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EXHIBITS.

C 1, p. 87; C 2, p. 87; C 3, p. 87; C 4, p. 88; C 5, p. 89; C 6, p. 89 and 90; C 7, p. 90; C 8, p. 90; C 9, p. 91; D 1, p. 92; D 2, p. 92; D 3, p. 93; D 4½, p. 93; D 5, p. 93; D 6, p. 94; D 8, p. 94; D 7, p. 95; D 9, p. 96; D 10, p. 96; D 11, p. 97; D 12, p. 97; D 13, p. 99; D 14, p. 99; D 15, p. 100; D 16, p. 100; D 17, p. 100; D 18, p. 101; D 19, p. 101; D 20, p. 102; D 21, p. 102; D 22, p. 103; D 23, p. 104; D 24, p. 104; D 25, p. 105; memorandum of conclusion, pp. 108 to 120; decree, p. 121; appeal, p. 122; petition of appeal, p. 123.

JUNE 2, 1904—Exhibits C 2, C 3, C 4, C 5, C 7, C 8, C 9.

JULY 14, 1904—Exhibits C 1, p. 91; C 2, D 1, p. 92; D 2, D 3, D 4, D 4½, D 5, D 6, D 7, D 8, on p. 94; D 9, D 10, D 11, D 12, D 13, D 14, D 15, D 16, D 17,

D 18, D 19, D 20, D 21, D 22, D 23, D 24, D 25, are no part of the exhibits, but dates are written thereon by counsel or the master when offered in evidence during the period of taking evidence.

Taking of depositions began on June 2, 1904 (see p. 14), and was continued on July 14, 1904.

MEMORANDUM OF DATES OF LETTERS AS FAR AS GIVEN.

September, 1891, D 22, p. 103.

June 15, 1892, D 7.

June 27, 1892, C 10.

July 10, 1892, D 15, p. 100.

July 12, 1892, D 13, p. 99.

July 19, 1892, D 17.

July 28, 1892, D 19, p. 101.

July 30, 1892, D 12.

August 11, 1892, C 7, reply to Exhibit D 21.

October 23, 1892, C 5.

September 17, 1893, D 6.

January 15, 1893, C 2, dated Monday.

March 21, 1894, before Easter day, D 21.

March 23, 1894, C 8.

March 30, 1894, D 25.

April 30, 1894, D 5.

May 21, 1894, D 24.

N. B.—Exhibits bear two days—one that of the marking by the Master; the other that of the writing itself.

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In Chancery of New Jersey.

Between

ADA HENDERSON FOOTE,

Complainant,

and

HENRY H. FOOTE,

Defendant.

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BILL FOR DIVORCE.

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To the Honorable William Jay Magie, Chancellor of
the State of New Jersey, in Chancery.

Humbly complaining showeth unto your honor your
oratrix, Ada Henderson Foote, that on the twelfth
day of October, one thousand eight hundred and
eighty-six, she was married to Henry H. Foote, at
Elizabeth, in the County of Union, in said State,
where she and he then resided, and for some years
previous had resided. Said marriage was solemnized
in St. John's Church, Elizabeth, by the Reverend O.
A. Glazebrook, its rector. Since that time she has
resided, and still resides, in said city of Elizabeth, as
also does her said husband.

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And your oratrix shows that after said marriage,
her said husband lived with her until the month of
June, one thousand eight hundred and ninety-two,
during which period a daughter, Maude B., by name,
was born to them, to wit, on the twenty-third day of
November, one thousand eight hundred and eighty-
nine, who is still living. In said month of June,

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eighteen hundred and ninety-two, or thereabouts, her said husband left New Jersey, and your oratrix, and went to Texas, to a town named Laredo, where he expected to be employed as manager of the electric light company there. This arrangement was not against the will of your oratrix. By it, as soon as he found it was a comfortable place, and he wanted her, he was to send for her, and she was to join and live with him there. Her said husband remained there until Sep-
 10 tember, one thousand eight hundred and ninety-three, when he returned to Elizabeth. During this time, he made no remittance nor in any wise aided in the support of your oratrix, except that, in August, eighteen hundred and ninety-two, she received from him fifty dollars, which she applied in payment of personal debts of his, except seven dollars which your oratrix needed and expended for clothing their said child.

And your oratrix shows that upon her husband's said return to Elizabeth, he did not come to her, or re-
 20 sume or seek to resume marital relations with her. Your oratrix was then living with her mother, as she was when he left for Texas, and had been, for some time before—no provision for her support or that of their child being made by him. The fact of her so living with her mother was public then; and he has since been resident in Elizabeth, and has, from time to time, met her in the street. Nevertheless, her said husband has wholly neglected to make any provision for her support or that of their child, nor has he even sought
 30 to return to her as his wife. And she shows and chagres that, for more than two years past, he has wilfully, continually and obstinately deserted her, without any just cause or justification therefor.

And your oratrix further shows that she is without adequate means of support, either for herself or their said daughter, who is now thirteen years of age, and is not possessed of any means for her education or support.

Your oratrix therefore respectfully prays that she
 40 may be divorced from the bonds of matrimony with

her said husband; and that he may be compelled, by the order and decree of this court, to provide for and support their said child, and that she may have such further or other relief as may be equitable and just. And your oratrix will ever pray &c.

CORTLANDT & WAYNE PARKER,
Solicitors of Complainant.

NEW JERSEY, ss.

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Ada H. Foote, the complainant in the above bill of complaint, being duly sworn, saith that her complaint in said bill is not made by any collusion between her and the said defendant in said bill, for the purpose of dissolving their marriage; but in truth and good faith, for the causes set forth in said bill of complaint.

ADA H. FOOTE.

Sworn and subscribed before me,
at Newark, on this 30th day of
July, 1903.

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FLORENCE M. ROSE,
Master in Chancery of New Jersey.

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IN CHANCERY OF NEW JERSEY.

10	<p style="text-align: center;"><i>Between</i></p> <p style="text-align: center;">ADA HENDERSON FOOTE,</p> <p style="text-align: center;"><i>Complainant,</i></p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">HENRY H. FOOTE,</p> <p style="text-align: center;"><i>Defendant.</i></p>	}	<i>On Bill, &c.</i>
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ANSWER.

I.

20 This defendant, answering the said bill of complaint, says that he admits the marriage with the complainant on the 12th day of October, 1886, at the city of Elizabeth, State of New Jersey, where the parties herein then resided and still reside as alleged in said bill of complaint, and further admits that complainant and defendant lived together as man and wife, and that a daughter, Maud B., was born of the marriage as alleged in said bill. Defendant further alleges and admits going to Texas, but asserts that he did so with

30 the consent and on the advice of the complainant and that he remained there until his return to Elizabeth about the time alleged in said bill, and alleges and admits that defendant sent complainant fifty dollars during his stay in Texas, and further alleges that he has no knowledge or information sufficient to form a belief as to how complainant disposed of the remittance aforesaid.

40 Defendant admits that upon his return to Elizabeth from Texas complainant was then living with her mother in said city of Elizabeth, and that since said

time, complainant and defendant have resided at No. 520 and No. 433 Westminster avenue respectively, in the said city of Elizabeth, New Jersey, and from time to time have met upon the street as in said bill of complaint set forth, and,

For further answer and defense to the bill of complainant herein, this defendant denies each and every allegation and statement thereof except as herein admitted.

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II.

And this defendant by way of cross bill exhibited against the complainant says: That upon his return from Texas he did go to complainant and seek to resume marital relations with her and tried to make provision for her and the child's support, and defendant alleges and avers that during the time he was in Texas he sent complainant all the money he was able to spare and that defendant's expectations of earning enough in Texas to support his family not being realized and his business failing to support defendant himself, he, said defendant, was obliged to return and consider his trip a failure, all of which was duly made known to complainant by defendant upon his return to Elizabeth aforesaid. And defendant further shows, alleges and avers that on his return to Elizabeth from Texas, he called at No. 520 Westminster avenue, where complainant lived with her mother, to see complainant; that as he approached the house, he saw complainant's mother standing on the porch and that when she saw him coming she went into the house and closed the door and defendant immediately went up and rang the bell and asked for his wife and for her mother, Mrs. Henderson, but was refused admittance, being told by the servant that they were "not at home." That defendant thereafter wrote a letter to complainant asking for an appointment to see her without interruption at her said home. That complainant answered by mail naming a date some few days following and in the letter sent defendant one

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of his own visiting cards (complainant having all defendant's goods and chattels in her possession). That defendant thereafter and on the day appointed duly presented the said card at the door of complainant's home, No. 520 Westminster avenue aforesaid, at the time chosen by complainant and was ushered into the front room or parlor of said house and found said complainant, her mother and brother of complainant sitting in said room, the last two with their backs toward the door and said defendant as he entered said room. That the mother and brother aforesaid remained in the places and positions mentioned throughout the interview, defendant at said interview having no opportunity to talk privately with his wife on family matters. That shortly after defendant left the house, and again wrote to complainant asking her to meet him for a conference at the house of a relative of defendant's and mutual friend of both, at which interview defendant explained to the complainant the utter failure of his Texas trip and venture, and that he was out of business and destitute of money, and defendant endeavored to get complainant to induce complainant's mother to join defendant and his mother in assisting complainant and defendant to keep house until defendant could obtain business and an income sufficient to care for himself and family, but complainant would not and did not consent to or assist defendant in any way in any of the plans suggested by him, but deserting and abandoning defendant, continued to live with her mother.

Defendant alleges and avers that defendant did in good faith return to the complainant and his child and did endeavor to continue marital relations, and never in any way abandoned or deserted complainant either before or after going to Texas or at any time, and that he has been at all times and now is ready to take complainant and his child and care for them to the best of his ability, and has duly offered so to do, but complainant, knowing of defendant's financial and business failure and poverty has deserted and still

deserts and abandons him. To all of which an answer on oath is hereby required.

Wherefore defendant respectfully prays this court that plaintiff's bill of complaint and action be dismissed, and that defendant may be divorced from the bonds of matrimony with his said wife and that he may be given by the order and decree of this court the right to control, maintain, provide for and support their said child, and that defendant have such other and further order, decree and relief as to the court may seem just and proper herein, and this defendant will ever humbly pray etc. 10

WM. P. TOLER,
Solicitor for Defendant.

IN CHANCERY OF NEW JERSEY.

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Between

ADA HENDERSON FOOTE,
Complainant,

and

HENRY H. FOOTE,
Defendant.

On Bill, &c.

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AFFIDAVIT.

STATE OF NEW YORK, }
COUNTY OF WESTCHESTER, } ss.

Henry H. Foote, the defendant in the above entitled action, being duly sworn, saith that this complaint interposed therein in the form and nature of a cross bill is not made by any collusion between him and the complainant in said action for the purpose of dissolv- 40

ing their marriage, but in truth and good faith for the cause or causes set forth in said cross bill.

(Signed) HENRY H. FOOTE.

Sworn and subscribed before me,
at White Plains, N. Y., on this
14th day of January, 1904.

(Signed) ROBERT COWARD,
Notary Public.

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STATE OF NEW YORK, }
WESTCHESTER COUNTY, } ss.

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I, Leslie Sutherland, Clerk of the County of Westchester, and also clerk of the Supreme Court for said county, the same being a court of record, do hereby certify that Robert Coward, before whom the annexed deposition was taken, was, at the time of taking the same, a notary public of Westchester County, dwelling in said county, duly appointed and sworn, and authorized to administer oaths to be used in any court in said state, and for general purposes; that I am well acquainted with the handwriting of said notary, and that his signature thereto is genuine, as I verily believe.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court and county, the 14th day of January, 1904.

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(Signed) LESLIE SUTHERLAND,
Clerk.

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IN CHANCERY OF NEW JERSEY.

Between

ADA HENDERSON FOOTE,
Complainant,

and

HENRY H. FOOTE,
Defendant.

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REPLICATION AND ANSWER TO CROSS BILL.

The complainant renews her allegation contained in her replication already filed that she joins issue on so much of the defendant's answer as is not in the nature of a cross-bill. And as to that part of said answer which is in the nature of a cross bill she answers and says that she denies that upon defendant's return from Texas as stated in his answer he went to her, and sought to renew marital relations with her, or that he made or tried to make any provisions for her and their support. And she further denies that during the time he was in Texas he sent her all the money he was able to spare. And from information and belief she denies that he did not realize enough in Texas, or that his business failed to support his family or himself. Upon her own knowledge she says that no such allegations were made to her by said defendant upon his return to Elizabeth. She further denies (protesting nevertheless, that such allegations are entirely immaterial and not legally to be proven) that upon his return from Texas to Elizabeth he called at complainant's residence where complainant, as she admits, lived with her mother, to see complainant; that as he approached the house he saw her mother

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standing on the porch, that when she saw him coming she went into the house and closed the door; that he immediately went and rang the bell, and asked for her and her mother, but was refused admittance, being told by the servant that they were not at home. Complainant says that if such an occurrence took place, she was entirely ignorant of it, and that said allegation in said cross bill was the first she ever heard of it. If it occurred she was not responsible for it. Complainant further saith that it is true literally, that thereafter defendant wrote a letter to her asking her to go to communion with her on the Sunday following (Easter Day). Complainant thinks that defendant is mistaken in stating that he asked for an appointment at complainant's house. This was on or about the month of March, one thousand eight hundred and ninety-four, some seven months after his return from Texas. She was indisposed to take this public step in view of the publicity which his desertion of her for that long period had obtained; and she therefore wrote him an answer of which the following is a copy: "My dear Harry: Before consenting to your proposition to take the holy sacrament with you on Sunday next I would rather have a few minutes' conversation with you. It seems to me that after such a separation as we have had—nearly two years, I would choose to have the meeting here and not on the street. Come here, to my mother's house at eight o'clock this evening when I feel sure there will be no interruption. Yours, A. H. Foote. March 22, 1894." Whether in this letter or any letter complainant sent him one of his own visiting cards or whether he presented it at the complainant's home, 520 Westminister avenue, complainant has no recollection. She does not see now why she should have done so. As to her having all defendant's goods and chattels in her possession as the defendant alleges, all she has of them are some books and a small table belonging to a bedroom set, left by him at the house where they once lived together, she supposes because they have not

been of consequence enough for him to take away. Complainant says that this conversation, neither at that meeting nor any other time, had any regard to restoration of their marital relations. Complainant's mother and brother were in the room. They were acquainted with the relations then subsisting between defendant and complainant. No one knew the object of defendant in his call, although at a word from him, had he wished to see her alone, he would have had such an interview. He expressed no such wish. After a while he departed. The room was large enough too, for him to have sought and had private conversation with complainant, had he chosen to seek it. Complainant says that some time thereafter she and defendant did meet at the house of a relative of defendant and friend of complainant and had an interview. But she denies that he then explained to her the failure of his Texas trip and venture or that he was out of business or destitute of money, or that he endeavored to get complainant to induce her mother to join him and his mother in assisting complainant and defendant to keep house until he should obtain business and an income sufficient to care for himself and family. Complainant recalls no such proposition being made to her. No plan of life whatever was suggested by him. Certainly complainant did not agree to any such proposition. She knew of no reason why her mother should support him or herself and her child, nor indeed why his mother should do so either. She did continue to live with her mother, although she endeavored to support herself and child by teaching. In this attempt her health failed and she was obliged to give it up. As to defendant's allegations of his good faith in returning to his wife and child, his endeavor to continue marital relations, his non-desertion of her at any time, his readiness to take his wife and child and care for them to the best of his ability, and his offer to do so—complainant denies them all. None of them were ever made, till the bill of complaint was

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filed. Action and non-action speak louder than words. Desertion began in Texas when complainant and her child were left by him without any support, except fifty dollars for a year and three months. It continued thence to the present time, ten years or more in all. He has enjoyed good health—he possesses capacity. He makes a respectable appearance. He has met with no misfortunes. Complainant has given him no reason to find fault with her. His conduct is irreconcilable with remembering his marriage vows or with his retention of the love once professed for her. Divorce for desertion and alimony sufficient to support and educate his daughter is slight reparation for the wrongs the complainant has sustained.

As to the allegation that the complainant has deserted and still deserts and abandons him, and that, knowing of defendant's financial and business failure and poverty, complainant saith that the charge is both utterly devoid of reason or support by facts, and is cruel. Defendant knows that while they lived together it was largely at her expense, that money of hers went to pay his debts, and at a time when she was by no means well to do; that nevertheless she was in all things a loving wife; that she has suffered and still suffers for his long and cold neglect of herself and their child; that whatever has been the motive, he has been the deserter. Self indulgence and carelessness of obligations have characterized his career in regard to her—poverty and business failure, if they have occurred, have sprung from indolence if not from ill habits. At least there is no right on his part to complain of her, even if he has lost her love. She seeks legal remedy, imperfect though it is, because of the necessity of aid in supporting herself and their child, and to vindicate herself as a woman and a wife.

CORTLANDT AND WAYNE PARKER,
Solicitors for Complainant.

CORTLANDT PARKER,
Counsel for Complainant.

 IN CHANCERY OF NEW JERSEY.

 Between

ADA HENDERSON FOOTE,

Complainant,
and

HENRY H. FOOTE,

Defendant.

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Upon reading and filing the consent in writing by way of stipulation, of the parties, that Mr. Walter J. Knight, of Newark, New Jersey, act as examiner to take the evidence in this cause, order is so made, on motion of Cortlandt & Wayne Parker, solicitors of the complainant, on this twenty-second day of March, one thousand nine hundred and four.

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In Chancery of New Jersey.

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Between

ADA HENDERSON FOOTE,

Complainant,

and

HENRY H. FOOTE,

Defendant.

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Taking of depositions, marking of exhibits, &c., in the above stated cause, pursuant to notice, before the subscriber, one of the masters and examiners in the Court of Chancery, at the hour of eleven o'clock in the forenoon of Thursday, the 2nd day of June, A. D., 1904, at my office, 1015-1016 Prudential Building, Newark, N. J., in the presence of Cortlandt Parker, Esq., counsel for the complainant and of William P. Toler, Esq., counsel for the defendant.

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By consent of the respective counsel the said depositions were taken in shorthand by Miss Katherine E. McKenna, a stenographer selected by myself, who, before the taking thereof was by me duly sworn to faithfully and truly take stenographically and reproduce in type-writing the testimony given, to the best of her skill and ability.

WALTER J. KNIGHT,
*Master and Examiner in Chancery
of New Jersey.*

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ADA H. FOOTE, the complainant, being duly sworn according to law, upon her oath deposes and says upon examination by

Mr. Parker.

Q You are the complainant in this suit?

A Yes, sir.

Q And the wife of the defendant?

A Yes, sir.

Q You were married when?

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A October 12, 1886.

Q By whom and where?

A In Saint John's Church, Elizabeth, by the Rev.

Otis Glazebrook.

Q After your marriage did you and your husband live together?

A Yes.

Q Where?

A The first six months after we were married, with my mother.

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Q Where?

A In Jersey street, Elizabeth, at her home.

Q After that?

A In a house Mr. Foote rented for twenty-one months, and then again we visited my mother in New York until June—the first of June, I think; we went to her in February, and we stayed with mother until June. The month of June I spent with my husband in Elizabeth, and then I went to my mother again until September the 23rd.

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Q Where?

A In Pine Hill, New York, her summer residence.

Mr. Toler. May I ask what year that was?

Witness. 1889.

Q Well, and on your return—where was your husband during your residence up there?

A He was in Elizabeth, and came to bring me to Elizabeth about a week before; I came down on the 23rd of September; then he brought me to a house

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which he rented furnished in Jersey street, Elizabeth.

Q Is that a different house from the one you have already mentioned?

A Yes, a house which he rented.

Q Well, you speak of one he had rented?

A Yes, but that was in Cherry street; this was another house in Jersey street, and we lived there until February, I think, when I went South with—oh, my mother came to Elizabeth with me, and my brother
10 and they boarded with us, and in February of that year I went South.

Mr. Toler. What year was that?

Witness. 1890. Then I went South with my mother for a visit with my little daughter who was some three months old. When I came back we stayed about a month with Mrs. Foote, Mr. Foote's mother, and then we moved into my own house on Westminster avenue.

20 Q Your own house—was it one that you had purchased or how did it become yours?

A One for which mother had given me the money to build; I built the house.

Q Gave you the money to build?

A Yes, sir.

Q Who directed the building?

A Mr. Foote; I gave him the bonds and he sold them as he thought fit, and paid for the building of the house.

30 Q Well, was this house free from encumbrances?

A No; in 1889, about November, it was mortgaged for \$2,000; Mr. Foote said he hadn't enough money to build it, and so I mortgaged it for \$2,000.

Q Well, was that all the mortgage that existed on it?

A At that time.

Q Afterwards, then?

A We lived in that house from June, 1890, until June, 1891.

40 Q Yes.

A And then finding that Mr. Foote was in debt, I mortgaged my house for \$1,000 more, in order to relieve him.

Q And you say that was to pay his debts?

A Yes, sir.

Q And did you pay his debts?

A I gave him the money.

Q Well, when you married Mr. Foote what was his business, and where?

A He was with Kuntz Brothers, bankers, 120 Broadway, New York, I know; he was paying teller. 10

Q Do you know what his salary was?

A I did not know then.

Q Have you knowledge now?

A Yes.

Q What was it?

A It was \$2,000.

Q Well, how long did he remain in the employment of Kuntz Brothers?

A I think between fourteen and sixteen years. 20

Q That was before you were married?

A Before I was married, yes.

Q And down to what time after you were married?

A Until—I don't know just when he lost his position, some time, I imagine, in 1891, the early part of 1891.

Q Well, then, how did he gain his living?

A I don't know.

Q You don't know?

A No, sir. 30

Q Up until how long after that did he remain in Elizabeth—did he live in Elizabeth after that time, and if so, when and where did he go?

A He lived in Elizabeth until 1892, June, and then left for Laredo, Texas.

Q Between the time in 1890, when he left Kuntz—

A In the early part of 1891.

Q Yes. Between that time and the time that he went South, how was he employed—where did he get his living from? 40

A I don't think he was employed, no, sir; after that we broke up housekeeping.

Q Oh, well, you did break up housekeeping?

A Yes.

Q When?

A In June, 1891.

Q And what became of your house?

A It was left vacant; I was at my mother's house, my mama had invited me to spend the summer with her, and I went with my little girl to spend the summer.

Q This was in the summer?

A Yes.

Q You say he went South—where did he go South?

A In 1892, in June, he went to Laredo, Texas.

Q And while he was there did you correspond with him?

A Yes.

Q To what degree?

20 A I heard from him about every two weeks until a letter dated the 11th of August, 1892.

Q And after that?

A I didn't hear from him until a year from the following September.

Q That is, until September, 1893?

A Yes.

Q Where was he after August, 1893, when you got the last letter, as I understand it?

30 A That letter was written from Laredo; where he was in the interim I don't know.

Q That letter was written from Laredo?

A Laredo, Texas, and I didn't know anything more than hearing, perhaps the early part of 1894, that he was still in Laredo.

Q Did he make any provision at any time, either before going to Texas or during his stay there for your support?

A No.

40 Q How much money during his absence did you receive from him, if any?

A I received in one letter a check for ten dollars, which he asked me to give to Mr. Ross, in payment of a bill of W. B. Tucker; in the letter dated August the eleventh, I received a check for \$50.

Q And what was that for, and what was done with it?

A Well, I suppose it was for me, he knew that there were bills that I would like to pay.

Q Did this money actually go to your support?

A About \$7.00 I kept for my little girl's use—my daughter's use, the rest of it I paid three bills with. 10

Q Of whose, yours or his?

A His.

Q And that used up the \$50?

A And that used up the \$50.

Q Well, next after that, what did you see or hear of your husband—from him, I mean?

A I didn't hear anything from him until September, 1893, when I received a letter stating that he was about to return to Elizabeth. 20

Q Yes, where was he then?

A He was in Laredo when that letter was written. I received the letter while I was in Pine Hill.

Q Yes; did you answer it, do you remember?

A No.

Q He was coming on?

A It was merely to state that he was coming on.

Q When did you then next see him?

A I saw him to speak to the 21st or 22nd day of March, 1894. 30

Q You say to speak to him?

A Yes, that is, to bow to him in the street.

Q You had met him then in the street and passed him?

A I think once, I am not quite sure about that, I think possibly once I had seen him, not even to speak to, but passed him.

Q Do you know where he was living at that time?

A With his mother at his mother's house. 40

Q At his mother's house—how far is it from your house?

A I should say a very short block.

Q Were you then living in your own house?

A With my mother, yes.

Q She was occupying the house that belonged to you?

A Exactly.

Q And maintaining you?

10 A Yes, for which I allowed her—for which I thought it but fair that she should live in my house.

Q And so she did?

A Yes.

Q Well, during all this time was there any provision made by him for your support?

A None.

Q How much of that time, between the time when he came to Elizabeth, elapsed before you saw him, as you have mentioned, which I suppose means having an interview with him?

20 A The day on which I passed him in the street and bowed to him, on the morning after I received a note asking me to go to communion with him on the following Easter morning, which was only a few days off, this was Wednesday, I think, that I met him, and I got the note on Thursday morning.

