trustees and make my

30 recommendations to them, if I have any to

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*Deposition of Emile J. Gezelin—Cross.*

make, concerning the applicant. At the time that Mr. Cox was in my office, I believe that he mentioned that he was on a leave of absence from the Hillside School in New Jersey. On this application that he filed in my office he mentioned, or I should say he wrote, that if a position were available for him in Nevada he could begin work December first, or possibly sooner. 10

Seventh Cross Interrogatory: If your answer to the Eighth Interrogatory propounded by the defendant is "Yes", then state the date or dates that an application, or applications, were made, after the date in July, 1943? A. His application was made on October 25th, 1943.

Eighth Cross Interrogatory: On the date or dates of said application, or applications, did the defendant, Wilbur H. Cox, state that he resigned his position with the Hillside High School, in the Township of Hillside, Union County, New Jersey? A. He mentioned that he was on leave of absence. 20

Ninth Cross Interrogatory: On the date or dates of said application, or applications, did the defendant, Wilbur Harry Cox, state that he was on vacation, or sick leave, from his position with the Hillside High School, in the Township of Hillside, Union County, New Jersey? A. On sick leave. 30

Tenth Cross Interrogatory: If your answer to the thirteenth interrogatory propounded by the defendant is "Yes", state the date on which he advised you that he would return to the State of New Jersey for the purpose of defending himself against a multiplicity of suits instituted by Viola E. Cox. A. (No answer.) 40

*Deposition of Mrs. J. H. (Helen) Hash—Cross.*

Eleventh Cross Interrogatory: Did you, or the officials of the school system of the City of Reno and State of Nevada offer Mr. Cox a position in the school system in said city or state? A. No.

10 Twelfth Cross Interrogatory: If your answer to the foregoing cross-interrogatory is "Yes" state the date on which the offer for employment was made. A. (No answer.)

Thirteenth Cross Interrogatory: If Mr. Cox was offered a position in the school system of the City of Reno, or State of Nevada, did he accept same? A. (No answer.)

20 Mr. Herrigel: Then the cross interrogatories and the answers as propounded to Mrs. Helen Hash.

First Cross Interrogatory? What is your occupation? A. Running a guest ranch.

30 Second Cross Interrogatory: If your answer to the Second Interrogatory propounded by the defendant is "Yes", state the approximate date of the conversation; where Mr. Cox lived at that time, and state the period of time which he lived there, giving the date of arrival and date of departure? A. Well, he came to live in my house on July 24th, 1943, and soon after he discussed the possibility of getting a position here because he wanted to remain here; Mr. Cox lived at the Lone Star Ranch, which is my guest ranch; Mr. Cox came to the ranch on July 24th, 1943, and left either the seventh or eighth of September, 1943.

40 Third Cross Interrogatory: If the answer to the Ninth Interrogatory pro-

*Eugene F. Hoffman, for Defendant—Direct.*

pounded by the defendant is "Yes", please state on or about the date on which he told you he was making an application to the Department of Education of the State of Nevada for employment? A. Soon after July 24th, 1943.

Fourth Cross Interrogatory: If your answer to the Tenth Interrogatory propounded by the defendant is "Yes", please state the date or dates on which he stated to you that Viola E. Cox had instituted a number of actions against him? A. I don't remember the exact date, but I remember him discussing it with me. 10

Fifth Cross Interrogatory: If your answer to the Eleventh Interrogatory propounded by the defendant is "Yes", state on or about what date he told you he was going back to face and defend the actions instituted against him by Viola E. Cox? A. I don't remember the date. 20

Sixth Cross Interrogatory: Did Mr. Cox live in your home while he was in Reno, Nevada, and if so, how long? A. Well, he lived there from July 24th, 1943, until about the seventh or eighth of September, 1943. 30

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EUGENE F. HOFFMAN, SWORN.

*Direct examination by Mr. Tepper:*

Q. You are a member of the Bar of New Jersey? A. That is right.

Q. With offices in the City of Newark? A. Yes.

Q. You are likewise Surrogate of the County of Essex? A. That is right. 40

*Eugene F. Hoffman, for Defendant—Direct.*

Q. Do you know the defendant, Wilbur Harry Cox? A. I have known him since about 1921.

Q. Do you recall having a conversation with him or attending with him an executive session of the Board of Education of the Township of Hillside? A. Yes.

10 Q. When was that? A. That was on or about November 15, 1943.

Q. Incidentally, did you hear the testimony of Mrs. White, a member of the Board of Education? A. Yes; on the last day in court here.

Q. Did you hear what she said about Mr. Cox and the members of the Board of Education at that session? A. Yes.

20 Q. Do you agree with her recollection of what that conversation was? A. No. I went over that statement with Mr. Cox before he made it, and, with all due respect to Mrs. White, what she said about the statement does not fit in with my recollection of it in a couple of important respects.

30 Q. Incidentally, you were there to represent Mr. Cox in his controversy relating to his employment? A. That is right. I had called Mr. Woodfield, the Supervising Principal. I attended high school and Mr. Cox was my principal; and I knew Mr. Woodfield very well, and Mr. Sadlowski, counsel for the Board of Education. Mr. Cox came to me and said, "They have suspended me". He came to me as a friend; I checked the law and I called Walter Sadlowski and I said, "You can't suspend a veteran without a hearing; you ought to know that".

Mr. Herrigel: I object to that.

The Court: Objection sustained.

40 Q. Did Mr. Cox consult you with respect to this suspension? A. Yes, sir; he asked me if they could do it.

*Eugene F. Hoffman, for Defendant—Direct.*

Q. He did? A. That is right.

Q. And as a result of your advice and handling of the situation did you get in communication with the officials of Hillside? A. I talked with Mr. Woodfield and Walter Sadlowski, and requested a hearing.

Q. Was that hearing granted? A. It was. 10

Q. That was an executive session? A. It was a closed session, yes; I guess you would call it executive.

Q. That was the night you were all here? A. That is right; all the members of the Board were present.

Q. Was the defendant, Wilbur Cox, there? A. That is right; it was our opportunity to tell our story.

Q. He was there? A. Yes, he was there. 20

Q. And you were there? A. I was there.

Q. Did you hear Mr. Cox, in the presence of the members of the Board of Education, including Mrs. White, relate his side of the story? A. I did.

Q. Did he do it orally? A. He had a statement—

Q. I just want to know whether it was orally?  
A. Yes; he read from a statement.

Q. If you can, will you tell us substantially what Mr. Cox told the Board of Education? A. As I 30  
recall it he thanked them for the opportunity to speak to them; he went a little bit into his family life and apologized for it because he said he knew they were not interested in that; he said he came back to fight a multiplicity of actions; he said that he was sick; he said that he had been suffering from cancer; he said that he was in Nevada, and while there he obtained a divorce; he didn't say that he went there for that; he said he was coming back; at one point he said, "I am here tempo- 40

*Eugene F. Hoffman, for Defendant—Direct.*

rarily and while I am here I will do the best I can"; that is the way I recollect the statement.

Q. Did he say anything to the members of the Board of Education about where his permanent abode was; where his domicile was? A. He said that it was in Reno, Nevada.

10 Q. You say that he told the members of the Board of Education that he was at Hillside temporarily to defend a multiplicity of suits?

Mr. Herrigel: I object to that as leading.  
The Court: Objection sustained.

Q. Very well then, Mr. Hoffman, will you repeat again, as I didn't hear it entirely, what was said by Mr. Cox about why he was in Hillside at that time? A. He said he came back to defend himself against a multiplicity of actions; he said he wanted to protect his fair name, as I recall it and he wanted to protect his pension rights; I think he mentioned that in part of the discussion.

20 Q. Did he say anything about being back in Hillside permanently? A. No; he said he was here temporarily and he said, "While I am here I will do the best I can".

30 Q. Did he say anything else about his pension rights that he wanted to preserve? A. I don't recall any more than that reference.

Q. Is that the conversation as you recall it, or the statement made by Mr. Cox? A. It was, as I recall it, it was a long rambling statement. I think he even went into a little bit of detail on his marital difficulties, and so forth.

40 Q. Did he say anything about seeking retirement under the pension fund? A. As I recall it, he said, "I intend to seek retirement".

*Eugene F. Hoffman, for Defendant—Cross.*

*Cross examination by Mr. Herrigel:*

Q. Did you say he said he was under bond? A. As I recall it, Mr. Herrigel, he did; I think, I am pretty sure he said, "I am here now under bond".

Q. What was he referring to, do you know? A. He put up two bonds, as you know.

10

Mr. Tepper: I object to what was he referring to. That is calling for a conclusion.

The Court: Well, if he does know.

A. He was referring to a bond which he put up on the writ of ne exeat, as I recall it.

Q. This was on November 15th that you are speaking of, wasn't it? A. (No answer).

Q. As a matter of fact, no bond was put up until after the middle of December, was it? A. Well—

20

Q. Either for ne exeat— A. What about the writ of sequestration? Wasn't there a bond put up for that?

Q. He wasn't released until December, was he; or am I wrong on that? A. He said, "I am under sequestration" in other words his salary had been sequestered and he put up a bond to get back some of that money. He knew at that time because it had been in the paper that a writ of ne exeat was out and the Sheriff's men were looking for him; he knew that; that was in the paper, that was public property.

30

Q. He had not been served yet? A. He had not been served.

Q. And although he hadn't been served, he put up a bond? A. That is right.

Q. So that that statement is incorrect, when he said he was under bond? A. Well, I think, as a matter of fact, I was negotiating for a bond at the

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*Eugene F. Hoffman, for Defendant—Cross.*

time, because I went to the National Surety Company to get a bond, and then I arranged for the Sheriff to come to my office to deliver Mr. Cox.

Q. Would you say that one of the points made by him was actually in existence at that time?

A. Literally speaking, no.

10 Q. Did he say anything about having married Miss Hamilton? A. As I recall it, I think he did; I have a copy of it in my file; he brought in the name of his present wife; he made some reference to her; he brought in her name, I am pretty sure I have the statement here.

Q. You mean you have the original? A. I think I have a carbon copy.

Mr. Herrigel: It is all right with me if he reads it.

20

Mr. Tepper: That is what he offered to put in evidence before.

Mr. Herrigel: I didn't know that it was a copy.

Q. Do I understand the Board got a copy of that? A. Mr. Cox typed the statement himself and he gave me a carbon copy and the original maybe he gave to the board.

30 Q. Do you think the board may have the original? A. I think they might have the original. Here it is; it is home typed; you can see it; November 15th—I will read it if you wish.

Q. If this is the copy that was used by him. I understand the copy that he used had pencil notations on it. A. The original.

Q. And he didn't stick to the exact text on this paper. Now if you can get the one that he used I would be very glad to have it read.

40

Mr. Tepper: It seems to me that that statement came originally through Mr. Her-

*Eugene F. Hoffman, for Defendant—Cross.*

rigel's examination. It was then that this document came to life. I have never seen it.

Mr. Herrigel: No; he spoke from a paper that had pencil notations on it.

Mr. Tepper: The original.

Mr. Herrigel: That is right; the original.

Mr. Tepper: There is nothing before the court as to how Mr. Herrigel knows that. 10

The Court: Just a minute, Mr. Tepper; there is no question now before the Court.

Mr. Herrigel: We have the carbon copy, but the original may have been altered so therefore the carbon copy would not be of much use unless we had the original and can look it over.

Q. Do you remember what he said concerning Miss Hamilton? A. I think his words were something like this, "I am concerned about my fair wife, the fair name of my wife"; it was something like that; it was sort of a flowery, rambling statement; it really was. 20

Q. He mentioned Miss Hamilton? A. That is right; I think he said, "I am now married" or something like that, "I have remarried".

Q. Did he say anything about his future work with the Hillside Board of Education? A. As I recall it he said, "I am here temporarily. While I am here you will have my best efforts"; in other words, I think he wanted to say that his successor would do as good a job and get off on the right foot. 30

Q. You are counsel of record in this case, are you not? A. That is right, sir.

Q. On August 24th you wrote a letter to me marked Exhibit C-16? A. Yes. 40

*Eugene F. Hoffman, for Defendant—Re-direct.*

Q. And on August 31st I reply to that; and that is marked Exhibit C-17? A. Yes.

Q. Both of these letters were written while Mr. Cox was in Nevada; is that correct? A. That is right.

Q. That is all.

10

*Re-direct examination by Mr. Tepper:*

Q. Mr. Hoffman, will you please examine this paper that you have before you, and tell me whether or not that is the paper which was read by Mr. Cox?

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Mr. Herrigel: I object to that; he can't tell whether that is the paper that was read by Mr. Cox. Mr. Cox can tell whether that is the paper that he read.

Mr. Tepper: Mr. Hoffman heard him read it.

A. I was right along side of him; it is the same.

The Court: His recollection may be just as good as the man who read it.

Q. I want to know if that is the paper that he read? A. Yes.

30

Q. I understand you to say that Mr. Cox gave you a copy of the memorandum that he read? A. That is right; as we walked out he said, "Here is a copy for you".

Q. And that is it? A. That is it.

Mr. Tepper: I offer that in evidence.

Mr. Herrigel: I object to that.

The Court: You can cross-examine on it, Mr. Herrigel.

40

Mr. Herrigel: I object to this; I haven't read it; I haven't seen it.

*Lawrence T. Regan, for Defendant—Direct.*

The Court: There is no law against your reading it.

Mr. Tepper: Mr. Herrigel is now consulting with other people with respect to this offer. I don't think that is regular.

The Court: He has a right to do that before he proceeds to make his objection. 10

Mr. Herrigel: If your Honor please, I object to this, because the original is the best evidence.

The Court: I will sustain the objection to the offer unless it appears later that the original has actually been lost.

Mr. Tepper: I would like to withdraw this witness and then try to account for the original.

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LAWRENCE T. REGAN, SWORN:

*Direct examination by Mr. Tepper:*

Q. Are you acquainted with the defendant, Wilbur Harry Cox? A. I am.

Q. Did you know him around Memorial Day of 1943? A. I did.

Q. At that time were you County Commander of the American Legion? A. I was. 30

Q. At that time was Mr. Cox an official of that organization? A. He was.

Q. Where did you see Mr. Cox on Memorial Day of 1943? A. In Steigers Grove, Hillside.

Q. Was that after the Memorial Day parade? A. It was.

Q. Did you have a conversation with him at that time about his moving outside the State of New Jersey? A. I did. 40

*Lawrence T. Regan, for Defendant—Direct.*

Q. Who was present? A. Mr. Cox, Mr. Kirkpatrick and myself.

Q. Mr. Kirkpatrick? A. He was.

Q. Is Mr. Kirkpatrick a member of the American Legion? A. He is.

10 Q. Were other members around there at that time? A. They were around but didn't take part in the conversation.

Q. You say Mr. Cox at that time had a talk with you about his moving outside of the State of New Jersey? A. He did.

Q. Did he tell you where he was going to live?

Mr. Herrigel: I object to that. Whatever he said was a self-serving declaration and it is hearsay.

20 The Court: Have you any law on that, Mr. Tepper?

Mr. Tepper: I have this to say with respect to that offer—Testimony of domicile is largely a matter of intent, and the declaration of the defendant to other people immediately preceding his leaving the State of New Jersey, might show his state of mind and his intent to abandon his New Jersey domicile and to acquire a new one he hoped to receive under the laws of the State of Nevada. Now that is evidence; that is not  
30 conclusive, but it is evidence dealing with his state of mind. Secondly, I believe that is also part of the *res gestae*, immediately preceding and upon doing a certain act; and upon those grounds, and of course the general rules of evidence, I say that this is not a self-serving declaration, and I do not believe it is hearsay; and if it is, it is the exception to the hearsay rule, and the only  
40 limit that I believe that can be placed on

*Lawrence T. Regan, for Defendant—Direct.*

this testimony is as to the limit of time with respect to when the act actually occurred. This testimony is to show this man's state of mind and his intent and his declarations as to domicile.

The Court: At a previous hearing in this case I expressed some doubt, and you said that you could not find evidence of this sort. 10

Mr. Tepper: Yes.

The Court: And I suggested to you then that you try to find some law to justify it. Have you searched?

Mr. Tepper: I will say this, that I started my research on it; I am very shorthanded at the office. I do recall that your Honor did suggest that, and I did say that I would see if I could find authority in support of this testimony. I am not prepared to say that I have the last word on the law and therefore I cannot cite cases to your Honor; but I do say that thus far I am convinced that this evidence is admissible. 20

The Court: I am going to admit the evidence subject to the objection. I am in doubt about it. It seems to me that if it is admissible at all it has very little weight.

Q. (Last question repeated) Did he tell you where he was going to live? A. He did. 30

Mr. Herrigel: This is being received subject to my objection.

The Court: Yes.

Q. Where, Mr. Regan, did Mr. Cox say he was going to move to? A. To Reno, Nevada.

Q. What else did he say with respect to his moving to Reno, Nevada? A. On Memorial Day? 40

*Lawrence T. Regan, for Defendant—Cross.*  
*Robert C. Kirkpatrick, for Defendant—Direct.*

Q. Yes. A. Well, prior to Memorial Day he had advised me that he wanted me to accept his resignation as membership chairman of the Union County Committee of the American Legion.

10 Q. What reason did he assign for leaving at that time? A. I tried to talk him out of it but he told me that he could not continue, that he was ill and was going to Reno, Nevada, because of his health. That is what brought about the conversation on Memorial Day. He first asked me to accept his resignation some time in the middle of May; it was on a Sunday, but I don't recall the exact date; and then on Memorial Day after the Veterans services in Hillside I saw him there with Mr. Kirkpatrick and we both tried to get him to  
 20 change his mind and continue as my membership chairman of the Union County Committee.

Q. Did he say anything to you about coming back to New Jersey? A. He said he was not coming back at that time.

*Cross examination by Mr. Herrigel:*

Q. Did he assign any other reason than his health for going to Reno? A. That is all.

Q. Just for his health? A. That is all.

30 Q. That is all he said? A. That is what he told me.

Q. Was anything said about his job, or his position? A. No; he didn't discuss that with me.

Q. That is all.

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ROBERT C. KIRKPATRICK, SWORN.

*Direct examination by Mr. Tepper:*

40 Q. Are you a member of the American Legion?  
 A. I am.

*Robert C. Kirkpatrick, for Defendant—Direct.*

Q. Do you know Wilbur Harry Cox? A. I do.

Q. Did you know him on Memorial Day, in 1943?

A. I did.

Q. Did you have occasion to discuss with him anything on that day? A. I did.

Q. Who was present? A. Mr. Larry Regan, Mr. Wilbur Cox and myself. 10

Q. Where did the conversation take place? A. Sieglers Grove in Hillside, right off Long Avenue.

Q. Was that after the Memorial Day parade?

A. Yes; it was.

Q. Was there gathered there a lot of other veterans? A. Yes.

Q. At that time did you know Commander Regan? A. I did.

Q. Was he County Commander of the American Legion? A. He was. 20

Q. Do you know whether Mr. Cox was an officer of that organization at that time? A. He was chairman of the Membership Committee.

Q. Did Mr. Cox discuss with you his moving out of the State of New Jersey? A. He did.

Q. What did he say?

Mr. Herrigel: I object to that for the same reasons I stated to the previous question. 30

The Court: The same ruling.

A. Why, he told me, well, in fact, he told me and Larry Regan, that he wanted to resign as chairman of the Union County Membership Committee. Larry asked him what his reason was, and he said his health was run down and he had decided to move out of the State of New Jersey. During the conversation Larry asked him where he was going and he said to Reno, Nevada; and I said, "Well, if you are going out there for your 40

*Robert C. Kirkpatrick, for Defendant—Cross.*  
*Wilbur Harry Cox, Defendant, Recalled—Direct.*

health, why don't you keep the membership committee, because Larry wants to keep you", but he said "Kirk, I am not coming back", he said, "I am going out there permanently".

10 *Cross examination by Mr. Herrigel:*

Q. Mr. Kirkpatrick, did he say anything other than that he was going to Nevada for any reason other than his health? A. No, he didn't.

Q. You didn't discuss it any further with him? A. No, sir.

Q. That is all.

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20 WILBUR HARRY COX, recalled:

*Direct examination by Mr. Tepper:*

Q. Mr. Cox, when you appeared before the Board of Education in Executive session, you stated that you read a prepared memorandum; is that correct? A. That is correct.

30 Q. Where is it? A. I presume that somebody in the school has it; I left it on my desk the night before I was suspended.

By the Court:

Q. You left it where? A. I left it on the desk in my office the night I was suspended.

Q. You were suspended before the meeting at which you were reinstated, weren't you? A. I was suspended on the 9th.

40 Q. Yes. A. And they continued the suspension on the 15th.

*Wilbur Harry Cox, Defendant, Recalled—Direct.*

By Mr. Tepper:

Q. Have you made a search for the original of that document? A. I looked for it after the last day of the trial here but I couldn't find it.

Q. Did you hear Mr. Hoffman testify? A. I did.

Q. Did you give him a duplicate carbon copy of that prepared statement? A. That night; yes, sir. 10

Q. When you say a duplicate carbon copy, I ask you to look at this document and see if you recognize it? A. That is the document.

Q. Is that the memorandum you read? A. Yes, sir.

Q. Now did the original have any notations on it in either pencil or ink? A. It may have had some ink notations on it; Mr. Hoffman had it.

Q. Will you examine this carefully and tell me whether or not you can say that this is the memorandum which you read in every material respect? Read it carefully, please. A. No question about it. 20

Q. Now then, Mr. Cox, at the time that you read that prepared statement, you were not under bond, were you? A. Virtually, yes.