Q That was his note to you?

A Yes.

Q Did you answer that note?

30 A I did.

Q In writing?

A In writing.

Q And did you keep a copy of it?

A I did.

Mr. Parker. I ask for the production of that paper, if you have it.

(Same handed to counsel).

Q Will you look at this note; is this the note you
40 refer to?

A It is.

Mr. Parker. I offer this note in evidence, it is a note addressed to "My Dear Harry," and signed "A. H.," March 22nd, marked Exhibit C. 1.

Mr. Toler. I would like to have the year that was written in.

Witness. The year? I think you can find it, because I met him in the street on Wednesday before Easter, in the year 1894, it was either the 21st or 22nd of March, I can't tell which, but the prayer book will tell. 10

Mr. Toler. But you think it is the year 1894?

Witness. Oh, yes, I know that is the year, 1894.

Q About what time was that, do you remember?

A About the 21st or 22nd of March, 1894.

Q After receiving this letter did you have an interview with him?

A Yes. 20

Q Where?

A At mother's house.

Q How soon?

A The evening I had appointed, Holy Thursday evening.

Q The evening you had appointed in this letter?

A Yes, sir, I think perhaps the date was the 23rd or 24th.

Mr. Toler. That was 1894.

Witness. 1894. 30

Q This was at your mother's house, you say?

A Yes.

Q According to the invitation in your letter?

A Exactly.

Q Well, he came, did he?

A Yes.

Q And what occurred?

A Well, we had a talk—an interview, and I asked him what he had been doing, and why he had not writ- 40

ten me for so many months and who had told him to come there then to see me.

Q Anything else you recollect?

A And could he give me any explanation of his silence, of the long time he had been away, and all the time he had been in Elizabeth and hadn't written me; I asked him why he hadn't come to see me before.

Q And what did he say?

A He made no answers except "Nothing," "I don't
10 know," and then he said he must go, he had a choir rehearsal and he must go; I said "But why must you go; this may be the chance of your life; it is the chance of your life, why cannot you tell me why you have been away from me and neglected me for these years and deserted me?" He said he had to go, that he made an appointment with the organist, and he had to go and so he went.

Q You have related substantially all that occurred in that interview?

A I think all; there may be one or two other questions bearing.

Q Well, now after that time?

A He came to the house on Friday morning, which was the next morning, with a little scrap of paper and asked if he might do anything for me, any service would be a pleasure to him.

Q Have you got that paper?

A Yes.

Q What year was that?

A 1894.

Q Do you remember what the contents were?

A Yes, about what I said, that if he might be any service to me, he was willing, and could he do anything for me; that was the whole idea, it was a very short note, two or three lines on a half sheet of paper.

Q Did he make any further propositions at any time to do any substantial thing for you?

A No.

Q Well, after that time had you a further inter-
40 view with him?

A That was Friday morning, on Saturday morning he came again with a note, the same kind of a note.

Q I show you here this note; is this your handwriting?

A Yes.

Q And it is a copy of what?

A One that I sent him some time after this interview, that was before Easter; these interviews of which we are speaking.

10

Mr. Parker. I offer this note in evidence; it reads as follows: "My dear Harry: I should like very much to see you tomorrow, Tuesday morning, at Edith's house, half past nine. Very sincerely, Ada H. Foote, Monday." Marked Exhibit C. 2.

Q Well, who is Edith?

A She was a relative of Mr. Foote's and a great friend of mine.

Q Of yours?

A A great friend of mine.

20

Q And did you meet him there?

A I did.

Q Well, what occurred between you then?

A Nothing particularly.

Q What was the conversation about?

A Mainly, I think, about a wedding which was about to take place for which invitations had been sent to Mr. Foote's house; it was unusual for them to go there, they generally came to me, and I asked him to send me the admittance card, so that I might go to the wedding; I don't remember anything else that occurred.

30

Q Was there anything said then about taking care of you and coming and providing for you, or anything of that sort?

A No, I wished that he would say it when I went there, I hoped he would.

Objected to.

40

Q But nothing of that sort did occur?

A No.

Q Well, now, I ask you if such a thing had occurred, any provisionary offer of provision for you, what would have been your responses?

Objected to as incompetent and irrelevant.

A Yes, I would have gone to him gladly.

10

Objected to.

The Master. I will admit the question on the ground that I understand there is a cross bill charging desertion on the part of the wife, and this question is admissible as showing her state of mind.

Q Was there any other meeting between yourself and your husband subsequent to these you have related?

20

A Occasionally I met him in the street; he would join me and walk with me.

Q Well, in any one of these conversations did he offer any provision for your maintenance?

A Never.

Q Or ask to return as your husband?

A Never.

Q In his answer in this case he states that his expectation of earning enough in Texas to support his family, not being realized, and his business failing to support himself, he was obliged to return and consider his trip a failure, all of which was duly made known to complainant by the defendant, upon his return to Elizabeth aforesaid. Is that true?

30

A It is not.

Q Did he make any explanation such as he has stated here as to the causes of his return?

A No, sir, I didn't see him, I was in Pine Hill at the time, I wasn't in Elizabeth.

Q When he went there you knew of his going?

40

A Yes.

Q You did not disapprove of his going?

A No, I gave my consent to his going.

Q After he was there did you withdraw your consent to his staying away from you, by letter?

A I did.

Mr. Parker called for the original letter, which was not produced, thereupon Mr. Parker produced a copy, together with a register card, dated January 15, 1893, and signed Ada Henderson Foote, which reads as follows: "My dear Harry: It is now five months since I have heard from you. Will you be kind enough to tell me in what state of mind you expect me to spend the rest of my life? I gave my approval when you proposed Laredo—trusting it would prove conducive to the comfort of both of us. I now withdraw my consent to your remaining any longer. Very sincerely, Ada Henderson Foote." Marked Exhibits C. 3 and C. 4.

10

20

Q That letter states that you had received no letter from him for five months, in January, 1893, is that true?

A Yes, sir.

Q He returned, as you have said, what date?

A Some time in September, 1893, I don't know just when.

Q Was there any answer to this letter?

A None.

Q Were there any other letters after that time from him to you?

30

A No.

Q None?

A None, until the one in which he tells me he is coming home.

Mr. Parker. I call for the letter dated October 23, 1892, written by the complainant to her husband.

Mr. Toler. I have no such letter.

40

Q Will you look at this writing, is that your husband's handwriting or yours?

A That is his writing and also my note—a copy of it.

Q Oh, it is your letter to him?

A Yes, sir.

10 *Mr. Parker.* I offer this letter and the accompanying register card in evidence. The letter reads as follows: "October 23, 1892. My dear Harry: It is now eleven weeks since I have had a line from you. In this time I have written and mailed you, this makes seven letters. I understand that letters have been received from you by a member of the family; from the silence I judge no message was sent to your wife or child. Can it be possible that you are so ill or disabled as not to be able to write? If so, is there no one who will use a pen for you? Can you give me an explanation of your silence? Your wife. P. S.—I hope that you will arrange for the payment of the interest which falls due on the 4th of Dec. My house rent does not cover this, as three hundred dollars has already been drawn and mama is quite unable to pay in advance. Recollect I have never considered this my debt. I signed the mortgage to relieve you of temporary embarrassment, and do not expect to be placed in an embarrassing position myself. A. H. F." Marked Exhibits C.5 and 6.

20

30

Q What reply, if any, did you get to this letter?

A I didn't get any reply.

Q None?

A None.

Q In this answer, by way of cross bill, the defendant alleges that he called at your house where you lived with your mother to see you, that as he approached the house he saw your mother standing on the porch, that when she saw him coming, she went into the house and closed the door, and defendant immedi-

40

ately went up and rang the bell, and asked for his wife and for her mother, Mrs. Henderson, but was refused admittance, being told by the servant that they were not at home. Have you any knowledge of these allegations, if they occurred?

A I was in Pine Hill at the time, I wasn't in Elizabeth.

Q You were not there?

A I was not in Elizabeth, I was in Pine Hill.

Q Well, at any time was any such occurrence known to you at the time? 10

A No.

Q He proceeds and says that he thereafter wrote a letter to you asking for an appointment to see you without interruption at your house, and that you answered by mail naming a date some few days following, and in the letter sent the defendant one of his own visiting cards. What have you to say about that, do you remember any such thing?

A No, I don't. 20

Q You do not?

A No. I remember giving him a visiting card upon one occasion, but I don't remember sending him one.

Q Do you remember any letter that asked for an appointment to see you without interruption at your house?

A No, sir, there was no such letter.

Q He further says in parenthesis "Have the defendant's goods and chattels in your possession." What have you to say as to the truth of that allegation? 30

A I have some books belonging to Mr. Foote, a small table, half a dozen face towels, two bath towels and a chair which was given by his mother, I understood, to both of us, to the house; I think that is all, and his card plate.

Q Well, he said that thereafter and on the day appointed in this letter, that he speaks of, he duly presented the said card at the door of your house, 520 40

Westminster avenue, have you any knowledge of that?

A No.

Q Never heard of it at the time?

A No.

Q When did you first know of any such allegation?

A The only interview that we had was the one—or the first one which we had was the one in March, the 21st or 22nd of March, 1894.

Q That is the time in which—

10 A I wrote him to come to my mother's house, and I would see him, in answer to his asking me to go to communion with him.

Q Well, now, he described another scene, that he came to your house, was ushered into the front room, found your mother and brother sitting there, the last two with their backs toward the door and to said defendant, and that as he entered the room that they remained there throughout the interview, and he had no opportunity to talk privately with you on family
20 matters. Do you remember any such meeting at your house, if so, describe what occurred and whether this occurred?

A Yes, there was a meeting at my house, but Mr. Foote evinced no desire to speak to me privately; I couldn't find out any of the questions I asked him, no answers apparently at all, and that was the meeting at which he said that he had an engagement with the
30 choirmaster, and when I told him that it was the chance of his life to make some amend to me, at least to explain, he said no, he had to go, and he did go.

Q And that is the meeting that you have spoken of heretofore in your testimony?

A Yes.

Q Well, then, he says that shortly after he left the house and again wrote to you asking you to meet him for a conference at the house of a relative of the defendant's and the mutual friend of both parties, and at that interview, he says, he explained to you, the
40 utter failure of his Texas trip, and that he was out of business and destitute of money, and endeavored to

get you to induce your mother to join him, and assisting you two together to keep house until the defendant could obtain business at an income sufficient to care for himself and family?

A I have no recollection of any such thing, not the least; if he had made such a proposition, I do not see why my mother should support us any more than his mother should support us, himself and myself and child.

Q Did you say that either should? 10

A Neither, that is what I say.

Q You have spoken of your daughter—of your child both in your bill and in your evidence; will you state when she was born?

A November 23, 1889.

Q She is still living?

A Yes.

Q You say in your bill that the arrangement for his going to Texas was not against your will, as you have already stated here; in the bill you say that as soon as he found it was a comfortable place, and he wanted her—he was to send for you; and she was to join and live with him there? 20

A I was willing to go.

Q That was a part of the arrangement?

A Exactly.

Q And you were ready and willing to go to that place?

A At any time. 30

Q What is your own situation pecuniary as to the capacity to get your living or for a living?

A I tried to make my living upon one occasion.

Q When and where?

A When Mr. Foote first came from Texas, I came to Elizabeth after two weeks in Pine Hill, I spent one week in Elizabeth and then a friend wrote me from Baltimore of a place at the Decorate of Art which she thought I could get and could fill. I was to stay at her house and go in and out from Caponville to Bal- 40

timere and back. I went to my friend and I stayed there a month, when my health failed and I came home.

Q Well, are you a lady of property or what is your pecuniary situation?

A Very little property.

Q Just state whether you are able to support yourself?

10 A No, not without assistance, I don't think I can.

Q You own the house where you are living?

A Yes.

Q What other property have you got that pays you an income?

A I have a house in Savannah which pays about one per cent., I have a Western farm which pays nothing, a house in Pine Hill which pays nothing, and I live in my house in Elizabeth.

Q How do you take care of yourself?

20 A I have a small income from some property which my mother left me.

Q How small?

A About \$800, some times it is less, it depends upon whether these things are rented; if they are rented why it makes that much.

Q Are you living alone in your house or is somebody else living with you?

A To enable me to live there my brother lives with me.

30 Q Does he aid in the provision for the house?

A Materially.

Q Well, then, you are supported by the little income you have mentioned, and you have got a house to live in, with interest to pay on it?

A Exactly.

Q And you have your brother's efforts in your behalf?

A Yes, without which I could not live there.

Q Well, your child is now 13 or 14 years old?

40 A 14.

Q And has to be educated?

A Yes.

Q By whom?

A First by my mother and then with great effort by myself, and now by my brother, for I am unable to do it.

Q You are not able to do it?

A No, sir.

Q You have seen your husband, you say, from time to time though, without any further interviews, as I understand that you have mentioned? 10

A Yes.

Q And what is his state of health to all appearance?

A It must be very good.

Q What is his appearance in matter of dress?

A His daughter says that he looks very well.

Q Have you any knowledge as to his capacity to earn a living for himself and for yourself?

A Yes. 20

Q Well, you say you have knowledge, now, what is that knowledge, as to his capacity?

A He has no ill health; for that reason I should think that he would have great capacity for making a living and a good living; he is strong and well; any strong man can make a living.

Q A man of intelligence?

A Great intelligence and a very clever accountant.

Q When you were living with him, do you know what his habits of life, as to social matters were? 30

A He was a club man and spent a great deal of time at the club.

Q And that continued how long; what part of the time during which you lived together was he a club man, as you say?

A I should say from the time before my little girl was born in 1889, until we broke up housekeeping in 1891.

Q What were his habits as a man of sobriety?

A He was a man who did use intoxicating drinks. 40

Q You knew of that?

A He didn't show it particularly; I knew it, yes.

RECESS.

Q From the time that your husband returned from Laredo until this time, where has been your residence and where his?

10 A I have lived at 520 Westminster avenue, and he at 433, a very short block apart, within sight, the house is.

Q Is there any relative of his living any nearer on the same street—a sister?

A Not now, there was.

Q There was, for how long?

A For from six months to a year or a year and a half after his return from Texas, I don't know when they moved away.

20 Q Do you know whether, during that time your husband called more or less frequently at his sister's house?

A Yes.

Q You know it?

A Yes, I saw him.

Q And during that time, if I understand you, he never called on you?

A Never.

Q At your house?

A No.

30 Q Or anywhere else?

A Not at my house.

Q You spoke of passing him frequently in the street, is that so—you have done so?

A Yes, in the past.

Q And what was the intercourse between you, if any?

A None.

Q Did you salute each other?

A I don't know.

40 Q You don't?

A No.

Q Well, but some time ago?

A Oh, yes, I bowed to him.

Q Up to what time?

A When my mother died, and he didn't write me or anything, why that showed that he wasn't sorry for me, and I thought I might not speak to him again.

Q When did your mother die?

A In 1897.

Q I call your attention to this letter, is this a copy of the letter you wrote to him? 10

A Yes.

Mr. Parker. I will read the letter: "My dear Harry: Before consenting to your proposition to take the holy sacrament with you on Sunday next I would rather have a few minutes' conversation with you. It seems to me that after such a separation as we have had, nearly two years, I would choose to have the meeting here and not on the street. Come here to my mother's house at eight o'clock this evening when I feel sure there will be no interruptions. Yours, A. H. Foote." Offered in evidence and marked Exhibit C. 7. 20

Q You are acquainted, of course, with your husband's handwriting?

A Yes, sir.

Q Is this his handwriting?

A Yes, sir.

Q And did you receive this letter from him? 30

A I did.

Mr. Parker. I will read it. "Laredo Electric Light & Machine Co., Laredo, Texas, Aug. 11th, 1892. My Dear Sistada: I am so glad to hear that you are in Pine Hill, and the tone of your letter indicates that you are quite happy. I enclose herewith exchange on N. Y. for \$50, which I think you can get Mr. Hill to cash for you. I see by the Journal that Ed. Babcock and Miss 40

Wall are finally married. I wonder where they will live. Over in Mexico I can get a suit of clothes made of the best English cloth for \$34 Mexican money, and as I can buy Mexican money for sixty-seven cents on the dollar I think it good policy to get a suit of clothes before I come home. I am perfectly satisfied here because I am busy, but I do wish I would see you and the baby for a little while. I have been to a swell Mexican ball but I can't begin to tell you about, I will have to wait until I get home. Now that I know you are in Pine Hill I will write you a long letter. Yours as ever, H. W. F." Offered in evidence and marked Exhibit C. S.

10

Mr. Parker. I call for the letter written by Mrs. Foote to her husband, dated April, 1895. Have you got it?

Mr. Toler. No, sir.

20

Mr. Parker. The original not being produced, I read the copy.

Q This is a copy of your letter to him of that date?

A Yes, sir.

Mr. Toler. May I ask the question of your witness, if it was made at the time, how long before it was sent, was it made?

Witness. It was sent at once.

Mr. Toler. You made the copy just before sending it?

30

Witness. No, I think I have the copy at home I think this is a copy, I am not sure, you may have the original or I may have it.

Mr. Toler. The original was sent to Foote?

Witness. Oh, yes.

Mr. Toler. And you made a copy at the time?

Witness. Oh, yes, at the time.

Mr. Toler. Just before you sent it?

Witness. Oh, yes.

40

Mr. Parker. I will now read it: "In all of your notes to me over a year ago, by the by, you

assure me of your expecting to do something for me. You can do something for me and now. Tell me why you so suddenly ceased to be as anxious to please me. Have you forgotten that I am your wife? April, 1895." Offered in evidence and marked Exhibit C. 9.

Q What reply did you get to that letter?

A I received a reply by mail.

Mr. Parker. I don't find that letter just now. 10

Mr. Toler. Well, you may have the right to examine on that letter.

Cross examination by Mr. Toler.

Q Mrs. Foote, in the hurry of taking this in long-hand—your evidence—I didn't get clearly about your financial standing; can you give me a little more definitely your source of income?

A Well, I have the Western farm which pays no rent. 20

Q Where is that located?

A In Illinois.

Q Do you know where in Illinois?

A I think it is out of Rock Island City, I am not very sure of these things; near Rock Island City the farm is; and a house in Savannah, in which I have a share; a house in Pine Hill in which I have a share; some Athens factory machine shops which don't pay any dividend at present.

Q How many shares? 30

A Seven.

Q What is the name of that?

A Athens Factory & Machine Shops, and some Savannah City bonds.

Q How many?

A I don't know and I don't know how much because I have never taken hold of those affairs at all, on which I mainly depend.

Q Now, what share is it?

A It is a third share. 40

Q Who has the other thirds?

A My brother and sister.

Q And this is under your mother's will, is it not?

A Part of it.

Q Now, from what source do you derive the \$800 income you mention?

A Well, when my farms are rented they pay pretty well, and when my houses are rented they pay; and when I say \$800 I include the entire income which possibly could come to me in maximum.

Mr. Parker.

Q The \$800 includes the whole when everything is rented?

A Yes, sir, and the Savannah City bonds.

Further cross.

Q How much income are you receiving now?

A My brother makes up what I cannot.

20 Q What have you, outside of what your brother pays?

A I told you I had that when all my things would pay, and when my things don't pay, I have less.

Q How much are you receiving now?

A I can't tell, I don't know, I can't calculate it at all, I have no idea; sometimes I think my house is rented, and then again it is idle.

Q And do you manage your own finances?

30 A At present I do, that means as nearly as I can, and that means not at all.

Q Then, as I understand it, \$800 is the utmost you have ever received as income from your investments per annum?

A Yes.

Q Now, go back to when Mr. Foote was a clerk for Kuntz Brothers, he was there in 1889?

A Yes.

Q And where were you living then?

40 A I was living from, I think the latter part of February, 1889, until the 23rd of September—he and

I lived together in New York at mama's expense until the first of June, 1889; then I came to Elizabeth and stayed with him one month, and I returned to my mother's house in Pine Hill and stayed with her until the 23rd of September.

Q What year?

A 1889, when mother and my brother returned to Elizabeth to a house which Mr. Foote rented, and boarded with us for the remainder of the winter.

Q And where was that house?

10

A 1165 East Jersey street.

Q When did you go to the Cherry street house?

A I was married in 1886; we lived with mama six months, visited her until the first of April, 1887; the first of April, 1887, Mr. Foote rented the Cherry street house.

Q Now, was he with Kuntz Brothers then?

A Yes.

Q When did he lose his position in Kuntz Brothers?

20

A I have no knowledge, he did not tell me.

Q When did you find it out?

A I found it out I think the 15th or 20th of May, just long enough for me to mortgage my house, finding that he was in debt and had no money, and upon advice to go to mother in her country home.

Q What time of year was that?

A As near as I can recollect the 5th of June, I am not quite sure as to the very date.

Q What year?

30

A 1891.

Q Then from 1887 until 1891, as I understand it, you didn't know that Mr. Foote had lost his position in Kuntz Brothers?

A He lost his position in 1887?

Q Did he?

A I am asking you.

Q Do I understand you to say that you didn't know until 1891 that Mr. Foote had lost his position in Kuntz Brothers?

40

A I did not know until some time during May, that he had lost it.

Q You didn't know when he lost it?

A No, I did not.

Q Do you know the reason why he lost it?

A No, I didn't know that either.

Q Did he continue to go to New York up until 1891, the same as ever?

A Just the same as ever, for a while.

10 Q Well, for how long?

A Well, until perhaps the first of May when I became rather suspicious. Shall I give you the details?

Q Yes.

A And asked him if I should be ill or my little girl ill where I should telegraph to him, because the child was only a baby, and I was a little afraid. He gave me an address of a firm in Liberty street for which he was working, or where he was independently working, I don't know. My brother came to see me the morning on which he gave me the address; it was supposed to be a store, or whatever it was—an office in Liberty street, and when my brother went to that place the building was being torn down, and there was no office in it.

20

Q Do you know the name of that building?

A No, I do not, and then I began to think that he lost his position, and indeed I knew it.

Q That was in June, 1891?

A No, it was earlier than June; we broke up house-keeping in June.

30

Q Then you knew it before June, 1891?

A I told you about the 15th of May; I began to be suspicious about the first of May, and the 15th I began to see that he lost his position.

Q Now, Mrs. Foote, you lived amicably and in amity with Mr. Foote all through the time of the Cherry street house, did you not?

A Yes, sir.

Q Did you run behind there in household expenditures?

40

A Not that I know of.

Q When did you leave the Cherry street house?

A The early part of 1889.

Q And you went from there to—

A To my mother in New York and visited her.

Q Now, at that time when you left the Cherry street house, were you and Foote in debt for groceries or other necessities?

A Not that I know of.

Q Was there any time after that that you know of, 10
that you were in debt for groceries or other necessities?

A There was.

Q When was that?

A When we broke up housekeeping in 1891.

Q How much did you earn then?

A I haven't the least idea.

Q Can you give us about?

A No, I mortgaged my house for \$1,000.

Q What date was that? 20

A I think one of the early days of June.

Q Early in June, 1891, was that?

A Yes.

Q Now, do you know, have you any list of the debts that that \$1,000 was applied to?

A A few.

Q Can you give them to us?

A There was left over a meat bill, a milk bill, a coal bill and servants' wages which mother paid, left over from the building of my house was a mason's bill, a carpenter's bill—I don't remember anything else; there were possibly a few more which I don't remember now. 30

Q And were these bills presented to you?

A No—oh, one of them was, the Roulvink, a painter.

Q Then there was a painter bill, that is in addition to what you have mentioned?

A Yes.

Q And do you know the amount of any of those 40

—for instance, there is a meat bill, do you know the amount of that, if you don't, say so, or the milk or coal, or any of them?

A I have the bills, but I am not sure.

Q And how much of that \$1,000 indebtedness was for the personal debts of Mr. Foote?

A Don't you call living personal debts?

Q Oh, then, you mean when you say his personal debts, you mean these were for living expenses?

10 A The things that a husband generally pays in the house.

Q Then they were necessities?

A Yes.

Q When we speak of personal debts I understood you to mean individual debts of Mr. Foote?

A I call them individual debts.

Q But they were household accounts?

A Yes, I suppose you might call them that.

Q When did Mr. Foote leave for Texas?

20 A In June, 1892.

Q And you knew at that time that he was out of a position?

A Yes.

Q And did you know how long he had been out of a position then?

A No.

Q How long did you suppose he had been without work at that time?

A I should say certainly 18 months, if not more.

30 Q You knew that he was out of work?

A You asked me how long I supposed; I don't know anything about it.

Q As a matter of fact you know now that he had been out of work then for a much longer period?

A As I supposed then; I don't know when he left his position in Kuntz Brothers; I only say I suppose he had left.

Q At that time I understood you that you did know, and that you know since?

40 A No, how should I know; he never told me.

Q And where were you living when he left for Texas?

A With my mother.

Q Where?

A At 520 Westminster avenue.

Q Now, up to that time you had lived in perfect amity with Foote?

A Perfect.