Q. What do you mean by that? A. Well, there were certain orders that were issued according to the papers, a writ of ne exeat and sequestration of funds, and I was told that that meant for me to put up a bond to have the money, and it cost me money to put up these bonds. 30

Q. So at that time you had notice? A. I heard that and then I came back, and I saw the clippings when I did return.

Q. Before you came back did you know that the Sheriff was looking for you? A. Yes.

Q. How did you know that? A. Well, my sister had written to me.

Q. Your sister wrote you and advised you? A. That certain actions to impound accounts against 40

*Wilbur Harry Cox, Defendant, Recalled—Cross.*

me, and that my bank account and salary had been impounded and that undoubtedly meant my pension fund, and she urged me to come back and take care of the matter.

Q. Who urged you to come back to take care of the matter? A. My sister; Mrs. Washburn.

10 Q. What is her first name? A. Edith.

Q. Is she in court? A. Yes, sir.

*Cross examination by Mr. Herrigel:*

The Court: You may examine into the loss of the original.

Mr. Herrigel: It hasn't been offered in evidence yet.

The Court: It has been and your objection is still pending.

20

Q. Mr. Cox, you say this is an exact copy? A. It is.

Q. Of the statement that you read? A. Yes.

Q. When you were asked before whether there were any pencil notations on the copy which you read, you said no, there were notations in ink; is that right? A. I said there may have been some notations in ink.

30 Q. Are there any notations in ink on this? A. There is one in pencil on this; that looks like an erasure here and there.

Q. That doesn't show the corrections in there which you made in pen and ink, does it? A. No; it doesn't; they were minor; for instance here that apparently was incorrect spelling; there I split without making proper syllables, as the word can not be divided into syllables; there is a word without a "T"; you can see that all of the corrections on the original were merely typographical.

40 Q. You mean correction of spelling would be a typographical error? A. Yes.

*Wilbur Harry Cox, Defendant, Recalled—Cross.*

Q. Do you mean to say that there were no other changes in the original? A. No, sir; not substantially of any kind.

Q. Did you show the statement to Mrs. White after you had read it? A. No, sir.

Q. She was sitting alongside of you, was she not? A. Mrs. White sat on the third seat of two tables forming a square, and I sat at the head, she sat on the right side of the table, to my right. 10

Q. You say there was no material change made— A. No, sir; no material change.

Q. —in pen and ink or pencil? A. No, sir.

Q. Just a word changed? A. Yes, sir.

Q. You said in that statement that you were under bond? A. Yes, sir.

Q. You were not under bond at the time— 20

Mr. Tepper: I object to that as improper cross. It is merely a question of the admissibility of this document.

The Court: I think it may go to the question of whether or not the statement was read in the form that it appears in this copy.

Mr. Tepper: I haven't any objection to that.

Q. As a matter of fact, you didn't give any bond until some time in December, did you? A. I was placed under some kind of legal restraint. 30

Q. You were under the restraint from proceeding with the other suit, were you not, with your Reno suit? A. I was under restraint with respect to my salary for this particular time, my money had been taken away from me; my bank account, while it remained in the bank, had been taken away, under an order about to be issued or it had been issued by the court for my arrest. 40

*Wilbur Harry Cox, Defendant, Recalled—Cross.*

Q. But you hadn't been arrested up to that time, had you? A. I hadn't been taken into custody.

Q. You hadn't been taken into custody or you hadn't made a bond at that time, had you? A. My attorney was arranging for that.

10 Q. He was arranging for a bond, but you had not actually made a bond? A. Well, I don't know; I hadn't seen it.

Q. Did you strike out the word "Bond" in this statement? A. I don't know.

By the Court:

20 Q. Well now, you have said a minute ago that there wasn't any change made in that statement except typographical errors, and now you say you don't know whether you struck out the reference to the bond. A. Well, that didn't occur to me, your Honor; I let that stand; I still use that language.

By Mr. Herrigel:

30 Q. You were asked just now whether you read the statement respecting the bond just the way it appears in the paper or whether you omitted reference to it when you read the paper. A. Oh, as far as I remember I read the paper as it is there.

Q. But you are not sure? A. Yes; I am sure that I read the paper.

Q. A moment ago you were not sure, were you? A. I didn't say that, did I?

Q. A moment ago you said you may have struck out the word bond.

40 The Court: That is what you said. Did you mean it?

*Wilbur Harry Cox, Defendant, Recalled*  
*—Re-direct.*

A. I am sorry; no, sir.

The Court: Anything else in that paper that you may have struck out or changed?

A. No, sir; I gave Mr. Hoffman a duplicate of the original.

Q. Where is that original paper? A. Well, it could have been picked up; the Board of Education has it, I know they put that suspension upon me, they continued my suspension, denying me access, and I was told to stay away from the building until I hand in my keys.

10

Q. You left your papers in the office, did you not? A. Yes.

Q. After you read the paper what did you do with it? A. I went into my office and I threw it on my desk.

20

Q. And you left it there; you didn't put it into your pocket or keep it? A. No, sir; I am sure I didn't put it in my pocket.

Q. And you are sure you don't know where it is right now? A. I am positive I don't know where it is.

Q. That is all.

*Re-direct examination by Mr. Tepper:*

Q. You said, upon being questioned by Mr. Her-  
 rigel, that your attorney was making arrange-  
 ments for a bond. You knew at that time that the  
 Sheriff had a writ for your arrest, did you not?  
 A. I did.

30

Q. You also knew that your solicitor was mak-  
 ing arrangements with the Sheriff to produce the  
 bond at the same time that you were to be sur-  
 rendered; did you not? A. Right.

Q. That was why you were not picked up be-  
 fore the bond was arranged for; didn't you know

40

*Eugene F. Hoffman, Recalled, for Defendant*  
—Direct.

that? A. I presumed as much, because I was around town and I wasn't apprehended.

Q. All right.

10 EUGENE F. HOFFMAN, recalled.

*Direct examination by Mr. Tepper:*

Q. Now, Mr. Hoffman, did you have custody of that paper from the day it was given to you? A. Yes.

Q. By Mr. Cox, down to the present time? A. Yes.

20 Q. This is the document that you saw and that Mr. Cox read? A. Absolutely; there are some typographical errors that are very obvious that have not been corrected; this is the carbon copy; otherwise it is the same statement.

Q. From your recollection this is exactly what he read? A. Yes, sir.

Mr. Tepper: I renew my offer.

30 Mr. Herrigel: I will still object to it on the ground that while he says that this is the same statement that was read by Mr. Cox, Mr. Cox is in considerable doubt about it; one moment he doesn't know whether or not he struck out the word bond, and later on he is sure that he did. I don't think this paper should be admitted.

The Court: I think it is competent evidence now in every lawful respect.

(Marked Exhibit D-4.)

40 Q. That is all.

*Robert C. Kirkpatrick, Recalled, for Defendant  
—Direct.*

ROBERT C. KIRKPATRICK, recalled.

*Direct examination by Mr. Tepper:*

Q. Mr. Kirkpatrick, you remember when Wilbur Cox was suspended? A. I do.

Q. Did you appear before the board as a veteran to discuss the situation with the board? A. The night of his suspension? 10

Q. Yes. A. I appeared there as a citizen that night.

Q. Was Mrs. White present? A. She was.

Q. Did you hear Mrs. White make any statements with respect to her opinion of Mr. Cox?

Mr. Herrigel: I object to that; I don't see how that is material or relevant here. 20

The Court: It does into her evidence, doesn't it, if the answer is such as to show prejudice? Objection overruled.

A. I did.

Q. What did she say? A. She said, to the best of my memory, during the discussion of this speech, Mrs. White said, "This affair had been going on in the high school long enough before the eyes of the children and it was about time that a stop should be made to it". Mr. Reibel questions her and said was she sure she could prove this statement, and cautioned her that there was the public present. She said, "Why, everybody in town knows it; I don't have to prove it; everybody in town knows". Mr. Reibel says to her then, "That is not the question I am asking; can you prove it; can anybody here, those people who have been passing this story around, would they sign a statement to this effect;" she said no, they don't want to sign any statements. 30 40

*Eugene F. Hoffman, Recalled, for Defendant*  
—Direct.

Q. Did you hear the testimony of Mrs. White in this court room at the last session? A. Yes; I heard her testimony; I don't know whether I recall all of it or not.

10 Q. Did you hear her state that she had no interest one way or the other in Mr. Cox, and that, as a matter of fact, she voted for his reinstatement? A. Yes; I heard that statement.

Q. Does the statement of her recollection of what she said at that meeting square with what you heard her say?

Mr. Herrigel: I object to that.

The Court: Objection sustained.

20 Q. You say that Mr. Reibel called upon Mrs. White to prove the statements made by her? A. Mr. Reibel informed Mrs. White that she should be careful as to what statements she made, because she might be called upon to prove those statements.

Q. Who is Mr. Reibel? A. He is chairman of the Board of Education, or was at that time, or President.

(No cross examination.)

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EUGENE F. HOFFMAN, recalled:

*Direct examination by Mr. Tepper:*

Mr. Tepper: Now, at this time, may it please the Court, I would like to have Exhibit D-4 read into evidence as the statement which was written by Mr. Cox.

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The Court: Well, it speaks for itself. Do you want to read it in?

*Eugene F. Hoffman, Recalled, for Defendant  
—Direct.*

Mr. Tepper: Yes, I would like to have it read into the record as the other documents have been.

Q. Will you read that Exhibit D-4? A. (Reading) This reads: For Hillside Board of Education, November 15, 1943.

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“I wish to thank you for inviting me to appear before you to tell a part of my sad story. I tell it with the utmost reluctance, but, I trust, with full confidence that you will understand my plight. Some of the details belong strictly in the realm of one’s private life rather than to become public property. But since my neurotic former wife in her maniacal fury has blackened my character and has cast aspersions on the fair name of Mildred Hamilton Cox, I rise in bitter indignation—but with assurance—in our defense. I earnestly request that not a single horrible fact I shall relate will be carried from this room. I ask it not for myself but for my daughter—the real angel of the former household. I ask it for my father and mother and for my mother-in-law, all of whom have been so truly exemplary in the conduct of their Christian lives that it is extremely unfair to cause them more anguish and further heartaches which needless publicity and insidious innuendos are bringing. I ask it also for my thoroughly good wife over whom some people are perilously close to serious damage suits. To get into the story. I once married a girl who became quarrelsome, developed a nasty tongue, bad manners and poor judgment. It is a matter of common knowledge that she fought with her family before her marriage to me. It is a matter of record that she has fought with neighbors, club mem-

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*Eugene F. Hoffman, Recalled, for Defendant*  
—Direct.

bers, with people associated with the school system, even with the guests in her own home. She has expressed her contempt for local doctors and dentists—butchers she called them—also for many employees of the school system. She has criticized  
10 unmercifully teachers and their families. She has referred to members of this body, to members of the American Legion and other organizations in vile and indecent language in the presence of our sweet daughter. She berated and browbeat me with increasing severity over the long years of our married life, and as a result I threw my energies more and more into my work. I should have considered long ago moving out of New Jersey and making other arrangements for my personal life had it not been for the presence of my  
20 daughter in the school. I wanted to see her through. It was mighty hard to complete that part of the program because her mother was poisoning her mind with distortions, but I intended to see her through, as mentioned above, before moving to Reno, Nevada. I am suffering from cancer and my life has been despaired of more than once. I felt that the time fast approaching when I should have to apply for disability benefits under the  
30 teachers pension fund plan, but postponed action including moving to Reno, Nevada, until the girl had been graduated from high school. On Virginia's graduation night her mother whisked her out of the building before I could even congratulate the child. You know how I feel on commencement night when the boys and girls pass from my control. Imagine my feelings when I was unable to personally greet my own daughter after the ceremonies and leave with her an intimate  
40 message on that important occasion. The dear grandparents who shared the child's care and af-

*Eugene F. Hoffman, Recalled, for Defendant  
—Direct.*

fection for sixteen years sorrowfully stayed at home uninvited by the granddaughter or her mother, and averse to coming at my invitation lest they embarrass her or me in the presence of her unpredictable mother. Graduation gifts from my sister and her family whom my daughter always adored because "she had such a nice home" were returned unopened. The girl was weaned from all these devoted relatives whom some of you know and realize what sort of respected people they are. Last Thanksgiving Day I returned to the house hot and hungry after chaperoning the high school band on public busses to the Newark Stadium, a hot and tiresome trip undertaken for the benefit of the youngsters and the pleasure of adults that we might have music at the Weequahic game. The hour was late; the car was gone; the cupboard bare. I reheated cabbage and soggy potatoes from the meal of some previous day for my Thanksgiving repast. Had I tried to warm up a cold love it would have been as distasteful as that holiday meal. Time after time over a period of years that fiend asked me for a separation or for some agreement to be reached through legal counsel. I refused. After a horrible night in July I fled to my sister's home for my own safety and well-being. This episode I shall not discuss. Then and there I made up my mind that I could not continue to live under so severe a mental and physical strain. I required medical attention since I felt myself physically disabled; and all of these things brought on the important decision which I put into execution. I moved to Reno, Nevada, where I honestly and in good faith won a final and absolute decree. I was in poor physical condition in September when I returned East to see what I

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*Eugene F. Hoffman, Recalled, for Defendant  
—Direct.*

could do about the whole situation. I was locked out of the home we had occupied by my former wife and I was deprived of my personal effects. I was in no condition to work. That point is indisputable. I could have used more time for sick leave before asking for the retirement I had in mind. I had just begun to show the important signs of improvement my specialists look for when I returned East for the second time. I have reason to believe that my health will improve with regular meals, rest in a happy home, and my physician's guidance.

I wish to emphasize that I did not refuse to contribute to Viola Cox's support. I was very eager to provide adequately for my child for whom I retain the finest of feelings regardless of whatever immature or poisoned thoughts she has. The day will come when she will see the right light. My counsel has repeatedly offered support money to my daughter, Virginia. The former wife has instigated and stirred up the furor over me. She has caused me to lose my possessions. This very hour steps are being taken toward the foreclosure of my property because I have been unable to meet the mortgage obligations since my salary checks were impounded by the court. She has taken advice other than counsel's, catapulted me into debt, plunged her daughter into an unnecessary position, brought down the roof over her own head, and jeopardized my position in the pension fund and my ability to apply for disability retirement. I was really sick when I returned from Reno after I had moved there, but I had the determination to settle my personal problems in face of the possible criticism of people whose business this personal affair was distinctly not. That is

*Eugene F. Hoffman, Recalled, for Defendant*  
*—Direct*

why I came back to New Jersey—to fight these actions against me, and to clear my record and my good name. I wanted to retire from New Jersey and find permanent employment in Reno if my health permitted. In order not to embarrass the school system and to drive myself into an early grave I had prepared for just such an emergency. I went so far as to line up positions in Reno, Nevada, because I did not intend to be crucified in New Jersey. I am back here, if only temporarily, to defend myself. I am under bond and under strain but those things should not prevent me from producing better results than ever—even better than under normal circumstances, of course health permitting, for with the help of my present wife and with her care, I have much to inspire me. I feel very strongly on these points. I know my usefulness to this institution in the past can not be questioned; and I will continue to do my best while I am here defending myself against these suits brought against me to the end that I shall continue to do an outstanding piece of work.

I have built this school from its beginning under Mr. Woodfield's skillful direction. I have grown up with the town and have contributed much to its development. I have given unsparingly of my time and energy. On that record I stand firmly. I shall defend my rights to the limit with the good wishes of my loyal teachers, the aid of my friends and supporters, and the inspiration of my relatives and family. Once again I thank you for inviting me to be heard and I respectfully request that the details of my story be kept inviolate within your breast."

*Eugene F. Hoffman, Recalled, for Defendant  
—Cross—Re-direct.*

*Cross examination by Mr. Herrigel:*

Q. Did you assist Mr. Cox in the drawing of that document? A. Mr. Cox showed it to me; I met him at the high school and he showed it to me that night.

10 Q. Had you discussed it with him before he read it? A. Only to this end; I asked for a hearing before the Board with him and he said, "I would like to write something to read, so that there is no misunderstanding about what I say".

Q. Without going into details, did you help him write his story, or did you edit it? A. It was pretty poor typing, you can see on that copy, and I think he changed some, I can't recall, he changed the spelling so that it will read better.

20 Q. You were satisfied with the text? A. Yes; I thought it was a little bit long, but I was satisfied with it.

*Re-direct examination by Mr. Tepper:*

Q. Did you tell him what he should put into that text? A. No; I thought at the time, I said, "It is pretty rambling, I don't think you have to go into so much personality", but that is the way I let it stand.

30 Q. Had you any knowledge of what the text was to be until you saw the finished product that night? A. No; I was only there because I had called up the Board and asked for a chance for him to tell his story.

Q. In other words, after you arranged for the meeting? A. That is right.

*Emanuel Reiter, for Defendant—Direct.*  
*Wilbur Harry Cox, Defendant, Recalled—Direct.*

EMANUEL REITER, SWORN:

*Direct examination by Mr. Tepper:*

Q. You are a resident of Hillside? A. Yes, sir.

Q. Are you acquainted with the defendant, Wilbur Harry Cox? A. Yes, sir. 10

Q. Do you recall attending a meeting of the Board of Education of the Township of Hillside, which was the result of Mr. Cox's reinstatement? A. Yes, sir.

Q. After that meeting did you engage in conversation with any members of the Board of Education? A. Yes, sir.

Q. With whom did you engage in conversation? A. Reverent Rutter and Mrs. White. 20

Q. Did Mrs. White tell you how she felt about Wilbur Cox? A. Yes.

Q. Just yes or no, please? A. Yes; she did.

Q. Did she tell you whether she felt that he should be dismissed from the school system? A. Yes, sir.

Q. What did she say to you with respect to that? A. She felt, in spite of the fact that the board had voted for reinstatement, he still did not belong in there. 30

(No cross examination.)

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WILBUR HARRY COX, recalled.

*Direct examination by Mr. Tepper.*

Q. While you were living in Reno, Nevada, did you make application for an automobile drivers license? A. I did. 40

*Wilbur Harry Cox, Defendant, Recalled—Direct.*

Q. When did you make that application? A. Shortly after the 15th of October.

Q. Of 1943? A. 1943; yes, sir.

Q. Was that before or after your decree down there? A. That was after the decree was granted.

10 Q. I show you Nevada operator's license issued to Wilbur H. Cox, Route 2, Box 231, Reno, Nevada, and ask you if this is the license issued to you by the State of Nevada? A. Yes, sir; it is.

Mr. Tepper: I offer that in evidence.

Mr. Herrigel: No objection.

Marked Exhibit D-5.

Q. Why did you have this auto license issued to you?

20

Mr. Herrigel: I object to that.

The Court: I don't think it is material why he applied. The fact is that he did.

Q. Did you have any special reason for making application for this license?

Mr. Herrigel: I object to that.

The Court: I will permit it.

30 A. I did.

Q. What was your reason? A. The reason was that I wanted to get around to several places for the purpose of interviews regarding a position.

Q. Did you use it to get around? A. I did.

40 Q. Where did you go? A. I went back to the Superintendent's office in the City of Reno, where I tried to see Superintendent. Previously I went to the District Superintendent's office, I went to Sparks, where the office of the Southern Pacific Railroad for that locality was situated; and I went to the Western Pacific Railroad office, to see where

*Wilbur Harry Cox, Defendant, Recalled—Direct.*

I could make application for a position with that railroad; and I expected to go to Carson City to see the State Superintendent, but I received a letter before I made the trip and I didn't go.

Q. Did you go to the International Correspondence School? A. No; the representative of the International Correspondence School located in Sacramento had written to me that he was coming to Reno. 10

Q. Thereafter did you receive a letter from your sister or your brother-in-law? A. Some time in that period following my decree I received a letter from my sister and my brother.

Q. What is her name? A. Edith Washburn.

Q. Is that the letter you received that you referred to in your testimony before we recessed? A. Yes, sir. 20

Q. Do you have that letter? A. No.

Q. What happened to it? A. I haven't any idea; I destroyed my correspondence in the West.

Q. As a result of what was in that letter did you make a decision about returning to New Jersey for a certain purpose? A. I thought it over a few days and came back.

Q. What did your sister ask you to do? A. She asked me to return; she was particularly concerned about the sequestration orders, as I recall it. 30

Q. Did she have anything to say in that letter about the activities of the Sheriff of Union County? A. She said the Sheriff was looking for me.

Q. Did she give you any other information about what was going on here? Did she say anything about the pension fund? A. Well, I can't recall what she said, but she intimated that the pension fund was threatened. 40

*Wilbur Harry Cox, Defendant, Recalled—Direct.*

Q. Was it after that that you came up to New Jersey? A. Yes.

Q. That was after you received your auto drivers license, Exhibit D-5? A. Yes; it was.

10 Q. After you came back to New Jersey to defend these actions did you make application to the Commissioner of Motor Vehicles of the State of New Jersey for an automobile drivers license? A. I did.

Q. In that application what did you state your address to be? A. Reno, Nevada; Box 231; Route 2.

Q. I show you this drivers license No. 662422 and ask you if that is the license issued to you by the State of New Jersey? A. That is it.

20 Q. What is the address of the applicant or licensee on that license? A. Box 231, Route 2, Reno, Nevada.

Mr. Herrigel: I move that all this testimony concerning this license that was procured after he returned here be stricken out on the ground that it is self-serving.

The Court: I will take it subject to the objection.

Mr. Tepper: I offer this license in evidence.

30 The Court: What is the date of it?

Mr. Tepper: March 1st, 1944.

(Marked Exhibit D-5.)

Q. Did you receive a letter from a prospective employer in Nevada recently? A. I did.

Q. From whom?

Mr. Herrigel: I object to that for the same reason. It is after the controversy.

40 The Court: It may relate back to one of the applications he made at the time.

*Wilbur Harry Cox, Defendant, Recalled—Direct.*

A. I received a letter from Otis Vaughan, Superintendent of Schools of Reno, in which he recalled my application distinctly, and he said there were no vacancies in the administrative field in Reno, and he referred me to Mr. Disten, the Deputy Superintendent.

Q. Where you already had an application? A. 10  
Yes, sir.

Q. After you received your auto drivers license did you make application anywhere for a position which would require you to have a drivers license?

A. I made application to the International Correspondence Schools to represent that organization in the State of Nevada, with headquarters in Reno.

Q. Did that require your being a licensed auto driver of Nevada? A. It required me to get 20  
around the State.

Q. Did that have anything to do with your getting this drivers license in Nevada? A. Well, the whole employment situation was primarily responsible for my applying for a license.

Q. Was that position available to you? A. It was.

Q. Were you ready to accept that position when you came to New Jersey to defend these actions? A. It was my impression at the time that there 30  
was a vacancy; despite the testimony of Mr. Gezelin, that I understood there was a vacancy.

Q. You mean in the school system? A. In the school system; and I was also interested in the Correspondence School position because of the salary it paid.

Q. Do you say now that there was a position open for you in the school system, administrative branch? A. That a vacancy had been reported 40  
to me.

*Wilbur Harry Cox, Defendant, Recalled—Cross.*

Q. There had been such a vacancy reported to you? A. Yes.

Q. You say in addition to that, the International Correspondence School people had a vacancy for you which would require you to travel through the State of Nevada? A. Yes.

10 Q. By automobile? A. Yes, sir.

*Cross examination by Mr. Herrigel:*

Q. Did you accept any of those positions? A. No, I did not, because——

Q. You didn't accept the correspondence school job?

Mr. Tepper: I think he should be allowed to finish his answer.

20 The Court: It called for a yes or no answer.

A. I didn't accept the job because I came back East to face these actions.

Q. Did you accept the other job? A. For the same reason I didn't accept it.

Q. Mr. Cox, you seemed to be so anxious to come back after your divorce to defend these suits; why didn't you defend them before you went to Reno the second time? A. I had no knowledge of any suits.

30

Q. Come, come.

Mr. Tepper: I object to that.

The Court: Strike out that comment.

Q. Didn't the Sheriff make inquiries for you in several places in Hillside to serve you with papers while you were there? A. No, sir.

Q. Wasn't he endeavoring to serve you with papers for two weeks while you were in Hillside? A. That was after my second return.

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*Wilbur Harry Cox, Defendant, Recalled*  
*—Re-direct.*

Q. Before your second return. A. No, sir; he did not.

Q. No one told you the Sheriff wanted to serve you with papers? A. No, sir; I was gone; I left Hillside in September.

Q. Did you have a car at the time, Mr. Cox? 10  
 A. I hired a car at the time.

Q. From whom did you hire it? A. I hired it from the U. Drive Corporation.

Q. What did you pay for it?

Mr. Tepper: I object to that as being immaterial.

The Court: Objection overruled.

A. \$25. 20

Q. For a week was that? A. That was a week's rental, including gasoline, as I recall it.

Q. Did you vote in Reno? A. No; there was no election on while I was there.

Q. Just yes or no. Did you vote there? A. I didn't vote.

By the Court:

Q. Did you vote in New Jersey since you came back here? A. No, sir. 30

*Re-direct examination by Mr. Tepper:*

Q. Was it the letter that you received from your sister that gave you the first knowledge that the Sheriff was seeking you? A. That was the first time I knew anything about it.

Q. That was in October, 1943? A. Toward November.

Q. That is all. 40

*Edith I. Washburn, for Defendant—Direct.*

EDITH I. WASHBURN, SWORN:

*Direct examination by Mr. Tepper:*

Q. You are the defendant's sister? A. That is right.

10 Q. Did the defendant come to live with you and your husband at any time in 1943? A. Yes; in July.

Q. In July, 1943, where were you residing? A. 441 Sumner Avenue, Roselle Park, New Jersey.

Q. Can you tell us the circumstances under which he came to you? A. Well, near dinner time he called and said, "Can you put me up——"

Mr. Herrigel: I object to what he told his sister.

20

The Court: Objection sustained.

Q. You say you had a telephone conversation with him? A. Yes.

Q. And following that telephone conversation he came to your home? A. He came for dinner.

Q. What was his physical appearance as you saw it when he came to your home?

Mr. Herrigel: I object to that.

30 The Court: Why is that material?

Mr. Tepper: I want to show this man's state of mind. I shall connect it up with what he told his sister and brother-in-law when he came there, with respect to moving out of New Jersey. I want to show what his appearance was and how he acted when he got there, whether or not he was well.

The Court: I suppose it has some bearing on his physical condition; the testimony is that he was ill. I will permit it.

40

*Edith I. Washburn, for Defendant—Direct.*

Q. How did he appear to you physically? A. He was wretched.

Q. Can you elaborate upon that? A. He looked poorly; he didn't eat; and slept very fitfully; it was just back and forth; the doors were open through all the rooms and we could hear him pacing up and down. 10

Q. Did you know that your brother was suffering from a cancerous condition?

Mr. Herrigel: I object to that; I don't see how that is material or relevant.

The Court: It doesn't hurt you, does it?

Mr. Herrigel: No.

The Court: Did you know; yes or no?

A. Yes. 20

Q. How long did your brother remain with you?

A. Ten days.

Q. During that time did he discuss with you his plans for moving out of New Jersey? A. Thoroughly; he said he was going—

Q. Just yes or no. A. Yes.

Q. Was anyone else present? A. My husband.

Q. What is his full name? A. Willard S. Washburn.

Q. What did your brother, the defendant, state to you with respect to that? 30

Mr. Herrigel: Your Honor, I object to that for the same reasons that I objected to the other questions.

The Court: Your objection will be noted and reserved.

A. He said that he was going to Reno to live.

Q. When was this, Mrs. Washburn? A. Some time toward the end of that ten days. 40

*Edith I. Washburn, for Defendant—Direct.*

Q. What month and what year? A. In July, 1943.

Q. What did he say about coming back? A. He said he wasn't coming back.

Q. Thereafter did he leave? A. He left on the 20th.

10 Q. When was the next time that you heard from him? A. As soon as he had an address he wrote for some clothes that he had left at the cleaners, to be sent out to him.

Q. You say he requested that you send his things out to him? A. That is right.

Q. Can you tell what those things consisted of that you sent out? A. Oh, things from the cleaners, consisting of Summer suits and some Winter suits, Winter overcoat and bath robe, for cold  
20 weather.

Q. Did you send out all his clothing? A. Oh, I sent out everything he asked me to.

Q. Did you send out all the clothing you had in your possession belonging to him? A. Yes.

Q. Was that clothing to the cleaners? A. Yes; he left it in town.

Q. Including Winter clothing? A. Yes, sir.

Q. Where is that cleaners? A. Peter Pan.

Q. Situated where? A. In Roselle Park.

30 Q. When was it that you sent out this clothing; that is the Winter clothing? A. The Winter clothing went later.

Q. About what month? A. August; the end of August.

Q. Thereafter, while your brother was living in Nevada, did you learn of certain actions that were instituted against your brother here in New Jersey? A. The Sheriff was at my door.

40 Q. When was the Sheriff at your door, do you remember? A. Well, the third week in September.

*Edith I. Washburn, for Defendant—Cross.*

Q. Thereafter did you learn of other actions instituted against him? A. Oh, yes.

Q. Did you and your husband write to your brother in October, 1943? A. Yes.

Q. Was that letter written after those actions were instituted? A. Yes, sir.

Q. What did you write your brother? A. I 10  
wrote that the Sheriff was looking for him, that his bank account had been sequestered, that his salary had been impounded, that his mortgage was being foreclosed that his pension fund was being impounded, and that they were looking for his car, and there were so many things that we couldn't take care of; he had written that he had a job, that he was better; and I wrote him that we can't take care of those things, "Even if you are settled in that job, won't you please come back 20  
and clean it up".

Q. That was in October, 1943? A. That was late in October.

Q. Thereafter, as a result of your letter, did your brother come to New Jersey? A. He did.

*Cross examination by Mr. Herrigel:*

Q. Mrs. Washburn, you said that the Sheriff first came to your home in September? A. That is right. 30

Q. Can you fix the approximate day in September? A. Wednesday evening, it was; the 21st was on Monday; Wednesday would be the 23d.

Q. The 23d on Wednesday— A. The 23d at dinner time.

Q. —of September? A. Right.

Q. When did your brother come back from Reno on the first trip? A. On his first trip, on the 12th of September.

Q. The 12th of September? A. Yes. 40

*Edith I. Washburn, for Defendant—Cross.*

Q. When did he leave for his second trip to Reno? A. I don't know.

Q. Didn't he stay at your home until he left the second time for Reno? A. No.

Q. Did you contact him during the entire month of September and the early part of October? A.  
10 (No answer).

Q. Weren't you a friendly family and see each other frequently? A. Not when we are away from each other.

Q. But your brother was here in September, was he not? A. He was sick.

Q. He was here, wasn't he, in New Jersey? A. He was sick and he stayed home.

Q. Please answer my question; he was in New Jersey in September? A. Yes.

20 Q. Do you know from what date in September to what date in October he was away? A. He was at my house three days, and he was sick.

Q. What days was he at your house? A. From the 12th to the 15th.

Q. Then you didn't see him after that until some time in October or November? A. November.

Q. How often did you correspond with him? A. I didn't correspond with him at all.

Q. Didn't you keep in touch with him? A. No.

30 Q. Did you know his whereabouts? A. I didn't know where he was.

Q. Did he tell you where he was going? A. He said, "I am too sick for you to take care of me; I have too much to do", and he went away; I don't know who took care of him.

Q. So that when the Sheriff went up to serve him, you didn't know where your brother had gone to? A. I didn't know where he was.

40 Q. Did he tell you he was going to Reno in September? A. No.

*Edith I. Washburn, for Defendant—Re-direct.*

Q. How did you learn about the sequestration proceedings and those other proceedings that you wrote to your brother about? A. His mail came to my address.

Q. What was there in the mail to post you on the fact that sequestration proceedings had been begun? A. The notification. 10

Q. Notification from whom? A. Who sent out those notices? The bank, isn't it?

Q. Do you know yourself? A. It was a printed form; the Hillside Bank, I guess must have sent it out.

Q. Did the Hillside Bank give you notice of the sequestration proceedings or did they give you notice of the foreclosure? A. Yes; they sent me notice of the foreclosure proceedings. 20

Q. Where did you learn about the sequestration? A. They sent me a notice of that.

Q. The Hillside Bank? A. I frankly don't recall where they came from.

Q. You got your information somewhere, did you not? A. On that form; I don't know who sent it.

Q. Did the Sheriff leave a copy with you? A. No.

Q. Did you speak to your brother about that? 30  
A. I didn't know where my brother was.

Q. Did your brother write you about these proceedings? A. He did not.

Q. You are sure he didn't write to you about that? A. I am positive.

Q. That is all.

*Re-direct examination by Mr. Tepper:*

Q. Was it after your brother left your home in September when you said that you could not take 40

*Edith I. Washburn, for Defendant—Re-direct.*

care of him when you advised him that the Sheriff came around to the door?

Mr. Herrigel: I object to that; she said it was in September, on the 12th.

Mr. Tepper: No, it wasn't; she didn't say September 12th.

10

The Court: The question isn't clear to me.

Q. When was it that the Sheriff came to your door? A. The 23d of September.

Q. Your brother left your home on the 15th of September; isn't that so? A. That is right.

Q. Having been there for three days? A. That is right.

20 Q. Was it at that time that he said to you that he was too ill for you to take care of him? A. That is right.

Q. Thereafter did you learn in October that he was again living in Nevada, or had returned to his home in Nevada?

Mr. Herrigel: I wish that counsel wouldn't ask so many leading questions.

The Court: I don't think that question is harmful.

30 A. I think I said in the latter part of October he wrote that he had a job already lined up, and I said before going back he should take care of these things that have happened.

Q. Did you receive a letter from Mr. Woodfield, of the Board of Education, to the effect that your brother's pay with the Board of Education was attached?

40 Mr. Herrigel: I object to that. Yes or no.

*Willard Washburn, for Defendant.*

*Harry S. Cox, Jr., for Defendant—Direct.*

Q. Did you receive any word from Mr. Woodfield that his property was attached? A. I beg your pardon; concerning what?

Q. Concerning his salary checks? A. No.

Q. That is all.

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WILLARD WASHBURN, SWORN.

The Court: Will he testify to the same effect as the last witness?

Mr. Tepper: Yes.

The Court: Can it be stipulated that if he took the stand he would so testify?

Mr. Herrigel: Yes, sir.

The Court: That stipulation will have the same force and effect as though it was actually taken. 20

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HARRY S. COX, JR., SWORN.

*Direct examination by Mr. Tepper:*

Q. You are the defendant's brother? A. That is right. 30

Q. Did you have occasion to visit your brother in the early part of 1943? A. That is right.

Q. When was it that you visited with him? A. July 17th.

Q. Where did you visit him? A. In Roselle Park, at my sister's home.

Q. Was that Mrs. Washburn's home? A. That is right.

Q. Did he at that time discuss with you his moving out of New Jersey? A. Yes; he did. 40

*Arthur R. Thiel, for Defendant—Direct.*

Q. What did he say to you?

Mr. Herrigel: I object to that.

The Court: The same ruling.

10 A. He said that in a couple of days, if things went as usual, he was going to leave the state and going to Reno, Nevada, where he could regain his health, if possible, and live out there permanently if he regained his health, and that he probably would not see me or my wife for a good many years; he left me with the impression that he was pulling out for good.

No cross examination.

20

ARTHUR R. THIEL, SWORN.

*Direct examination by Mr. Tepper:*

Q. Mr. Thiel, are you Past Master of the Masonic Lodge known as Hillside Lodge No. 241? A. No; I am not.

Q. Are you the present Master? A. Present Master.

30 Q. In 1943, around May or June, did you know Mr. Wilbur Harry Cox, the defendant? A. I did.

Q. Was he a member of that lodge? A. He was.

Q. Was he an officer of that lodge? A. He was.

Q. Who was then Master? A. Mr. Laws.

Q. Were you then Senior Warden? A. That is right.

40 Q. That is the seat right before the master-ship? A. That is right.

*Arthur R. Thiel, for Defendant—Direct.*

Q. At that time did the master of Hillside Lodge receive a communication from Wilbur H. Cox? A. He did.

Q. Did you see that communication? A. I did.

Q. What did the communication state?

Mr. Herrigel: I object to that, if your Honor please. If there is a communication they should produce the communication. 10

The Court: Objection sustained.

Q. Do you know whether or not Mr. Cox asked that his resignation be accepted as an officer of the lodge?

Mr. Herrigel: I object to that.

The Court: Objection sustained.

20

By the Court:

Q. Were you present at any meeting of the lodge when any action was taken with respect to Mr. Cox, the defendant in this suit? A. No; there was no action taken in the lodge; it was a personal letter that I saw.

Q. Just the letter; you didn't talk to Mr. Cox at the time, did you? A. No; I didn't.

By Mr. Tepper:

30

Q. Are you familiar with the Masonic laws? A. I am.

Q. And procedure? A. I am.

Q. Do you know whether or not under the Masonic laws or procedure a resignation may be accepted from a lodge officer at that time? A. It could not be accepted.

Q. Was Mr. Cox an officer at that time? A. He was.

40

*Arthur R. Thiel, for Defendant—Direct.*

Q. What office did he hold? A. Well, Junior Deacon.

Q. Therefore did the lodge— A. I beg your pardon. I am mistaken; he was Senior Master of Ceremonies.

10 Q. That was his office at the time? A. Yes, sir; that was his office.

Q. Is that one of the offices from which the incumbent can not resign? A. All officers, appointed officers, can not resign once they are appointed.

Q. Do you know whether or not thereafter the master appointed someone to take the position of Mr. Cox in the lodge?

Mr. Herrigel: I object to that.

20 The Court: If he knows he can state. Do you know?

A. Yes.

By Mr. Herrigel:

Q. Was somebody else appointed to take his place? A. Well, somebody has to take it; the place can not stay vacant.

30 The Court: Somebody substituted for him?

A. Substituted for him.

By Mr. Tepper:

40 Q. When you say someone was substituted, since Mr. Herrigel opened the door to that, is that because the resignation could not be accepted that a person would have to substitute? A. Well, he wasn't there at the beginning so somebody had to take his place.

*Arthur R. Thiel, for Defendant—Cross.*

Q. Did you see this letter? A. I did.

Q. Can you say whether the letter related to Mr. Cox's membership in the lodge?

Mr. Herrigel: I object to that.

The Court: Objection sustained. It speaks for itself; it should be here.

10

*Cross examination by Mr. Herrigel:*

Q. Is Mr. Cox an officer in the lodge now? A. He is.

Q. What position does he hold? A. Junior Deacon.

By the Court:

Q. When was he appointed to that office, if you know? A. Yes; in December I appointed him. 20

Q. You appointed him in December, 1943? A. Yes.

Q. As Junior Deacon? A. Yes, sir.

Q. Do you recall December, 1943; is that when you took office? A. That is right.

Q. That was after Mr. Cox was back teaching again at the Hillside High School? A. Yes.

Q. Do you remember calling Mr. Cox and asking him whether he would serve as Junior Deacon? A. I do. 30

Q. Did you have any conversation with him at that time other than to tell him that you were appointing him as Deacon? A. I didn't say I was appointing him. I asked him if he would like to continue in my year, and if so that I would appoint him as Junior; which was next in line from the position that he held.

Q. He left the lodge, did he not? A. While he was Senior.

Q. What office did he hold? A. Senior Master of Ceremonies. 40

*Jean A. White, Recalled, for Complainant*  
—Direct.

Q. That was a promotion, was it not? A. Oh, yes.

10 Mr. Tepper: Mrs. Irene F. Cox is the mother of the defendant. I discussed the matter with Mrs. Cox and she told me that she was prepared to testify that her son came to her when he was leaving for Reno, Nevada, and he said to her, "Mother, I know you are getting on in years and so is dad. I am ill and cannot live in this climate. I am leaving for Reno, Nevada and I don't know if I will ever see you again, so I will have to say good-bye to you". That is the gist of her testimony, if Mr. Herrigel will let it go in by agreement.

20 Mr. Herrigel: Subject to that general objection.

Mr. Tepper: That is correct.

The Court: Are you willing to have that go in?

Mr. Herrigel: Yes; subject to my general objection.

The Court: I assume counsel will brief that point so that the court can deal with it.

Mr. Tepper: Yes, I will.

30 The Court: Does that complete your case?

Mr. Tepper: That completes my case.

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JEAN A. WHITE, recalled:

*Direct examination by Mr. Herrigel:*

40 Q. Mrs. White, on the evening of November 15th when Mr. Cox read this statement, where were you seated with relation to the place where

*Jean A. White, Recalled, for Complainant*  
 —Direct.

he was seated? A. Right around the corner of the table.

Q. Did you see the statement that he read? A. I did.

Q. Was the statement just exactly the same as this that I show you, which is Exhibit D-4? 10

Mr. Tepper: I object to that question. How could this witness possibly testify to this statement and say it was not exactly as it is there?

The Court: She might; she might remember some difference; she is entitled to state that.

A. We were sitting right around the table; ordinarily Mr. Woodfield sat around the corner, but 20  
 Mr. Woodfield was not at the meeting at that time and then that left a place for Mr. Hoffman; Mr. Hoffman sat a little bit back of Mr. Cox; Mr. Cox sat near the table and he pulled out the folded statement from his pocket, folded this way (indicating) and as he sat there he read it; I saw every page as he read it; there were many notations on every sheet, perhaps two lines on one and three on another, but they were written notations between the lines; and that I definitely saw, that 30  
 it was not all clear typewriting; some of the pages may have had two lines of notations and some pages may have had three; but I swear I saw every page as he read it.

Q. Mrs. White, I am reading from page 5 of Exhibit D-4, which is as follows: "I am here if only temporarily to defend myself"; did he say that? A. To the best of my honest recollection I never had the idea that he was back here temporarily; I never did. 40

*Jean A. White, Recalled, for Complainant*  
—Cross.

Q. That is all.

*Cross examination by Mr. Tepper:*

10 Q. Was it because of something that Mr. Cox said that you didn't believe that he was back temporarily? A. No.

Q. It wasn't because of anything he said, but that is the impression you got? A. My impression, Mr. Tepper, was that he felt that now that everything was settled he could give the board of education far better work than he had ever done before; that was my impression after the latter part of his statement.

20 Q. You read this statement with Mr. Herrigel, didn't you? A. Yes; I read it.

Q. You had read the statement in its prepared form, stating that he felt that he could give the Board of Education even better service now than he had before; didn't you read that yourself? A. Yes.

Q. Would you say that that was not read by Mr. Cox? A. What was not read?

30 Q. Would you say that this is not the statement that was read by Mr. Cox, Exhibit D-4? A. I would say that that is not the statement that was read by Mr. Cox, inasmuch as the statement he read had notations between the lines. Many of these things could have been changed.

Q. You say that is the only reason? A. There were many things; in fact, this temporary situation.

40 Q. Yes. A. Yes; as far as my honest recollection is concerned that was never brought to the attention of the board on the night of November 15th.

*Jean A. White, Recalled, for Complainant  
—Cross.*

Q. Now, do you remember Mr. Cox stating—you have a pretty good memory, have you not, Mrs. White? A. I am not to be the judge of that.

Q. Well, would you consider that you have a good memory, or would you say your memory is faulty? A. I wouldn't say my memory was faulty; 10  
no.

Q. What would you say? A. My faculties are pretty good, I think.

Q. Did Mr. Cox say: "I wish to thank you for inviting me to appear before you to tell a part of my sad story"? A. Yes.

Q. You remember that? A. Yes.

Q. Distinctly? A. Yes.

Q. Just exactly what he said? A. Yes. 20

Q. Did he say, "I tell it with the utmost reluctance but, I trust, with full confidence that you will understand my plight"? A. Yes; read further.