Q Had he been unable to pay the living expenses prior to that? 10

A If he failed I have several checks which will show that I paid them.

Q Well, there is no question about who paid them; I want to know if he failed to pay them?

A If there was a question about it I paid them.

Q I mean to say, when did Mr. Foote cease to pay the family living expenses?

A I can't tell you; I went on living supposing he had a position.

Q Did he pay the living expenses up to June, 1892? 20

A With mama's help, after my child was born, \$36 a week, I think he did; I paid \$45 a month only, for the furnished house.

Q Then it is safe to say that Mr. Foote's failure to pay the expenses was after June, 1892?

A Perfectly safe, yes—1892—I should say 1891, because I was living with my mother after 1891.

Q In June, 1891, he failed to meet expenses; did he give you any reason why he couldn't pay them? 30

A No.

Q And you knew no reason why he failed to pay the living expenses?

A I suppose because he hadn't the money.

Q I don't ask you what you suppose, I ask you if you know; did he give you a reason or did he not?

A No, he gave me no reason.

Q And when he left for Texas, in June, 1892, was he in good spirits?

A Very. 40

Q And anticipated success and your joining him there?

A Exactly.

Q And how many letters did he write between June and August 11th, of that year?

A Seven or eight letters, one about every two weeks until August 11th.

Q And have you those letters?

A I have.

10 Q Have you them with you here?

A Mr. Parker has them.

Mr. Parker. I have some letters, but I don't know how many.

Mr. Toler. I would like to have a look at those letters.

Mr. Parker. I haven't examined as to his letters.

Mr. Toler. I think they are competent at this period.

20

Witness. They were among my letters.

Q Did you deliver them to Mr. Parker?

A I may not have delivered all to Mr. Parker.

Q You delivered certain letters to Mr. Parker?

A Yes.

Q And you think those are among them?

A Possibly.

Q And as I understand you, these are seven or eight letters that were prior to August 11, 1892?

30

Mr. Toler. Counsel for defendant gives notice on the record to produce seven or eight letters said to have been received by the complainant from defendant while in Texas, and all letters which passed between the parties to the action, between 1890 and date.

Q How many letters, Mrs. Foote, were received after August 11, 1892, from defendant?

40 A None until September, one dated September 17, 1893, telling me that he was coming home.

Q And have you that letter?

A I have.

Mr. Toler. Will you produce that, Mr. Parker?

Q What letters after that, can you enumerate them, after August 11th, that you received from Mr. Foote, there is one you have mentioned of September 17, 1893, are there any others?

A One again in March, 1894. 10

Q Any others?

A One, I think, in May of that same year.

Q May, 1894.

A Yes, that was the last until one in answer to mine of April, 1895.

Q And are those all?

A Those are all.

Q And have you a copy of that letter that you sent to defendant in which the one of April, 1895, is a reply? 20

A Yes.

Q Where is that copy?

A Mr. Parker has it.

Q Is that the letter to which he wrote an answer in April, 1895 (referring to exhibit C. 9.)

A Yes, sir.

Q Where was that letter sent to?

A 433 Westminster avenue.

Q Mr. Foote was then living on the next block? 30

A Yes.

Q When did you first begin to make copies of your letters to Mr. Foote?

A I always made them, from the time he left.

Q From the time he went to Texas?

A Yes.

Q June, 1892?

A No, I didn't; that is a mistake; the first copy I made was of a registered letter which I sent at my mother's request. 40

Mr. Toler. Mr. Parker, have you the registered letter?

Mr. Parker. Yes, (producing same).

Q I hand you Exhibit C. 5, and ask if that is the letter you referred to?

A Yes, sir.

Q And is Exhibit 6, the return from the post-office?

10 A Yes.

Q And this was written at the advice of your mother?

A Of my mother.

Q That was the first time that you ever copied a letter that you sent to Mr. Foote?

A I don't remember, I am not sure.

Q Did your mother advise you from that time on in your correspondence?

20 A Yes.

Mr. Parker. I don't think that is worth while to ask what somebody else told her.

Q What were the relations between your mother and Mr. Foote at that time?

A What could they be?

Objected to.

30 Q They were antagonistic, were they not, soon after your marriage, the relations between your mother and Mr. Foote?

A Not at all.

Q When did they become so?

A I didn't know they had become so.

Q Then you mean to say they were friendly, your mother and Mr. Foote?

A As friendly as woman could feel who saw her child suffering and knew the reason of the suffering.

40 Q Well, then, they were not very friendly, were they?

A I don't know what Mr. Foote's feelings were with my mother.

Mr. Parker. Certainly this is all objectionable, it is not in reply to any examination of mine; I haven't brought the mother on the stand.

The Master. Mr. Toler states that he proposes to show what the attitude of the mother was, by reason of the action of the complainant; and that the master says unless it is so connected it will be incompetent and must be stricken out.

10

Exception.

Q Then after June, 1892, if I understand you correctly, you made copies of all your letters to Mr. Foote—sent to Mr. Foote?

A No, not all.

Q Have you produced here all the copies that you made of those letters?

A The letters which were brought out, you mean?

Q No, letters that were sent Mr. Foote?

20

A I didn't send him any more, I sent him seven or eight which I spoke of, in one of those letters.

Q Well, those seven or eight letters were received from him?

A No, received by him from me.

Q And you have copies of those?

A No, I don't think I have, I am not sure.

Q Well, I have misunderstood you; let me ask you this, did you not testify that you received a letter from Foote about every two weeks between June, 1892, and August, 1892?

30

Mr. Parker. She said that was so for a few weeks and then it ceased.

Q How many letters did you receive from Mr. Foote between June and August, 1892?

A Seven or eight.

Q Now, then, those seven or eight letters you think are among Mr. Parker's papers, is that right?

A Probably, I am not sure.

40

Q Now, do I understand you that you have seven or eight copies of letters sent in response to those?

A No. In response to those?

Q Yes, did you answer those seven or eight letters?

A Yes, by fourteen instead of seven or eight.

Q You answered those letters by two answers to each one?

A Easily.

Q Did you keep copies of those letters you sent in
10 answer?

A Not all of them.

Q Of how many?

A I can't tell you how many.

Q Tell about how many?

A No, I cannot.

Q You began keeping copies in 1892?

A When I got no answer from him, yes, to be sure.

Q Will you count them at the next meeting and
tell us how many copies you have?

20 A I will let Mr. Parker tell me what I am to do.

Mr. Toler. I will extend my notice to produce to cover all copies of letters made by the complainant which were sent to Mr. Foote subsequent to 1890.

Q Do you remember the time to which you have testified that Mr. Foote called to see you at the house?

A Do I remember the time?

30 Q Yes.

A Yes.

Q What day was that?

A March the 22nd, 1894.

Q Mr. Foote, as I understand it, returned from Texas in September, 1893?

A He did.

Q Where were you between September, 1893, and March, 1894?

40 A With the exception of one month, in my house on Westminster avenue, 520.

Q Was Mr. Foote on the next block during that time?

A The entire time.

Q Did you meet him during that period?

A I did.

Q Now, where did you meet him?

A In the street.

Q How many times?

A I don't remember.

Q Can you tell us about how many?

10

A No.

Q Was it a dozen times?

A No, I don't think so.

Q Half a dozen?

A I don't remember.

Q It was less than a dozen times?

A Probably.

Q Do you remember when the first meeting was after his return from Texas?

A March 21st or 22nd, 21st, I think, 1894.

20

Q I understood you to say that between September, 1893, and March 22, 1894, you met him frequently on the street?

A I didn't say frequently, I said I met him several times, but I don't think near enough to have spoken to him.

Q I want to get the first meeting after he came from Texas?

A The first time I recollect bowing to him—is that what you mean?

30

Q I mean the first time you met him on the street after he returned from Texas?

A I may have met him in December, I am not sure.

Q Well, can you tell us when the first meeting was?

A No, that is the first meeting of which I have any recollection at all except that I did see him in the street.

Q Then there were other meetings that you cannot recollect?

40

A I think I may have seen him but no meetings. I call meeting a person face to face, and have him take off his hat to me, a meeting.

Q Then the first meeting was March 22, 1894?

A Yes, sir.

Q You didn't say anything to him prior to that date and subsequent to December, 1893?

A I had no opportunity of saying anything.

Q Did you see him?

10 A Occasionally in the street.

Q Did you pass him on the street during that time?

A I don't think so.

Q Are you positive that the first time you said anything to defendant after his return from Texas was March 22nd, 1894?

A Positive.

Q There can be no doubt of that?

A No doubt, no.

20 Q Why did not you answer his letter to you stating that he was coming home?

A Because I expected him to come to me.

Q Was that the reason?

A Yes, sir; I had every reason to expect him to come after me or come to me.

Q Where were you then?

A In Pine Hill.

Q And that letter was dated September 17, 1893?

A Yes, sir.

30 *Mr. Toler.* That one has not been produced here, has it?

Mr. Parker. I have no such letter.

Q Now I call your attention, Mrs. Foote, to the meeting at the house, in what room was it held?

A In my parlor.

Q And that is the front of the house?

A The front of the house.

Q Adjoining the hall?

40 A Adjoining the hall.

Q And who was present in the room?

A My mother.

Q And who else?

A No one else that I know of.

Q But you were present?

A I was.

Q And Foote?

A Yes, sir.

Q The three of you?

A Yes. 10

Q When Mr. Foote came in where was your mother standing or sitting?

A She was seated and arose as he entered the room and bowed to him.

Q Was your brother, Manny Henderson, in the room at the time?

A He was not.

Q Was he there during the interview?

A He was in the hall, near the door possibly, I don't know, my back was to the door so that I didn't see him in the room. 20

Q And the hall was a small room adjoining the parlor?

A Yes, sir.

Q Then he was within hearing of the conversation?

A If voices were raised, yes.

Q Did your mother at all during the interview turn her back upon you?

A No, sir, her side, she was reading a book.

Q Then do you mean to say that Mr. Foote's statement that your mother and your brother, when he entered, were seated with their backs turned towards the door, is false? 30

A Is false.

Q You are positive about that?

A I am positive.

Q There could be no mistake?

A No mistake.

Q How was it that Mr. Foote had come to see you at that time, in answer to a letter, was it? 40

A He had written to me asking me to go and take communion with him the following Easter Sunday, the 25th.

Q And you had answered it?

A I had answered—and if he would meet me in the street and I had answered that I would prefer to meet him in my mother's house after so long a separation, for a few minutes' conversation.

10 Q I call your attention to Exhibit C. 7, and ask if that is the letter you refer to?

A That is the letter.

Q Well, you say here "Come here to my mother's home at eight o'clock this evening when I feel sure there will be no interruption." Do you remember that?

A Perfectly.

Q Then Mr. Foote had a right to expect there would be no interruption, did he?

A Yes.

20 Q And when he arrived you expected him to talk over family matters, did you not?

A I expected him to, yes.

Q And your mother was in the room and your brother within hearing in the hall?

A Yes, sir.

Q Is that a fact?

A Positive; he was within hearing.

Q What did you say to Mr. Foote at that meeting?

30 A I asked him why he had come, and then I asked him who told him to come; getting no reply to that—he said no one—I asked him if he could give me an explanation of his silence and why had he so treated me; he said he didn't know; I said why didn't you answer my letters, he didn't know.

Q Then you expected him to talk of family matters before your mother?

A Why not?

Q I didn't ask you why not, I said, did you?

40 A Certainly, unquestionably, she had supported me and my child.

Q Don't you think the reason he didn't speak of family matters was your mother's presence?

A Not at all, the room is large enough if he had lowered his voice to have a private conversation.

Q How big is that room?

A Twenty feet by eighteen.

Q Do you mean to say he could have a private conversation concerning family matters with your mother there and she not hear it?

A Private conversations have been had in that room before. 10

Q Do I understand that he returned the next morning?

A He did.

Q Did he send any message in?

A A slip of paper.

Q Have you that slip of paper?

A Yes.

Q Who has it now?

A I think it is with Mr. Parker's papers. 20

Mr. Toler. I will have to still further extend my notice to produce the paper presented by the defendant at the door of complainant's house, March 23, 1894.

Mr. Parker. I haven't got it with me.

Mr. Toler. Well, I won't examine on that now because you may find it later; I shall reserve my examination on that point until later.

Q Where did you see him at that time—did you see him that morning? 30

A I did.

Q In the same room?

A No.

Q Where?

A In the hall.

Q He didn't enter the house?

A He did enter the house, in the hall.

Q He entered the hall?

A Yes. 40

Q What was the conversation there?

A I don't remember.

Q Who was present?

A No one but myself.

Q And you can't remember what was said at that conversation?

A Not at all; I waited for him to say something.

Q Do you remember what he said.

A Not at all.

10 Q Do you remember what you said?

A I asked him if he wouldn't like to see his child; he said he didn't think he could stand it; I said I had stood it for these unbroken months, I thought he might be able to stand it for once; that I remember distinctly.

Q Is there anything else that comes to your mind, of that conversation?

A No, sir.

Q That is all?

20 A That is all.

Q And that was Friday?

A Friday morning.

Q After the meeting with your mother and yourself in the parlor?

A Yes, sir.

Q When was the next meeting?

A Saturday morning.

Q The very next morning?

A The very next morning.

30 Q How did he gain admittance at that time?

A He rang the bell.

Q Any paper at that time?

A I don't remember.

Q Might have been a letter that time?

A Hardly a letter.

Q Well, a memorandum or a paper?

A I don't think so.

Q Are you positive it wasn't?

A I am pretty positive.

40 Q Might have been?

- A I don't think so.
- Q Are you willing to swear it wasn't?
- A No, not exactly, it may have been, but I don't think so.
- Q If it was a paper it is among Mr. Parker's papers?
- A No, I don't think so.
- Q Do you know where it is?
- A I may have had it, and I may have destroyed it.
- Q Will you look for that paper? 10
- A Yes.
- Q Do you remember the conversation that took place on Saturday morning?
- A No, I don't.
- Q Don't remember what he said?
- A No.
- Q Or what you replied or what you said?
- A No.
- Q But you remember distinctly the conversation on Thursday and that your mother was present? 20
- A Yes; I hadn't seen him for months.
- Q But the Friday conversation and Saturday you don't remember?
- A It lasted possibly five minutes.
- Q I say you don't remember the Friday and Saturday, is that right?
- A Yes.
- Q Did he return again?
- A Sunday afternoon he came again.
- Q Was there a paper that time? 30
- A No.
- Q How did he gain admittance at that time?
- A I saw him coming and opened the door for him.
- Q Did he enter the hall?
- A He did and the parlor.
- Q And were you alone?
- A I brought my little daughter in to see him.
- Q Were you the only ones present, he and you and the daughter?
- A Yes. 40

Q Your mother wasn't present?

A No.

Q Can you tell what the conversation was?

A I asked him if he thought she had grown, if she was what he expected her to be; he hadn't seen her for a long time, and then I asked her who it was, and she said she didn't know, and I said why, don't you know, and then I told her.

Q Told her it was her father?

10. A Her father.

Q Do you remember anything else of the conversation?

A Very short; it was my daughter's tea time and I had to prepare the meal, I had no servant of my own, and I told him he would have to leave the house, I had to put my child to bed.

Q You told him this?

A Yes.

20. Q Do you remember anything that he said at that conversation?

A Nothing.

Q Are you positive there was no writing at that time?

A Positive.

Q Because you let him in?

A I let him in myself.

Q Now, when did he return again?

30. A Monday morning, as nearly as I can recollect, he came down on Monday, I am not perfectly sure about his coming on Monday.

Q What time in the morning was that?

A Same as the others, when I was at breakfast at half past eight.

Q The time of the parlor meeting with your mother was what time?

A Eight o'clock in the evening.

Q What time was the meeting Friday morning?

A Between half past eight and nine.

Q And the same time Saturday?

40. A Yes, sir.

Q How about Sunday afternoon, what time was it?

A Half past five.

Q It was near tea time?

A Very near.

Q Monday morning, what time was that?

A Early again.

Q Did you let him in?

A No.

10

Q How did he get in then?

A The servant let him in, I was at breakfast, as I was on other mornings.

Q Did the servant report who it was?

A No, I don't know whether she did or not, I don't remember.

Q Did he send a card in then?

A No, I don't think so, possibly, I don't know.

Q Did he send a card in at the Thursday meeting?

A I have no recollection of that.

20

Q The Friday meeting?

A No.

Q The Saturday meeting?

A No.

Q Sunday afternoon?

A No.

Q Monday?

A No.

Q Do you ever remember when he presented a card at the front door?

30

A No.

Q Did you ever send him one of his cards?

A Gave him some of his cards.

Q When did you give him these cards?

A Either one of those mornings.

Q What was said when you gave him the card?

A I don't know as very much was said about it.

Q How did you happen to give him one of his own cards?

A I don't remember about that.

40

Q Would you be apt to forget if you wrote him and sent him a card?

A No.

Q Do you remember doing any such thing?

A I hardly think I sent it, I may have put it in to save him the embarrassment of speaking when he came to the door.

Q Then you think you might have put it in when you wrote and told him to call?

10 A On Thursday evening I think that is possibly the card.

Q Then his statement of the card being received is possibly true, is it not, you don't say it is false, do you?

A Not absolutely, no, because I have some recollection about a card some way or somehow.

Q But Mr. Foote did not write for the meeting at Edith's, you wrote for that, did you not?

A You have the letter.

20 Q Yes, he is mistaken in that; it was you that wrote and not him?

A Yes.

Q Now this was Monday morning the 26th day of March, 1894, am I right?

A Yes.

Q Now, when did he come to the house after that?

A He has not been there since, I think.

Q When did you next meet him after that?

A In the street.

30 Q Where?

A Nearly in front of his own house, adjoining it.

Q What date was that?

A I don't remember the date, somewhere along up to the 21st of May, we met together frequently, and we took a long walk around.

Q Did he accompany you to New York during that time?

A We went on the same boat and the same train to New York and parted at the ferry.

40 Q Now, how many times were you with Mr. Foote

between those dates—between that Monday in March, 1894, and the month following on up to May 20th, say ?

A Possibly four or five times.

Q Now, Mrs. Foote, was there ever to your knowledge anything said by Mr. Foote that he was going to leave you?

A No, I don't think so.

Q He never gave you to understand that he intended to desert you, did he? 10

A No.

Q Did you ever hear from anyone else, outside parties at all, that he intended to desert you?

Objected to.

(Question withdrawn).

Q To get to the meeting at Edith Thompson's, that was in answer to a letter of yours?

A Yes, sir. 20

Q And when was that held?

A I think the 21st of May.

Q That was 1894?

A Yes, thereabouts, some time in May, the latter part of May.

Q And this Mrs. Thompson was a distant connection to Foote, was she not?

A Married his first cousin.

Q And was an intimate friend of yours?

A Very. 30

Q Did you suggest her name for the meeting?

A Probably.

Q What room in the house was that meeting held in?

A In her parlor.

Q What time of day?

A Nine o'clock in the morning or half past nine.

Q Was she present?

A She greeted him when he came in and went upstairs. 40

Q She knew the purpose of the meeting?

A Nobody knew the purpose of the meeting.

Q She knew you were both to meet there?

A Yes.

Q Did you tell her you were coming?

A Yes, I did.

Q So you arranged it?

A Yes.

10 Q Foote had nothing to do with the arrangement,
did he?

A As far as I recollect he had none.

Q In what room of the house did you say that was held?

A In her parlor.

Q And only you and Foote present?

A That is all.

Q Now, can you state the conversation at that meeting?

20 A I think I told him at that meeting that a friend
of mine was to be married, a Mr. V—— to Miss G——,
and I wished very much to go to her wedding, and the
invitation was left at his house instead of mine, and
I wanted the card to go to the wedding; he asked if he
might go with me and I said I didn't care to have him
go with me, and that was about all, I think.

Q That wasn't the purpose of the meeting?

A I hoped that he would offer me help, that is
why I went there. I expected he would talk of that.

Q Are you positive that he didn't talk of that?

30 A Positive.

Q Have you stated all the conversation that occurred at that time?

A As nearly as I can recollect.

Q The only subject mentioned was a wedding?

A A wedding and some incidental things; that
was a very important thing to me and I should have
remembered it.

40 Q Are you willing to swear, Mrs. Foote, that he
didn't speak on the subject of your mother helping
and his mother—to that effect?

A I could swear to it.

Q You can rely on your memory as to that?

A Absolutely.

Q You mean to say your mother's name wasn't mentioned in that interview?

A No, sir.

Q Or his mother's name?

A No.

Q Nothing was said whatsoever about any plan of action regarding your coming together? 10

A Nothing.

Q You never asked him anything about it?

A I don't see why I should.

Q I didn't ask you that; did you ask him?

A No, I did not.

Q You never asked him what the purpose of his coming there was?

A No.

Q And after that when did you next meet him?

A I don't think I met him again since. 20

Q And that was May, 1894?

A Yes, sir.

Q Haven't seen him on the streets?

A I bowed to him and seen him until 1897.

Q How many times have you seen him on the street?

A I can't say positively.

Q Have you seen him more than six times?

A Oh, yes. 30

Q What was his appearance in dress during that time?

A Made a very good appearance.

Q Did you notice any signs of drink about him?

A Rather stout.

Q Any other indications?

A I don't know how men look when they drink.

Q Well, you have seen men, haven't you, who were drunkards and drinking?

A Hardly. 40

Q Do you think stoutness is an indication of drink?

A With some people, yes.

Q And you think it was with him?

A Unquestionably.

Q Did he drink during your married life?

A Yes.

Q To excess?

A Well, he would drink in the evening.

10 Q Don't you know he has been afflicted with drunkenness for years?

A No.

Q Don't you know that he had to have money sent to Texas to bring him home?

A His sister told me, Julia Foote came to me and told me that money had been sent to him to come home from Texas, and he had not come; this was in February of the year he came home, finally in 1893 he came home but I hadn't heard from him.

20

Mr. Parker. Somebody told you so?

Witness. Yes, sir; his sister Julia Foote.

Further Cross.

Q Do you know that by reason of drink he has been without any work except for short periods in the Journal which is owned by his mother?

A No, I don't know that.

30 Q Do you know that he lost that position by reason of drink and has taken the cure at White Plains?

A No.

Q Never heard of it?

A No.

Q Do you know, Mrs. Foote, that his mother has supported him for all these years and that he has not been able to support himself?

A No.

Adjourned until Monday, June 13, 1904.

WALTER J. KNIGHT,

40 *Master and Examiner in Chancery of New Jersey.*

Q Are those the ones that were handed in at the door?

A Those are, yes.

Q I hand you a paper writing which you state was handed in at the door by Mr. Foote, and it bears the day of the week as Monday morning, can you place the date of the month for me?

A The 26th of March.

10 Q And the one I hand you similarly handed in prior to that, bears the inscription Saturday morning, would that be the 24th of March?

A Yes, sir.

Q What year?

A 1894.

Q And were these the only ones that were handed in at the door?

A I have no recollection of any more.

Q There might have been others?

A Possibly.

20 *Mr. Toler.* I offer in evidence these two letters, marked Exhibits D. 1 and D. 2.

Q Can you tell which one was introduced in that envelope?

A One of them.

Q Do you know which one?

A No, sir.

30 *Mr. Toler.* I also offer this envelope in evidence. Marked Exhibit D. 3.

A 22nd or 23rd of March. This was Monday morning and Good Friday fell on the 23rd. This was the 26th, and if that was Saturday morning that was the 24th, and he came to see me on Thursday night which was the 22nd.

Q Then there is one missing which ought to be in that envelope; now this is Friday morning, dated the 23rd, Good Friday?

A Yes, sir.

40 Q Whose writing is that?

A Mine.

Q This is Good Friday, March 23, 1894?

A Yes, the others are March 24th and 26th.

Q Good Friday, March 23, 1894, is that yours?

A Yes.

Q "I gave this note to him for—" what?

A "For this addition."

Q Did you put the brackets around there?

A Yes, I must have.

Q Then you put the brackets around the words 10
"and desire forgiveness."

A Yes, that was the addition.

Q Now, will you please explain, I don't understand what the meaning of the word is, "I give this note to him for this addition."

A I handed the note, as I would hand it back to you; I didn't like the finish of that note, and I gave it to him to have it finished in a way which I thought he knew, and so he did, because he made it.

Q After he presented this note, you objecting to 20
the closing sentence, gave it back to him?

A I objected to it.

Q You objected to the closing sentence, and you gave it to Mr. Foote again?

A Yes, sir.

Q With this memorandum on it?

A No.

Q When did you put that memorandum on it?

A When I sent it to Mr. Parker.

Q Then how did you come into possession of this 30
again after giving it back to Mr. Foote?

A Haven't I written there that I gave it to him for an addition, and he gave it to me again.

Q Did he bring it himself?

A The following day probably; you have two other notes.

Q Yes.

A One of those dates.

Q Was it—these two notes are dated Saturday 40
and Monday, which was it?

A Is it mailed?

Q Yes.

A Probably on Saturday.

Q Can you swear it was Saturday?

A No.

Q Can you swear it was Monday?