Q. Does that refresh your recollection? A. Yes.

Q. Do you remember it? A. I remember it.

Q. What else did he say? A. He also said further, he went on, he took—before he went on to read the statement further, he read and he also expressed orally, not reading from this statement, he asked that the board give him their confidence, in that they would not make public what he had said and what he was going to say. 30

Q. You say that he said that orally? A. He didn't read it; after it read it there, then he lifted his head and asked if they would not give him that confidence, because it meant a lot to him.

The Court: You mean he read it without looking at the paper?

A. That is right. 40

*Jean A. White, Recalled, for Complainant*  
—Cross.

Q. You just read this paper a little while ago, didn't you? A. No; he read it with me, Mr. Herrigel, out front.

Q. Just a little while ago before lunch you read it thoroughly? A. Well, I just went through it  
10 casually, speedily.

Q. You read every statement in it, did you not, Mrs. White? A. Yes.

Q. Particularly with respect to the condition of his being up here temporarily and going to Reno, Nevada, didn't you? A. I read that.

Q. You looked for that particularly? A. No; I didn't look for it but I read it there.

Q. Now having read that a little while ago, will you please tell the court what Mr. Cox said, according to this statement? A. I have given that  
20 in my previous testimony.

Q. I don't want your previous testimony; I want your testimony now. A. When Mr. Cox came before the board that night—

Q. I don't want what Mr. Cox said when he came before the board.

Mr. Herrigel: She is telling what occurred.

The Court: Counsel wants you to give  
30 your recollection now from the contents of that written statement.

A. As nearly as I can recall from going over casually that I just read over once before lunch, it is very nearly to the point, with the exception of certain things.

Q. Pardon the interruption; did you say the article is very nearly to the point? A. Very nearly to the point.

40 Q. Yes.

*Jean A. White, Recalled, for Complainant*  
—Cross.

Mr. Herrigel: Except for the matter of the temporary stay in New Jersey.

A. Yes.

Q. Are there any other particulars in this statement which does not agree with your recollection? 10

A. There was much said about a bond; I don't have any recollection of that; he may have said it; I would not say about that; I have no recollection of that.

Q. Now then, Mrs. White, you didn't want Wilbur Cox to continue in the Hillside school system, did you? A. I think that is a personal question.

The Court: Just answer it.

A. If he gave good service he was entitled to stay. 20

Mr. Tepper: I object to that answer, may it please the court. I want to have her tell me whether she felt that Wilbur Cox should continue in the school system.

The Court: Do you have any personal feeling against Mr. Cox?

A. Not at all.

The Court: Which would color your attitude in the board since that time? 30

A. None at all, your Honor.

Q. Mrs. White, didn't you express yourself that Mr. Cox should be out of the school system? A. I wonder if you refer to Mr. Roger's statement.

Q. Never mind what I am referring to; I am asking a direct question and I think in all fairness to everyone you should state what your recollection is. You didn't want him in the school system, 40

*Jean A. White, Recalled, for Complainant*  
—Cross.

did you, Mrs. White? A. Under certain conditions.

Q. But under the conditions as you understood them you didn't want him in the school system, did you? A. You don't know how I understood them.

10 The Court: Can't you answer that without qualifying it?

A. Will you ask your question again?

Q. I am merely asking you one question. Is it not a fact that you, because of certain information that you had, did not want Mr. Cox in the school system? A. You are right.

Q. I am right; am I not? A. Yes.

20 Q. And after the session, which resulted in Mr. Cox's reinstatement, you did have a conversation, did you not, with the gentleman who testified before? A. Not particularly with him alone; Mr. Reiter had a conversation with the four of us.

Q. Yes; you were there, were you not? A. I was among them. I don't recollect making any expression of opinion as far as myself is concerned; I remember distinctly a statement of Mr. Ritter's.

30 Q. Now, coming back to this executive session, do you recollect the colloquy which took place between you and Mr. Reifelt; he was then President of the Board of Education, I believe? A. Yes.

Q. Respecting your statements? A. I don't recall that particular one what you just asked.

Q. Well, that was on November 15, 1943, when you had your closed session. A. Yes.

40 Q. Mr. Reifelt, who was then President of the Board of Education, told you, did he not, that you must be prepared to prove the things that you stated? A. Mr. Reifelt said nothing of the kind on November 15th.

*Harlow H. Curtis, for Complainant—Direct.*

Q. Did he say so at any time? A. He may have said so at some time.

Q. You must be careful what you say, because you may have to prove that. A. Yes.

Q. He didn't say that? A. No.

10

HARLOW H. CURTIS, SWORN.

*Direct examination by Mr. Herrigel:*

Q. Mr. Curtis, you are a member of the Board of Education— A. I am.

Q. —of the Township of Hillside? A. I am; yes, sir.

Q. Were you present on November 15th when that statement, Exhibit D-4, was read by Mr. Cox? 20  
A. I was.

Q. You heard it read in court? A. I heard part of it read in court.

Q. Did you read it yourself afterwards? A. I read part of it; yes.

Q. To the best of your recollection were there any things that you read in this statement which were not said by Mr. Cox on the evening of November 15th? A. I would say that they were; I wouldn't say they were read, but I understood Mr. Cox to say that they were, but I would say that they were not. 30

Q. What are those things that you recollect?  
A. Well, the first thing that Mr. Cox states there that Mr. Cox said that he would come back to Hillside temporarily. My impression of what he said is that he would come back, he was in the best of health, that he was happily married and that he was able to do a better job.

Q. That is all.

40

*Harlow H. Curtis, for Complainant—Cross.*

*Cross examination by Mr. Tepper:*

Q. You say that this is your impression of what was said? A. That is my impression; it is so.

Q. You had a conference with counsel a little while ago in one of the private rooms; did you not? A. I did.

10 Q. Were you present in the court room when Mr. Cox testified respecting this document, Exhibit D-4? A. I was.

Q. Were you also in the court room when Mr. Hoffman testified respecting this document, Exhibit D-4? A. I was.

Q. When you say that that was not your interpretation— A. Right.

20 Q. Did you mean by that that you did not so understand it? A. I don't recall Mr. Cox having read that statement as it was stated there.

Q. What statement do you have recollection of his having read? A. I don't recall that he made the statement that he came back to Hillside temporarily; and I interpreted what he said at the time, "I am happily married".

30 Q. I don't want your interpretation. A. Well, I heard him say at that time, that he came back to Hillside, he was happily married, that he was in the best of health, and that he was able to do a better job.

Q. You read this statement, did you not? A. I read that.

Q. Is there any reference in here to his having been happily married? A. No, sir; not to my recollection. I just went over it hurriedly.

40 Q. Will you please examine Exhibit D-4: "I ask it also for my thoroughly good wife over whom some people are perilously close to serious damage suits". A. Yes; I remember that; not those exact words, but similar to it.

*Harlow H. Curtis, for Complainant—Cross.*

Q. Would you say those were not the exact words that were used? A. No.

Q. No what? A. No, sir; I wouldn't say that was, but I am quoting only from memory and not verbatim; I couldn't say that.

Q. So that that statement was right, was it not?

A. I would say that it was partially right; I wouldn't swear to it; no. 10

Q. Now do you remember the statement read, "I know my usefulness to this institution in the past can not be questioned"? A. Yes.

Q. "And I will continue to do my best while I am here defending myself against these suits brought against me to the end that I shall continue to do an outstanding job? A. No, sir; he never said that in my opinion.

Q. You don't recall any such statement? A. No, sir. 20

Q. Would you say that that was not in there?

A. That was not in there.

Q. Now, Mr. Curtis, were you one of the members of the Board of Education who voted for the suspension of Mr. Cox? A. I was.

Q. You felt that he should be out of the school system, did you not? A. No, I didn't feel that he should be out of the school system; but only if he was conducting himself in a manner becoming a school teacher. 30

Q. That is the way you felt about that? A. Yes, sir.

Q. As a result of that you felt that there was no place for him in the school system, did you not? A. Yes.

Q. And you so expressed yourself, did you not? A. I did.

Q. The two things that you don't recall which are on this statement is the statement that you 40

*Harlow H. Curtis, for Complainant—Cross.*

referred to as his being back temporarily? A. That is right.

Q. And the statement relating to his thoroughly good wife; you don't remember that? A. State that again.

10 Q. That statement which relates to his being back at Hillside High School temporarily; you don't recall that having been read at all? A. That is right.

Q. And you don't recall Mr. Cox having read the statement, "I ask it also for my thoroughly good wife over whom some people are perilously close to serious damage suits"? A. I don't recall that, no; I can give you my recollection of that, if you wish.

20 Q. No, I don't want your recollection of that; I want to know from you. A. I couldn't say.

Q. Could you say whether it was or was not read? A. Yes.

Q. In all other respects is that substantially what was stated at the meeting?

Mr. Herrigel: Let him examine it.

A. I am trying to think.

30 The Court: You may look at it if you wish.

A. I don't recall Mr. Cox making this statement, number 5, just here (indicating) "I came back to New Jersey to fight these actions against me and to clear my record and my good name. I wanted to retire from New Jersey and find employment in Reno if my health permitted". I don't remember that statement ever being read by Mr. Cox. Outside of that I would say that is 40 nearly a hundred per cent as I can remember it.

*Harlow H. Curtis, for Complainant—Cross.*

Q. Of course you relied upon your memory of this statement? A. That is right, sir.

Q. Did you have any conversation with Mrs. Cox recently regarding her marital affairs? A. No, sir; I have not recently, only to pass the time of day; that was just meeting her in court and I just addressed her. 10

Q. Now you were present, were you not, at this executive session of the board? A. I was present at a meeting of the Committee of the whole; that was not an executive session.

Q. It was a closed meeting, was it not? A. It was; yes, sir.

Q. Did you hear Mr. Reifelt, who was then President of the Board, admonish Mrs. White about certain statements she was making derogatory to Mr. Cox? A. There never was a word spoken by any member of the board whatsoever at that meeting. 20

Q. Would you say that you didn't hear Mr. Reifert tell Mrs. White that she would have to be prepared to prove any statements she made? A. Nothing was stated by any member of the board at that meeting.

Q. Did you hear it at the July 9th meeting, or any other meeting? A. I don't recall any statement by Mr. Reifelt admonishing any member of the board. 30

Q. Was it at the November 9th meeting that that happened? Did you attend that meeting?

Mr. Herrigel: I object to that; he said he didn't hear any such statement.

The Court: Objection sustained.

Q. Did you hear Mrs. White's testimony? A. I did.

Q. Just a little while ago? A. Yes, sir; I did. 40

*Wilbur Harry Cox, Defendant, Recalled*  
*—Direct.*

Q. Did you hear her make the statement that she may have had that conversation with Mr. Reifelt? A. I did hear her say so.

Q. Still you say that that conversation did not take place?

10 Mr. Herrigel: I object to that.

A. I did not say it didn't take place; I said I didn't hear it.

Q. You wouldn't say that it didn't take place?

A. I wouldn't say so; no.

Q. That is all.

Mr. Herrigel: I just want to ask Mr. Cox one question.

20

WILBUR HARRY COX, recalled.

*Direct examination by Mr. Herrigel:*

Q. Mr. Cox, you said in your application for a drivers license for 1944 you put in your application that you were a non-resident, did you not? A. Yes, sir.

30 Q. Is this a non-resident license? A. Certainly; it has a non-resident address.

Q. Is it a non-resident license or is it a residents license? A. I don't know the distinction.

Q. You didn't sign a power of attorney on this, did you? A. I did on the back of the card, where it says for non-resident; yes.

Q. This is a residents application, is it not? A. The license itself states the address as being Reno, Nevada.

40

*Eugene F. Hoffman, Recalled, for Defendant  
—Direct.*

EUGENE F. HOFFMAN, recalled.

*Direct examination by Mr. Tepper:*

Q. Mr. Hoffman, did you hear Mrs. White's testimony respecting this statement, D-4? A. Yes.

Q. Did you hear her statement that she does not recollect this having been read, "I came back to New Jersey to fight these actions against me and to clear my record and my good name"? A. That is right. 10

Q. Was that statement read by Mr. Cox? A. Yes.

Q. You have a definite recollection of that statement having been made by him? A. Absolutely.

Q. Did you hear Mrs. White's testimony that she did not recall that Mr. Cox stated that he was up here temporarily while he was defending these actions; do you recall that? A. Yes. 20

Q. Do you recall whether or not Mr. Cox made such statement? A. Yes; he did.

Q. Did he or did he not make the statement that he was in New Jersey temporarily? A. Yes; because Mr. Reinfelt said to me afterwards and said, "What do you lawyers mean by temporary?" I said, "Well, it depends on how long it takes to work things out", and by working things out I meant the actions against him. 30

Q. You couldn't be mistaken about that; is that so? A. That is right.

Q. Did you hear Mr. Curtis' testimony? A. Yes.

Q. Did you hear him state that he has no recollection of the following statement having been read by Mr. Cox: "I ask it also for my thoroughly good wife, over whom some people are perilously 40

*Eugene F. Hoffman, Recalled, for Defendant*  
—Direct.

close to serious damage suits''? A. Yes; I recall that statement being made.

Q. Can you tell us whether that statement was read by Mr. Cox? A. That statement was read, I recall it distinctly, because it seemed a little personal; but it was made.

10 Q. So that I don't overlook anything that either Mr. Curtis or Mrs. White said that they don't recall was read by Mr. Cox, I ask you again, Mr. Hoffman, was this statement as it appears here in Exhibit D-4 read by Mr. Cox in the exact language that appears in D-4?

Mr. Herrigel: I object to that; he said it was not the exact language, that there were some words crossed out.

20 The Court: I will sustain the objection; you got it in the record already.

Q. Did you have custody of this document from the date that Mr. Cox gave it to you until the present time? A. Yes, sir.

Q. Were any changes made in this statement to your knowledge? A. No; absolutely not.

Q. That is all.

30 No cross examination.  
Mr. Tepper: I will rest.  
Mr. Herrigel: I rest, too.



*Exhibit C-1.**Complaint.*

1925, and ever since have been, still and now are, husband and wife.

3. That there is one minor child of said marriage, VIRGINIA COX, aged sixteen years.

10

4. That there is no community property belonging to plaintiff and defendant.

5. That since the said marriage the defendant has been guilty of and has treated the plaintiff with extreme cruelty, which said cruelty has caused the parties to separate, and they now are, by reason thereof, living separate and apart.

20

WHEREFORE, plaintiff prays the judgment and decree of this court that the bonds of matrimony heretofore and now existing between plaintiff and defendant be dissolved absolutely and forever, and that each party hereto be restored to the status of an unmarried person. And for all other further proper orders and for general relief.

ALBERT HILLIARD,  
Attorney for Plaintiff.

30

STATE OF NEVADA, }  
COUNTY OF WASHOE. } ss.:

40 WILBUR H. COX, being first duly sworn, deposes and says: That he is the plaintiff in the action entitled above; that he has read the within and foregoing complaint and knows the contents thereof; that the same is true of his own knowledge, except as to matters therein stated upon information

*Exhibit C-1.*  
*Complaint.*

and belief, and as to those, he believes it to be true.

WILBUR H. COX

Subscribed and sworn to before me this 7th day  
of September, 1943 10

KENDRICK JOHNSON  
Notary Public in and for the county of  
Washoe, state of Nevada

My Commission Expires :

I, ALBERT HILLIARD, hereby certify, that the  
within is a full, true and correct copy of the orig-  
inal complaint now on file in the above-entitled  
court. 20

.....  
Attorney for Plaintiff

Default of the Defendant for  
failing to appear, entered in  
open court 15th day of Oct. 1943

E. H. Beemer, Clerk  
By B. Buchanan, Deputy Clerk

30

40

*Exhibit C-1.*

*Affidavit for Publication of Summons.*

ALBERT HILLIARD  
Attorney for Plaintiff.

10 IN THE SECOND JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA,  
IN AND FOR THE COUNTY OF WASHOE.

WILBUR H. COX, Plaintiff,  <i>vs.</i>  VIOLA E. COX, Defendant.	}	No. 77720. Dept. No. 2. Filed Sep 7 1 49 PM '43 E. H. Beemer, Clerk. By A. G. Caughlin, Deputy.
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20

**Affidavit for Publication of Summons.**

STATE OF NEVADA, }  
COUNTY OF WASHOE. } ss.:

30 WILBUR H. COX, being first duly sworn, deposes  
and says: That affiant is the plaintiff named on the  
suit entitled above: that said suit has been com-  
menced by the filing of a verified complaint and  
the issuance of summons thereon; that said suit  
is brought to obtain a decree of divorce by plain-  
tiff from defendant, and that a good cause of ac-  
tion exists therefor in favor of plaintiff and  
against defendant, as follows:

40 That plaintiff is now an actual and bona fide  
resident and domiciled within Washoe County,  
Nevada, and that said plaintiff, for a period of  
more than six weeks, preceeding the filing of  
complaint herein, has been an actual and bona  
fide resident of and domiciled within the State of

*Exhibit C-1.**Affidavit for Publication of Summons.*

Nevada; that plaintiff and defendant were married to each other at Newark, New Jersey, on October 9th, 1925, and ever since have been and are now wife and husband; that although during the married life of plaintiff and defendant, plaintiff's conduct was in accordance with marital duties, defendant has treated the plaintiff with extreme cruelty. All in form and manner specifically alleged in the complaint filed herein, reference to which hereby expressly is made. 10

That defendant is a necessary and proper party defendant in this suit; that summons cannot be served on defendant in person within the State of Nevada; that defendant is not now in and cannot be found in the State of Nevada; and that defendant's present residence and address are: 126 Virginia Street, Hillside, New Jersey 20

WHEREFORE, affiant prays for an order of Court directing that service of process be made herein on defendant by the publication of summons in some newspaper designated as most likely to give notice to defendant of the pendency of this suit, and by mailing to defendant, at said last known address, a copy of the Summons attached to a duly certified copy of the Complaint, all in manner and form required by law, and further directing that personal service of process, in due form, upon defendant outside the State of Nevada, be equivalent to complete service by publication and mailing; and for all proper relief in the premises. 30

WILBUR H. COX

Subscribed and Sworn to before me this 7th day of September, 1943.

KENDRICK JOHNSON 40

Notary Public, Washoe County, Nevada

(Seal)

*Exhibit C-1.**Order for Publication of Summons.*

ALBERT HILLIARD  
Attorney for Plaintiff

IN THE SECOND JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA,

10 IN AND FOR THE COUNTY OF WASHOE.

WILBUR H. COX,  
Plaintiff,

*vs.*

VIOLA E. COX,  
Defendant.

No. 77720.

Dept. No. 2.

Filed Sep 7

1 49 PM '43

E. H. Beemer,  
Clerk.

By

A. G. Caughlin,  
Deputy.

20

**Order for Publication of Summons.**

Upon reading the affidavit of plaintiff, duly filed herein, it appears to the satisfaction of the Court, and the Court finds, that defendant herein resides outside of the State of Nevada, that defendant cannot be found within the State of Nevada, and that summons herein cannot be served upon defendant in person within the State of Nevada; and it appearing from said affidavit and from the verified complaint filed herein, and the Court here finds, that a cause of action exists in favor of plaintiff and against defendant, that defendant is a necessary and proper party herein, and that the residence and address of defendant are 126 Virginia Street, Hillside, New Jersey and it further appearing that the Nevada State Journal is a newspaper published in the City of Reno, Washoe County, State of Nevada, and is the newspaper

30

40

*Exhibit C-1.**Order for Publication of Summons.*

most likely to give notice to defendant of the pendency of the suit;

Now, THEREFORE, It is hereby ordered that summons in this suit be served on defendant herein, by publication thereof in the above named newspaper, and that said publication be made for a period of four weeks and at least once a week during said time; 10

IT IS FURTHER ORDERED AND DIRECTED, That a copy of the summons and a certified copy of the complaint be deposited forthwith in the United States Post Office at Reno, Nevada, enclosed in an envelope upon which the postage is fully prepaid, addressed to defendant, at 126 Virginia Street, Hillside, New Jersey. 20

It is further ordered that due service of a copy of the summons and a certified copy of the complaint on defendant in person outside the State of Nevada shall be equivalent to complete service by publication and deposit in the United States Post Office, and that such process may be served upon defendant as prescribed by statute.

DONE IN OPEN COURT, Sept. 7, 1943.

A. J. MAESTRETTI,  
District Judge. 30



*Exhibit C-1.**Affidavit of Service.***Affidavit of Service.**

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

RAYMOND B. STILES: being first duly sworn, de- 10  
 poses and says: That he is and was on the day  
 when he served the annexed summons, a citizen  
 of the United States, over the age of twenty-one  
 years, and not a party to the above entitled action;  
 that he received the annexed summons in said  
 action on the 14th day of September, 1943 and  
 personally served the same upon Viola E. Cox the  
 above-named defendant on the 14th day of Sep-  
 tember, 1943, by delivering to Viola E. Cox the 20  
 said defendant personally, in Hillside, County of  
 Union, State of New Jersey, a copy of the annexed  
 summons attached to a duly certified copy of the  
 complaint in the above-entitled action.

RAYMOND B. STILES

Subscribed and sworn to before me  
 this 15th day of September, 1943

DOROTHY D. BATCHELOR  
 Notary Public in and for the State of 30  
 New Jersey (Seal)  
 (My Commission expires 10/17/43)

*Exhibit C-1.**Findings of Fact, Conclusions of Law, and Decree.*

No. 77,720

Dept. No. 2

IN THE SECOND JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

10

GEORGE E. MCKERNON

Attorney for Plaintiff

WILBUR H. COX,  
Plaintiff,*vs.*VIOLA E. COX,  
Defendant.Filed Oct. 15  
11 23 AM '43.E. H. Beemer,  
Clerk.By B. Ellsworth,  
Deputy.

20

**Findings of Fact, Conclusions of Law, and Decree.**

THIS CAUSE came on regularly this day for trial. The plaintiff appeared personally and by his attorney, Mr. Geo. E. McKernon. Service of summons having been obtained upon the defendant by personal service of summons, according to law, and the defendant having failed to demur, answer, or otherwise plead, or make any defense in said action within the time allowed by law, upon motion of plaintiff's counsel, the default of the defendant was duly entered herein. Evidence was introduced, the case was submitted, and, after due deliberation, decided in favor of the plaintiff and against the defendant. Pursuant to the foregoing the court now makes and adopts the following:

40

*Exhibit C-1.**Findings of Fact, Conclusions of Law, and Decree.*

## FINDINGS OF FACT

1. That all the allegations of plaintiff's complaint are true.
2. That the court has jurisdiction over the parties and of the cause of action and to hear and determine the same. 10

## CONCLUSIONS OF LAW

That plaintiff is entitled to the relief hereinafter granted.

## DECREE

By reason of the premises, it is hereby ORDERED, ADJUDGED and DECREED: 20

That plaintiff, WILBUR H. COX, be and hereby is, granted an absolute and final divorce from defendant, VIOLA E. COX, upon the ground of extreme cruelty; that plaintiff and defendant be and they hereby are absolutely and finally divorced from each other and restored to the status of unmarried persons.

Done at Reno, Washoe County, Nevada, this 15th day of October, 1943.

A. J. MAESTRETTI 30  
District Judge

Recorded in Judgment Record  
Book A 58 Pages 99-100  
E. H. Beemer, County Clerk  
By B. Buchanan, Deputy Clerk



*Exhibit C-1.**Transcript of Testimony.*

No. 77,720. Department No. 2.

IN THE SECOND JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA,  
IN AND FOR THE COUNTY OF WASHOE.

10

WILBUR H. COX,  
Plaintiff,

vs.

VIOLA COX,  
Defendant.

Filed Feb. 7  
12 37 PM '44.

E. H. Beemer,  
Clerk.

By V. A. Given,  
Deputy.

**Transcript of Testimony.**

20

BE IT REMEMBERED, that the above-entitled action came on regularly for trial in said Court on Friday, the 15th day of October, 1943, at the hour of 11.10 o'clock A. M. of said day, before HON. A. J. MAESTRETTI, Judge of said Court, sitting without a jury.

The plaintiff was present in person and represented by his attorney, GEORGE E. MCKERNON, Esq., the defendant not appearing.

30

J. Lozano, Official Reporter of said Court, was present and acting as such, and thereupon the following proceedings were had, and testimony taken, to wit:

The Court: No. 77,720, Wilbur H. Cox vs. Viola Cox. You may enter the default of the defendant for failing to appear and answer within the time required by law. You may proceed.

Mr. McKernon. I would like to have the record show at this time that I have been substituted in

40

*Exhibit C-1.**Mrs. J. L. Hash, for Plaintiff—Direct.*

this case in place of Mr. Albert Hilliard as attorney for the plaintiff.

The Court. It may so show.

10

## TESTIMONY OF

MRS. J. L. HASH, who, being called and duly sworn, as a witness on behalf of the plaintiff, testified as follows, to wit:

## DIRECT EXAMINATION

Mr. McKernon. (Question). Please state your name? (Answer). Mrs. J. L. Hash.

20

Q. Where do you reside, Mrs. Hash?

A. At the Lone Star Ranch in Washoe County, Nevada.

Q. Do you rent quarters there?

A. Yes, I do.

Q. Did you rent quarters to Wilbur H. Cox who was just sworn with you?

A. Yes sir, I did.

Q. When did you do that?

A. July the 24th.

30

Q. And for more than six weeks after July 24th, was he there every day?

A. Yes.

Q. As a matter of fact, was he there up to September 9th?

A. Yes, he was.

Q. Do you know where he resides at the present time?

A. Yes, I do.

Q. Where?

40

A. At Mrs. Gelmstedt's ranch.

*Exhibit C-1.**Wilbur H. Cox, Plaintiff—Direct.*

Q. On the Verdi Highway?

A. Yes.

Q. And from the 24th of July up to September 9th, was he at your place every day?

A. Yes sir, he was.

Q. Not absent for a single day?

10

A. No, sir.

Mr. McKernon: Has the Court any questions?

The Court: None. You may be excused.

## TESTIMONY OF

WILBUR H. COX, who, being called and duly sworn as a witness on behalf of himself, testified as follows, to wit: 20

## DIRECT EXAMINATION

Mr. McKernon. (Q). Please state your name?

A. Wilbur H. Cox.

Q. Are you the plaintiff in this action, Mr. Cox?

A. I am.

Q. Is the defendant, Viola Cox, your wife?

A. She is.

30

Q. When did you marry the defendant?

A. October, 1925.

Q. Where?

A. Newark, New Jersey.

Q. When did you establish your home and residence in Washoe County, Nevada?

A. July 24th, 1943.

Q. And where?

A. At the Lone Star Ranch.

Q. And for how long a time did you reside there? 40

*Exhibit C-1.**Wilbur H. Cox, Plaintiff—Direct.*

- A. A period of six and a half weeks.
- Q. Were you there from July 24th down to September 9th of this year?
- A. I was.
- 10 Q. Each and every day?
- A. Each and every day.
- Q. Where do you reside now?
- A. South Verdi Road.
- Q. When you arrived here on July 24th, was it your intention to make Nevada your permanent home for an indefinite period?
- A. It was.
- Q. Is that your present intention?
- A. It is.
- 20 Q. Do you maintain a home anywhere else other than in the State of Nevada?
- A. No, sir.
- Q. Are there any minor children the issue of the marriage?
- A. One daughter, sixteen.
- Q. And she is with the defendant?
- A. She is.
- Q. In the State of New Jersey?
- A. Yes.
- 30 Q. Is there any community property to be considered by this Court?
- A. No, sir.
- Q. You charge the defendant treated you with extreme cruelty. Is that allegation true?
- A. It is.
- Q. Did the defendant ever tell you that she did not love you?
- A. Yes.
- Q. Did she ever threaten your life?
- 40 A. She did.

*Exhibit C-1.**Wilbur H. Cox, Plaintiff—Direct.*

Q. Did she leave you in a cold house without any food?

A. She did.

Q. Did she refuse to prepare food for you at that time?

A. Yes. 10

Q. Did she ever throw newspapers at you while you were in bed?

A. She did.

Q. Did she ever throw toast at you?

A. Yes.

Q. Did she hit your arm when you assisted her in drying the dishes?

A. She did.

Q. Why was that?

A. Because I picked up a plate that hadn't 20  
dripped long enough.

Q. Did she ever call you vile and indecent names?

A. Yes, sir.

Q. Did she say anything about the friends that you associated with?

A. Yes, she did.

Q. Did she ever address names toward them?

A. She did.

Q. Did she alienate the affections of your 30  
daughter so that your daughter no longer cares for you?

A. She did.

Q. Did she tell you she was sorry that you did not die while you were sick?

A. She did.

Q. And did she leave the house on many occasions?

A. Yes, sir.

Q. In the company with other men? 40

A. That I don't know.

*Exhibit C-1.*

*Wilbur H. Cox, Plaintiff—Direct.*

Q. You know that she has been out with other men?

A. She has, I know.

Q. You know that she has kissed these other men on many occasions?

10 A. No.

Q. Did she pull the pillows from under your head when you were in bed?

A. She did.

Q. Did she ask you for a separation or some other arrangement?

A. Several times.

Q. Did she take your car when you needed it in your business?

A. She did.

20 Q. How about the time you were taking your examinations, what did she do then?

A. She insisted on going out on a party with other men that lasted until three o'clock in the morning before the day of the examination.

Q. What effect did these various acts of cruelty have upon your health and your happiness?

A. Made me extremely unhappy for years, and had an adverse effect upon my health.

30 Q. Do you trace your ill health and unhappiness directly to the acts of cruelty on the part of the defendant?

A. I do.

Q. Do you think that if you continued to live with her, it would permanently impair your health?

A. Yes sir, I do.

Q. Were you under a doctor's care as a result of her actions?

A. Yes, sir.

40 Q. Is there any possibility of a reconciliation?

A. No possibility whatsoever.

*Exhibit C-1.**Certificate of Court Reporter.*

Q. Have you read all the allegations of your complaint?

A. Yes, sir.

Q. Are they all true?

A. Yes, sir.

Mr. McKernon: That is plaintiff's case, your Honor. Has the Court any questions?

The Court: You may enter the order granting a decree of divorce to plaintiff from defendant upon the ground of extreme cruelty.

10

STATE OF NEVADA, }  
COUNTY OF WASHOE. }

I, J. LOZANO, official reporter of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, DO HEREBY CERTIFY:

20

That as such reporter I was present in Department No. 2 of the above entitled court on Friday, the 15th day of October, A. D. 1944, at the hour of 11.10 o'clock A. M. of said day, and that I then and there took verbatim shorthand notes of the testimony given and proceedings had therein upon the trial of the case of WILBUR H. COX, PLAINTIFF, vs. VIOLA COX, DEFENDANT.

30

That the foregoing transcript, consisting of pages numbered one (1) to seven (7), both inclusive, contains a full, true, and correct transcription of my said shorthand notes, so taken as aforesaid, and a full, true, and correct statement of the testimony given and proceedings had upon the trial of the said above entitled action, to the best of my knowledge and ability.

Dated at Reno, Nevada, February 3rd, 1944.

J. LOZANO

40

*Exhibit C-1.**Certificate of County Clerk.*

IN THE SECOND JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA,  
IN AND FOR THE COUNTY OF WASHOE.

No. 77720

Dept. No. 2.

10

<p style="text-align: center;">WILBUR H. COX, Plaintiff, <i>vs.</i> VIOLA COX, Defendant.</p>	}
---	---

20

I, E. H. BEEMER, County Clerk and ex-officio Clerk of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, do hereby certify that I have compared the foregoing with the originals thereof, and that I am the keeper of said originals, keeping same on file in my office as the legal custodian, and keeper of the same under the laws of the State of Nevada, and I further certify that the foregoing copies attached hereto are full, true and correct copies of the

30

Complaint, Affidavit for Publication of Summons, ORDER FOR Publication of Summons, Summons, Affidavit of Service, Findings of Fact, Conclusions of Law and Decree, and Transcript of Testimony.

and now on file and of record in my office.

40

I do further certify that the same have not been altered, amended or set aside, but are still of full force and effect.

*Exhibit C-1.*  
*Certificate of Judge.*

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said Court this 7th. day of February, A. D. 1944.

E. H. BEEMEN  
County Clerk.

(Seal) 10

I, A. J. MAESTRETTI one of the Presiding Judges of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, do hereby certify that said Court is a Court of Record, having a Clerk and a Seal; and that there is no provision by law for a chief judge or presiding magistrate thereof, that both of said two judges are placed by law on an equality as to authority; that E. H. BEEMER, who has signed the annexed attestation, is the duly elected and qualified County Clerk of the County of Washoe, and was at the time of signing said attestation, ex-officio Clerk of said Court. 20

That said signature is his genuine hand writing, and that all of his official acts as such Clerk are entitled to full faith and credit.

And I further certify that said attestation is in due form of law.

WITNESS my hand this 7th. day of February, A. D. 1944. 30

A. J. MAESTRETTI  
One of the Presiding Judges of the  
Second Judicial District Court of the  
State of Nevada, in and for the  
County of Washoe.

*Exhibit C-1.**Certificate of County Clerk.*

STATE OF NEVADA, }  
 COUNTY OF WASHOE. } SS.:

10 I, E. H. BEEMER, County Clerk and ex-officio  
 Clerk of the Second Judicial District Court of the  
 State of Nevada, in and for the County of Washoe,  
 do hereby certify that the Honorable A. J. MAES-  
 TRETTEI whose name is subscribed to the preceding  
 Certificate, is one of the Presiding Judges of said  
 Court, duly elected and qualified, and that the  
 signature of said Judge to said Certificate is gen-  
 uine.

20 IN WITNESS WHEREOF, I have hereunto set my  
 hand and affixed the seal of said Court this 7th.  
 day of February A. D. 1944.

E. H. BEEMER

County Clerk and ex-officio Clerk of  
 the Second Judicial District Court  
 of the State of Nevada, in and for  
 the County of Washoe.

(Seal)

30

40

## New Jersey Court of Errors and Appeals

Between

VIOLA E. COX,  
Complainant-Respondent,

*and*

WILBUR HARRY COX,  
Defendant-Appellant.

On Bill for  
Separate  
Maintenance.

On Appeal from  
the Court of  
Chancery.

Sat Below:  
Campbell, C.  
Herr, A. M.

### BRIEF OF DEFENDANT-APPELLANT.

#### Preliminary Statement.

Complainant-respondent filed two bills, one asking for support and maintenance from the defendant-appellant (S. C., p. 10), and the second bill (S. C., p. 7), to set aside the decree for divorce (S. C., p. 306, *et seq.*) granted defendant-appellant in the State of Nevada.

The Court of Chancery, after hearing, advised a decree (S. C., p. 26) that the defendant-appellant support and maintain the complainant-respondent and a child of the marriage (who attends college), and that the divorce granted defendant-appellant in the State of Nevada is of no force or effect in this State.

Defendant-appellant appeals from said decree.

There is but one issue in this case: Did the defendant-appellant obtain his Nevada decree fraudulently?

It is our contention that the Nevada decree must stand, complainant-respondent not having proved, within the requirements of our law, that

the defendant-appellant imposed a fraud upon the State of Nevada with respect to his domicile in said State.

### Statement of Facts.

The defendant-appellant and complainant-respondent were married on October 9, 1925 (S. C., p. 10) and lived together in the State of New Jersey. In the latter part of 1935, the defendant-appellant became afflicted with cancer. That defendant-appellant suffered from cancer is admitted by complainant-respondent (S. C., p. 201). Thereafter, his condition became progressively worse requiring an operation (S. C., p. 201). From that time on, complainant-respondent's attitude toward defendant-appellant changed. She subjected him to "constant nagging", "berating", "belittling", and even went so far, on or about September, 1941, as to threaten defendant-appellant with a knife, saying "I could kill you" (S. C., p. 148). In February, of 1943, defendant-appellant contracted influenza and ran a high temperature. During said illness, he was neglected by complainant-respondent and left unattended, without heat, in their home (S. C., p. 146). On one occasion, in January of 1941, complainant-respondent left defendant-appellant and spent the night among strangers, in a rooming house, on Fulton Street, in Newark, New Jersey (S. C., p. 199).

On or about May, 1943, defendant-appellant, feeling himself to be totally and permanently disabled, made up his mind to surrender his New Jersey domicile and establish a new and permanent domicile in Reno, Nevada (S. C., p. 149). He intended to avail himself of the disability retirement benefits to which he was entitled under the

rules of a pension fund, of which he was a contributing member, as principal of the Hillside, New Jersey, High School. He actually applied for and was granted such retirement, effective January 1, 1945. (Answering affidavit filed December 5, 1944. Said affidavit is now before the Court, having been filed in support of defendant-appellant's resistance of complainant-respondent's motion for alimony pending this appeal, which motion was denied by this Court. A copy of this affidavit is, for the convenience of the Court, attached hereto and marked, Exhibit "A".)

Defendant-appellant resigned as Senior Master of Ceremonies of his Masonic Lodge; as Chairman of the Membership Committee of the American Legion of Union County, New Jersey; and as President of the Union County Teachers' Federal Credit Union (S. C., p. 90). He sold his automobile and bade his mother and other relatives good-bye, telling them that he was moving to Reno, Nevada. He further stated that he would "just as soon drive a horse and wagon out there and be happy and in good health, rather than be here and in ill health" (S. C., p. 150). Defendant-appellant did not, however, resign his office of principal of the Hillside High School because he desired to avail himself of accumulated vacation and sick-leave time, and because he did not want anything to interfere with his application for disability retirement (S. C., p. 155).

Defendant-appellant established his domicile in Reno, Nevada, in July, 1943.

In September, 1943, defendant-appellant, after he had taken up his residence in the State of Nevada, filed his petition for divorce on the grounds of extreme cruelty (S. C., p. 297, *et seq.*). Thereafter, an order of publication (S. C., pp. 302-303) was obtained out of the said Court in Nevada,

after which personal service was made upon the complainant-respondent in the State of New Jersey. Thus, jurisdiction over the complainant-respondent was obtained, in accordance with the statute of the State of Nevada. The divorce case in Nevada came on in due course for trial, and the hearing resulted in the granting of a divorce to the defendant-appellant and against the complainant-respondent (S. C., p. 306, *et seq.*).

### POINT 1.

**The finding of the Court that the defendant-appellant procured the Nevada decree for divorce by fraud was illegal, improper, and unsupported by the evidence.**

Under this point, defendant-appellant will argue the reasons numbered "A" and "C", set forth in his petition of appeal (S. C., p. 2).

The complainant-respondent herein is attempting to nullify the decree of a Court of another State. In order to succeed, she must prove that the defendant-appellant herein practised a fraud upon that Court and State. The law is clear that in such a situation the burden is upon her to establish the fraud by *clear and unequivocal proof*. The decree by the Nevada court raises a presumption of the *bona fides* of the defendant-appellant's domicile in Nevada. This presumption can only be overcome by clear and convincing proof. *Feickert v. Feickert*, 98 N. J. Eq. 444 at 448; *Field v. Field*, 103 N. J. Eq. 174; *Pahy v. Pahy*, 107 N. J. Eq. 538; *Ballentine v. Ballentine*, 112 N. J. Eq. 222; *Sprague v. Sprague*, 131 N. J. Eq. 104.

The testimony in this case clearly indicates that the defendant-appellant became a *bona fide* resident of (that is, domiciled in) the State of Ne-

vada and the defendant-appellant's testimony, as well as the testimony of his corroborating witnesses, concerning his *animus manendi* in establishing his residence in Reno, Nevada, outweighs the statements of the complainant-respondent that have been stressed on her behalf. It was urged that the defendant-appellant had no *animus manendi* with respect to his said residence in Nevada because he had not resigned his position as principal of the Hillside, New Jersey, High School before establishing his domicile elsewhere.

In this connection, it is pointed out that he suffered from cancer (that is admitted by complainant-respondent, S. C., p. 201); that he was operated on for said condition (S. C., p. 201); that complainant-respondent subjected defendant-appellant to "constant nagging", "berating", "belittling", and, on or about September, 1941, threatened him with a knife, saying, "I could kill you"; that complainant-respondent left him on a number of occasions, in 1941, (S. C., p. 218) and that, on or about May, 1943, defendant-appellant, feeling himself to be totally and permanently disabled, resigned as Senior Master of Ceremonies of his Masonic Lodge; Chairman of the Membership Committee of the American Legion; and as President of the Union County Teachers' Federal Credit Union; advised his friends and relatives that he was going to Reno, Nevada, never to return to New Jersey; surrendered his New Jersey domicile; and established a new and permanent domicile in Reno, Nevada. Defendant-appellant testified " \* \* \* I selected Reno for its altitude and its good climate \* \* \* " (S. C., p. 149); and that he would "just as soon drive a horse and wagon out there, (Reno, Nevada) and be happy and in good health rather than be here (New Jersey) and in ill health" (S. C., p. 150).

Dr. Arthur G. Pilch testified (S. C., p. 71, *et seq.*) “ \* \* \* He was in poor condition and he had lost a good deal of weight.” “ \* \* \* The next time I saw Mr. Cox was on the 20th of September. He weighed 138 pounds. His usual weight, as he explained it, was 154. I told him that it was about time he went away”.

Lawrence T. Regan, a disinterested witness, County Commander of the American Legion, of which the defendant-appellant was an officer, testified (S. C., pp. 245-246):

“Q. Where, Mr. Regan, did Mr. Cox say he was going to move to? A. To Reno, Nevada.

Q. What else did he say with respect to his moving to Reno, Nevada? A. On Memorial Day?

Q. Yes. A. Well, prior to Memorial Day, he had advised me that he wanted me to accept his resignation as Chairman of the Union County Committee of the American Legion.

Q. What reason did he assign for leaving at that time? A. I tried to talk him out of it but he told me that he could not continue; that he was ill; and was going to Reno, Nevada, because of his health. That is what brought about the conversation on Memorial Day. He first asked me to accept his resignation some time in the middle of May; it was on a Sunday, but I don't recall the exact date; and then on Memorial Day, after the Veterans' Services in Hillside, I saw him there with Mr. Kirkpatrick. We both tried to get him to change his mind and continue as my Membership Chairman of the Union County Committee.

Q. Did he say anything about coming back to New Jersey? A. *He said he was not coming back at that time.*” (Italics ours.)

This testimony was corroborated by Robert C. Kirkpatrick, a disinterested witness. (S. C., bottom p. 246, *et seq.*)

That defendant-appellant intended to definitely establish himself in Reno, Nevada, was further corroborated by the depositions of two Nevada residents, Helen Hash, (S. C., p. 226, *et seq.*) and Emile J. Gezelin (S. C., p. 228, *et seq.*)

Mr. Gezelin, Deputy State Superintendent of Public Instruction of the Fourth Supervisory District of Nevada, a disinterested witness, testified that the defendant-appellant made application for a position in the Nevada School System, on October 25, 1943, stating that he was available to begin work December 1, 1943, or sooner. Said witness stated that he had met Mr. Cox for the first time when he interviewed him in Reno (S. C., pp. 232-234.)

The testimony further disclosed that defendant-appellant had made arrangements with relatives to financially assist him in Nevada until he was in a position to take employment and become self-supporting.

It is true that defendant-appellant remarried after he obtained his final decree and it is also true that defendant-appellant corresponded with his present wife (the former Mildred Hamilton) while he resided in Reno, Nevada.

There was introduced into evidence, on behalf of the complainant-respondent, a letter (S. C., p. 84) from the defendant-appellant to the present Mrs. Cox, which the complainant-respondent's solicitor thought to be very damaging to the defendant-appellant. However, said letter clearly indicates the bona fides of the defendant-appellant's residence in Reno, Nevada, and proves the *animus manendi*. He wrote from Reno, Nevada, on August 26, 1943, "\* \* \* If you can't go on without me and want me, I will welcome you with open arms as soon as you can get to me \* \* \*."