A No, one of those dates. There were three notes, one on Friday, in which I wrote here "Good Friday," and I say "I gave this note to him for this addition," and I marked it there, you can see that the writing is not altogether the same as the other, the ink is lighter with that addition that I put there. I cannot state positively it was the next day, which was Saturday; there were only two other notes there.

Q I hand you an envelope, will you tell me in whose handwriting that is?

A Mr. Foote's.

Q Well, is there any other than Mr. Foote's handwriting on it?

20 A Mr. Parker's.

Q Mr. Parker put these dates on it, March 23, '94?

A Yes, sir.

Q And do you know why he put that on?

A Not at all, for his own convenience, I suppose.

Q Was there a letter that was in this envelope that was received March 23, 1904?

A Hardly a letter.

Q A piece of paper?

30 A Probably one of those pieces of paper.

Q It happens that these don't fit. I have a letter of Friday and a Saturday letter and a Monday letter, there don't seem to be any Thursday letter for which this envelope seems to call?

A If there is none, then I am not responsible.

Q Was there a letter on Thursday?

A No, I don't think so, I am quite sure.

Q Then the first letter handed in at the door was Friday and that was March 23, 1894?

40 A Yes, sir.

Q Then this envelope goes with the letter of March 23, inscribed Friday morning?

A I see no reason to think we got any more than this one; those dates are not right at all.

Q Well, the incorrect dates are put on by Mr. Parker?

A Merely because I suppose he mixed them up.

Mr. Toler. I offer in evidence this piece of paper, together with the envelope on which the memorandum of Mr. Parker's appears, but which has no bearing. Marked Exhibits D. 4 and D. 4¹/₄. 10

Mr. Parker. Here is another letter which I have, it is from Mrs. Foote to her husband; I think it is in the evidence already, but this is not marked as an exhibit.

Q Will you look at that and see if we have that in evidence?

A I don't know, I think so. 20

Mr. Toler. I offer the original, if not already in evidence, and if it is a copy, I should like the original to take its place. Marked D. 5.

Q Do you say that is your handwriting?

A Yes, sir.

Q Then, Mrs. Foote, you have given us all the epistles or paper writings that were handed in at the door by Mr. Foote?

A I am not sure. 30

Q Well, all that you could find.

A All that I can find.

Q There may have been others?

A There may have been, yes.

Mr. Toler. Now, I have got the three letters that were handed in at the door, I should now like to have the seven or eight letters from Texas which were testified to.

Mr. Parker. There are pencilings on this one that I know nothing about; in my handwriting is 40

"August 11, 1892," which was the date of the last letter; I don't know, some of these pencilings are mine, but whether they are all or not, I cannot swear exactly.

Mr. Toler. Maybe Mrs. Foote can help us out on what are your memorandums there.

Mr. Parker. Here is another letter, which is an Elizabeth letter and has to do with this Easter matter.

10 *Witness.* That is not a Texas letter, this is the letter that was written before Easter asking me to go to the holy celebration with him.

Q I show you a letter dated September 17, 1893, from Laredo, Texas, in Mr. Foote's handwriting, signed "Harry," and ask if that is the letter written immediately prior to his return from Texas?

A It is, as far as I know.

Q The letter which you never answered?

20 A No.

Mr. Toler. I offer in evidence that letter that has been referred to. Marked Exhibit D. 6.

Mr. Parker. You ask for the Laredo letters.

Mr. Toler. Yes, sir.

Mr. Parker. I will give them to you in the order of dates; here is a letter of the 15th of June.

Mr. Toler. I offer it in evidence, together with the envelope. Marked Exhibit D. 7 and 8.

30 *Mr. Parker.* Here is another letter dated the 28th of June.

Mr. Toler. I offer that in evidence. Marked Exhibit D. 9 and D. 10.

Mr. Parker. Here is another letter dated the 3rd of July.

Mr. Toler. Offered in evidence. Marked Exhibit D. 11 and 12.

Mr. Parker. Here is another letter dated July 12th.

40 *Mr. Toler.* I offer that in evidence. Marked Exhibits D. 13 and D. 14.

Mr. Parker. Here is another letter dated the 10th of July.

Mr. Toler. I offer that in evidence. Marked Exhibits D. 15 and D. 16.

Mr. Parker. Here is another letter dated the 19th of July.

Mr. Toler. I offer that in evidence. Marked Exhibits D. 17 and D. 18.

Mr. Parker. Here is another dated July 28th.

Mr. Toler. I offer that in evidence. Marked Exhibits D. 19 and D. 20. 10

Q Are those all the letters, Mrs. Foote?

A All that I know anything about, yes.

Q In using Stada and Sistada, that was a term of endearment between you?

A Not at all, my sister always used the term, adopting it herself, and he followed it.

Q And these letters were so addressed to you?

A He always called me so, yes, sir. 20

Mr. Toler. Now, I should like to be sure that all letters from Mr. Foote to Mrs. Foote has been put in evidence.

Mr. Parker. Well, you asked me for a parcel of them, I have given them to you, you said I want those from Texas, and I have given them all from Texas; I began with the letters from Elizabeth, I gave you some of those; there are some here, whether I gave them to you or not, I don't know. There is one letter that I missed, it seems to me, dated September 17, 1893. 30

Letter dated March 21, 1894, offered in evidence and marked Exhibit D. 21.

Mr. Parker. Here is a letter I put "No" on the top, and the reason I put that there is that it seems to relate to matters in 1891, and I suppose my reason was that that had nothing to do with the case.

Q Where was this written from, do you know?

A Elizabeth, to me at Pine Hill. 40

Q Is this your memorandum?

A Yes, sir.

Q Written probably some time in September, 1891?

A Yes, sir.

Q You are not positive about that date, are you?

A I said some time in September.

Q Are you positive it was September?

A Positive.

10

Mr. Toler. I offer it in evidence, letter without date beginning "My darling wife," and as testified to, sent to Mrs. Foote at Pine Hill.

Marked Exhibit D. 22.

Mr. Parker. Here is a letter dated April 9, 1894.

Mr. Toler. Letter offered in evidence dated Monday April 9, 1894, sent to Mrs. Foote by Mr. Foote. Marked Exhibit D. 23.

20

Q Can you explain, Mrs. Foote, the reason why he didn't see you after writing that letter, the circumstances, he mentions, were unavoidable?

A Not at all, probably because he didn't come, I don't know what else.

Mr. Toler. Letter dated Elizabeth, May 21, 1894, sent by defendant to plaintiff is offered in evidence. Marked Exhibit D. 24.

30

Mr. Toler. Also another letter dated March 30, 1894, sent by defendant to plaintiff. Marked Exhibit D. 25.

Counsel for the plaintiff objects to these letters as evidence in the case.

Q When did you first begin to keep Mr. Foote's letters?

A Always kept them since I was first married.

Q About what date, I think you testified to it, did you begin to keep copies of your own letters to him?

40

Mr. Parker. She stated that.

A The first copy was the first registered letter.

Q Do you remember the letter in which you stated that you had agreed to Mr. Foote going to Texas and you withdrew that agreement, or words to that effect?

A Distinctly.

Q And did anyone advise you to write that letter?

A No one.

Q Your mother didn't?

A Not at all.

Q Did anyone outside of your mother advise you in that correspondence at all? 10

A Not at all, there was no correspondence; I was the writer; correspondence is, I believe, when people receive and answer letters.

Q I ask you if anyone advised you?

A I answered your question.

Q I ask you if anyone advised you in relation to the letters you were writing to Mr. Foote, other than your mother?

A I have already answered your question. No one advised me. 20

Further direct.

Q You were asked in your examination, questions about your financial standing, and in your cross examination you were requested that you should state a little more definitely your source of income; have you since enabled yourself to be more exact, and if so will you state these sources with more exactness? 30

A Yes; may I refer to my paper which I made out?

Q You answered the question that you have enabled yourself to be more exact?

A Yes.

Q Well, now, I ask you to state these sources with more exactness; this paper that you hold, I suppose is a memorandum of your own?

A Exactly.

Mr. Toler. I don't think it is permissible to use that memorandum unless it is necessary; I 40

would like her to testify outside of the memorandum.

Mr. Parker. It is a memorandum of accounts.

Mr. Toler. What are they from, what is this a copy of? Taken from what?

Mr. Parker. Accounts she made up.

10 *Mr. Toler.* From what? I object unless I know what that memorandum is taken from; I will have to object to the question unless she can state from what she made that up; I don't know the volume or book.

(Objection withdrawn).

A One Georgia, Southern and Florida, fifty; eight Ocean Steamship bonds, four hundred; one City of Savannah, fifty; one City of Savannah, twenty-five; one Missouri and Kansas and Texas, twenty; one City of Savannah, twenty-five; one City of Savannah, fifty; one City of Savannah, twenty-five; American Car
20 Foundry, twenty-eight; South Western Railroad, two hundred and sixty; Georgia Railroad, eleven; Morris and Essex, seven; which makes a total of nine hundred and fifty-one dollars. I own a farm \$35.62; Savannah house average \$159, making a total of \$1,145.62.

Q What did it cost you to live by the year from that income?

A My expenses, the taxes, interest and insurance on the house are \$296.32, the repairs on the house are \$57.25, making a total of \$350.57, which leaves me
30 \$792.05, my household expenses are \$549.37, my clothing bill for myself and daughter is \$781.31, which leaves me a deficit of \$538.63.

Q And what about the education of your daughter?

A I haven't put it in.

Q Is that comprised within your statement?

A No, sir.

Q Well, what, at her age, and as she stands, is the expense of her education?

40 A The ordinary tuition is \$100, at such a school as

I have had her for the past winter, but that means nothing, no accomplishments, no French, no music, nothing, just dry tuition.

Q In your examination you spoke of the \$50 which your husband sent you from Texas, and stated that excepting a small part of it it was used to pay his debts. I hand you two papers, one purporting to be a receipt from you of certain money on account of bill from Oliver and Drake, druggists, dated September 17, 1892, and the other and following items which with the credit on it seems to have possible relation, one to the other; are these two things part of one transaction? 10

A Yes, sir.

Q And what are they?

A The receipt is the paper which I received from Oliver & Drake for a portion of a bill which was sent to Mr. Foote of \$16.61.

Q And the other?

A And the other is an itemized bill which I have from Oliver & Drake, making up the \$15. 20

Mr. Parker. I offer these in evidence, and the same are marked Exhibits C. 1 and C. 2, of this date.

Q That doesn't comprise the whole of the \$50. Can you tell where the rest went?

A There was a bill to a livery man for some \$15, \$14 and some cents, possibly \$15. I have tried to get that receipt but I failed, however, it will show on his books what the bill was, and when it was paid. 30

Mr. Toler. We will admit, if you wish, Mr. Parker, that it was his bill, if that is your object in the question.

Q How much was paid on the livery bill?

A Between \$14 and \$15.

Q That was paid on Mr. Foote's account?

A Yes, sir.

Mr. Toler. We admit that. 40

Q Reference was made in your examination to-day to the letter you wrote to Mr. Foote telling him that you withdrew your consent to his remaining in Laredo; what were your motives in that action.

A My motive in registering the letter?

Q In writing it and saying that you withdrew your consent?

A I wanted him to come home, he had been away from me long enough; I hadn't heard from him for
10 months, I was unhappy and wretched, I didn't know whether he was living or dead, and so I wrote him to come home.

Counsel for the defendant objects to the question and moves to strike out the answer as irresponsible, incompetent and irrelevant.

Further cross.

Q What is the total amount, including the child's
20 teaching, that you deem necessary for your living expenses, summing up, making a sum total?

A It is a difficult question for me to answer. I don't see how I can answer it.

(Question withdrawn).

(By consent of counsel the signature is waived).

(Signed) ADA HENDERSON FOOTE.

Sworn to and subscribed before
30 me, this 14th day of July, 1904.

WALTER J. KNIGHT,

*Master and Examiner in
Chancery of New Jersey.*

IN CHANCERY OF NEW JERSEY.

Between

ADA H. FOOTE,

Petitioner,

and

HENRY H. FOOTE,

Defendant.

10

Taking of depositions, marking of exhibits, &c., in the above stated cause resumed pursuant to the adjournment last had, before the subscriber, one of the masters and examiners in the Court of Chancery, at the hour of 11 o'clock in the forenoon of Friday, the 9th day of September, A. D., 1904, at my office 1015-1016 Prudential Building, Newark, N. J., in the presence of Cortlandt Parker, Esq., counsel for the complainant and of William P. Toler, Esq., counsel for the defendant.

20

JAMES S. HENDERSON, sworn for the complainant.

30

Direct examination by Mr. Parker.

Q You are the brother of Mrs. Foote, the complainant?

A I am, yes, sir.

Q What is your age?

A Forty-three.

Q And how long have you resided in Elizabeth?

A About thirty-two years.

40

Q Were you present at the marriage of your sister, the complainant, to the defendant, Mr. Foote?

A I was.

Q Where were you then residing?

A On East Jersey street.

Q And how long did you live there?

A About two years.

Q Where did your sister and her husband reside, after their marriage?

10 A With us for six months.

Q You say us, what do you mean?

A My mother, my sister and my brother—mother's family.

Q Another sister?

A Yes, sir.

Q And the brother is who?

A Manny H. Henderson.

Q Is he in health now?

A No, sir, he is very ill.

20 Q And has been for some time?

A Some two years.

Q And so that his mind is affected?

A Yes, sir, I am sorry to say.

Q He has no knowledge, of course, of this proceeding or anything about it, has he?

A I think not.

Q Well, you have been here and heard some of the testimony. Did you know at the time of Mr. Foote's going to Texas?

30 A I did, yes, sir.

Q Where were you residing then?

A Residing on Westminster avenue, 520.

Q In Elizabeth?

A In Elizabeth, yes.

Q At the same place where you are now?

A Same place, yes, sir.

Q And where she is now?

A And where she is now.

40 Q And where, when he went to Texas, was Mr. Foote and his wife residing?

A Mr. Foote was residing with his mother and Mrs. Foote with her mother, at the time.

Q Well, at the time of his marriage and after that did he reside elsewhere than with his mother?

A After his marriage he resided with my mother in a house that he rented, that is for two years, and then in my sister's house that they built on Westminster avenue, in a house erected by my sister.

Q What was his employment previous to his going to Texas? 10

A For a year and a half I believe he did nothing before he went to Texas, at the time he married my sister he was employed by Kuntz Brothers in New York, bankers and brokers.

Q In what capacity, do you know?

A I think as paying teller.

Q Do you know about how long he was there in that capacity?

A No, I do not, I think it was two or three years before that he had been advanced to that position, he had lower positions all the way through, and from advancement up he eventually got paying teller. 20

Q Have you any information, derived from him, as to the amount of his compensation in the service of Kuntz Brothers?

A Not from him, no, sir, through my sister, he was getting \$2,000 a year at the time, I heard her say.

Q That was understood between the family?

A Yes, sir.

Q Now, Kuntz & Company—have you any knowledge of the character and reputed wealth of that firm? 30

A Very wealthy concern, one of the largest firm of bankers, I believe, in New York City.

Q You said that for about a year and a half before going to Texas he was not in their service, did I understand you?

A Yes, sir.

Q Have you any knowledge of the occasion of his leaving that employ?

A I didn't hear from him anything about it. 40

Q You knew him, of course?

A Yes.

Q And intimately?

A Yes, sir.

Q What was the character of his usual health?

A Extremely good, I should say; I have never known him to be sick up to that time, and never heard of him being sick since.

Q Up to what time is that?

10 A The time he went to Texas.

Q You knew him well; can you speak as to his grade of intelligence?

A I should think he had sufficient intelligence to be able to make a living and occupy a position.

Q Do you know anything about his repute as a man of business, as to his talent?

A No, sir, I do not.

Q Well, did you know of his return from Texas, when it occurred?

20 A I did.

Q How soon after?

A Two or three days afterwards, I think, I am pretty sure.

Q When and where did you first see him after his return?

A I met him on Broad street opposite the gas company's office in Elizabeth.

Q Were you alone at that time?

30 A I was. I went up and spoke to him and told him I was glad to see him home again, and some other pleasantries, I don't know exactly what it was now.

Q And that was all that passed between you?

A That was all, yes, sir.

Q Something has been said in this evidence of his having been in the complainant's house or her mother's house, whichever it was at that time, after his return, with your mother, when he called and had a conversation in the same room with the complainant. Did you have any such experience?

40 A No, sir, I was not present.

Q You were not in any room in the house when he called, and when your mother was with you, and your sister and he were in the same room but in a different portion?

A No, sir, I think not.

By Mr. Toler. Mrs. Foote has testified that the defendant said it was the witness's brother. Am I right in that?

By the Witness. Yes, sir.

10

Q After his return did you continue to reside in Elizabeth?

A Yes, sir.

Q Did you meet the defendant—meet Mr. Foote during the period that you resided there?

A Yes, sir.

Q Ever since?

A Yes, sir.

Q Where and how?

A On the street, passing him up and down from my business, and he going up and down town or to the train or whatever his business might have been.

20

Q Well, was this meeting of him a frequent thing?

A Well, pretty much nearly every day, I should imagine for the last eight or nine years probably, or seven or eight years.

Q Did you ever meet him when his daughter was with you?

A I have, yes, sir.

Q Did he accost her or you?

30

A No, sir.

Q At such times?

A No, sir.

Q Did he see her and yourself as he passed?

A He coming in the same direction which we were going and should have seen us, and no doubt he did.

Mr. Toler. I should like my objection noted to this line of testimony as incompetent and irrelevant.

40

Q During your residence with your sister, since his return, where did he reside?

A At his mother's house on the same street.

Q About how far off from your mother's and your residence?

A About 275 steps, or about 900 feet, I should say.

Q Within sight?

A Within sight, yes, sir.

10 Q Had the houses piazzas?

A Yes, sir.

Q From these could people in one house see the people on the piazza of the other house?

A From our house they can, I don't know whether from the Foote's or not, but I imagine so, it could be.

Q Do you know whether your sister was frequently in the street on the way to the business part of the city?

A Yes, sir, every day.

20 Q And that was the fact how long, all this time?

A All this time, I should say.

Q And what called her there?

A Marketing and going visiting the stores down town and friends on the other side of town, visiting.

Q This, then, was a frequent occurrence?

A Two or three times daily, I should say.

Q Now, did the defendant pass through the street where she and you and he lived, on his way to his business or going to or from it?

30 A Yes, sir.

Mr. Toler. If the witness saw him, that is a different thing.

Witness. Yes, sir, I seen him.

Q During what period, after his return from Texas, did he ever to your knowledge call at her house or seek to see her?

A He called at her request.

Q Did you see him then yourself?

40 A No, sir, I did not.

Q Now, the question is, whether, as to your knowledge.

A I was so informed, Mr. Parker.

Q Do you know of any other occasion than the one that you now refer to, when he called?

A I was informed that he called two or three times afterward.

Q You think he did?

A Yes, sir.

Q Within what time was that after his return? 10

A Eight or nine months after his return from Texas.

Q And after that time did he make any calls, to your knowledge?

A Not to my knowledge.

Q Did you hear at the time of his having made any such calls?

A No, sir.

Q Do you know anything as to how he spent his time or his money since his return from Texas? 20

A Not personally.

Q Not from him?

A No, sir.

Q Well, can you say anything about his habits as to the use of intoxicating liquors?

A He used them.

Mr. Toler. The witness has just answered that question that he doesn't know personally about his habits or what he done since he came from Texas. 30

Witness. What he done with his money, not as to his habits.

By Mr. Parker. The word habits has not been used by me, before.

(Question repeated).

Witness. I seen him in a bar room taking a drink.

Q Well, I speak of habits? 40

A I know nothing whatever of his habits personally.

Q Well, have you any knowledge as to his being in an intoxicated condition?

A I have seen him on the street so, yes, sir.

Q Once or more, or how many times?

A Several times, I suppose half a dozen times in ten years.

10 Q You were present when your sister was examined as to the amount of her income?

A Yes, sir.

Q And her expenditures and expenses?

A Yes, sir.

Q Are you able to say whether she was correct in the statement that she then made as to the details of her support?

A I am, yes, sir.

Q What have you to say about that, was she correct or not?

20 A She was correct.

Q Your present residence, where is it?

A 520 Westminster avenue.

Q With her?

A With her, yes, sir.

Q How long back has that continued?

A Since 1891.

Q Since when?

A 1891, I think it was—yes, 1891.

30 Q Well, during that time have you yourself contributed to the support of herself, and the establishment, the house?

A Since the death of my mother, yes, sir.

Q Since your mother's death?

A Yes, sir.

Q When did your mother die?

A In 1887.

Q Well, what contribution was made, how were things managed?

A Equal division of all the expenses.

40 Q Did you ever know of the defendant giving any

thing towards these expenses or the expenses of his wife?

A Never.

Q You know that he never did?

A I know that he never did, yes.

Cross examination by Mr. Toler.

Q What is your business?

A My business, bicycle business.

Q Where is your office?

10

A 16-18 Julian place.

Q And the times you have testified you go to business every morning and return at night to your residence?

A Every morning, noon time and night, six times a day I pass through the street.

Q And as I understand you, you have testified that Mr. Foote lived with his mother and your sister lived with her mother prior to their going to Texas, within a block of each other, is that right?

20

A About nine hundred feet.

Q One on one block and one on the adjoining block.

A Yes.

Q And after Mr. Foote's return from Texas the same state of affairs existed as to his residence, as before he went to Texas?

A Yes, sir.

Q You being at business have no knowledge, that is, don't know of your own knowledge how many times Mr. Foote called on his wife?

30

A Not if I have seen him there, no.

Q Mr. Foote might have called many times without your knowing it, might he not?

A No, sir.

Q Well, without your knowing it unless told of it, is that right?

A Yes, sir.

Q Then of your own knowledge you do not know how many times Mr. Foote called on his wife?

40

A I answered that before.

Q You say you saw Mr. Foote intoxicated on the street, is that right?

A That is correct.

Q Now, when you say intoxicated, could he walk?

A He could navigate, as the expression is.

Q Was there anyone with him?

A No.

10 Q And this covered a period, you say, of ten years?

A More lately in the last four or five years.

Q Did you talk with him at all at these times?

A No, sir.

Q How far off were you?

A Right behind him coming to and going in the same direction.

Q Walked up behind him?

A Yes, sir.

Q Had you been drinking that day?

A No, sir.

20 Q Do you drink?

A No, sir.

Q Never take a drink?

A No, sir.

Q How long since you haven't been drinking?

A About ten years.

Q Were you drinking at the time you saw Mr. Foote on the street?

A I told you no.

Q This was after you had stopped drinking?

30 A Yes, sir.

Q You used to drink, didn't you?

A Yes, sir, some little.

Q Did you ever drink with Mr. Foote?

A Once, yes.

Q Only once?

A Before he was married.

Q Ever been to New York with him drinking?

A No, sir.

Q Where is your brother Manny now?

40 A He is in Morris Plains Asylum.

Q When did your sister tell you that Mr. Foote was getting \$2,000 a year?

A When he was at Kuntz Brothers.

Q Can you remember the year?

A No.

Q You are positive about that?

A About the year?

Q That he was with Kuntz Brothers when your sister told you?

A Yes, sir, I am positive. 10

Q Are you positive as to the amount, \$2,000?

A She stated so, yes.

Q Where was this that she told you this?

A I don't remember, probably in the house where all conversations took place.

Q And Mr. Foote at the time was with Kuntz Brothers?

A Supposed to have been there, yes.

Q Where were they living then, in Westminster avenue? 20

A Yes, sir.

Q You were never present at any of the interviews between Mr. Foote and Mrs. Foote subsequent to his return from Texas, were you?

A I have already answered that question; no.

Q And is it the same before he went to Texas, were you present at any interviews before he went to Texas?

A What business would I have to do with man and wife to be present at their interviews? 30

Q I didn't ask you that.

A I don't remember whether I was or not.

Q Is that what you mean to go down as your answer, you don't remember whether you were present at an interview between husband and wife?

A Well, what do you mean, a social interview in the parlor or dining room, many times, at the table, yes.

Q I am talking about the defendant and complainant in this case? 40

A I have no recollection whatever.

Q You probably would have remembered it if you had been there, wouldn't you?

A I probably would, yes, I don't know.

Q You heard the testimony in this case of Mrs. Foote, have you not?

A Yes.

Q Were you present at any of those interviews she testified?

10 A Here?

Q Yes.

A Both of them.

Q She testified that she met Mr. Foote, were you present?

A I have already stated no.

Further direct.

Q You have just proven that you were present at the giving of the testimony in this case by Mrs. Foote?

20 A Yes, sir.

Q Were you here when that testimony closed?

A I was, yes, sir.

Q At that time did the solicitor of the defendant make any statement in relation to the sobriety of Mr. Foote?

A He did.

Mr. Toler. I object to this whole line of testimony.

30 *Mr. Parker.* I will take the testimony subject to your objection.

Q Will you state what it was that he then said?