“As far as the job goes, Pal, between you and me, I am counting that out \* \* \*.” Nowhere in said letter (which was undoubtedly intercepted by some one on behalf of the complainant-respondent) is there a single statement indicating either a pre-conceived intention to obtain a divorce in Nevada, or that defendant-appellant did not intend to permanently remain in Nevada, or that he ever intended to come back to New Jersey, or to go elsewhere. This letter proves conclusively that there was no mental reservation on the part of the defendant-appellant in establishing his domicile in Reno, Nevada.

To hold that defendant-appellant had a preconceived intention to obtain a Nevada decree, this Court must find that every single bit of defendant-appellant’s testimony, as well as the testimony of his corroborating witnesses, is untrue, then conclude that the contrary is the fact, though there be no evidence to support it.

There is no denying the fact that the defendant-appellant abandoned New Jersey as his residence with the *animus non revertendi*. After his sister importuned him to come back to defend certain actions, (under which his pension rights and retirement benefits, upon which he intended to depend for his income during his disability, were attached) he returned to New Jersey to protect his rights, and to “try to clear my good name”. It is clear that in returning to New Jersey, *he was motivated by the desire to protect his pension rights.*

Upon defendant-appellant’s return to New Jersey, he was arrested under a writ of *ne exeat*. Sequestration proceedings had been instituted against his pension rights and other assets, and he was obliged to remain in New Jersey pending

the outcome of this litigation. *This testimony stands uncontradicted from any competent source.*

On November 25, 1943, after defendant-appellant returned to New Jersey to protect his pension rights, he appeared before the Board of Education of Hillside, where he read a prepared statement (S. C., p. 257) addressed to his application for temporary reinstatement to his position of principal, while he was defending himself against his wife's several actions. Said statement clearly tells the story.

*The defendant-appellant actually applied and was granted retirement, for physical disability, by the Teachers' and Annuity Pension Fund of New Jersey, effective January 1, 1945 (See answering affidavit filed December 5, 1944).* This one fact stands out as decisive of the question concerning the defendant-appellant's intention to establish a domicile in Nevada. No clear and convincing proof was offered showing that defendant-appellant departed from this jurisdiction in order to obtain a divorce, or with the intent to evade our divorce statute, or that his actions were prompted by defendant-appellant's lack of intention to acquire a domicile in Nevada, or that he was not physically and continuously within the jurisdiction of Nevada during the period required for domicile by the statutes of that State, or that his intentions to remain there were not made in good faith. *The test and governing legal principle laid down in Sprague v. Sprague, supra, are fully met in the instant case, and said case is cited as being in support of defendant-appellant's Nevada decree. In Sprague v. Sprague, supra, the Court found as a fact "that although he did not then intend to return to New Jersey, he had not made up his mind where his new domicile would be. He was financially unable to settle permanently in*

Nevada or anywhere else until he could succeed in securing a position \* \* \*. He hoped (without any assurance whatsoever) that after securing a divorce he might become associated with some suitable institution either in Nevada or *elsewhere in the northwest \* \* \**” (Italics ours.)

“When he left New Jersey, therefore, his intention to establish a domicile elsewhere was *indefinite and uncertain as to any particular place*. Where that place might prove to be was dependent upon the location of his future professional activities, at that time a highly uncertain contingency.” (Italics ours.)

*In the case under appeal, the defendant-appellant's intention to make Reno, Nevada, his new home was unqualified and not conditioned on the happening of a future event*. He suffered from cancer, resigned his official connections with his school and fraternal organizations, and had the financial ability, through the retirement pay which he expected, and the financial assistance of his family, to maintain himself in Nevada where he moved and acquired a change of domicile with the present intention of making Nevada his home thenceforth. *He concealed nothing from the Nevada Courts* and the adjudication of domicile by the Nevada Court was not based upon any misrepresentation or suppression of essential facts and is, therefore, under the *Sprague* case, *supra*, binding upon the Courts of New Jersey.

In the case of *Shapiro v. Shapiro*, which is unreported, (Docket 108/27) decided by the Chancellor (Advisory Master Francis Child sitting) the Court stated:

“The wife in this case filed her petition charging that the defendant had deserted her on the 27th day of February, 1930, when both parties were residents of the State of New

York. The defendant on or about February 27, 1930, left the petitioner, first coming to Passaic, New Jersey, where he remained at his uncle's residence for a few days, then going to Lakewood, New Jersey, where he remained a few days, and then going to McKeesport, Pennsylvania, to Pittsburgh, Pennsylvania, and then going by comparatively short journeys to different states, finally winding up in Reno, Nevada, arriving there on or about the 29th day of April, 1930. On July 30, 1930, he instituted suit in the Second Judicial District Court of the State of Nevada in and for the County of Washoe against the present petitioner, the basis of said suit being extreme cruelty. Service of process was made upon the present petitioner personally in the City of New York. Thereafter, on or about October 27, 1930, a decree of divorce was granted by the Nevada court on the ground of extreme cruelty.

"This decree, it is asserted, constitutes a bar to the petitioner's right to relief in the courts of this state. The petitioner in the present suit claims that the decree of the Nevada court is invalid in that the husband's residence in Nevada was fraudulent, that he went there for the purpose of obtaining a decree; and as evidence of this she shows that the defendant husband left Nevada shortly after obtaining the decree and became a resident of the State of New Jersey on or about January 1, 1931.

"The burden is upon the present petitioner of showing that the defendant husband was guilty of fraud in obtaining the Nevada decree, and that the decree so obtained is invalid.

"There can be no question but that the courts of Nevada had jurisdiction over the subject matter, that is, the granting of a divorce. The petitioning wife was duly served with process in conformity with the laws of the State of Nevada. She had ample opportunity either to enter a defense to the action in the courts of Nevada or to apply for an

injunction in the courts of New York restraining the defendant from prosecuting the Nevada suit. She did neither.

“It has been held that where the actual notice of the pendency of a suit has been given to a defendant and reasonable opportunity afforded to put in a defense thereto and such suit is for a cause which the public policy of the state in which the judgment obtained in said suit is sought to be enforced recognizes as a sufficient cause for divorce the judgment so obtained must be recognized by the courts of this state. *Felt v. Felt*, 59 N. J. Eq. 607. The statement of law contained in the case just cited is subject, of course, to the qualification that no fraud in connection with a jurisdictional requirement, more specifically, residence, has been perpetrated on the court in which the judgment sought to be enforced was entered.

“Fraud will not be presumed with respect to judgments obtained in a sister state, but must be established by clear and unequivocal proof. *Field v. Field*, 103 N. J. Eq. 174; *Pahy v. Pahy*, 107 N. J. Eq. 538.

“I am unable to find from the evidence in this case that this defendant husband left the State of New York with the intention of not establishing a *bona fide* residence in the State of Nevada or some other state. In fact, a review of the testimony does not show conclusively at all that at the time the defendant left New York he knew where he was going or what he was going to do. He had abandoned a position that was permanent and was paying him \$55 a week; he had little or no money and eked out a precarious existence in the various cities in which he stopped before reaching Reno, Nevada; he sought employment in these cities as a pharmacist, his profession; he took any sort of employment that would enable him to exist; he found that in order to obtain employment as a pharmacist he must have passed the examination required for pharmacists in the various states. He passed such examinations in the States of

California and Nevada, and holds pharmacist's licenses issued by those states.

"He testified that after obtaining the decree for divorce he went to the State of California, and thence back to Nevada, going back and forth between those states, as he says, seeking employment. Being unsuccessful in that, he came to New Jersey about January 1, 1931, and is now employed in a drugstore owned by his parents in the City of Newark.

"As I have stated before, the burden of proof showing the fraudulent residence of the defendant husband in the State of Nevada is upon the petitioner, and I am unable to find that she has sustained this burden. A decree of divorce obtained in a sister state is presumed to be valid, and the burden of showing that such decree is invalid is upon the party asserting its invalidity. *Feickert v. Feickert*, 98 N. J. Eq. 444, at 448; *Cole v. Cole*, 96 N. J. Eq. 206.

"For the reasons above stated the petition will be dismissed."

Assuming that the complainant-respondent has presented testimony which may lead one to entertain a suspicion as to the bone fides of the defendant-appellant's residence in Nevada, such suspicion is insufficient proof of the alleged fraud. In *Schneider v. Schneider*, 103 N. J. Eq. 149, it is stated:

"\* \* \* But while the evidence establishes that defendant herein deserted petitioner herein in this State and strongly suggests that he subsequently went to Nevada in order to obtain a divorce from her for the cause therein alleged by him, which cause (extreme cruelty) necessarily occurred, if at all, in this State, and also strongly suggests that defendant herein did not obtain a bona fide residence in Nevada, I am unable to determine that the evidence establishes either of these material facts with any degree of certainty essential to support an affirmative finding to that effect."

The reasoning in this case has been upheld by the Court of Errors and Appeals in *Pahy v. Pahy*, *supra*, where the Court said:

“It may be conceded that they raise a suspicion that the purpose of the husband in going to Nevada was to obtain a divorce and that he had no intention of becoming a permanent resident of that State; but mere suspicion is not enough to justify treating the decree of the Nevada Court as a nullity. The law is settled in this State that, where the Court in which the divorce was obtained has jurisdiction over the subject matter and its powers are limited to the granting of relief to a resident of the State, its adjudication that complainant is such resident is final, unless it is made to appear that the Court was led to this conclusion by fraud perpetrated upon it by the complainant; and that fraud is a fact that will never be presumed but must always be clearly and convincingly proved.”

The conclusions reached in the above cases follow naturally from recognition by the Courts of our several States of the rights of individuals to change their domiciles.

Judge Vroom, speaking for the Court of Errors and Appeals, in *Wallace v. Wallace*, (E. & A. 1903) 65 N. J. Eq. 359; spoke thus:

“\* \* \* I concur entirely in the principle laid down by the Special Master in this case that a person may legitimately move to another State in order to avail himself of the laws of that State, and this includes, necessarily, the right to remove into the jurisdiction of this State for the purpose of procuring a divorce, the only requirements being absolutely good faith in taking up of such residence and the *animus manendi*; in other words, the *factum* of residence and the *animus manendi* prove the domicile.”

This is the basis for the rule imposing upon the complainant-respondent herein the burden of proving by clear and convincing proof that the defendant-appellant went to Nevada not as he rightfully could, shown under the reasoning in *Wallace v. Wallace, supra*, but *solely* to procure a divorce, and then leave that State, without ever having intended to abandon his residence in New Jersey, and establish it in Nevada.

The testimony presented at the hearing of this cause falls short by far of proof of fraud; much less is fraud proved clearly and unequivocally.

The defendant-appellant suffered from cancer, which condition became progressively worse. This is admitted by the complainant-respondent. (S. C., p. 201). While there is considerable dispute in the testimony, many important facts dealing with the defendant-appellant's change of domicile from the State of New Jersey to the State of Nevada are uncontroverted.

The defendant-appellant testified that his life with complainant-respondent was a wretched one; that he was subjected to "constant nagging"; "berating"; "belittling"; and that, on or about September, 1941, he was threatened by complainant-respondent with a knife, saying, "I could kill you" (S. C., p. 148).

Said treatment of him by complainant-respondent caused said defendant-appellant to resign official positions held by him in various organizations and to surrender his domicile in New Jersey and to establish a new domicile in Nevada. An examination of the testimony will show ample corroboration that the defendant-appellant's domicile in Nevada was *bona fide*.

After the defendant-appellant obtained his final decree in Nevada against the complainant-re-

spondent in October, 1943, the defendant-appellant continued to reside in Reno, Nevada; obtained an automobile driver's license, so as to enable him to accept a proposed position with a correspondence school, which work would have required a great deal of driving on his part (S. C., p. 263).

The defendant-appellant's testimony (S. C., p. 144, *et seq.*), indicates his state of mind when he decided to abandon his New Jersey domicile and establish his Nevada domicile:

“Q. What did you mean by that? A. Well, as far back as 1939 she told me it was too bad that God hadn't taken me when I was sick in 1936 with the cancerous condition; and in 1940 she told me to get the hell out; she begged me to go to my friend, Mr. Hofmann, and make some sort of agreement for divorce, for maintenance or whatever it was that was in her mind; she nagged and berated me on every occasion; and in September, 1941, for four days, from the 17th to the 21st, I heard nothing but a continual outpouring of abuse; I was called the vilest possible names in the presence of my daughter, who should not have known of this condition, certainly should not have heard it coming out the mouth of her mother..”

Defendant-appellant returned to New Jersey after his sister, Mrs. Washburn, advised him that the sheriff had attached, among other things, “my pension fund” (S. C., p. 157). That the defendant-appellant returned to New Jersey to protect his pension and annuity fund rights to which he was about to resort in his application for retirement for physical disability, appears from his testimony (S. C., p. 102, *et seq.*):

“Q. You are sure she (Edith Washburn) spoke of your pension fund rights? A. Yes, sir, that is what concerned me a great deal.

Q. What did you decide to do? A. I decided that I would come here and find out what that was all about and try to clear my good name.

Q. Did anybody else write you about this action that was pending, too; did you receive a newspaper clipping? A. I received a newspaper clipping; I don't remember who sent it.

Q. Were you advised that a sequestrator had been appointed? A. It wasn't stated in that language; it was stated that they were after my money, the pension and annuity fund, seeking to get hold of my contingent annuity fund; the sheriff was after that. There were certain court actions that weren't made clear to me at that time" (S. C., p. 158).

Corroborative testimony on this point was given by defendant's sister, Edith Washburn (S. C., pp. 272-273).

When defendant-appellant arrived in New Jersey on or about November 7, 1943, he was taken into custody under a writ of *ne exeat* and also found that all of his pension fund rights and other equities which he had in the State of New Jersey were taken over by a sequestrator (S. C., p. 158).

Being without funds, except that money which he was able to borrow, defendant-appellant sought and received reinstatement to his position in the Hillside High School. This action was taken by defendant-appellant in order to enable him to defend the various legal actions which had been instituted against him, and in order to preserve his pension and annuity rights. Here is his testimony in this connection:

"Q. Now why did you ask for reinstatement in your school position? A. Well, after all, I was here under compulsion and I had

to live. By that time I was borrowing money because my salary checks were tied up, I was borrowing money from my attorney and I had to live, and consequently I resumed my position, I reported to work; and furthermore, as I first stated before, it seemed the logical condition, since I was here under compulsion, I wanted to get their O. K. and the best thing to do was to work while I was here; I really had to live and to get those recommendations that I wanted.

Q. At that time what were your plans with respect to going back to Reno, Nevada? A. To go back as soon as I was able to leave; as soon as I was released.

Q. As soon as these actions had been disposed of? A. Yes." (S. C., p. 159.)

The Court's attention is directed to a statement read by the defendant-appellant to the Board of Education of Hillside, New Jersey, on November 15, 1943, which discloses the defendant-appellant's purpose in coming back to the State of New Jersey (S. C., p. 260). This is corroborated by Eugene F. Hofmann, Esquire, a reputable member of the New Jersey Bar, and the then Surrogate of Essex County, New Jersey (S. C., p. 237, *et seq.*)

Jean White, a member of the Board of Education of Hillside, contradicted some of the defendant-appellant's testimony. She, however, also admitted her prejudice against the defendant-appellant, and admitted that she felt that he should be out of the school system:

"Q. Is it not a fact that you, because of certain information that you had, did not want Mr. Cox in the school system? A. You are right.

Q. I am right, am I not? A. Yes." (S. C., p. 288.)

Harlow W. Curtis, another witness, produced on behalf of complainant-respondent, thus indicated his bias against defendant-appellant:

“Q. As a result of that, you felt that there was no place for him (defendant-appellant) in the school system, did you not? A. Yes.

Q. And you so expressed yourself, did you not? A. I did.” (S. C., p. 291.)

An examination of the testimony quickly leads to the conclusion that the complainant-respondent has not sustained the burden imposed upon her by the rule established in the cases *supra*.

## POINT 2.

**Virginia Cox, the daughter of the parties, having attained the age of legal earning capacity, the Court below erred in making the order requiring the payment of \$15.00 per week for her support.**

The Order made in the Court below for the payment of \$15.00 per week by defendant-appellant for the support and maintenance of his seventeen-year-old daughter, Virginia, in custody of the complainant-respondent, is illegal and not in accordance with the testimony of the case. While it is admitted that a father is under the duty of supporting his minor child, the child in question is full grown, a high school graduate, and is presently attending college. She is capable of supporting herself, while defendant-appellant is in poor health, and, as the affidavit, dated December 4, 1944, (which affidavit is before the Court) shows he is retired on a small pension by reason of his poor health. The testimony further shows that the daughter, Virginia, was employed by the Hillside Township Board of Education during the

summer of 1944, earning \$25.00 per week (S. C., pp. 187-188). There is, therefore, no legal basis for the decision of the Court of Chancery in ordering this payment by the defendant-appellant. In the case of *Ziesel v. Ziesel*, decided by our Court of Errors and Appeals, in 1921, 93 N. J. Eq. 153, it was held that the father is the one to decide what schooling a child should get and the father is under no legal duty to provide a boarding-school education for a sixteen-year-old son. The Court cited the case of *Streitwolf v. Streitwolf* (1899), 58 N. J. Eq. 570. This was also a decision of our Court of Errors and Appeals. In a suit for limited divorce, the wife asked for additional funds to send the son of the parties to law school. The application was denied by the Court. The son was nineteen years of age. In this case, the Court says: (At page 576)

\* \* \* "It may be further observed that the Courts, in determining the amount of alimony have had regard to the age and earning capacity of the minor for whose support and education the wife asks an allowance. In *Snover v. Snover*, 2 Beas. 13 N. J., Eq. 261; it was directed by Chancellor Green that so much of an award of permanent alimony as was designed for the support of a daughter should cease when she attains the age of 18. In *Amos v. Amos*, 3 Gr. Ch., 4 N. J. Eq. 171; Chancellor William Pennington said, 'where children are grown up, it is not proper to make an allowance on their account,' having evidently in mind their arrival, not at legal majority, but at a condition of earning capacity."

It is, therefore, respectfully urged that the defendant-appellant is not obliged to pay for the higher education (college) of his daughter, Virginia, and that the Order granting same should be vacated and declared null and void.

## POINT 3.

**The defendant-appellant's Nevada decree is within the protection of the United States Constitution, Article 4, Section 1.**

Under this point, the defendant-appellant will argue the reason Numbered "B", set forth in his petition of appeal (S. C., p. 2).

The United States Supreme Court, in upholding the rulings previously made that the judgment of a State Court should have the same credit, validity, and effect in any other Court in the United States which it had where it was pronounced. The United States Constitution and Federal Statutes require that not *some*, but *full*, faith and credit be given to judgments of a State Court. (*Williams v. State of North Carolina* (1942), 317 U. S., 287, 63 S. Ct. 207, 87L, Ed. 279.)

There has been a suggestion that the overruling in the *Williams* case *supra*, of *Haddock v. Haddock* (1905) 201 U. S. 562, 26 S. Ct. 525, 50L, Ed. 867, was *dictum* only. Technically, this may be true. It is, however, a point of decidedly minor importance. The prevailing opinion in the *Williams* case clearly showed that the present United States Supreme Court was of the opinion that the *Haddock* case was wrongfully decided and the ruling made was exactly the opposite to that in the *Haddock* case.

Prior to the decision in the *Williams* case, a distinction was made with regard to the right of a party to a marriage to change his or her domicile depending upon which deserted the other. There are rulings indicating that, where one spouse abandoned the matrimonial domicile and went to another State and became domiciled there, a de-

creed of divorce obtained by him in the State to which he went would have no extra-territorial effect. On the other hand, the spouse who was abandoned could change her domicile and could sue there and obtain a divorce that would be recognized as valid. *This rule has now, obviously, been ended by the decision in the Williams case.* Said case clearly indicates that the extension of the power of the State under the full faith and credit clause of the Federal Constitution does not depend upon whether or not the person who had removed from the matrimonial domicile had lawfully done so. Today, under the *Williams* case, *supra*, either party to the marriage may, wrongfully or not, change his or her domicile and, if said domicile is valid and bona fide, may at the place of that domicile obtain a decree for divorce which is entitled to full faith and credit in all the States.

The decisions throughout our country seem generally to hold that if the judgment of a foreign State challenged in another, on its face appears to be a record of a Court of general jurisdiction, such jurisdiction over the cause and the parties is to be presumed unless disproved by extrinsic evidence or by the record itself. (*Adam v. Saenger*, (1937) 303 U. S. 59, 58 S. Ct. 454, 82 L. ed. 649). In such case, the full faith and credit clause of the Federal Constitution precludes any inquiry into the merits of the cause of action, the logic or consistency of the decision or the validity of the legal principles on which the judgment is based. *Milliken v. Meyer*, (1940) 311 U. S. 457, 61 S. Ct. 339, 85 L. ed. 278; *Fauntelroy v. Lum*, (1907), 210 U. S. 230, 28 S. Ct. 641, 52 L. ed. 1039; *Titus v. Wallick*, (1938) 306 U. S. 282, 59 S. Ct. 557, 83 L. ed. 653.

### Conclusions.

It is, therefore, respectfully submitted that the decree of the Court of Chancery declaring defendant-appellant's Nevada decree to be of no force or effect in New Jersey should be reversed and complainant's bill for separate maintenance should be dismissed as not being based on law or the evidence submitted in the case.

Respectfully submitted,

EUGENE F. HOFFMANN,  
Solicitor for Defendant-Appellant.

JULES E. TEPPER,  
Of Counsel.

**Exhibit "A".****Answering Affidavit of Defendant-Appellant.**

(Filed December 5, 1944.)