A He asked the complainant if she knew that Mr. Foote had been without employment for ten years, to which she answered no; he asked her if she knew that what employment he had had was with the Elizabeth Journal owned by his mother. She said no; he said, didn't you know that he had been afflicted with drunkenness for years, and Mrs. Foote said no; he said,
40 didn't you know that he had been in White Plains

for treatment; Mrs. Foote said no, and you spoke up and said: What is that, what is that? And Mr. Knight said, Mr. Parker, gold cure, Keeley cure, or something of that kind, and you turned around to the solicitor and asked who put him there; he said I put him there; jumped up from his chair, and he said: Now I can say once more he is a man.

Q Now I can say what?

A Once more he is a man after one month's treatment, or six weeks.

10

JAMES S. HENDERSON.

Sworn to and subscribed before
me this 9th day of September, 1904.

WALTER J. KNIGHT,
*Master and Examiner in Chancery
of New Jersey.*

By Mr. Parker. When will we have the next testimony?

20

By Mr. Toler. I have no testimony to offer.

By Mr. Parker. I rest with this witness for to-day, but I have other witnesses whom I will call later.

Adjourned until Friday, September 16, 1904, at 2.30
in the afternoon.

30

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i> ADA H. FOOTE, <i>and</i> HENRY H. FOOTE,</p>	<p><i>Petitioner,</i> <i>Defendant.</i></p>
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Friday, September 16, 1904.

The above matter, on the application of counsel for the complainant, stands adjourned until Wednesday, September 21, 1904.

Newark, N. J., September 21, 1904.

20 Taking of depositions in the above case resumed in my office at the hour of two o'clock in the afternoon of this day, in the presence of Cortlandt Parker, Esq., for the complainant, and William P. Toler, Esq., for the defendant.

Counsel for the complainant states that on consideration he closes his testimony and rests.

Counsel for the defendant states that he has no evidence to offer on behalf of the defendant.

Defendant rests.

30 CASE CLOSED.

To the Honorable William J. Magie, Chancellor of the State of New Jersey:

I hereby respectfully certify that the foregoing depositions were taken by and before me, at the time and place and in the manner hereinbefore set forth.

Respectfully submitted this 21st day of September, 1904.

WALTER J. KNIGHT,
*Master and Examiner in Chancery
of New Jersey.*

40

EXHIBITS.

August 11, 1892. Lost letter, received the announcement of notice Sep. 17, 1893.

Return in five days to The Laredo Electric Light Co., Laredo, Texas.

Mrs. Henry H. Foote, care of Mrs. Henderson, Pine Hill, Ulster Co., New York.

EXHIBIT C. 1.

10

My dear Harry—

Before consenting to your proposition to take the Holy Sacrament with you on Sunday next, I would rather have a few minutes conversation with you. It seems to me, after such a separation as we have had, (nearly two years), I would choose to have the meeting here, and not on the street. Come here to my mother's house this evening at eight o'clock when I feel sure there will be no interruption.

20

Yours,

A. H. FOOTE.

March twenty-second.

EXHIBIT C. 2.

June 2, 1904.

My dear Harry—

I should like very much to see you to-morrow, Tuesday morning, at Edith's house—half-past nine.

30

Very sincerely,

Monday.

ADA H. FOOTE.

EXHIBIT C. 3.

June 2, 1904.

Jan. 15, 1893.

My dear Harry. It is now five months since I have heard from you. Will you be kind enough to tell me

40

in what state of mind you expect me to spend the rest of my life? I gave my approval when you proposed Laredo, trusting it would prove conducive to the comfort of both of us. I now withdraw my consent to your remaining any longer.

Very sincerely,

ADA HENDERSON FOOTE.

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EXHIBIT C. 4.

June 2, 1904.

Registry Return Receipt sent Jan. 21, 1893.

Reg. No. 336, from Post Office at Elizabeth, N. J.

*Reg. Letter addressed to H. H. Foote, Post Office at Laredo, Tex.

20 After obtaining receipt below, the postmaster will mail this card, without cover and without postage, to address on the other side.

Received the above described Registered *Letter. H. H. Foote.

(Sender's name on other side.) Sign on dotted lines to the right. When delivery is made to other than addressee, the name of both addressee and recipient must appear.

30 When the registered letter or parcel accompanying this card is delivered, the Postmaster will require signature to the receipt on the other side, also on his record of registered deliveries, and mail this card without cover to address below.

A penalty of \$300 is fixed by law for using this card for other than official business.

Post Office Department. Official Business. Post Office at Laredo, Tex. Registered Jan. 20, 1893.

40 Return to Mrs. H. H. Foote, 520 Westminster ave., Post Office at Elizabeth, County of Union, State of New Jersey.

EXHIBIT C. 5.

June 2, 1904.

Oct. 23, 1892.

My dear Harry. It is now eleven weeks since I have had a line from you. In this time I have written and mailed you, this makes seven letters. I understand that letters have been received from you by a member of the family; from the silence I judge no message was sent to your wife or child? Can it be possible that you are so ill or disabled as not to be able to write? If so is there no one who will use a pen for you? Can you give me an explanation of your silence?

Your Wife.

P. S. I hope that you will arrange for the payment of the interest which falls due on the 4th of Dec. My house rent does not cover this as three hundred has already been drawn and Mamma is quite unable to pay in advance. Recollect I have never considered this my debt. I signed the mortgage to relieve you of temporary embarrassment; and do not expect to be placed in an embarrassing position myself.

A. H. F.

EXHIBIT C. 6.

June 2, 1904.

Registry Return Receipt sent Oct. 24, 1892.

Reg. No. 326. From Post Office at Elizabeth, N. J.

*Reg. Letter addressed to H. H. Foote, Post office at Laredo, Tex.

After obtaining receipt below, the postmaster will mail this card, without cover and without postage, to address on the other side.

Received the above described Registered *Letter. H. H. Foote.

(Sender's name on other side.) Sign on dotted lines to the right. When delivery is made to other than addressee, the name of both addressee and recipient must appear.

When the registered letter or parcel accompanying this card is delivered, the Postmaster will require signature to the receipt on the other side, also on his record of registered deliveries, and mail this card without cover to address below.

A penalty of \$300 is fixed by law for using this card for other than official business.

Post Office Department. Official Business. Post Office at Laredo, Tex., Oct. 31, 1892.

10 Return to A. H. Foote, 520 Westminster ave, Post Office at Elizabeth, County of Union, State of New Jersey.

EXHIBIT C. 7.

June 2, 1904.

20 My dear Harry. Before consenting to your proposition to take the Holy Sacrament with you on Sunday next, I would rather have a few minutes conversation with you. It seems to me that after such a separation as we have had, nearly two years, I would choose to have the meeting here, and not on the street. Come here to my mother's house at eight o'clock this evening, when I feel sure there will be no interruption.

Yours,

A. H. FOOTE.

EXHIBIT C. 8.

June 2, 1904.

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Laredo Electric Light and Machine Co.

Laredo, Texas, Aug. 11th, 1892.

My dear Sistada:

I am so glad to hear that you are in Pine Hill and the tone of your letter indicates that you are quite happy. I enclose herewith exchange on N. Y. for \$50, which I think you can get Mr. Hill to cash for you. I see by the Journal that Ed Babcock and Miss Wall are finally married. I wonder where they will live.
40 Over in Mexico I can get a suite of clothes made of

the best English cloth for \$34 Mexican money, and as I can buy Mexican money for 67c. on the dollar, I think it good policy to get a suite of clothes made before I come home. I am perfectly satisfied here, because I am busy, but I do wish I could see you and the baby for a little while. I have been to a swell Mexican ball, but I can't begin to tell you about. I will have to wait until I get home. Now that I know that you are in Pine Hill, I will write you a long letter.

Yours as ever,

H. H. F.

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EXHIBIT C. 9.

June 2, 1904.

In all of your notes to me, over a year ago, by the by, you assure me of your anxiety to do something for me. You can do something for me and now. Tell me why you so suddenly ceased to be as anxious to please me. Have you forgotten that I am your wife?

April, 1895.

20

EXHIBIT C. 1.

July 14, 1904.

Oliver & Drake, Druggists, 132 Broad Street.

Elizabeth, N. J., Sept. 17, 1892.

Received from Mrs. Ada H. Foote, fifteen dollars on account.

\$15.

OLIVER & DRAKE.

30

EXHIBIT C. 2.

July 14, 1904.

Elizabeth, N. J., 190

Mr. H. H. Foot, Bought of Oliver & Drake, Druggists, 132 Broad Street. W. M. Oliver. J. B. Drake.

1891. June 4. $\frac{1}{2}$ pt. brandy, 1.00; 1 bottle brush, 10, 1.10; 2 Nurs. Bottles, 20, (Aug. 11) 1 pt. whiskey, 1.25, 1.45.

40

Aug. 24, 1 bt. whiskey, 1.25; (28) 1 bt. whiskey, 1.25
2.50.

Sept. 1, 1 bt. whiskey, 1.25, (11) 1 bt. whiskey, 1.25,
2.50; 16, 1 bt. whiskey, 1.25, (29) 1 bt. whiskey, 1.25,
2.50.

Oct. 7, 1 oz. paregoric, .10, 1 bt. Olive Tar, .40, .50;
9, 1 bt. whiskey, 1.25, 1 bt. Lime W., .20, 1.45; 10, 1
pres., .35, 1 oz. Arrow root, .05, .40; 29, 1 bt. whiskey,
1.25; (Nov. 16) ½ pt. whiskey, .45, 1.70.

10 Nov. 16, 16 2 Quin. caps., .06, (27) 1 Pres., .35, 41;
29, 1 Pres., .35, (30) ½ pt. whiskey, .45, .80.

Dec. 26, 1 doz. Quin. caps., .20, (29) 1 oz. Syr.
Squills, .10, .30; 29, 1 oz. Paregoric, .10.

1892. Jan. 4, ½ pt. whiskey, .40, (8) 1 bt. milk of
mag., .50, .90. \$16.61.

Cr. 1892. Sept. 17, By cash on account, \$15.00.
\$1.61.

EXHIBIT D. 1.

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July 14, 1904.

Saturday morning.

My dear Sistada:

Is there any service that I can render you this
morning? I assure you I should be most happy to
render you any assistance that is in my power.

Yours devotedly and affect'ly

HARRY.

EXHIBIT D. 2.

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July 14, 1904.

Monday morning.

My dear Sistada:

My daily question is and shall be: What assistance
may I render to her to whom I owe so much? I shall
be at home all this morning doing some writing for Al
Lukens, but that may be a secondary consideration
in serving you.

Your devoted,

HARRY.

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EXHIBIT D. 3.

July 14, 1904.

Mrs. Henry H. Foote.

Answer.

EXHIBIT D. 4.

July 14, 1904.

10

Good Friday, March 23, 1894.

Friday morning.

My dear Sistada:

Is there any service that I can render you this morning? That I may show you even by my smallest action that I am sincere (and desire forgiveness.)

Yours,

HARRY.

I gave the note to him for this addition.

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EXHIBIT D. 4½.

July 14, 1904.

Mrs. Foote.

Answer.

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EXHIBIT D. 5.

July 14, 1904.

My dear Harry:

I would like very much to see you tomorrow, Tuesday morning, at Edith's house, half past nine.

Very sincerely,

ADA H. FOOTE.

April 30, 1894.

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EXHIBIT D. 6.

July 14, 1904.

Laredo, Texas.

Sept. 17, 1893.

My dear Sistada:

10 I wrote you at Eliz. telling you that I expected to return home the first part of this week, but not knowing whether you were there or at Pine Hill I write to both places. Is it possible for me to expect forgiveness from you for what I have not done? My heart is too full to write. I don't know where to commence. Write me a line at Eliz. and let me know what kind of a reception I may expect. I don't know what I shall do when I arrive home, but the panic has laid S. W. Texas desolate and it is hardly possible to earn bread and butter. My obligations to your mother can never be paid for all her kindness to you and the baby, and with all my misfortune and suffering if I could only see you and the baby and hear your laugh I should be happy.

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With my dearest love for you and baby, believe me,

Very affectionately,

HARRY.

EXHIBIT D. 8.

July 14, 1904.

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Return in five days to The Laredo Electric Light Co., Laredo, Texas.

Mrs. Henry H. Foote,
520 Westminster Ave.,
Elizabeth, N. J.
c. o. Mrs. Henderson.

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EXHIBIT D. 7.

July 14, 1904.

Laredo Electric Light Company.

Laredo, Texas, June 15, 1892.

My Dear Sistada :

Since writing you on Sunday I have been very busy at the office & consequently have had no time to "inspect" the city. I am agreeably disappointed in Laredo & find it pleasanter than I anticipated. There is a great deal of society here. Ft. Mackintosh is only a mile from here & between the Americans & English in Laredo & the Officers & wives at the post there is always something going on. I think my dress suit would have come in handy, but I guess I can get along without it. I have only been here five days & have had two invitations, one to a swell hop last evening & another for to-morrow evening at the casino. The climate here is very healthy, & it is quite a resort for consumtives. The hotel accommodations are very good & the food is above the average. We have every thing that is in the market, we have strawberries the year around & crabs lobsters oysters & clams in their season. Of course hotel cooking is tiresome but that is so everywhere. Peaches are so plentiful that I don't bother to eat them. Fresh figs are very common (the kind you get in Savannah.) The weather is of course very warm in the day time, but there is always a breese and the nights are cool. The natives here say that May & June are the hottest months, so I am on the "tag end" of the hot spell. New Laredo in Mexico is absolutely Mexican. There is a Mexican post there & altogether the atmosphere is pervaded with soldiers. The world is very small! I have met a half doz people here that I know & who should walk into the hotel yesterday on his way to Mexico City but Fred Seaman of Madison. Laredo is situated on a "bluff" about 60 ft above the Rio Grande river & the two cities are connected by bridges. The river is very muddy, but the natives do not hesitate to bathe in it.

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I am perfectly well & contented here & trust that I shall keep so until I have to come home. With best love to all & kiss for yourself & baby Maud, believe me

Very truly yours,
H. H. F.

EXHIBIT D. 9.

July 14, 1904.

10 Return in five days to The Laredo Electric Light Co., Laredo, Texas.

Mrs. Henry H. Foote,
520 Westminster Ave.,
Elizabeth, N. J.
c. o. Mrs. Henderson.

EXHIBIT D. 10.

July 14, 1904.

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Laredo Electric Light Company.
Laredo, Texas, June 27, 1892.

My Dear Sistada:

Yesterday was St. John's day & it was a very interesting sight to see the way the Mexicans observe the day. From daylight until 10 o'clock every Mexican is supposed to take a bath in the Rio Grande & consequently the river was full of them, old & young, male & female, horses & cattle, consequently the river was full of them. The heat here is something awful. 110° in shade is considered quite cool. But is the atmosphere is very dry, not having had any rain in two years, malaria is out of the question & and Annie's shipment of quinine was quite unnecessary. I have been very busy & really have had no time to write long letters. I have just time to drop you this line before the mail closes. I am on my way to North Laredo to buy a carload of coal. Am very well. With love to all.

40

Yours,
H. H. F.

EXHIBIT D. 11.

July 14, 1904.

Return in five days to The Laredo Electric Light
Co., Laredo, Texas.

Mrs. Henry H. Foote,
520 Westminster Ave.,
Elizabeth, N. J.
c. o. Mrs. Henderson.

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EXHIBIT D. 12.

July 14, 1904.

Laredo Electric Light Company.
Laredo, Texas, July 30, 1892.

My Dear Sistada :

What do you think of living in a climate where 110°
average is considered quite pleasant! I have been
here three weeks and 110° has been the average, but as 20
I have written you it never rains here consequently
the climate is very healthy. Laredo is a town of long
distances and when you have to walk around town in
the sun & dust about six inches deep you are apt to
become somewhat fatigued. There are no holidays
for a man in the Electric Light business, for Sunday
or July 4th people must have light. The men em-
ployed by the Company are as a rule very pleasant &
agreeable but the plant has run itself so long that it
takes all my time getting things systemtized. I go to 30
the office about 8 o'clock in the morning and work un-
til 1 o'clock then after dinner like all good Mexicans I
take a "Siesta" (a nap) for about an hour & a half
every body sleeps in the day time & you might as well
try to do business in the middle of the night as to try
and accomplish anything between one o'clock & 4
o'clock in the afternoon. Of course the plant runs all
night & I make it a rule to be there at 12 o'clock at
night when the engineers change to see that every-
thing is all O. K. New Laredo is the gayest place in 40

the evening. The Mexican gov always have music on the Plaza and it is very pleasant to listen to the music & to watch the Mexican men & women walk around & round the Plaza. They walk for hours at a time and always in opposite directions. They are not allowed to walk in the same direction. It is an old Mexican custom & a person is liable to arrest if they break this rule. The Mexicans, when they have a law they enforce it. The other day a Mexican soldier killed his wife. He was captured and it being proved that he did kill her he was taken from jail & shot by the soldiers. No jury, no ministers, no sympathetic ladies with bunches of flowers & cans of jelly allowed. Laredo is on the decline. Unless it rains there will be nothing left to support the city. People are leaving their ranches & driving their cattle & sheep north in search of water. I have seen myself hundred of cattle dying of thirst, & there is nothing left but to shoot the beast or drive away. Some time go to mother's & get Carlton's book on Mexico. Of course everything he says is exaggerated, but pictures in his book are daily scenes for this country. I expect before I return to take a trip to Monteray & the City of Mexico. We at home have no conception of Mexico, any more than the Mexicans have of the U. S. They think that if it was not for San Antonio (a city of 40,000) they could capture the whole U. S. in a week. Have you any idea of the size of Texas? Just think! I am 600 miles from Mamie. When I left Longview to go to Mineola to see Mamie the journey was the same as going from Baltimore to Eliz & then driving to Morristown. The only way I can get a breeze in this place is to start an electric fan and then the air feels like register heat. This is an awful hard place to work in and I have plenty to do. I think that if you were here, you would stay about 24 hours, and pack up and get out. You will have to wait until the middle of July before I send you any money I need all that there is here at present for the running of the plant.

Give my best love to all, and with a kiss for yourself & baby Maud, believe me

Very truly yours,
H. H. F.

EXHIBIT D. 13.

July 14, 1904.

Laredo Electric Light Company.

Laredo, Texas, July 12, 1892.

10

Dear Sistada:

How are the little chickens getting along? I had almost forgotten all about them. I presume that by this time Toler is living on Spring chicken. How I would like to taste one! The food here is pretty poor. How would you like to drink goat's milk & eat young kid? Think of Spring kid instead of Spring lamb! Have you heard anything more about the school house? where it to be built? Tomorrow I have to go to the Santos Tomas' coal mines on business & I will have the satisfaction of going in a coal mine if I did have to come to Texas to see one. I presume that you are having pretty warm weather at Eliz now, but it is nothing compared with Laredo weather. Somebody at the telephone wants me. Give love to all.

20

Yours,

H. H. F.

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EXHIBIT D. 14.

July 14, 1904.

Return in five days to The Laredo Electric Light Co., Laredo, Texas.

Mrs. Henry H. Foote,

520 Westminster Ave.,

Elizabeth, N. J.

c. o. Mrs. Henderson.

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EXHIBIT D. 15.

July 14, 1904.

Laredo Electric Light Company.

Laredo, Texas, July 10, 1892.

My Dear Sistada:—

Laredo has been blessed with a rain storm of a few hours, and everything has improved in appearance, but it has been so much hotter ever since that it is almost unbearable. I see by the Journal that Dr. Green
 10 is dead. It seems that all Eliz's Dr.'s die suddenly. I will write to Will Clark & ask him to send you the lamp which I had last winter. I am sure you will find it safe & in good condition. I enclose herewith \$10 to pay Geo. Ross ac. Tucker. I am unable at present to send you any more money because I am unable draw any more until more is collected. In other words the money I have on hand I need to run the Light plant. I hope baby Maud will not be sick. How is the house getting along? Do you intend going
 20 to Pine Hill? Give love to all.

Yours truly,

H. H. F.

EXHIBIT D. 16.

July 14, 1904.

Return in five days to The Laredo Electric Light Co., Laredo, Texas.

Mrs. Henry. H. Foote,

30 520 Westminster Ave.,

Elizabeth, N. J.

c. o. Mrs. Henderson.

EXHIBIT D. 17.

July 14, 1904.

Laredo Electric Light Company.

Laredo, Texas, July 19, 1892.

Dear Sistada :

I am sorry to hear about Geo. Cent. passing its dividend. The best thing I can do is to do the best I can.
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In other words if I can't get anything to do at home I had better stay down here. I have not been very well for the last few days but feel better now. I am sorry to have such "blue" letters from you, because it is bad enough to be here without thinking that you are unhappy at home. I presume that you will all stay in Eliz this summer & you might be in a much worse place. How is Annie Sawyer? Does she still come to see you every day? I hope you & the baby will send you some money tomorrow or next day. With love to all. 10

Yours truly,
HARRY.

EXHIBIT D. 18.

July 14, 1904.

Return in five days to The Laredo Electric Light Co., Laredo, Texas. 20

Mrs. Henry H. Foote,
520 Westminster Ave.,
Elizabeth, N. J.
c. o. Mrs. Henderson.

EXHIBIT D. 19.

July 14, 1904.

Laredo Electric Light Company.

Laredo, Texas, July 28, 1892. 30

My Dear Sistada:

I have not heard from you for a few days & I trust that you & the baby are both well. I have lost 19 lbs. since I have been down here, & would like so much to have one cool day to see how it feels. I am sorry to be able to send you any money until after Aug. 1, but such is the case. I am glad they have decided to put the school house on Parker road. Will it be next to "Mike's"? Has Pete Brown commenced his house yet. If I ever get back to Elizabeth I don't 40

believe I will know the place with two new depots. Laredo has 3 trains a day. One going north, one going to Corpus Chrysti & one to Mexico & they are generally from 1 to 3 hours late & hard to depend upon. Society here is very poor. The "Pastime Social Club" is the swell club of the town & the Executive Committee is composed of the W. U. tel operator, the telephone mgr. & the Ant engineer of the Electric Light Co., but they all wear dress suits. Have you heard
 10 anything more about the Clark Thread Works? I don't think there is any chance to make any money out of the State Fair people. Give love to all at Elizabeth. How does Screven get along in the choir? How I would like to see you & the baby!

Yours truly,
 H. H. F.

EXHIBIT D. 20.

July 14, 1904.

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Return in five days to The Laredo Electric Light Co., Laredo, Texas.

Mrs. Henry H. Foote,
 c. o. Mrs. Henderson,
 Pine Hill,
 Ulster Co., N. Y.

EXHIBIT D. 21.

July 14, 1904.

30

Wednesday morning.

My dear Stada:

I must take this opportunity to thank you very much for speaking to me on the street the other day, and I have a request to ask you which I hope you may see your way clearly in granting. Will you not take your Easter communion with me at Christ Church at the 7 o'clock celebration? You leave home about quarter of seven and I will meet you and go
 40 with you. Our conversation may be as limited as

you choose to make it, or to have it made, and I assure you that I will appreciate this favor more than I can possibly express. Please assist me in my hope and believe me always

Your devoted,
HARRY.

Mch. 21, 1894.

EXHIBIT D. 22.

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July 14, 1904.

My Darling Wife:

I heard from Ernest that Screven was not at all well. I tried to get in the house twice but was unsuccessful both times, consequently I presumed he must be much better. I should be glad to be of any service to him that is in my power. I am very sorry that you are so unhappy at Pine Hill & that you & Maud do not get on as well as usual. Do not stay in Pine Hill when your mother comes home. You would be still more unhappy. Perhaps I deserve all the scoldings you give me but nevertheless I am doing the best I know how & I hope some day you will again be your own bright self. I have seen nothing of Mannie. If he came to Eliz. I did not see him. I have the foundation of the house painted & the fence between Teler's & your house. I am very sorry your mother does not improve. Saturday the expressman had a piece of furniture for your mother from Mrs. Pinneo's & as the house was locked he had to leave it on the piazza. He came to me for a key to the house, but of course I could not let him in. When your mother comes home you come to & there will be some way provided for your comfort. You certainly could not stay in Pine Hill. I know nothing positively & if you think best to rent your house do so. I am doing my best.

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Your devoted husband,
HARRY.

Written probably sometime Sep. 1891.

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EXHIBIT D. 23.

July 14, 1904.

Mrs. Henry H. Foote,
c. o. Mrs. Henderson,
520 Westminster Ave.,
Elizabeth, N. J.

My dear Sistada :

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I was awfully sorry not to have seen you yesterday, but of course under the circumstances it was unavoidable. I trust nobody is seriously ill and I hope the servant question will be easily settled. I am at your service at any time.

Your devoted,
HARRY.

Monday, Apl 9, '94.
Eliz., N. J.

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EXHIBIT D. 24.

July 14, 1904.

Mrs. Henry H. Foote,
c. o. Mrs. M. H. Henderson,
520 Westminster Ave.,
Elizabeth, N. J.

Eliz., N. J., May 21, '94.

30

My dear Sistada :

I expect to go away tomorrow for a few days on a business trip for Harry Toler, up in Vermont & New Hampshire, and I should like very much to see you in the morning about 8.30 o'clock for a few moments. Of course I don't know what the outcome will be but it may be a start and that is something. I hope that you and the baby are well, but I have not seen you in so long that I wonder and hope for the best.

With all my love,
HARRY.

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EXHIBIT D. 25.

July 14, 1904.

Mrs. Henry H. Foote,
 c. o. Mrs. Henderson,
 520 Westminster Ave.,
 Elizabeth, N. J.

Friday evening.

My dear Sistada :

May I not have the pleasure of seeing you some time
 to-morrow or on Sunday? or both? I just plain want
 to see you. What were you doing down on Eliz. ave?
 I must see you, it is such a satisfaction and I know
 you will give me that much pleasure. I will be at
 Toler's in the morning and, if you are going by about
 9 o'clock your one look will tell me whether my wish
 may be gratified.

10

Your devoted,

HARRY.

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Mch. 30, '94.
 Eliz., N. J.

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02

IN CHANCERY OF NEW JERSEY.

Between

ADA H. FOOTE,

Complainant,

and

HENRY H. FOOTE,

Defendant.

On Bill for Divorce.

It is, on this twenty-first day of March, one thousand nine hundred and five, on motion of Cortlandt & Wayne Parker, Solicitors for Complainant and with the consent of Counsel for both parties ordered that the above mentioned cause be referred to Eugene Stevenson, Esquire, one of the Vice Chancellors, to hear the same for the Chancellor and to report thereon to him and advise what order or decree should be made thereon.

W. J. MAGIE,
C.

We consent to the above order.

CORTLANDT & WAYNE PARKER,
Solicitors for Complainant.

WM. P. TOLER,
Sol'r for Deft.

IN CHANCERY OF NEW JERSEY.

Between

ADA H. FOOTE,
Complainant,

and

HENRY H. FOOTE,
Defendant.

*On Bill for Divorce
for Desertion.
Memorandum of
Conclusions.*

Messrs. Cortlandt and Wayne Parker for complainant.

Mr. William P. Toler for defendant.

STEVENSON, V. C.

1. While the defendant filed an answer denying the desertion charged against him, and also a cross-bill praying for a divorce on the ground of an alleged desertion of him committed by the complainant, he offered no evidence to sustain either his answer or his cross-bill. His counsel, however, cross examined the two witnesses for the complainant. The complainant's whole case rests upon her own deposition, the deposition of her brother, Mr. James S. Henderson, and the letters from the defendant which were admitted or proved.

The testimony for the complainant, if the same could be deemed sufficient in amount, does not in my opinion exhibit a case of wilful, continued and obstinate desertion on the part of the defendant.

The couple were married October 12, 1886. In June 1891 they broke up housekeeping and the complainant and her child went to her mother's house

in Elizabeth, N. J., to live, while the defendant went to reside with his mother in the same city. The separation thus commenced has continued without break until the hearing of the cause. The complainant's bill was filed August 6th, 1903, twelve years after the commencement of the separation. After the separation had continued about a year the defendant with the knowledge and consent of the complainant, went to Laredo, Texas, to fill the position of manager of an electric light company. The complainant admits that this business arrangement of her husband was not against her will, and that she contemplated joining her husband and living with him again in Texas.

The defendant evidently made a failure of his Texas experiment and in September 1893 he returned from Texas and again began to live with his mother in Elizabeth. For the ten years preceding the commencement of this suit these parties have been residing in the same street in Elizabeth within two blocks of each other.

The testimony shows that the original separation in 1891 was not due to any intentional cruelty or ill-treatment on the part of the defendant. The resources of the little family gave out. The husband had recently lost a good position in the employ of a firm of bankers in New York City where he was earning \$2,000 a year. It was necessary to mortgage the wife's property to pay accrued household expenses. The wife apparently having a small income of her own, took her child and went to live with her mother, while her husband in his poverty and misfortune found refuge in his parent's house. The complainant's testimony although perhaps avoiding a complete disclosure of all that she knew of the subject, indicates and other evidence I think warrants the inference that the loss of the defendant's position in New York and his failure to support his family were due to habits of intoxication which he had contracted. The husband and wife apparently never quarreled. After

the separation had endured for a year, I think it was plain that this unfortunate and erring man, probably with the aid of friends, made an effort to make a fresh start in a new place, and accordingly went to Texas and engaged in the business above mentioned in a comparatively small town. The complainant testified that when the defendant left for Texas he was in good spirits, and that she anticipated that he would succeed, and that she would join him there. A series of affectionate letters were written by the defendant to the complainant during the first months of his stay in Texas, and then the correspondence ceases. The reasons of the failure of the defendant's experiment in Texas we are left to surmise. After his return in 1893, to his mother's house in Elizabeth a number of interviews took place between himself and his wife, and some communications passed between them. These interviews and communications seem to have ceased about the year 1897. The complainant's brother testified that at different times, and particularly during the four or five years preceding his, the brother's examination, as a witness in this case, he had seen the defendant intoxicated on the street. Both counsel in argument refer to the significant fact indicated if not proved by the testimony, that the defendant had recently taken the "Keeley Cure" at White Plains, New York.

The defendant's affidavit of noncollusion annexed to his crossbill was taken before a notary public at White Plains, New York, on January 14th, 1904.

It is hardly necessary to say that habitual drunkenness is not a cause of absolute divorce in New Jersey even when the effects of such drunkenness is to justify the wife in separating herself from her husband. Nor is failure to support a wife resulting from habitual drunkenness a cause of divorce in this state.

The doctrine of constructive desertion has not been extended so as to reach these classes of cases which in other states are recognized as proper ones to call

for the remedy of divorce. The failure of the husband to support the wife growing out of his habitual drunkenness may justify the wife in leaving him and prevent the separation so caused from being charged against her as a wilful, continued and obstinate desertion, but it does not follow that in such a case the husband is guilty of such desertion.

In all the long story of separation which the complainant tells, and in all these letters to her from the defendant, I fail to find any indication that the defendant intentionally separated himself from his wife, or intentionally produced the conditions which compelled such separation. The defendant appears to have loved his wife. I do not think that the proofs show that he ever addressed a word to her except in kindness. He fully recognized that he had grossly failed in the discharge of his duty to his wife, and that he stood in need of her forgiveness. Although the complainant had some means, she seems to have preferred not to share with her husband the discomfort and misery of a drunkard's home. As between such a home and a home with her mother she made a very natural choice. Although the husband and wife were separated, in my judgment there was no wilful and obstinate desertion committed by either. When the husband endeavored to make a new start and went to Texas, both husband and wife were planning that when he succeeded in his new life of industry and sobriety they would live together again in the husband's new and distant home. There is no suggestion that the husband did not embark in this Texas enterprise in absolutely good faith, and that the six or eight affectionate letters which he wrote during the first two months of his stay in Texas do not make a truthful disclosure of his mind and feelings towards his absent wife. No reason for the sudden termination of the husband's letters is suggested by the testimony except the same reason which indirectly caused the original separation in 1891. That same cause of separation and estrangement continued

to operate after the husband's return to Elizabeth in 1893 and presumably kept the couple apart for the ten years which followed and which ended with the husband in the "Keeley Cure" at White Plains.

In *Laing vs. Laing*, 21 N. J. Esq., 248, Chancellor Zabriskie in defining constructive desertion, includes only cases in which "the husband treats his wife with such cruelty or violence that she is obliged to leave him for safety, or to avoid personal injury"—"but" the learned Chancellor adds (p. 249), "if she leaves him because he is intemperate, improvident, fails to support her, or because his bad temper or intemperance makes her home disagreeable, this is not a desertion on his part. Habitual drunkenness is not in this State a ground of divorce. It would become such substantially if the doctrine would be established that a wife might leave her husband for it and then have a divorce on the ground that he deserted her."

In *Palmer vs. Palmer*, 22 N. J. Eq., 88, the same Chancellor formulates a similar definition of constructive desertion, but admits that there may be cases "where a wilful and malicious refusal by a husband to permit a wife, who is discharging her own duties, to share with him such means of support as he may have, may be held to be an expulsion from his house and constitute a desertion."

Skean vs. Skean, 33 N. J. Eq., 148; *McVickar vs. McVickar*, 46 N. J. Eq., 490; *Lister vs. Lister*, 65 N. J. Eq., 110.

The plain distinction between a wilful withholding of support by the husband from the wife, the necessary effect of which is to compel her to seek support away from him, and the habitual drunkenness of the husband which renders him unable to furnish support to his wife and thus becomes the indirect cause of her separation from him, prevents I think, the definition of constructive desertion from being

extended so as to make habitual drunkenness leading to non-support practically a cause of divorce under our statute.

It may be argued that where the wife is wholly dependent for support upon the earnings of the husband, and the husband allows himself to become an habitual drunkard so as to deprive him of his power to earn a sufficient support for himself and wife, that he must be presumed to intend the natural consequence of his conduct, which is the compulsory separation of his wife from him. It may be claimed that in such a case it is not the drunkenness of the husband which is the cause of divorce, but the constructive desertion which results from such drunkenness. To extend the doctrine of constructive desertion to such a case, viz: where the wife has no means and the husband's only means of supporting his wife consist of his earning power which habitual drunkenness destroys, would in effect, make habitual drunkenness where these special conditions exists, practically a cause of divorce in New Jersey. But the complete answer, I think, to the argument suggested above, is that the law of divorce in defining desertion deals with the actual intention of the parties. The desertion must be wilful and obstinate as well as continued. It is notorious that drunkards generally do not in fact *intend* the consequences of misery and sorrow from which their families suffer. In this present case there is nothing to show that the defendant for the ten years prior to the commencement of this suit, was not from time to time struggling to reform and hoping to re-establish his home. There is no evidence that the failure of the defendant to support his family, if such failure in fact compelled the complainant to separate herself from him, was at any time within his purpose or intention.

The evidence indicates that the defendant desired to live with his wife and support her, but could not resist the appetite for strong drink, which rendered the

discharge of his duty to his wife and child practically impossible.

Apart altogether from the foregoing considerations I think there is a feature of this case which would prevent any possible extension of the doctrine of constructive desertion from being applied to it. The evidence quite strongly points to the conclusion that the original separation in 1891 was not forced upon the complainant. The complainant's testimony as to the cause of this original separation is meagre. She says that in June, 1891, they "broke up housekeeping"—that finding out that the defendant "was in debt and had no money" she mortgaged her house for \$1,000, "to relieve him" and "upon advice" went to her mother in her country home. This is hardly a description of a wife starved out of her drunken husband's home. It may be that the wife was prudent in leaving her husband before his improvidence had led to the exhaustion of her resources, but by leaving him she protected herself while she deprived him of the restraint which her personal influence might have exercised upon him. She seems to have left him to his fate—to struggle with his enemy alone. The testimony indicates to my mind not that the complainant was forced away from the defendant by his failure to support her, but that "by advice" she consented to a separation at least until the defendant could get employment and again from his means provide and maintain a suitable home for his family. If the defendant at any time thereafter had in fact become capable of providing a home and support for his wife, and had wilfully refused to do his duty in that regard, it may be that a constructive desertion might be established against him. But there is no evidence that the defendant at any time after his failure in Texas became capable of supporting his wife. On the contrary the evidence strongly indicates that his habits of intoxication grew upon him from year to year until when this suit was commenced he had

reached the stage of chronic alcoholism which calls for the application of the "Keeley Cure." Without, therefore, distinguishing between the intended and the unintended results of a husband's habits of intoxication in a case like this, the indications are that the original separation of these parties was established by consent, and that the complainant did not desire to return to her husband unless he could reform his habits and render himself able as well as willing to maintain a suitable home for her and her child, and that the husband never thereafter had the means to supply such a home.

2. If there is any view of the evidence in this case which will support a charge of constructive desertion, no such charge is set forth in the bill of complaint. In *Smithkin vs. Smithkin*, 62 N. J. Eq., 161, Vice-Chancellor Reed says (p. 163) "I am of the opinion that when a divorce is asked for on the grounds of desertion arising from the compelled absence of the petitioner by reason of the extreme cruelty of the respondent, the facts should be so charged in the bill or petition. The issue to be tried in such a case would be the fact and the degree of the respondent's cruelty, and the respondent is entitled to be informed of the issue to be tried and to answer the acts charged. The case of an ordinary desertion and one such as we are considering, radically differ. The proof offered in support of the former would often refute the existence of the latter."

The foregoing views seem to apply with equal force to every form of constructive desertion. The principle laid down is that the facts which are to be deemed as causing "the compelled absence of the petitioner" must be set forth so as to constitute the charge which the defendant is to meet.

It is certainly a very remarkable circumstance that the complainant in her elaborate and argumentative pleadings refrains from disclosing the fact that the defendant was addicted to drink.

3. The whole charge of desertion rests upon the uncorroborated testimony of the complainant. The letters of the defendant certainly do not help out the complainant's case. There is not a word in all these letters written by the defendant which indicates an intention to desert his wife, or an intention to cause his wife to separate herself from him.

The testimony of Mr. Henderson, the complainant's brother, only "proves the continuance of the separation, but not that the original separation was a desertion." See *Corder vs. Corder*, 59 Atl. Rep., 309.

The fact of the defendant's repeated intoxication after the separation began, which was testified to by Mr. Henderson, plainly does not supply the necessary corroboratory evidence. A woman cannot get a divorce by swearing to a constructive desertion resulting indirectly from her husband's habitual drunkenness and then producing a witness to testify that long after the separation her husband was from time to time seen drunk on the streets. The corroboration must be of the account which the complainant gives of the "causes of separation"—of the characteristics of the separation which show it to have been a wilful and obstinate desertion. *McShane vs. McShane*, 45 N. J. Eq., 341; *Costill vs. Costill*, 47 N. J. Eq., 346.

4. It may be urged that the inference that the drunkenness of the complainant was the indirect cause of the separation which took place in the spring of 1891, is not warranted by the evidence. The direct testimony on this subject is certainly meagre. On the direct examination the complainant was asked what were the defendant's "habits as a man of sobriety." Her answer was: "He was a man who did not use intoxicating drinks," and she stated that she knew it "but the defendant didn't show it particularly." On cross examination the complainant's testimony was as follows:

Q Did he drink during your married life?

A Yes.

Q To excess?

A Well, he would drink in the evening.

Q Didn't you know that he has been afflicted with drunkenness for years?

A No.

Q Do you know that by reason of drink he has been without any work except for short intervals in the Journal which is owned by his mother?

A No, I don't know that.

Q Do you know he lost that position by reason of drink and has taken the cure at White Plains?

A No.

Q Never heard of it?

A No.

Q Do you know, Mrs. Foote, that his mother has supported him for all these years and that he has never been able to support himself?

A No.

The brother of the complainant who was a witness, testified that the defendant "used" intoxicating liquors but knew "nothing of his habits personally." He admitted, however, that he had seen the defendant intoxicated on the street, "half a dozen times in ten years."

Counsel for the defendant in his brief refers to the significant cross examination above set forth as the admission of the defendant "in the evidence that the defendant had been a slave to drink and had taken the cure at White Plains."

In the elaborate brief of the complainant no charge or admission is made that the original separation of the parties resulted directly or indirectly from the defendant's habits of intoxication. The defendant is alleged to have been "habituated more or less to the use of liquor; sometimes intoxicated" and statements made by the defendant's solicitor in relation

to the defendant's having been "afflicted with drunkenness for years" and having been sent to the "Keeley Cure" at White Plains, are pointed out in this brief "as the strongest evidence" as the defendant's "ill-habits." This brief also states as a fact that the defendant had at last resorted to the Keeley Cure.

The impression derived from the whole testimony in this case is that the complainant was keeping back information which she might have given, which would have made it plain whether or not in 1891 the defendant had become addicted to habits of intoxication which destroyed or greatly impaired his earning power. When this subject is presented to her mind upon her direct and her cross examination, in her answers she is extremely guarded and avoids describing the degree to which the defendant had become addicted to drink. After avoiding opportunities to state whether the defendant was a drunkard or not, she evades the direct question whether he drank "to excess."

In the state of the proofs above set forth it may be necessary to consider how this case would stand if it must be deemed that the evidence is insufficient to warrant the inference that the habitual drunkenness on the part of the defendant brought about the original separation which occurred in June, 1891. With such an assumption it is difficult to avoid the conclusion that the complainant has refrained from testifying to facts which would explain the cause and character of a separation which without such explanation is certainly involved in mystery. The defendant from the present point of view appears to be a man of "great intelligence and a very clever accountant," a man of good health and of good education, who had risen in the employ of a banking firm until he was earning \$2,000 a year. His general moral character is not questioned; he is a member of the church. This man manifests no feeling towards his wife and child but kindness and affection. He has in some

way failed in his duty to his wife for which he recognizes that he needs her forgiveness, and the forgiveness which he seeks is for some sin of omission. After the separation has endured for over two years the defendant writes to his wife from Texas notifying her that he is coming home, stating that he wanted complainant's forgiveness, begging her to write to him and referring to the sight of his wife and child as the one thing which would make him happy in all his "misfortune and suffering." It is noticeable that the complainant in her direct examination admitted that she wrote no reply to this letter, failed to produce it but described it as merely stating that the defendant "was coming on." The letter itself which was thus misdescribed, was afterwards forced from the complainant on cross examination. Through all the communication and interviews which followed the defendant's return to Elizabeth in 1893 until 1897, when there appears to have been an entire cessation of intercourse between these parties, the defendant manifests his strong affection for his wife and his desire to be restored to her favor while at the same time he plainly admits that for some reason not stated he stands in need of her forgiveness.

If we exclude from consideration the theory of habitual drunkenness as the origin of this separation in 1891, and the cause of the continuance of that separation, the conduct of this married couple certainly is inexplicable according to the ordinary standards of human nature in the light of the evidence which has been produced. It is almost impossible to avoid the inference that the true cause of this separation has been concealed. Such concealment, in divorce cases founded upon alleged desertion, is frequently made. But if the complainant has not kept back any explanatory evidence, if the picture which she presents of her married life and then of her separation from her husband is reasonably complete, and we must attribute the separation to an unaccountable

and unnatural desire of the defendant to desert his wife and child, and deem al his manifestations of affection for his wife and child insincere, I think the case is still subject to the fatal objection that the "causes of separation" stand proved by the complainant's testimony alone. Whatever theory may be adopted as to the causes of separation, that theory must be deduced from the complainant's testimony without the aid of corroborative testimony. The corroborative evidence which has been offered does not extend to the essential elements of the matrimonial offence of desertion defined by our statute.

The bill is dismissed.

IN CHANCERY OF NEW JERSEY.

Between

ADA H. FOOTE,
Complainant,
and
 HENRY H. FOOTE,
Defendant.

On Bill for Divorce.
Final Decree
Dismissing Bill.

This cause having been regularly set down for hearing at the May Term, 1905, of this Court and now coming on to be heard in the presence of Messrs. Cortlandt and Wayne Parker, of counsel with the complainant, and William P. Toler, Esq., of counsel with the defendant; and the pleadings herein having been read, and the proofs and evidence offered by the parties respectively having been taken in open court, and the arguments of said counsel having been heard; and the Court having considered the said pleadings and proofs and arguments, and being now of opinion that the complainant is not entitled to the relief prayed by her bill of complaint herein:

It is thereupon, on this twentieth day of July, nineteen hundred and five, by the Chancellor of the State of New Jersey, ordered, adjudged and decreed, that the said complainant's bill of complaint in this cause be and the same is hereby dismissed.

W. J. MAGIE,
C.

Respectfully advised,
 EUGENE STEVENSON,
V. C.

IN CHANCERY OF NEW JERSEY.

<i>Between</i> ADA H. FOOTE, <i>Complainant,</i> <i>and</i> HENRY H. FOOTE, <i>Defendant.</i>	}	<i>On Bill of Divorce</i> <i>and Alimony.</i>
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The complainant, Ada H. Foote, hereby appeals from the final decree of the Court of Chancery made in this cause, whereby her bill of complaint therein, praying for divorce from the bond of matrimony with said defendant, and for alimony, was dismissed with costs, (which decree was filed in said court on the fourth day of August, one thousand nine hundred and five), and from the whole thereof, upon the ground that the same was not justified by, and is contrary to, the evidence taken in said cause, and that said court should have decreed that the prayer of said bill should be granted and that she should be divorced from matrimony with said defendant, with costs of her said suit and that alimony should have been settled in her favor according to the position of said court—to the Court of Errors and Appeals in the last resort in all causes.

Dated, August 18, 1905.

CORTLANDT & WAYNE PARKER,
Solicitors of Complainant.

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

CORTLANDT PARKER,
Of Counsel with Complainant.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

HENRY H. FOOTE,
Defendant.

and

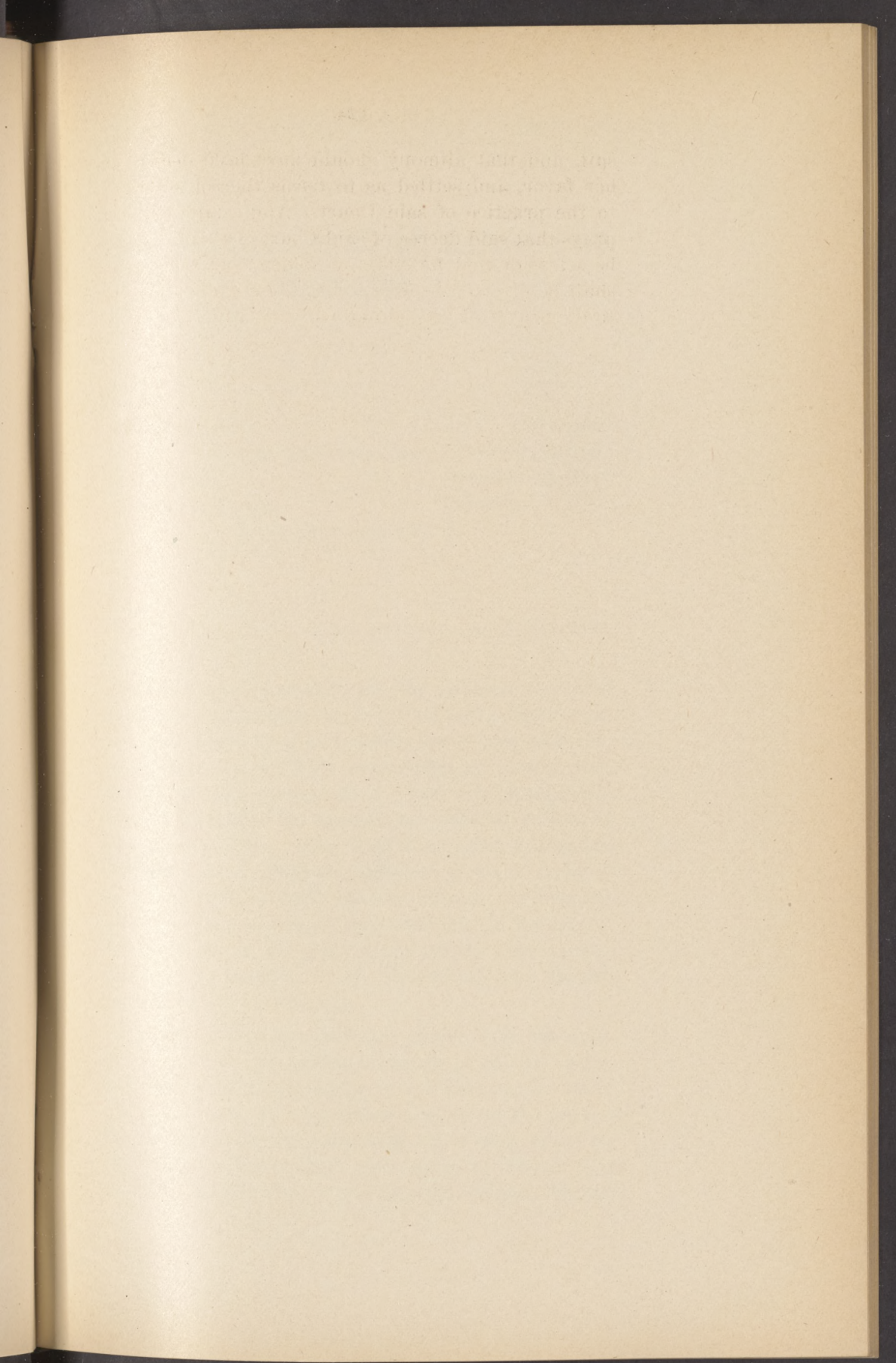
ADA H. FOOTE,
Complainant,

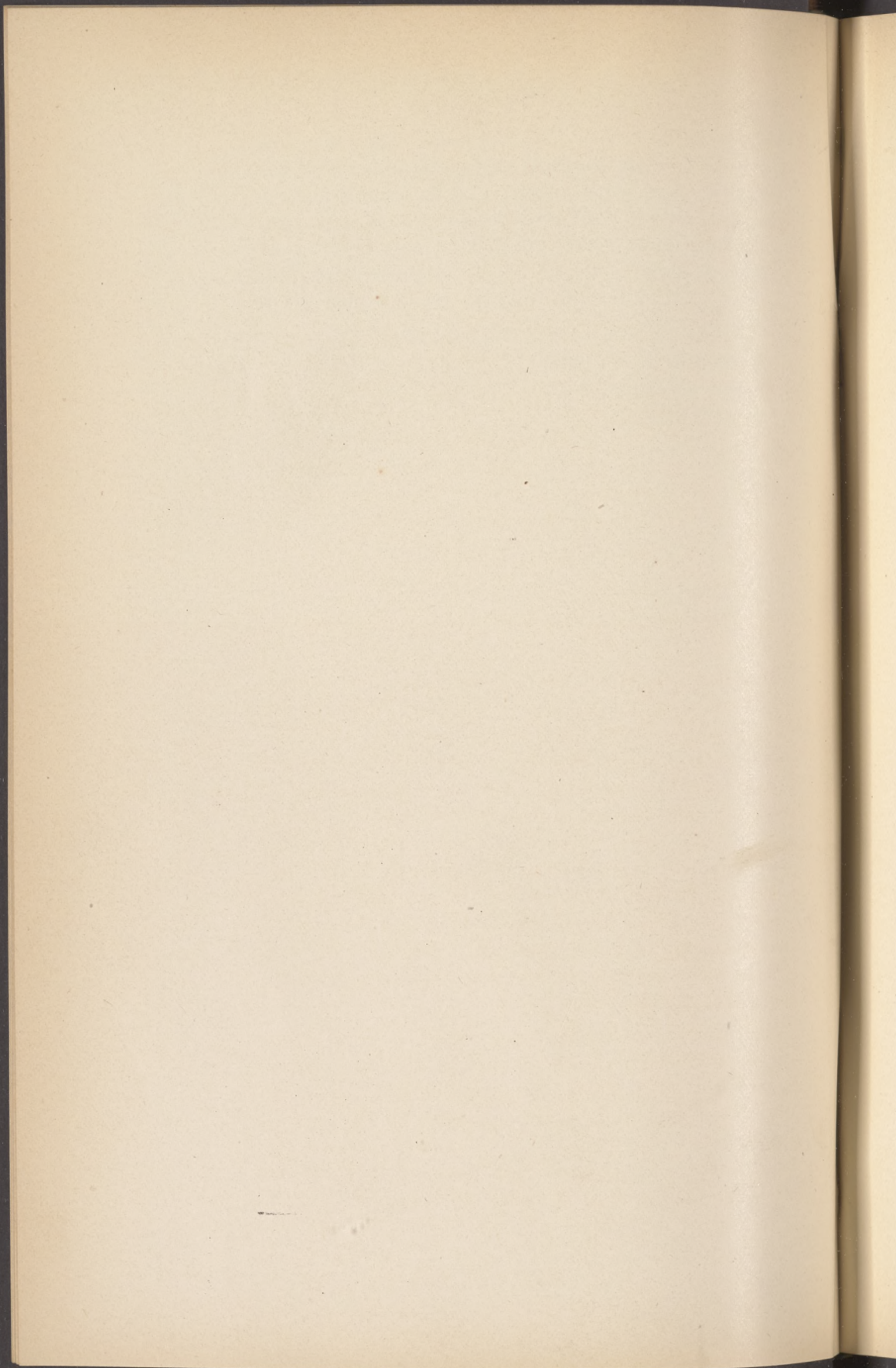
Petition of Appeal.