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

Between

VIOLA E. COX,  
Complainant-Respondent,

and

WILBUR HARRY COX,  
Defendant-Appellant.On Bill to Annul  
and on Bill for  
Maintenance.On Appeal from  
Final Decree.Petition for  
Alimony and  
Suit Moneys.STATE OF NEW JERSEY, }  
COUNTY OF ESSEX. } ss.:

WILBUR HARRY COX, of full age, being duly sworn, according to law, upon his oath, deposes and says that:

1. I am the defendant-appellant herein.
2. My attention has been called to the petition for alimony and suit money filed in this matter.
3. After the complainant-respondent filed her bill for separate maintenance, she applied to the Chancellor for alimony *pendente lite* and counsel fee, which was denied by the court, and on the 7th day of January, 1944, an order was entered continuing the application for alimony *pendente lite* to the date of final hearing. At the same time I was ordered to pay the sum of \$15.00 a week for the support of our daughter, Virginia Cox, then in her custody. I have complied to the best of my ability with the court's order to pay \$15.00 for

Virginia's support, and recently forwarded my check which pays her up to December 12, 1944. Virginia will be enghteen years of age on the 24th day of December, 1944, and is presently a college student.

4. While I would like to afford my said daughter a college education, my physical condition and my lack of funds, as hereinafter explained, makes it impossible for me to pay for my said daughter's higher education. I am advised by my solicitor that I am not legally obliged to send my daughter through college, but notwithstanding said advice I would very gladly and wholeheartedly permit her to complete her college education were I in the financial position to do so.

5. I am suffering from cancer and nervous exhaustion and have recently been retired because of physical disability, under the provisions of the Teacher's Pension Annuity Fund of New Jersey. Before being so retired I was in receipt of an annual income of \$4,600.00, plus a bonus of \$200.00, as a high school principal. My retirement pay as of January 1, 1945, the date said retirement becomes effective, will be approximately \$1,500.00 annually. (This is approximately \$3,300.00 less than my former income.) Said income of approximately \$1,500.00 is insufficient to take care of my medical expenses, the cost of maintaining my household, and my personal requirements. I am, as I have stated, suffering from cancer and nervous exhaustion and I am informed that for some time to come I will be required to undergo medical treatment.

6. The said Viola E. Cox, complainant-respondent, has been and is steadily employed at the Western Electric Company, of New Jersey, and earns approximately \$40.00 per week. This is much more than I will receive as of January 1, 1945. She re-

sides with her father and, while I am in no position to prove that she does not pay \$65.00 a month for rent and board, as alleged in her affidavit, I am convinced that she is well provided for at least until this case has been finally determined by this honorable court.

7. Within the approximate period of the past two months the said Viola E. Cox has received in cash \$1,197.00, the proceeds of property which she and I, jointly, sold. This money she has on hand in addition to the \$15.00 per week which I have been paying to her for the support of Virginia, our daughter.

8. I owe to creditors approximately \$2,900.00 as follows:

Guy L. Hamilton, Principal and interest on loan .....	\$746.56
United States Government, Principal and interest on loan .....	679.79
Shenandoah Life Insurance Co., Principal and interest on loan .....	993.27
Teachers Credit Union, Principal and interest on loan .....	121.20
Personal Finance, Principal and interest on loan .....	80.98
Willard Washburn, Loan .....	200.00
Edith Washburn, Loan .....	58.00
To my father's estate, Loan .....	200.00

9. I am utterly destitute and without funds and have no assets aside from my pay as a principal of a high school, which ceases this month, after which, as of January 1, 1945, my annual retirement pay of \$1,500.00 begins.

10. I owe past due current bills amounting to \$306.06.

11. At the time that I was compelled to leave my wife because of her cruel and inhuman treatment of me I incurred many debts, which remain unpaid, for medical and other expenses.

12. The said Viola E. Cox, the complainant-respondent, is possessed of war bonds (which she admitted in her testimony when this case was tried in the Chancery Court), a bank account, and the \$1,197.00 which she recently received as the proceeds from the sale of property which she and I jointly owned. She has sufficient money with which to pay the cost of the printing and her other expenses pending the determination of my appeal from the decree of the Court of Chancery.

WILBUR HARRY COX.  
(Wilbur Harry Cox.)

Sworn and Subscribed to before me }  
this 4th day of December, 1944. }

ESTHER McDEVITT,  
(Esther McDevitt),  
A Notary Public of New Jersey.

11. At the time that I was compelled to leave my wife because of her cruel and inhuman treatment of me I incurred many debts, which remain unpaid, for medical and other expenses.

12. The said Viola E. Cox, the complainant-respondent, is possessed of war bonds (which she admitted in her testimony when this case was tried in the Chancery Court), a bank account and the \$1,157.00 which she recently received as the proceeds from the sale of property which she had I jointly owned. She has sufficient money with which to pay the cost of the printing and her other expenses pending the determination of my appeal from the decree of the Court of Chancery.

Witness Harry Cox.  
(William Harry Cox.)

Sworn and subscribed to before me }  
this 4th day of December, 1944. }

Esther McDavitt,  
(Esther McDavitt),  
A Notary Public of New Jersey.

**New Jersey Court of Errors and Appeals**

Between  
 VIOLA E. COX,  
 Complainant-Respondent,  
 —and—  
 WILBUR HARRY COX,  
 Defendant-Appellant.

On Bill for  
 Separate  
 Maintenance.  
 On Appeal from  
 the Court of  
 Chancery.  
 Sat Below:  
 Campbell, C.  
 Herr, A. M.

**BRIEF OF COMPLAINANT-RESPONDENT.**

**Statement of Issue.**

This case presents an appeal from a Final Decree of the Court of Chancery (S. C., p. 26) which decree provides that the decree of divorce obtained by defendant-appellant in the State of Nevada against complainant-respondent be declared null and void and of no force or effect in this State; that defendant-appellant pay complainant-respondent alimony in the annual sum of \$1560.00 in equal weekly installments of \$30.00, \$15.00 of which shall be for the support and maintenance of Virginia Cox, a daughter, and further that the defendant-appellant pay the costs of the various suits to be taxed and the sum of \$750.00 counsel fees, from which latter allowance no appeal is made.

The matter was brought on by a Bill for Separate Maintenance (S. C., p. 10) and by Addition by Way of Supplement to Null Decree of Divorce (S. C., p. 7) and Answers (S. C., p. 15 and p 18). The suits were consolidated by Order of the Court of Chancery (S. C., p. 13).

Complainant-respondent agrees with the defendant-appellant that the issue presented is the

validity of the decree of divorce obtained by defendant-appellant in the State of Nevada and that the validity of the Nevada Divorce depends upon the question of whether defendant-appellant established a bona fide domicile in the State of Nevada with the *animus manendi*.

As in the case of *Sprague vs. Sprague*, 131, N. J. Eq. 104, Court of Errors and Appeals, January 9, 1942, defendant-appellant rests his defense upon his Nevada Decree and presents no matters in justification of her charges of abandonment and refusal to maintain and support. See Answers (S. C., p. 15 and 18), also (S. C., 107-108).

Complainant-respondent contends that clearly and unequivocally she has proven defendant-appellant did not establish a bona fide domicile within the State of Nevada with the *animus manendi* and that he imposed a fraud upon said sister state with respect to his domicile in that state and therefore she is entitled to have the decree of our Court of Chancery affirmed.

### Statement of Facts.

Much emphasis has been placed by defendant-appellant upon the testimony that he had been afflicted with cancer and upon his testimony, uncorroborated, which he repeatedly refers to in his brief, that complainant-respondent had subjected him to constant 'nagging,' 'berating' and 'belittling'. This was all denied by complainant-respondent and by the daughter (S. C., p. 193; p. 188; p. 216) except for the fact that defendant-appellant had had an operation for cancer in 1936. Throughout the course of the trial and in his brief, he repeatedly refers to his physical condition and to his wife's treatment of him. No-

where in the testimony does it appear that defendant-appellant was suffering from cancer during 1943 when he went to Nevada or that he has been suffering from cancer since his operation in 1936, except by his own statements.

Not one scintilla of medical testimony was brought out to prove his statements although he was examined by Dr. Arthur G. Pilch as late as September 16 and 20, 1943 (S. C., p. 70) who stated (S. C., p. 72):

“Mr. Cox gave a history of having a testicle removed by teratoma some sixteen years or so previous; this, he said, was done by Doctor Carl Ill. When he came to see me he complained of having intestinal grippe during the summer; he was in poor condition and he had lost a good deal of weight. To me it seemed as if he was having nervous kidney pains and I told him inasmuch as he lost so much weight, the only way to regain it was by rest, and I suggested that he take a needed rest. The next time I saw Mr. Cox was on the 20th of September. He weighed 138 pounds. His usual weight, as he explained it, was 154. And I told him that it was about time he went away. I wrote a letter to the Board of Education and suggested that, and told them that he was to have a leave of absence, that he was ill.”

These examinations took place while defendant-appellant was back in New Jersey, having filed his proceedings for divorce in Reno on September 7, 1943 just a week or two previous. He was well enough to return to Reno on or about September 29, 1943 and to attend the hearing on October 15, 1943 and to then journey back to Hillside arriving November 7, 1943. He was well enough to resume his duties as principal of Hillside High School on November 8, 1943 and continue in that position

until the end of 1944 (S. C., p. 80-81) (defendant-appellant's brief, p. 9) (defendant-appellant's affidavit December 4, 1944).

Defendant-appellant did not call a single witness to corroborate his story that complainant-respondent constantly "nagged", "berated", and "belittled" him or that she ever threatened to kill him. All of this testimony was foreign to the issue in this case. It is very evident that it was introduced to enlist the sympathy of the Court of Chancery and is repeated in defendant-appellant's brief to enlist the sympathy of this honorable court.

Defendant-appellant did not raise the issue of justification in his answers or at the trial. In a desperate plight, he saw fit to make much of these claims all uncorroborated. Complainant-respondent would pass this part of the testimony and its repetition in defendant-appellant's brief except for the fact that the same has been so emphasized by defendant-appellant.

The facts concerning the real issue presented in this case are these:

Complainant-respondent had been having marital difficulties with his wife, and, in fact, he was in love with another woman. The testimony (S. C., pp. 191-192) and his letter written from Reno, Nevada, dated August 26, 1943, addressed "Mildred Dearest" (S. C., pp. 84-88) unquestionably shows that this was so. This letter also shows that his affair with Mildred Hamilton, the woman he married on November 6, 1943 (S. C., p. 82) three weeks after his Reno decree, obtained October 15, 1943, and almost immediately after his return East, had been going on for some time. We quote, "If our affair becomes a big item of Town Talk, maybe the P. O. people will be watch-

ing for Reno postmarks. But I guess we're overfearful. I really don't give a darn except that the more we wave a "red flag" in her face, the more she'll fight back—damn her" (S. C., p. 87). Answers to questions asked him by the court (S. C., pp. 128-130) definitely show his frame of mind before he went to Reno and while he was in Reno. They speak for themselves. We quote some of the questions and answers:

"Q. I take it that your life with your wife was not a happy one? A. No, sir; it was not.

Q. Had you thought of divorcing her before you left the State of New Jersey? A. No, sir; I thought of going to Reno to establish a domicile.

Q. Not for the purpose of getting a divorce? A. My primary purpose was to get away, to get out of that situation.

Q. Why did you pick out Nevada as a future home? A. Well, in the first place, it is mountain country; I like a high climate, and I have heard lots of fine things about the hot springs and even temperature almost all the year round except for the winter months and the fine amusements and attractions of the city.

Q. The fact that the divorce laws out there are reputed to be rather lax did not have anything to do with your making up your mind to go there? A. No, sir; because I have always heard that there were other states where you could get a divorce in the same period of time.

Q. Well, within two weeks or less from the time you arrived in Reno, you did make up your mind to get a divorce? A. Yes.

Q. What was it that led you to make up your mind in those two weeks to get a divorce when you hadn't thought of that condition when you left New Jersey? A. I was determined to get out of this situation.

Q. The situation with your wife? A. Yes, sir.

Q. Weren't you just as determined when you left New Jersey to get out of that situation as you were two weeks later, determined to get away from that situation? A. Yes."

His unqualified answer "yes" to the last question needs no explanation. Many other parts of his testimony show his actual frame of mind, for example:

"Q. Do you deny that you told her you did not love her? A. I told her that she had destroyed all my respect for her" (S. C., p. 161).

Another example may be found in his letter to his daughter from Reno, Nevada (S. C., p. 120). This letter is quoted at length later in this brief.

We will briefly review in chronological order the *actions* of defendant-appellant from early in the summer of 1943 up to and including his return to Hillside, New Jersey, where he resumed his position as principal of Hillside High School and was so employed at the time of the trial (S. C., pp. 80-81).

On July 8, 1943, defendant-appellant wrote the following letter to Mr. Woodfield, the supervising-principal of the Hillside Schools (Exhibit C-4, S. C., p. 41):

"For the past two months I have spent several week-ends and many extra hours preparing the schedule for 1943-1944. As a result I have nearly completed the work requiring my presence in the building this summer. What work remains can be done anywhere. If I desire it, may I have an additional three or four weeks of vacation? I assure you of my untiring service in 1943-1944."

The last sentence in this letter "I assure you of my untiring service in 1943-1944 unquestionably shows that defendant-appellant intended to return and assume his duties as principal of Hillside High School, which he did, as we later point out.

On July 17, 1943, nine days after the above letter was written, defendant-appellant called on his wife and endeavored to persuade her to go to Reno for a divorce. He had been away from home for several days. When she refused, he said, "If you don't get it, I will", and in reply to the remark put to him by complainant-respondent "I don't know what you are going to get it on", he replied, "I don't know either, but I will make something up. I am going to Reno for a divorce" (S. C., p. 193).

Although he denied the exact conversation above set forth, he admitted on cross examination that he had discussed a divorce with his wife on the 17th day of July, 1943 (S. C., p. 163).

On July 20, 1943, three days later, defendant-appellant was on his way to Reno, in fact, he performed his duties as principal of Hillside High School up to and including July 20, 1943 (S. C., pp. 89-90). He admitted that he interviewed an attorney about obtaining a divorce about ten days or two weeks after he got to Reno. He stated that in that interval, he had been sick (S. C., p. 130). Six and one half weeks after he arrived in Reno, he instituted his divorce suit on September 7, 1943 (S. C., p. 297) Exhibit C-1.

On September 12, 1943, he arrived in Hillside, New Jersey, and on September 13 resumed his duties as principal of Hillside High School, where he remained for several days until he obtained sick leave (S. C., p. 68) (S. C., pp. 79-80). He

then returned to Reno about September 29, 1943 (S. C., p. 80).

His divorce hearing in Reno, Nevada, came up for trial on October 15, 1943, on which date, he was awarded a decree (S. C., p. 80; Exhibit C-1, p. 307). He returned to Hillside on November 7, 1943 and resumed his duties as principal of Hillside High School on November 8, 1943, at which position he was continuously employed from that date until and during the trial (S. C., pp. 80-81). By his own admission in his brief and affidavit of December 4, 1944, he did not resign from said position until the end of 1944. It is significant to point out that he married Mildred Hamilton in New York on November 6, 1943 (S. C., p. 82) and also that he was appointed in December, 1943, as Junior Deacon of the lodge from which he stated he had resigned (S. C., p. 281) which position was a promotion from his previous office as Senior Master of Ceremonies.

### ANSWER TO POINT I.

**The determination of the Court of Chancery that defendant-appellant procured his Nevada decree by fraud was legal, proper and based on the overwhelming weight of evidence.**

A careful analysis of the testimony discloses that practically all the evidence supporting defendant-appellant's contention that he went to Reno, Nevada, to establish a domicile with the *animus manendi* consists of declarations made by him before he left, while in Reno and on the witness stand. These were chiefly oral statements made to friends and relatives, except the statements made to Helen Hash and Emile J. Gezelin in Nevada. Mrs. Hash was the owner of the

Boarding House where he roomed in Reno and the only witness in his behalf at the Reno hearing (Exhibit C-1; S. C., p. 310) and Mr. Gezelin was the Deputy State Superintendent of Public Instruction of the Fourth Supervisory District of Nevada, to whom he made application for a position between October 15 and 21, 1943 (S. C., pp. 228-229) after his decree was granted in Nevada and whom he only saw once. His declarations and meager attempts to find some employment, which he did not follow up, were undoubtedly made to build up his case. The only other evidence of any attempt to establish himself in Reno, Nevada, was the statement that he made a telephone call to the Deputy Superintendent's office in August, 1943, (S. C., p. 134). He attempted to establish some semblance of sincerity by resigning from or attempting to resign from several organizations, none of which paid any salary (S. C., p. 116). He was very careful not to resign from his position as principal of Hillside High School and thus cut off his source of income (S. C., pp. 80-81) because he intended to return to that position which he did for a few days on September 13, 1943 and finally on November 8, 1943. In fact, he fought to retain that position (S. C., p. 51; pp. 267-271).

It is very significant that he did not make formal application for any position in Nevada until after he obtained his Reno decree although he had no income or means of support except from the Board of Education of Hillside (S. C., p. 116). It is also interesting to note that within three weeks from the date of obtaining his Reno decree he married Mildred Hamilton in New York, that he returned to his position in Hillside the next day and that he made no further effort to establish himself in a paying position in Nevada. On cross examination (S. C., p. 268) he stated that he

did not accept any position in Nevada although he had previously stated (S. C., p. 135) that a position with the International Correspondence School, which he also stated he applied for after October 15, 1943, paid almost as much as he was getting in Hillside. In Re-direct (S. C., p. 119) he said, "There was plenty of employment there; yes sir."

Although the declarations of defendant-appellant were admitted in evidence to show his state of mind, they bear little weight in law. Chancellor Walker in the case of *Rinaldi vs. Rinaldi*, 94 N. J. Eq., page 14, October 18, 1942, reiterating the principle of law set forth in *Firth v. Firth*, 50 N. J. Eq. 137 held as follows:

"In *Firth v. Firth*, 50 N. J. Eq. 137, 24 Atl. 916, it was held by Vice-Chancellor Van Fleet:

'The actual intention of the person whose domicile is in dispute is, in cases of this kind, a fact of great importance, but the best and most trustworthy evidence of it is found, as a general rule, in his acts rather than in his declarations.'"

See, also, *Stout v. Leonard*, 37 N. J. Law 492, 496.

"And no length of residence without intention of remaining will constitute domicile. *Stout v. Leonard*, 37 N. J. Law 495."

Jacobs on the Law of Domicile, Section 455 states: 'Declarations not conclusive; their weight depends upon circumstances:

The declarations of the person whose domicile is sought to be fixed are certainly not conclusive upon the question of his intention; (*Ackerman vs. Ackerman*, 3 Macq. H. L. Cas. 854) but with respect to the weight which is to be given them it is difficult to lay down any rules. Acts are regarded as more important than declarations, and written declarations are usually more reliable than oral ones.

The value of declarations depends upon a variety of considerations; and must be determined in each case by its own circumstances. The time, occasion, and manner of making them, their reasonableness and consistency with themselves and with other proven facts in the case, the presence or absence of the suspicion of sinister purpose in making them, the character and temper of the person, as well as (if they are oral) the length of time which has elapsed between the time of their alleged utterance and the time when they are testified to, etc. enters materially into the estimation of their value.

If they are not inconsistent with acts and are faithfully reported, they often serve to turn the scale, but it is otherwise if they are contradicted by the acts and general conduct of the person making them'."

Certainly, the acts of defendant-appellant in this case were inconsistent with his declarations.

The principles laid down in *Feickert v. Feickert*, 98 N. J. Eq. 444 at 448; *Field v. Field*, 103 N. J. Eq. 174; *Pahy v. Pahy*, 107 N. J. Eq. 538; *Ballentine v. Ballentine*, 112 N. J. Eq. 222; *Sprague v. Sprague*, 131 N. J. Eq. 104, cited in defendant-appellant's brief have been fully met by complainant-respondent in this case.

In the light of all of the evidence, there can be no question that defendant-appellant did not in good faith establish a domicile in Nevada with the *animus manendi*. The letter which he wrote to Mildred Hamilton while he was in Reno is more expressive of his real state of mind than any declarations that he may have made to friends and relatives. This letter, he never intended to be introduced in evidence (S. C., pp. 84-88, inc.). We will not quote the same in full. We do, however, set forth a few salient passages therefrom. After expressing his ardent love for her, he says:

“Things look black for the present. I had word that she is shooting off her mouth around town that she’ll never consent to a decree, but saying that and stopping it are two different things.” \* \* \*

“I think with your good works in town plus the sympathy I’ll get for what she is doing to Virginia and me, we’ll make some progress. As far as the job goes, Pal, between you and me I’m counting that out for the people aren’t going to stand for ‘shenani-gans’ and she is on the ground stirring things up. However, I think I still have A. G. R. R. K. Earle, Walker, Legion, if it counts for anything, Lodge if it counts, and maybe Elks plus a lot of people. So I’ll be ‘cagy’ and play my cards as well as possible. This I do feel. The town isn’t big enough for her and me, and if I can win with this handicap, my victory will be complete. Well, away with that.” \* \* \*

“If I can get my freedom in Washington I’ll go there, or Mexico, or Argentina. Don’t know what on, but I will. I want complete freedom and you. It must be; it will be.” \* \* \*

“I didn’t mean by ‘intimacy’ anything except that she’s probably been fully informed about our close association at school. All the other stuff is circumstantial. However, Pal, I feel that we’ll have to ‘take’ anything. I know I can. I won’t be panicky. I’ll be patient, suffering and very strong—all for us, Sweet—my mate. You speak about Seal level and me next summer. Would I come? Darling, I’d go to Sea Level, ‘Podunk’ or anywhere with you for as long as you wished. And I don’t care if the roof leaks! Just so long as we are dry (from above).” \* \* \*

His reference to “A. G. R. R. K. Earle, Walker, Legion, Lodge and Elks” were explained by him as follows (S. C., pp. 88-89): Earle he admitted to be Edward Earle of the Board of Education; Walker he admitted to be Frank Walker of the

Board of Education; R. R. K. he admitted to be Mr. King; A. G. he admitted to be Mr. Woodfield, whose full name is Arthur G. Woodfield, Supervising Principal of Schools in Hillside, New Jersey (S. C., p. 38). As to the lodge and Elks he admitted he referred to friends. These references clearly show that he intended to come back to Hillside and resume his position as principal of Hillside High School and to fight for that position, which he actually did as we have shown.

Can it be seriously urged that there is not a "single statement in this letter indicating a pre-conceived intention to obtain a divorce in Nevada or that defendant-appellant did not intend to permanently remain in Nevada or that he ever intended to come back to New Jersey or to go elsewhere" as contended in defendant-appellant's brief? What did he mean when he wrote:

"You speak about Seal level and me next summer. Would I come? Darling, I'd go to Sea Level, 'Podunk' or anywhere with you for as long as you wish."?

\* \* \* \* \*

"So I'll be 'cagy' and play my cards as well as possible."?

\* \* \* \* \*

"she'll never consent to a decree, but saying that and stopping it are two different things."?

\* \* \* \* \*

"If I can get my freedom in Washington I'll go there, or Mexico, or Argentina. Don't know what on, but I will. I want complete freedom and you. It must be; it will be."?

The letter is replete with references indicating his actual intention and explaining his previous and subsequent actions.

While in Reno, he wrote a letter to his daughter (S. C., pp. 120-121):

“LONE STAR RANCH, RENO, NEVADA.

Dear Chicken:

Little Pal, I have tried not to put you in the middle of a nasty situation. However, I've got to talk plain facts. I earn \$4,600 a year. If I start a career all over again, I'll slip back to a bare subsistence salary which would enable me to live. But if I have to cut my income to \$2,000 a year it will affect your standard of living as well as mine. In other words while I'm down at the bottom of the ladder again, I'll be getting \$50 a week less than I can make now in Hillside.

I believe you should not be made to take a cut in living standards simply because of a thoroughly incompatible marriage. That just isn't sense.

If I were you I'd talk common sense to your mother in a hurry. She can cut off her nose to spite her face if she wants, but I don't want her fooling around with your nose.

And don't you give up ideas about N. T. C. After this war, teaching opportunities will be grand but business and industry will be fierce.

I mean business, Chicken, but I'm taking care of you. Never lose sight of that.

If you get a chance, send me my ration books (plural) I owe stamps.

Hope you are O. K. and I wish this might be settled amicably so that I could see you soon.

Love,  
DADDY.”

This letter shows plainly that he was endeavoring to have his daughter influence complainant-respondent to consent to a divorce decree. It was a pressure letter (S. C., pp. 121-122). It was a letter from a man in desperate circumstances who had threatened to divorce his wife, who said she

would litigate such action. He did not intend to lose his position as principal of Hillside High School, hence the admonition to his daughter to "talk common sense to your mother in a hurry." He showed his anxiety by saying "I mean business, Chicken." He pointed out that he was earning \$4,600 in Hillside and would have to cut his income to \$2,000 elsewhere and said "I wish this might be settled amicably so that I could see you soon." He makes it clear that he did not intend to stay in Nevada in spite of any declarations he may have made to the contrary.

Defendant-appellant repeatedly insists that he returned to New Jersey to protect his pension rights and attempts to clinch this contention by a statement on page 9 of his brief in italics that he "actually applied and was granted retirement for physical disability by the Teachers, and Annuity Pension Fund of New Jersey, effective January 1, 1945." He further states, "This one fact stands out as decisive of the question concerning the defendant-appellant's intention to establish a domicile in Nevada." There was no evidence introduced in the case that he had even applied for a pension before or during the trial because, of course, he did not make such application until after the case was decided.

We are concerned with his real intention during the summer and early fall of 1943, before going to and while in Reno, not with his intentions and actions more than a year later. He did not tell his supervising principal, Arthur G. Woodfield, in his letter of July 8, 1943 that he intended to apply for a disability pension. On the contrary, he said "I assure you of my untiring service in 1943-1944." He did not tell Mr. Woodfield in his letter of September 18, 1943, eleven days after his Reno suit was filed, that he intended to

apply for a disability pension. On the contrary, he requested a leave of absence and stated "My constant interest is Hillside High School and if I can promote its successful operation in any way I shall relish the opportunity. I have the utmost confidence in the ability of Mr. Donham to carry forward *our* program during *my leave*." (S. C., p. 46). He did not tell the Board of Education of Hillside High School that he intended to apply for a disability pension. He did not even tell them that he was using his extended vacation granted in July and subsequent sick leave granted in September, to avail himself of the Nevada divorce laws.

On November 15, 1943, after he had been suspended by the Board, in an endeavor to justify his conduct, he read a long rambling statement to the members (S. C., pp. 257-261), most of which was devoted to vilification of his wife.

Jean A. White and Harlow W. Curtis, two disinterested witnesses who were present when the statement was read to the board, denied that the copy with notations appearing thereon, read in evidence, was exactly the same as the statement read to the Board, particularly the part stating defendant-appellant had returned "if only temporarily" (S. C., p. 284); (p. 289). The defendant-appellant himself was in considerable doubt concerning the exact contents of the original statement (S. C., pp. 250-254).

He referred to the pension fund but did not state he intended to apply at that time or at any definite time in the future for a disability pension. In the copy read in evidence, he said, "I am back here, if only temporarily, to defend myself. I am under bond and under strain but those things should not prevent me from producing better results than ever—even better than under normal

circumstances, of course health permitting, for with the help of my present wife and with her care, I have much to inspire me. I feel strongly on these points. I know my usefulness to this institution in the past can not be questioned; and I will continue to do my best while I am here defending myself against these suits brought against me to the end that I shall continue to do an outstanding piece of work" (S. C., p. 261). In the above statement he said, "I am under bond" and in his brief, page 17, it was stated "When defendant-appellant arrived in New Jersey on or about Nov. 7 he was taken into custody under a writ of *ne exeat* and also found that all of his pension fund rights and other equities which he had in the State of New Jersey were taken over by a sequestrator." Both of these statements are false except that sequestration proceedings had been instituted. A writ of *ne exeat* was not served upon him and he was not taken into custody and put under bond until sometime in December, 1943 (S. C., pp. 251-252). It must also be borne in mind that this statement was prepared by him while "here defending myself against these suits."

This case comes squarely under the doctrine in *Sprague vs. Sprague, supra*, wherein the court held:

"(5) It is not conceivable, therefore, that the Nevada court could have adjudicated that defendant was domiciled in Nevada had he disclosed to that court the conditional nature of his intention respecting his future residence. By failing to disclose these facts to the Nevada court defendant perpetrated a fraud on that court. Its adjudication of domicile was based upon his misrepresentation or suppression of the essential facts, and is, therefore, not binding upon us.

Since neither party to this suit was domiciled in Nevada, defendant's Nevada decree

is not within the protection of our own full faith and credit clause, *Lister v. Lister*, 86 N. J. Eq. 30, 37, 97 A. 170; *Hollingshead v. Hollingshead*, 91 N. J. Eq. 261, 110 A. 19."

A review of the testimony taken at the Reno hearing, Exhibit C-1 (S. C., pp. 309-315) fails to disclose that defendant-appellant apprised the Nevada court of the fact that he was returning to Hillside within three weeks. He did not disclose that he was on sick leave from Hillside High School, nor that his only income and means of support were from the Hillside Board of Education. He did not disclose the strong ties which beckoned him to return to Hillside, New Jersey, as indicated in his letter to "Mildred Dearest." He did not disclose that he had written to Mr. Arthur G. Woodfield on July 8, 1943, "I assure you of my untiring service in 1943-1944." He did not disclose that he had written to his daughter, "I wish this might be settled amicably so that I could see you soon." He did not disclose that on September 18, 1943 he had written to Mr. Woodfield requesting a leave of absence and indicating his constant interest in Hillside High School and that he had "utmost confidence in the ability of Mr. Donham to carry forward *our* program during *my* leave."

As stated by the learned Advisory Master, in his opinion, (S. C., p. 25) "no disclosure was made to that court of many significant facts and circumstances bearing upon the question of his alleged Nevada domicile now in evidence here, which clearly lead to the conclusion, without any reasonable doubt, that Mr. Cox never established a domicile in Nevada, and that on the contrary his domicile has remained at all times in this state."

Complainant-respondent does not question the legal principles laid down in *Shapiro v. Shapiro*

(docket 108/27; *Field v. Field*, 103 N. J. Eq. 174; *Pahy v. Pahy*, 107 N. J. Eq. 538; *Schneider v. Schneider*, 103 N. J. Eq. 149; *Feickert v. Feickert*, 98 N. J. Eq. 444 or *Wallace v. Wallace*, 65 N. J. Eq. 359, cited by defendant-appellant. She does, however, emphatically question his application of these principles to the facts in this case. The facts in this case raise no mere suspicion of fraud on the part of defendant-appellant as to the bona fides of his residence in Nevada. This fraud was proven by the overwhelming weight of evidence and by defendant-appellant's own actions and admissions.

The key to the entire situation may be found in defendant-appellant's own admission made in response to questions asked by the Advisory Master (S. C., p. 118).

“Q. When you were out there during the time you were getting this decree, did you board? A. Yes, sir.

Q. Did you acquire any affiliations at all, business affiliations, in Nevada? A. (No answer).

Q. I will withdraw that question. Did you actually get a position in Nevada? A. *No, sir; because I still had the one here.*”

Throughout the many pages of testimony, this admission, viewed in the light of his actions which have already been pointed out to this court, plainly show defendant-appellant's real intention not to establish a domicile in Nevada, but to remain domiciled in New Jersey. He further testified as follows (S. C., p. 123):

“Q. What was the reputation that you were worried about in August? A. Well, I still wanted that recommendation from Hillside when I departed.

Q. If you had resigned you could have gotten it, could you not? A. The state of my

health was bad and that I could not put in any application for anything if I was not immediately available for a position. There was an uncertainty about what I was going to do; I was ill.

Q. You didn't answer my question. Will you please answer? A. I wasn't in any position to resign."

He thus admitted that in August, 1943, while he was in Reno, there was an uncertainty about what he was going to do.

It is respectfully submitted for the reasons above set forth, and in the light of all of the testimony, bearing in mind that the court below had the advantage of observing the sincerity, demeanor and bearing of the witnesses on the stand, that the defendant-appellant unquestionably procured his decree for divorce in the State of Nevada by fraud and that the determination by the Court of Chancery that he was not domiciled in Nevada and that the Nevada decree be set aside was in accord with the overwhelming weight of evidence.

## ANSWER TO POINT II.

**The order of the Court of Chancery allowing \$15.00 per week for the support and maintenance of Virginia Cox, the daughter of complainant-respondent and defendant-appellant was proper and in accord with the evidence.**

Section 2:50-37 R. S. provides as follows:

"Pending a suit for divorce or nullity, brought in this State or elsewhere, or after decree of divorce whether obtained in this State or elsewhere, the Court of Chancery may make such order touching the alimony of the wife, and also touching the care, cus-

tody, education and maintenance of the children, or any of them, as the circumstances of the parties and the nature of the case shall render fit, reasonable and just \* \* \*.”

Although there was evidence introduced in the case that Virginia Cox was attending New Jersey State Teachers' College at Newark, there was ample evidence that her needs and requirements for support and maintenance alone exceed \$15.00 per week.

The final Decree did not provide that the allowance made for the daughter be used for support, *education* and maintenance but provided only for support and maintenance (S. C., p. 28). Much emphasis is laid in defendant-appellant's brief upon the right of the father to decide what schooling a child should get. The case of *Streitwolf v. Streitwolf*, decided in 1899, 46 years ago, 58 N. J. Eq. 570, is given as authority for this rule. The case of *Ziesel v. Ziesel*, decided in our Court of Errors and Appeals in 1921, 93 N. J. Eq. 153 is also cited as further authority. We submit that the decree in this case signed by the Chancellor does not provide that defendant-appellant pay for the higher education of his daughter.

In the *Ziesel* case, the Court of Errors and Appeals remitted the matter to the Court of Chancery for further proceedings on the question of allowances made by the Court of Chancery. The Court of Chancery had allowed the sum of \$520.00 annually for the support and maintenance of a sixteen year old son and \$980.00 annually for his board and tuition in a boarding school. The Court of Errors and Appeals decided:

“But where, as here, it appears that the father's annual net income was only \$4,500.00, we think that an order requiring him, against his objection to pay to the mother \$520.00 an-

nually for the support and maintenance of such sixteen year old son, and \$980.00 annually for his board and tuition in a boarding school, is excessive in so far as it represents expenses for education in a boarding school, rather than in a public high school, in view of the fact that the father believes, with some showing of reason, that attendance at a public high school is adequate and preferable for his son for present purposes, and in view of the further fact that the father has a second wife and daughter to support."

It should also be noted that in this case, Dr. Ziesel had settled approximately \$40,000 of property in Wildwood, New Jersey upon his wife from which she had an income of about \$2600 a year. Further, there were no proceedings to set aside the Pennsylvania divorce between the parties so that the marriage of Dr. Ziesel to his second wife, whom he was obliged to support, was legal.

Vice-Chancellor Leaming in accordance with the findings of the Court of Errors and Appeals re-determined the question of allowances in this case and because the boy was obliged to come home from boarding school fixed an annual allowance of \$208.00 in addition to the \$520.00, thus making a total allowance of \$728.00 or \$14.00 *per week* as a proper amount to cover education, support, care, clothing and all incidental expenses. He made an additional allowance of \$208.00 (approximately \$6.00 a week for nine months) the period during which the boy would have been away at boarding school as a proper additional allowance because the boy was required to stay at home. This was taken to the Court of Errors and Appeals and affirmed, 94 N. J. Eq. 571.

Defendant-appellant has also cited the cases of *Snover v. Snover*, 13 N. J. Eq. 261, decided in 1861, eighty-three years ago, in which case the

contest was over an allowance of \$.75 *per week* for the child, and *Amos v. Amos*, 4 N. J. Eq. 171, decided in 1842, nearly a century ago, in which case the court allowed \$2.00 *a week* for complainant's maintenance *pendente lite*. Many social and economic changes have taken place since these decisions were made. The standard of living of our citizens has improved. Women have attained a much more prominent place in the social and economic life of our country. It has become more and more necessary that girls as well as boys be fitted for a place in our economic structure. It is also a well recognized fact that in this modern, competitive world, education and training in higher institutions of learning is becoming more and more necessary to fit our youth for the future.

It is commonly known that the cost of living today has risen alarmingly. Bare support and maintenance require a sum considerably in excess of \$15.00 a week, certainly for one in the station in life occupied by the daughter in this case.

Defendant-appellant has stated in his brief that he applied for and was granted retirement by the Teachers' Annuity and Pension Fund of New Jersey, thus introducing into his brief evidence that was not before the court below. At the trial he admitted that he was employed by the Board of Education of Hillside at \$4,600 a year (S. C., p. 122). His solicitor excused the introduction of this material in his brief by referring to defendant-appellant's answering affidavit to the petition filed by complainant-respondent for suit moneys and alimony *pendente lite* in the Court of Errors and Appeals. An impression is thus given this honorable court that defendant-appellant has little earning capacity by introducing material not in the record. Complainant-respondent would

not introduce any material not in the record, were it not for the fact that defendant-appellant has done so. There is nothing preventing defendant-appellant from taking other employment to supplement his pension. He says he is sick. However, no medical testimony has been introduced to indicate that he is permanently and totally disabled. The answering affidavit of complainant-respondent in the alimony proceeding before the Court of Errors and Appeals, dated December 28, 1944, shows that Mildred Hamilton with whom defendant-appellant entered a contract of marriage is employed at a salary of approximately \$3,000 per year, thus relieving defendant-appellant of the necessity of supporting her. Of course, since his Nevada decree has been set aside, he is under no legal duty to support Mildred Hamilton to whom he is presently illegally married.

Complainant-respondent has learned and verily believes that defendant-appellant is presently employed by the International School of Correspondence in Newark, New Jersey. We merely point this out to show that the defendant-appellant, who has introduced into his brief material not in the record before the court below, has an earning capacity in addition to his pension.

Defendant-appellant is appealing from a decision of the Court of Chancery made on the basis of facts in evidence at the trial, and therefore, extraneous matters that have occurred since the hearing in the court below which defendant-appellant has sought to bring in via his brief should not be considered by this Honorable Court. The needs of the daughter, Virginia Cox, and the earning capacity of defendant-appellant were all fully brought before the court below. It is fundamental that should defendant-appellant's earning capacity be so reduced as to make it impossible

for him to abide by the order of the court that he can always apply to the Court of Chancery for a reduction and on proper proof, such relief will be granted. There are numerous cases supporting this doctrine.

Defendant-appellant further points out in his brief that the daughter was employed by the Board of Education of the Township of Hillside. The evidence clearly shows that this was only a summer job and that otherwise, she was not employed.

It is, therefore, respectfully urged that the decree of the Court of Chancery providing for the support and maintenance of the daughter was proper and in accord with the evidence and that the same should be affirmed.

### ANSWER TO POINT III.

**When the decree of a sister State has the congenital infirmity of having been conceived and procured by fraud, the full faith and credit clause of our Federal Constitution, Art. 4, Sec. 1, and the Act of Congress, 28 U. S. C. A. 687 do not apply.**

This Honorable Court of Errors and Appeals of New Jersey has settled this point repeatedly. It is therefore not necessary to review the many decisions of this Honorable Court on this point.

In the recent case of *Mascola v. Mascola*, 134 N. J. Eq. 48 (Court of Errors and Appeals, September 17, 1943) the applicability of the much discussed case of *Williams v. North Carolina*, 63 S. Ct. 207, 317 U. S. 287 was ruled upon. After stating that it was clear that the husband in that case went to Florida and there obtained his di-

voiced for a cause which, as alleged by the wife, occurred while the parties resided, i. e. where domiciled in our state, the court held:

“(3) Here too, the unchallenged proofs offered by and for the wife amply support her allegations and the result reached by the Advisory Master.

The applicability of *Williams vs. North Carolina*, 63 S. Ct. 207, 317 U. S. 287, 87 L. Ed. —, 143 A. L. R. 1273, is, however, urged in support of the argument that the Advisory Master erred in not giving full faith and credit to the Florida decree. There is no occasion in the case at bar to add more to the much discussed effect of the decision in the *Williams* case. See vol. 29, American Bar Association Journal, p. 268, Feb. 1943, pp. 84, 86, March, 1943, p. 125, May 1943, p. 268, Vol. 91, U. of P. Law Review March 1943, p. 565, Vol. IX, Current Legal Thought, June 1943, p. 325. For here, unlike in the *Williams* case, there was no “admission” that the husband had been “actually domiciled” in Florida. Here, unlike in the *Williams* case, the second cause for action was based on the allegation of the wife’s petition charging that the husband had not acquired a bona fide domicil in Florida. That was the single issue which was raised. That was the single issue which was tried. That single issue was determined adversely to the husband. And the unchallenged proofs on that issue, we repeat, amply established that the husband had not acquired a bona fide domicil in Florida and that his divorce there was procured by fraud.

(4) A divorce procured by a spouse based upon a fraudulent and not an actual domicil in the state where the challenged decree was procured has consistently been held by our courts, before and since *Haddock v. Haddock*, 201 U. S. 562, 26 S. Ct. 525, 50 L. Ed. 867, 5 Ann. Cas. 1, overruled in *Williams v. North Carolina*, *supra*, to be of no force and effect

in this state. *Sprague v. Sprague*, 131 N. J. Eq. 104, 108 *et seq.*, 23 A. 2d 810; *Martin v. Martin*, 132 N. J. Eq. 22, 26 A. 2d 491. And this has been our holding prior to and since our legislature set down our state policy in giving full faith and credit to a divorce decree by a court of competent jurisdiction in any of our sister states if the jurisdiction of such state was obtained in substantial conformity with our statutory provisions for the service of process. N. J. S. A. 2:50-35. Additionally, the Florida decree is of no force and effect in our state since the husband went to Florida solely in order to obtain a decree of divorce for a cause which occurred while the parties resided, i. e., were domiciled in our state. N. J. S. A. 2:50-35; *Sprague v. Sprague*, *supra*; *Martin v. Martin*, *supra*.

(5) The full faith and credit clause of our federal constitution, Art. 4, sec. 1, and the Act of Congress, 28 U. S. C. A. 687, were not designed nor do they lead to a contrary result, when, as in the case at bar, the decree of the sister state has the congenital infirmity of having been conceived and procured by fraud. Cf. *Bell v. Bell*, 181 U. S. 175, 21 S. Ct. 551, 45 L. Ed. 804; *Andrews v. Andrews*, 188 U. S. 14, 23 S. Ct. 237, 47 L. Ed. 366.

'The decree is affirmed.'

There is therefore no doubt that the Courts of the State of New Jersey have the right to set aside a judgment of a foreign state when it appears that such judgment was conceived and procured by fraud as has been proven in the present case. The *Williams* case, even though it overruled the decision in *Haddock v. Haddock*, 201 U. S. 562, by dictum only, recognizes this rule. Mr. Justice Douglas said in that case:

'Moreover it (North Carolina) admits that there probably is enough evidence in the record to require that petitioners be considered to have been actually domiciled in Nevada.'

and later in the opinion held:

“Nor do we reach here the question as to the power of North Carolina to refuse full faith and credit to Nevada Divorce Decrees because contrary to the findings of the Nevada Court, North Carolina finds that no bona fide domicile was acquired in Nevada.”

**Conclusion.**

**It is therefore respectfully submitted that the decree of the Court of Chancery should be affirmed in its entirety.**

Respectfully submitted,

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