To the Honorable, the Court of Errors and Appeals in the last resort in all causes, of the State of New Jersey, respectfully showeth your petitioner, Ada H. Foote, above named, that she finds herself aggrieved by a final decree made in the Court of Chancery by the Honorable William J. Magie, Chancellor of New Jersey, filed in said Court on the fourth day of August, one thousand nine hundred and five, in the above stated cause, whereby her bill of complaint therein, praying for divorce from the bond of matrimony, with the said Henry H. Foote, the defendant therein, and for alimony, was dismissed with costs, in this respect, that said decree adjudges that her said bill of complaint should be dismissed with costs. And your petitioner humbly appeals from said decree and from every part and the whole thereof, upon the ground that the same was not justified by, and is contrary to the evidence taken in said cause, and that said Court of Chancery should have determined and decreed, by reason of the evidence and pleadings in said cause, that the prayer of said bill should be granted and that the petitioner should be divorced from matrimony with said defendant, with costs of her said

suit, and that alimony should have been decreed in her favor, and settled as to terms thereof according to the practice of said Court. And your petitioner prays that said decree of said Court of Chancery may be set aside and for nothing holden, and that decree shall be directed by this Court to be made according to the prayer of her said bill of complaint.

CORTLANDT & WAYNE PARKER,
Solicitors of Appellant.
CORTLANDT PARKER,
Of Counsel.





New Jersey Court of Errors and Appeals.

Between

ADA H. FOOTE,

Complainant-Appellant,

and

HENRY H. FOOTE,

Defendant-Appellee.

*On Bill for
Divorce on the
ground of De-
sertion.*

The decision in this cause seems to me wholly indefensible.

First.—There runs through the opinion a notion of doctrine upon desertion as a statutory cause for divorce, unsupported by any public act or any well-considered case in our courts expounding it, to wit: that simple desertion, the reason of whose beginning is unrevealed, furnishes no ground for judicial action by granting a divorce. The Vice Chancellor's doctrine demands a cause, as to the injustice of which proof is given, and that not only by one witness. Hence, the absence in the opinion, of any reference to the important testimony in the case, which proves that the separation from his wife, by the defendant, was willful, continued and obstinate.

Second.—Following this idea, there is in the opinion of the Vice Chancellor a theory as to the reason of the separation, alleged by complainant to be desertion, which is in no wise either alleged on the part of the defendant, in his pleadings, or in any proof by either party, to wit: that this cause or reason was habitual intoxication, wherefore the opinion further

contends, that as there is no ground for a decree of divorce for desertion, created by habitual intoxication, the complainant must fail in her suit.

In opposition to these remarkable and, perhaps, eccentric views, the complainant alleges in her bill of complaint, after narrating facts on which she relies as circumstantial proof of an intention to desert his wife, accompanied with the fact of abandonment of his wife by him, as to which there is no contest, she concludes her bill with charging that for more than two years past—the bill being filed July 30, 1903—he has willfully, continuedly and obstinately deserted her, without any just cause or justification therefor, and prays divorce and alimony.

The bill alleges marriage between the parties October 12, 1886.

The residence of both parties then, and since, was in Elizabeth, New Jersey. A daughter was born November 23, 1889, who is still living. The pair lived together till June, 1892. Her husband then left, with her consent, and went to Texas, as manager of an electric plant there, she agreeing to follow him when he sent for her, and she was to join him and live there. He remained there till September, 1893, or thereabouts, when he returned to Elizabeth. During this time she received no remittance for her support, except that in August, 1892, she received \$50.00, which she applied to personal debts of his; \$7.00 she used for her child's clothing (p. 1).

The answer admits all this. She further alleges that upon her husband's return to Elizabeth, he did not come to her, or seek to resume marital relations with her. She was then living with her mother there, as she was when he left for Texas. He has known of her being there and has met her often in the street, but he has made no provision for herself or her child, or even accosted her when he met her on the street, nor has he ever sought to return to her as her husband. This is fully proved (see pp. 14 to 69).

In the evidence of complainant, she alleges further that she is without adequate support for herself or her daughter, now 13 years old, and destitute of means for her education or maintenance, and her prayer is for divorce, a decree to provide for her child and herself, and other equitable relief.

His answer has two distinct parts. First, he admits the marriage and cohabitation with his wife, till he went to Texas; the birth of his child; sending her \$50.00, how spent he does not know; the residence of his wife and himself, at different numbers in the same street. He says nothing about any other provision made by him than this \$50.00, which he admits, and denies everything in the bill except as admitted. Second, he exhibits his cross bill against the complainant, concluding with the prayer (see case p. 7) that his wife's bill be dismissed and decree be made against her, divorcing him from her, and that he may be given by the decree of the court the right to control, maintain, provide for and support, their child, and for other relief.

This prayer admits his ability to do what he asks. He would surely not offer to this court to do what he cannot do. In his cross bill defendant alleges that upon returning from Texas, he went to complainant and sought to resume his marital relations with her, and tried to make provision for her and their child's support; that during the time he was in Texas he sent complainant all the money "he was able to spare," and his expectations failing to support himself, he was obliged to consider his trip a failure, all of which he says was made known by him to his wife on his return. He makes no allegation of proof of what he earned or what it cost him to live, giving no data as to his pecuniary ability, but not alleging lack of such ability. His expectations failed to support himself. What he got he says he "could not spare." What were these expectations?

He then says that on his return he called at No. 520 Westminster avenue, in Elizabeth, where she lived with her mother, to see complainant; that her mother was on the porch and saw him; that she went into the house and closed the door; that he went up and rang the bell and asked for his wife and her mother, but was not admitted, being told by the servant that they were not at home; that he thereafter wrote a letter to complainant, asking for an appointment to see her without interruption, at her home; that she answered by mail, naming a date some few days following, and in it sent one of his visiting cards; that on the day appointed he went, was ushered in, and found complainant, her mother and her brother there, the last two with their backs to the door, and to the defendant as he entered, and that they remained in that attitude throughout the interview, defendant having no opportunity to talk privately with his wife on family matters. That shortly after defendant left the house and wrote complainant again, asking her for a conference at her residence. This he had, and at this interview he explained to his wife the utter failure of his Texas trip, and he endeavored to get her to induce her mother to join him and his mother in assisting complainant and defendant to keep house until defendant could obtain business and an income sufficient to care for himself and family. But he says complainant would not consent to any of his plans, but deserting and abandoning defendant, continued to live with her mother. He alleges that he did return to complainant and his child and endeavored to continue marital relations, and is ready now to take complainant and their child, and that he has duly offered so to do, but complainant still deserts and abandons him. To this cross bill is annexed an affidavit denying collusion. A simple denial, as in the Chancery rule, was filed by complainant to these pleadings. It being thought by the court that particulars should be given, as is general with all answers anew, she also filed an answer substantially, to the cross bill. She denies in it that on defendant's

return from Texas he went to her and sought to resume marital relations with her, or made or tried to make provision for her support. She denies that while in Texas he sent her all the money he could spare. She denies that he did not realize enough in Texas, or that his hopes failed to support his family or himself. She says no such allegations were made to her by him on his return, or ever. She denies the story about his alleged call on his return, and about being answered that she and her mother were not at home, when they were, to her knowledge or belief. She denies any correspondence to her by him of the failure of his Texas trip or of his being destitute of money, or that he made such a proposition as to their both getting their respective mothers to support them in housekeeping, as stated by him. She denies his allegation of good faith in returning to her or to her child; his readiness to take his wife and child and care for them, according to his ability. She says that none of these allegations were ever made by him till her bill was filed.

What childish reasons these are that are given by him in these pleadings for deserting a wife and a child? Suppose the case stated stopped there? With the fact undenied that she loved him, and plainly patent in her cross examination, with no duty incumbent upon her to go forward, and downright beg him to come back and be her husband; with the fact that he, a healthy, strong man—to use the language of the Vice Chancellor (p. 118)—a man of great intelligence and of good education, who had been in the employment of a banking firm until he was earning \$2,000 a year; with the fact that for many years, thirteen, from 1892 till now, he had left this wife and daughter to look out for themselves. If these excuses were all true, what defense do they make to the charge of unjust, willful, continued and obstinate abandonment, in which consists statutory desertion? But how stands the case as to the truth of what he says, denied point by point, under oath? Does not his silence corrob-

rate? Does it not confess? He does not come forward—he dare not come forward—nay, he adds insult to injury in this farrago of puerile statement, his cross bill; he charges her with desertion and prays that he may be divorced from her for her desertion, and that his child, for whose life she would give her own, may be delivered over to his hands; and the Vice Chancellor alleges that he is not guilty of desertion, and coining a defense that the cause of his conduct was habitual drunkenness, decrees, that instead of freedom from his embrace or power, instead of compelling him to educate his child and support the mother, her prayer should be denied, and the very costs of making it laid upon her.

There is a case decided in Chancery, by a Vice Chancellor whose experience, ability, legal knowledge and strong common sense, is not exceeded in our day; a case decided after this suit was begun, but wholly unknown to him, and so like this that I am tempted to quote it here at length. It is the case of *Coe v. Coe*, decided by Vice Chancellor Pitney, at the February term, A. D. 1905. It is found in 59 Atlantic Reports, page 1059. It reads thus:

“PITNEY, V. C. The suit is by a wife against her husband for a divorce from the bonds of matrimony on the ground of desertion.

“The parties were married in this state in April, 1900. The defendant was a resident of Morristown and engaged in some sort of labor there. The wife was a native of Morris County and her parents resided there but she was living in Brooklyn, where she has employment in a millinery establishment. After her marriage she continued in her employment and to live in Brooklyn, until some time in the month of June, 1900, her husband visiting her on Saturdays and Sundays. In June of that year he left Morristown to seek employment in Pennsylvania. She, becoming enceinte, gave up her employment a month or two later, lived temporarily for a month or two with

her sister in Morris County, and in October gave birth to a child, the fruit of the marriage. She rarely heard from her husband and he sent her no money. As soon as she was able to work she sought employment and obtained it, notwithstanding the encumbrance of her child, with a Mrs. Hatton, in East Orange, New Jersey, and has maintained her position ever since. The child died in the fall of 1901. She had corresponded with her husband during this period and up to the middle of the year 1903. He seems to have settled down in the neighborhood of Pittsburgh, and to have had what with proper conduct would have proven a reasonably remunerative position as conductor on a trolley street railroad, but he did not keep it long, and then attempted several other employments, but never with any success. A careful perusal of the letters he wrote to his wife, satisfies me that his want of success was due entirely to his own misbehavior, mainly in the matter of indulging at intervals in intoxicants. In one of his letters he admits that he had had at times a surplus of money in his pocket, but that he had spent it in drink. Such letters as he wrote were very affectionate and contained frequent promises to reform, save money and come east, but at no time when he received his weekly or monthly pay did he ever divide it or send one cent to his wife. His letters were full of kisses but no money. On the contrary, on two or three occasions, he asked his wife to send him money, which she was wise enough not to do. The letters which she wrote to him are not produced, nor did she keep copies, but judging of the contents from his answers thereto, and her evidence, I think it fair to infer that they were those of an affectionate wife and that she was continuously expressing a desire that he should return and perform his marital duties towards her, both in the way of support and love. But in the year 1903, she became satisfied that her desires were hopeless and that her husband had not the force of

“will, if he had the sincere desire, to act towards her
“as a husband should.

“The learned Master seems to think that the wife
“was acquiescing in her husband’s staying away up
“to the summer of 1903, which was less than two years
“before the petition was filed, and that the desertion
“did not take place until that late day. I am unable
“to agree with him in that result. I think the ten-
“dency of the proof is to show that she was all the
“while as insistent as a wife should be that the hus-
“band should do something for her, and that was all
“she could do. The duty of the husband to love and
“support his wife is a practical duty and is not per-
“formed by a manifestation of sentiment without cor-
“responding conduct. Hence a mere writing of love
“letters and the making of promises, unaccompanied
“by a single practical act, amount to nothing. The
“failure to try in earnest to do anything in the way of
“supporting and loving his wife, is desertion, no mat-
“ter how much the party may indulge in affectionate
“language and send kisses by the thousand, in writing.
“The intention and resolution of a husband to save
“money for the benefit of his wife, while he is too weak
“to resist the temptation to spend that money on him-
“self, is of no legal value and cannot count in the way
“of counteracting his absolute neglect to provide for
“her. I am satisfied that the defendant husband from
“time to time had money which he might have sent to
“his wife. I am satisfied, also, that if he had had the
“simple resolution of mind to live with and support his
“wife, which the nature of the marriage contract re-
“quired of him, he could have done something towards
“such support. The husband’s conduct from the start
“was that of a deserter of his wife, and its character
“of willfulness became fixed when he had shown by his
“conduct that he had not a resolution strong enough,
“even if he had a sincere desire, to do even a part of his
“duty, and I think the evidence shows that the deser-
“tion became willful more than two years before the
“petition was filed.

“The attitude of the wife was not that of acquiescence in the prolonged absence and neglect of her husband. It went no further than to consent to his making an honest attempt to provide her with a home and proper support. This, I find, he failed to do. The question of the duty of the spouse to seek out the deserter and ask a reunion has no place in the facts of this case.

“For these reasons, I am of the opinion that the exceptions must be sustained and a decree of divorce granted, and will so advise.”

It is not right that I should stop here, and it seems to me that it is pertinent that in examining the evidence, the character of the parties here should be understood. Letters are self-painted portraits of souls. I begin, therefore, by referring the court to letters written by the defendant to his wife, on, or very soon after, his arrival at Laredo, in Texas.

Before doing this, however, let us look at his life here before going so far, as it is exhibited. (Case 15 to 18)—and Exhibit D 7, on page 95, dated Laredo, June 15, 1892, exhibit his ability, his lightsomeness of heart, finishing with saying that he was perfectly well and contented there (see D 10) dated June 27, 1892 (p. 96). And then again, (D 13, p. 99) July 10, (1892) D 15 . These letters indicate that he was doing well. They are kindly, if not proportionately loving to his wife. In several of the early ones he speaks of sending money to her. In one he sent \$10.00, July 10, 1892. D 15, July 19, he promises money the next day or the day after, D 17. July 28, is to send August 1st, August 11, 1892, Exhibit C 8, he sends her \$50.00, and speaks of getting a new suit of clothes for himself; says he is perfectly satisfied there because he is busy. From that time forth, remaining there till September 17, 1893, he never writes her. January 15, 1893, after writing him six or seven letters, she writes him thus, (C 3) :

“My dear Harry:

“It is now five months since I have heard from you. “Will you be kind enough to tell me in what state of “mind you expect me to spend the rest of my life? I “gave my approval when you proposed Laredo, trust- “ing it would prove conducive to the comfort of both “of us. I now withdraw my consent to your remain- “ing any longer. Very sincerely,” &c.

Before that, she writes him (C 5) October 23, 1892: “My dear Harry :

“It is now eleven weeks since I have had a line from “you. In this time I have written and mailed you six “or seven letters. I understand that letters have been “received from you by a member of the family. From “the silence I judge no message was sent to your wife “or child. Can it be possible that you are so ill or dis- “abled as not to be able to write? If so, is there no “one who will use a pen for you? Can you give me an “explanation of your silence? Your wife. P. S. I “hope that you will arrange for the payment of the “interest which falls due on the 4th of Dec. My house “rent does not cover this, as \$300 has already been “drawn, and mamma is quite unable to pay in ad- “vance. Recollect I have never considered this my “debt. I signed the mortgage to relieve you of tempo- “rary embarrassment and do not expect to be placed “in an embarrassing position myself. A. H. F.”

On September 17, 1893, he writes her his last letter: Exhibit D 6, p. 94 :

“Laredo, Texas, Sept. 17, 1893.

“My dear Sistada :

“I wrote you at Eliz. telling you that I expected to “return home the first of this week, but not knowing “whether you were there or at Pine Hill, I write to “both places. Is it possible for me to expect forgive- “ness from you for what I have not done? My heart “is too full to write. I don’t know where to commence. “Write me a line at Eliz. and let me know what kind “of a reception I may expect. I don’t know what I

“shall do when I arrive home, but the panic has left southwest Texas desolate and it is hardly possible to earn bread and butter. My obligation to your mother can never be paid for all her kindness to you and the baby. With all my misfortune and suffering, if I could only see you and the baby and hear you laugh, I should be happy. With my best love for you and baby, believe me, very affectionately, Harry.”

Then he returned home, but not to her, as his answer says.

The letters from him to which I have referred, and those which I have copied, together with the subsequent history to be soon described, give us an idea of the manner of man he was, and, so far as shown, is. It was impossible for the complainant to get witnesses from so distant a point, and who might describe with some degree of accuracy his life in Laredo. But the first letter shows (D 7), June 15, 1892, a letter put in evidence by himself, through his counsel, describing Laredo and his ideas of life there, that he had written her on the Sunday previous that he was agreeably disappointed in Laredo and found it pleasanter than he anticipated. That there was a great deal of society there; that an American fort is only a mile off, and that between the Americans and English in Laredo, and the officers and their wives at the post, there was always something going on; that he had been received very hospitably; that his dress suit would have come in handy, but guesses he can get along without it; had only been there five days—showing his arrival to be on the 10th of June—and that he had had two invitations, one to a swell hop last evening, another for the next evening at the Casino Hotel; accommodations are very good; food above the average; they have everything that is in the market, strawberries the year round, crabs, lobsters, oysters and clams in their season; peaches so plentiful that he didn't bother to eat them; fresh figs very common; weather warm in the day time; nights are cool and have a breeze; that Laredo is absolutely Mexican; the atmosphere per-

vaded with soldiers; had met a half dozen people already that he knew—mentions one by name; describes the city attractively, says that he is perfectly well and contented there and trusts that he shall keep so till he has to come home.

Gaiety was evidently a great thing with the gentleman, and where a love of gaiety exists in the midst of poverty, desertion of wife and family is very likely to be equally common. This man, quite evidently, gives preference to gaiety and self-consideration over his wife and child. Therefore, very soon after he was there her love for him began to pain her. She found him not thinking enough of her and of his child to send money necessary for their support. She found him gay when she was pining. She naturally thought, when letters failed—as she complains at different times—and at last when she found by experience, that he must have forgotten her, since his stay of so long a time, as alleged, between June 10, 1892, or thereabout, and 11th of August, 1892, she gets his first remittance, \$50.00, for two people for two months, and after that, as shown by C 3 (p. 87), dated October 23, 1892, she said, "It is now eleven weeks since I have had a line from you." That shows that August 11th was his last letter. In this time she says that she has written and mailed him seven letters. It has been copied above. Her complaint ends with saying, "Can you give me an explanation of your silence?" The letter reached him, for his signature admits it (see Exhibit C 6, p. 89). But no answer comes.

Again she writes, January 15, 1893, the second letter above copied, in which she says: "It is now five months since I have heard from you. Will you be kind enough to tell me in what state of mind you expect me to spend the rest of my life? I gave my approval when you proposed Laredo. I now withdraw my consent to your remaining any longer." From that time forth, August 11, 1892, to September, 1893, over a year, not a word did she get from this loving husband. At last,

when about to come home, he writes the letter I have last copied, in which he asks forgiveness for something which he has done, which she don't know of, and, as this review will show, never has heard of from him or anyone else.

The Vice Chancellor says that he is convinced that something is concealed. It wasn't concealed by them both, for in the pleadings each declares the other in the wrong. He swears there is no collusion, and she has done the same, so that the secret is not concealed by concert between them. And yet, there must have been something, of great moment, or he never could have written or acted as he did.

I have wandered here, perhaps repeating unnecessarily. I was about to endeavor to properly describe the complainant. She was the child of a clergyman, a rector of a church in Georgia, after being for twenty odd years, rector of Trinity Church, Newark. Her father's first wife died. Years after, he married her mother, and she is one of several children. She has the culture and the character of a thorough lady. There is not a word said or to be said against her. Her evidence on her examination exhibits her character beyond all exception, and her married life, portrayed in evidence and re-stated by the Vice Chancellor, exhibits a woman ready to deny herself to the last for the husband that she loved, but, at the same time, demanding that love, and yet too proud to beg for it. That was her condition when he left for Laredo. He had been living on the little patrimony she had, and the aid of her mother, and apparently, so far as appears, without making any special effort to get his own living or hers.

First, the house was built for them, and not with anything that he gave. Next, the house could not be finished without more money. She gives the money and a mortgage secures the debt, for she borrows the money for him. Then, instead of endeavoring with all his might to get a position where he could be her real

husband, we hear nothing to that effect, and what we do hear is his exodus to Laredo. To this she consents. The Vice Chancellor treats it as if she had begun the ground for desertion then or even before. Could he have read the pleadings? The very bill itself states that there was no desertion then, and that she agreed with him that he should go, with the expectation that he would succeed, and that then she would join him. Then begin her trials, and they go on in the way that these letters show—disappointed love on her part; careless regard, mingled with at last a fit of reproachful conscience, on his, accompanied with the letter written just before he came away from Laredo, in September, 1893, with its strong description of what he owed, not only to her, but to her mother. This letter shows a disposition to profit again by their charity, and with it the fact is to be joined, that in the answer which I have called “puerile,” he betrays this selfishness on his part by stating that he had proposed to his wife to get her mother’s consent, while he would try for *his* mother’s consent, and thus they could get a fund on which they could live together. Her nature scorns any such proposition as that, and she denies that anything of that nature occurred, so that it was a simple meditation and resolution on his part. But it exhibits his character. And now we have enough to comprehend the character of these two people, and likewise to comprehend the action of both thereafter.

We have seen what he states in his answer occurred on his return to Elizabeth from Texas: that he called at 520 Westminster avenue, where the complainant lived with her mother, to see her, and the servant told him his wife and her mother were not at home. And then he says that thereafter he wrote to the complainant, asking for an appointment to see her at her own house. This the complainant answered, he says, by mail, naming a day some few days following, and in the letter sent defendant one of

his own visiting cards. What is all that as proof to excuse him? And then he goes into the house and takes his seat, but it was so near the others that he leaves without saying anything. That ends all that he professes of an endeavor to persuade his wife to restore the relations which he had occasioned by his separation. So with all this. According to the complainant—and she is corroborated constantly by the papers reading thus—the whole story is an imagination or a figment. Now what did occur? He came home, all agree, in September, 1893. She at that time was away in Pine Hill (D 6); she keeps the letter which shows corroboration of what she stated, that she at the time was at Pine Hill. He says, "I didn't know whether you were at Elizabeth or at Pine Hill," and he wrote, he says, to both places. She didn't reply to that letter. His former conduct had hurt her, and besides, where was she to write? According to the letter, he must have reached Elizabeth almost as soon as the letter did. It was easy for him, when he arrived home, to discover where she was and to go to her, or, at any rate, to write to her from there, and give some reason why he did not go to her. And so the matter remains. This is in September, 1893. We hear nothing of any endeavor on his part to bring about marital or any relations with her then or from that time on. But in March, 1894—six months nearly, or quite—having seen him once in the street, according to her evidence, and only that, and meeting him, at which time he didn't even salute her, she saluted him.

At that time she had had information of his return to Elizabeth, while she was with her mother at Pine Hill—had herself come to Elizabeth surprised that he had not come to see her there and more, that he had not sought her out on his return then—as his mother's residence and that of her mother were on the same street near and opposite. The only information she had had from him about himself was the letter (Exh. D 6), already quoted:

Of course Mrs. Foote was excited by such a letter. What was this that he had done which made him doubt if it was possible that she could forgive him? On the other side, he, who knew what he had done, was probably not encouraged by hopes of forgiveness, since he had received no answer. So he had passed her without speaking, but she had recognized and saluted him. Yet he did no more. But the next day or the day after, in view of the approaching Easter, he writes her a note asking her to go with him to communion on Easter Day. Impressed with the novelty of such a situation after six months' silence from him, she wrote him the following:

“My Dear Harry:—Before consenting to your proposition to take the Holy Sacrament with you on Sunday next, I would rather have a few minutes' conversation with you. It seems to me after such a separation as we have had nearly two years, I would choose to have the meeting here, and not on the street. Come here to my mother's house this evening at eight o'clock, when, I feel sure, there will be no interruption.

Yours, etc.,

A. H. Foote.

March twenty-second.”

The court will remember, of course, that this letter (D 6) is written by the defendant, and offered by his counsel, and is self-made evidence. It is the only thing that has proceeded from him in excuse for his return anyhow. Who knows of any such panic as that of which he speaks? Who knows whether he resigned, or was discharged? Why have we not heard from his lips as a witness, or coming from his hand as a defendant what this unrevealed thing is for which he begs forgiveness? He does not act when he returns in consonance with this letter. It discloses that he expected his wife was either at Elizabeth or Pine Hill. She was not at Elizabeth. His mother's house was near, in the same street, and her house was visible from it (see her brother's testimony, p.). How

easy, it was for him to learn that she was at Pine Hill, and to go there for consolation or for forgiveness. He does not go there—it is not far (only in Ulster county). Traveling is cheap. His mother had the means to enable him to get to his wife. He had friends, doubtless, associates, who would help him. His story in his answer, does not tally with his conduct, then, or for a long time after. For the first time that he sought her company was in March, 1894—the very day is fixed, it being Wednesday before Easter, which occurred on the 22d. His last letter (D 6) shows that he got back to Elizabeth in a week from its date, Sept. 17, 1893, that is, Sept. 24th. From this to his first visit, as already said, was six months. Why?

The meeting took place. She describes it (pages 21, 22, 23). She plainly made it the occasion she had longed for. She wished to understand what he intended, and what cause he had for deserting her. Here is her story, pp. 21 to line 20 on p. 22: "I asked him what he had been doing and why he had not written for so many months and who had told him to come there then to see me—and could he give me any explanation of his absence; of the long time he had been away, and all the time he had been in Elizabeth and had not written me. I asked him why he hadn't come to see me before." And he made no answer except "Nothing—I don't know," and then he said he must go. I said, "but why must you go? this may be the chance of your life. It *is* the chance of your life. Why cannot you tell me why you have been away from me and neglected me for these years and *deserted* me." He said he had to go—that he made an agreement with the organist and he had to go, and so he went.

Was she not right in declining to astonish the world, which must have noticed a separation so long, by such an act of proclamation as he proposed? Her mind was wildly anxious to ascertain whether he loved her still—and from his mouth. So she appoints the meet-

ing, telling him why. But he gave her no explanation—would not, though pressed—went to an organist and to church to practice for Easter, apparently, she begging him to stay. Thus he treats a wife whom he had so long deserted—and he is called by the Vice Chancellor a Christian. As if to love, honor and cherish her was not a higher Christian duty by far, and this he had sworn when he was married. Surely, if desertion never began before, it did then—March 23, 1894—eleven years and more ago.

He comes next day bringing a scrap of paper on which (p. 22) he had written that “if he could be of any service to her he was willing, and could he do anything for her”—but he made no proposition, gave no reply to the questions he had run away from the day before. Does not this indicate resolution on his part to do nothing as a husband for her? Still, it was something; it had a little effect. His wife could still try to capture him anew—and therefore to give him another chance of winning her again. He brings a scrap note. On Monday after Easter or before (p. 23) Easter, she writes him thus: “My dear Harry: I should like very much to see you to-morrow (Tuesday) morning at *Edith's* house, half-past nine. Very sincerely, Ada H. Foote.” “Monday.” Could he not see, must he not have seen, that she was courting him, spite of all that had passed? He came. They met. They conversed. Edith, a relative of the husband, but a dear friend of complainant, was not present. They were alone. What was she there for? She tells (p. 23): Nothing particular occurred. They talked about other people's weddings. She is asked the question, was there anything said then about taking care of her and providing for her, or anything of that sort? The answer is—“No—I wished that he would say it when I went there—I hoped he would—but nothing of that sort did occur.” She is asked, if such a thing had occurred, any provisional offer of provision for her, what would have been her response. She replies, “Yes, I would have gone to

him gladly." His silence on these occasions extinguished her hopes. They met afterwards—occasionally in the street. Never did he offer any provision for her maintenance. Never did he ask to return as her husband?—never!

What should she have done? propose to him? It would have forfeited the dignity of her womanhood. Though ever so much pained, this she could not do, and this our law positively says was beyond any duty on her part.

See the cases—*Wilson v. Wilson*, 57 Atlantic Reports 552; *Alward v. Alward*, 55 Atl. Rep. 996; *Sargent v. Sargent*. Specially regard *Wilson v. Wilson*, decided by V. C. Stevenson.

Suppose she had asked him to return, what would he have said? What would he have *done*? He has no love for her—never could have had and acted thus. The Vice Chancellor thinks differently. But actions speak louder than words. And he says in his answer that she deserted him—and prays for divorce from her, and for the custody of her child—a decree which would have killed her. And then what does he do—treats her as a stranger—for eleven years he has not entered her house. His wife's mother, to whom in his farewell letter he warmly expresses his obligation, dies. He knew what a sorrow that was to the woman whom he married. He shows no respect for her, no regret, no sympathy. When her mother died, in 1897, he did not write her or do anything—that showed that he was not sorry for her. So was she not right? Did he meditate return to her? When he wrote the letter recognizing his obligation to her mother, was he anything but a hypocrite? When he filed his answer, was he not worse?

This meeting at Edith's seems to have extinguished her hopes. She was most unwillingly satisfied that his desertion was resolute, and what could she do? They met, now and then, accidentally and finding themselves in the same train to New York, conversed

a little and parted at the ferry (see case). Her state of mind did not change. There was no hatred, no reproach. She was young and attractive. We hear nothing of her being even acquainted with any other man. No woman ever went into the divorce court so unassailed, so pure. She had suffered; she was poor. When he came from Texas, after living two weeks at Pine Hill, she spent one week in Elizabeth and he did not come near her, and a friend wrote her from Baltimore that there was a place at the decoration of art there which she could get and could fill. She had then been, in her belief, deserted for months verging on, if not reaching, years. She goes there—to stay with the friend and fill this position which must have been very light. Her health gave way and she returned to Elizabeth. It was six months after that when she made the efforts related to induce her husband to return to her. That ill health was grief; she must return and try her fate.

The last words of her testimony, an answer to the cross examiner, who asked what was her motive in registering the letter (D), in which she withdrew her consent to his remaining at Laredo; her motive in writing it and saying that she withdrew her consent, she describes the effect of his conduct upon her: "I wanted him to come home—he had been away from me long enough. I hadn't heard from him for months. I was unhappy and wretched. I didn't know whether he was living or dead, and so I wrote him to come home." She registered this letter so that if alive he would get it—further evidence of her anxiety and her love.

Now, what does the husband do, after the acceptance by him of her note, a request to meet her at Edith's house—the Monday after Easter, I make it, or close by. She plainly wrote that request in consequence of his request, dated Good Friday, March 23d, 1894 (Exhibit D 4, p. 93). It shows some little yielding on his part, when he says in it: "Is there any service that I can render you this morning? that I may show you

even by my smallest action that I am sincere." So far he wrote. She gave the note to him for the addition (and desire forgiveness). Evidently he was seeking to induce a joint communion, thus publishing temporary reconciliation. It was all mere words on his part, simple talk, (and she saw it) no explanation of past conduct, no revelation of the thing for which he sought forgiveness, no sign of returning to practical duty, nothing but such flimsy efforts to get rid of her easily, as was proved in *Coe v. Coe* and scorned by Vice Chancellor Pitney. The notes continued, on Saturday morning and Monday morning. Easter came and went. After that, no more notes by him to her; no visits till the Edith house conference (p. 23); after that, nothing. All this was in the spring of 1894. He was still in Elizabeth, within sight of her. Not a visit—passings in the street, in sight of her and of his daughter. She evidently still slightly hopeful. In April, 1895, she writes him thus (Ex. C 9, p. 91): "In all your notes to me, over a year ago by the by, you assure me of your anxiety to do something for me. You can do something for me and now, tell me why you so suddenly ceased to be as anxious to please me? Have you forgotten that I am your wife?"

And their correspondence, however trivial, stops; and the bill is filed in 1903 because of the growth of her daughter. Eight years afterward—and both reside so near each other. And in 1897 her mother dies, and the one child grows day by day; and he, the father, is hale, hearty and capable and evidently indulged. He lives with his mother, and he shows no sympathy or care for anyone but himself. He is evidently cold, lazy, self-indulgent. He has lost all love for her. Bye and bye she loses it for him. And necessity befalls her which overcomes her pride. Their child comes to an age which makes expensive education necessary. She buries her pride and seeks freedom from legal thralls, full ownership of her child, and means to educate her, and the Vice Chancellor actually dismisses her bill,

and that with costs; and yet the case puzzles him. It is his impression that this lady was keeping back information which she might have given which would have made it plain, whether or not in 1891 the defendant had become addicted to habits of intoxication which destroyed or greatly impaired his earning power. When this subject is presented to her mind upon her direct and her cross examination, in her answers she is extremely guarded and avoids describing the degree to which the defendant became addicted to drink. She did not care to abuse him. After avoiding opportunity to state whether the defendant was a drunkard or not, she evades the direct question whether he drank to excess. Strange to me all this, the Vice Chancellor's view as to this. How could she have the motive he imputes, and how facts are mistaken to base this theory. Now, there is no complaint of him in 1891. It was in June, 1892, that he left for Texas. He remained there till September, 1893. She had no intercourse with him, except as I have stated, till the bill was filed. Intemperance in 1891 was irrelevant. She was not asked about that, of course. She states on that subject just what she knew, and no more. A conscientious case is mistaken by the Vice Chancellor for concealment, as if she had any idea that proving him a sot was anything against her claim.

The Vice Chancellor imports into the case that the defendant has been in a sanitarium in Connecticut, the state where his affidavit of non-collusion was taken, all which, if it is evidence, relates only to what occurred during this trial, and of course has nothing to do with this cause. The subpoena in the case was served upon defendant personally, as I believe, in the city of Elizabeth. The suit and his cross bill may have led him to Connecticut. Of this there is no evidence. That something occurred in Laredo which defendant keeps secret is plainly shown by circumstances. He writes her frequently, well and lovingly from his first arrival there, till Aug. 11, 1892. Then, after sending her the

only \$50 he gave her while there, he, in his letter, promises a long letter soon. She continues, and from August to October writes seven letters to him—and she has learned that letters have been received from him by a member of the family with not even a message sent to his wife or child. Her letter shows just vexation, and she signs, "*Your wife.*" No further letters till Jan. 15, 1893, five months from his last—the August (\$50) letter. She begins to think he is deserting and withdrew her consent to his remaining longer and asking him to be kind enough to tell her in what state of mind he expects her to spend the rest of her life. From that time no letters came from him till Sept. 17th, 1893—the last regular letter she ever received from him. It betrays consciousness on his part of having done his wife much wrong, much greater than simple failure to support her. What of it? Who can tell? She can, but does not. Why not? Is it not probable that soon after Aug. 11, 1892, something happened in his life which estranged him from his wife and child? In that warm climate, that home of self-indulgence and gayety, something that he was ashamed to confess—perhaps loss of money at the gaming table—perhaps also weakness in yielding to sexual temptation—and with it loss of place, compelling him to rush home. As to his history after that Aug. 11, 1892 letter, he is altogether silent. As he comes away his loving young wife and child return to his memory, his conscience adjudicates, and he pens that last effusion of his better nature, the only thing in all this history that leads one to think at all well of him. For what a history leaks out? Marriage to a young girl, who possesses expectations. This, while drawing a salary in a strong house, one of the strongest in New York, of \$2,000, life with her, and birth of a child. Meanwhile loss of his place. Why? Silence is the answer. Then use of the wife's patrimony to a degree, getting a house for which she paid, on which a mortgage was given, the interest of which he did not pay. Then, absence

of support to wife and one child; going then with her consent to Texas, to a place found for him, evidently—then displaying to her view only social delights and pleasures; writing to her frequently during two months, but sending no money to support his child or his wife till Aug. 11, 1892. From that time forward he never writes till the letter announcing his return, Sept. 17, 1893.

And then comes a pause. When that letter came she was at Pine Hill, a country seat of her mother's. It is not very far from Elizabeth. She could be reached in two or three hours. He never goes near her from Sept. 17, 1893, till March 28, 1894. They lived within a short distance apart on opposite sides of the same street. They had passed each other in the street. He had taken no notice of her. He had passed his child and taken no notice of her. Half-crazed by all this, she, during the interval, went to Baltimore, there to get her living. She could not. She returned sick to Elizabeth, for there was contest within her. She loved her husband, spite of all. But she owed herself self-respect.

A few days before March 21, 1894, about six months after his return, she, certainly the wronged one every way, met him in the street and spoke to him; see his letter of (p. 102) March 21; and after an interval he writes her for the first time in half a year asking her to take the communion with him. It is the first sign in the evidence, of his being other than the gay Luthario of Laredo. It took her by surprise, but it gave her opportunity. She wanted to know why he had treated her so outrageously. And she had wit enough to see that if she consented to his request without explanation the censorious world might readily blame her instead of him for his scandalous behavior. Yet, spite of all, she loved him, so she wrote him in reply as follows:

“My Dear Harry:—Before consenting to your proposition to take the Holy Sacrament with you on Sun-

day next, I would rather have a few minutes' conversation with you. It seems to me, after such a separation as we have had (nearly two years), I would choose to have the meeting here, and not on the street. Come here to my mother's house this evening at eight o'clock, when, I feel sure, there will be no interruption.

Yours,

A. H. Foote.

"March twenty-second."

The interview is described at pages 21-22 upon examination in chief, and pages 50, &c., on cross-examination.

She says: "Well, we had a talk, and I asked him what he had been doing and why he had not written me for so many months, and who had told him to come there to see me; and could he give me any explanation of his silence; of the long time he had been away, and all the time he had been in Elizabeth and had not written me, and I asked him why he had not come to see me before."

Q And what did he say? He made no answer except "Nothing—I don't know," and then he said he must go. I said, "But why must you go? This may be the chance of your life—it is the chance of your life—why cannot you tell me why you have been so many years away from me and neglected me for these years and deserted me? He said he had to go—that he made an appointment with the organist and had to go—and so he went."

His answer to this appeal on her part were by little scraps of paper which he brought (Exh. D 4, D 1, D 2; see pp. 92-93), asking if there was any service he could render to her that morning that he might show even by his smallest action that he was sincere—your Harry. This was Good Friday morning. He added, by her suggestion, "and desire forgiveness." For what? She then asked him to explain, but he was not by this request induced, nor had he the disposition to say a word intimating desire to renew marital relations or do anything for her support or that of his

child. This conduct shows design to abandon her as her husband or her lover, or sink into a mere servant.

Whether the defendant went to the organist's or to the Communion or what became of him is not of consequence, nor does it appear. Again, silence on his part except the fusillade of short letters mentioned. He had been told by her that he could be of vast service to her and to himself if only he would explain his conduct to her. Easter week is consumed in this way. Why this? and why not the explanation of two years' absence and clear desertion, beginning August 11, 1892, when he ceased to aid her support—or certainly September 17, 1893, the date of his last regular letter, in which he asks forgiveness for some unrevealed ill-behavior, some deed done or not done?

His wife, too, is ready to forgive, if he would give her reasonable chance. Her conduct shows this plainly. She had a friend named Edith, a relative of her husband's, yet one of her own great friends. She occupied a house in Elizabeth, and on the 26th of March, 1894 (see p. 54) Mrs. Foote wrote him thus: "My dear Harry:—I should like very much to see you tomorrow (Tuesday) morning at Edith's house, half-past nine. Monday." This was but an adjournment by her of their meeting at her house.

He came. She is asked: What was the conversation about? Was there anything said then about taking care of you and coming and providing for you or anything of that sort? No; I wished that he would say it when I went there—I hoped he would—but nothing of that sort did occur. No; well, now, I ask you if such a thing had occurred, any provisional talk of provision for you, what would have been your response? A *Yes*; I would have gone to him gladly.

No other meeting occurred between the parties subsequent to this (p. 24). Occasionally they met in the street; he would join her and walk with her, undoubtedly thus seeking better public opinion. Well, in any one of these conversations did he offer any provision

for your maintenance? Never.

Or ask to return as your husband? Never.

None of this testimony is denied by the husband—not a word.

There is one more exhibit which should be considered (C. 9, p. 91 and p. 35).

And now, before considering the defendant's conduct specially, let us recapitulate Mrs. Foote's case upon the writings: 1. October 23, 1892, complaint of no letters to her, though others got them (2) January 15, 1893. She was naturally expecting them (p. 87, 80); withdrawing consent to her husband's staying away; her complaint of neglect. *Still love*. On page 72 her reasons: "I wanted him to come home; he had been away long enough. I hadn't heard from him for months. I was unhappy and wretched. I didn't know whether he was living or dead, and I wrote to him to *come home*." *Still love*. (3) C. 9: "In all of your notes to me, over a year ago, by the way you assured me of your anxiety to do something for me, you can do something for me and now. Tell me why you so suddenly ceased to be as anxious to please me? *Have you forgotten that I am your wife?*" *Still love* and asking him to come back. But no answer.

Does any one acquainted with the ways of womanhood, as every married man becomes, fail to see in the life and conduct of this lady that deserted, as she thought herself, and so said to him on one occasion reviewed, she yet loved her husband and was ready and desirous that he should seek to return to marital relations? She is what I have called her—a lady—and has womanly pride. Therefore, wronged and insulted as she was by his conduct, believing that the world knew how she had been treated, she required that he should explain his conduct, do something to satisfy her just and righteous expectation, and offer his energies in their mutual support, and his love to her again. But this man was full of words, without

deeds. In the whole story, what little things betokening returned affection did he do or say? He was determined not to account for his conduct, or he was ashamed to do it. His offers were of a piece: "Is there any *service* that I can render you this morning—any *assistance* that is in my power?" What *assistance* may I render to her *to whom I owe* so much? Does any man seeking to obtain the love, or the return of love from a wife, who desires to be a husband again, use such talk as this? In writing, too, with the pen in his hand, which he only had to use, telling her he loves her, or asking renewal of her love for him. With a daughter, too, who could have been a messenger without knowing it, if caressed by him in presence or to the knowledge of her mother. Or, a few flowers to one or both without a word, would have broken ground between him and the woman who he knew had sacrificed not only herself, but considerable fortune for him.

But there is the letter of September 17, 1893: "Is it possible for me to expect forgiveness from you for what I have not done?" What *does* this mean? Did his pen slip and introduce the "not"? Certainly every sinner, yea, every human being, can say "We have left undone those things which we ought to have done and we have done those things which we ought not to have done." But can he not mention the sins of omission and those of commission which should be confessed to her and by her forgiven? What had the man done? What had he left undone? He can easily tell what. And confession is the forgiveness to the forgiveness. Did this man wish forgiveness to the extent of renewed marital life? If he did, why did he not comply with his wife's urgent and repeated request? Evidently he had done wrong with money somehow. We have no evidence what his salary was; we can guess, somewhat. He reached Laredo on June 10, 1892 (see Exh. D, 7); August 11, 1892 (C. 8, p. 90) he sends \$50 to her. He must have retained some

of the pay he had received. He talks in this letter of getting a suit of clothes at Mexican rates. In his answer, he speaks of sending what *he could spare*. He lived at a hotel and rushed into society; \$1,000 or \$1,200 was probably at least his salary. Here, again, is *silence*. He sent no more money home after this \$50. There is evidence that money had to be sent him to enable him to get home. His silence speaks—and says that he dare not or could not account for his salary.

If his money was lawfully lost, he would have told it. In some shameful way the money went, or the silence would have been broken. But in the past she had paid his debts. Was he not sure of forgiveness if that was all?

I dwell on this so much because of the Vice Chancellor's opinion that there was something concealed. This, I believe; but not at all by his wife; only by him. She could not go to him and say, "Never mind the past; I want you back again. Be my husband again, the father of my child." She could convey that fact otherwise, and so she did by the advances she made. What did the mutual friend, Edith, intend when *she* left the pair alone?

The law on this subject is thoroughly settled. A deserted wife has not to debase herself in order to enable her to claim the freedom which wilful, obstinate and continued desertion gives her by the law of New Jersey. See late cases: *Wilson v. Wilson*, 57 Atlantic Reporter, 552. This case, decided by Vice Chancellor Stevenson, shows a strange contrast in general views to those expressed by him in this cause; *Sargent v. Sargent*, 9, 144, in Court of Appeals. Almost every case reported states this doctrine.

His Communion invitation letter (Exh. D. 21, p. 102) shows that she had spoken to him in the street—not he to her—and thanks her very much for it—a fact perfectly consistent with his knowledge of a something which he had not told her. She addresses him

kindly, affectionately—"My dear Harry"—but wisely and justly. It was the first time that oral intercourse between them had occurred for twenty-one months—and he living for six months within sight of her house!

What is the unrevealed reason? Certainly, on the case as it stands, there was full knowledge on his part what it was; but she has none yet. Revelations might have made a difference in the feelings and conduct of both. He can tell it, but he will not, and he has the effrontery and cruelty, not only to conceal it, but in the last paragraphs of his cross-bill answer (pp. 6 and 7) he charges her with being the deserter, claiming custody of his child. And he calls for answer under oath which she has abundantly given, in her evidence, the only way in which she could legally answer that call. She has proved him false in all controverted statements, and manifested by correspondence and lack of letters by him that she has been wronged from the beginning; and that she has been practically deserted by him, least from his return from Laredo, in September, 1893, to the present time—some ten years before the beginning of this suit.

The review of the facts thus far shows the complainant utterly free from any fault in her relations with this man. The testimony goes further. On cross-examination Mrs. Foote gives an account of the financial history of the pair pretty much from their marriage (see pp. 36 to 42). In her examination in chief (pp. 15 to 18) the same subject occurs.

From all, it appears that with money her mother gave her she built a house, raising \$2,000 on mortgage to complete it, and \$1,000 afterwards to pay her husband's debts; that he lost his situation for reasons which he never communicated to her; and that going to Texas was an effort to recuperate. It further appears that her mother helped them continually and till she died in 1897; at which time, on account of his lack of manifested sympathy, his wife's feelings toward him changed—and not till then.

The opinion of the Vice Chancellor (see p. 108) "indicates" mistakes as to the case intended to be placed before the court quite inexplicable. The bill states distinctly that the arrangement whereon the defendant went to Laredo in 1892 was not against her will; that by it, as soon as he found it to be a comfortable place and he wanted her, he was to send for her, and she was to join and live with him there. It was no separation, but had to be stated to account for his being in Texas. Yet his honor speaks of their separation as beginning in 1891 and declare it to have "continued twelve years after the beginning of the 'separation.'" The court then says: "The defendant evidently made a failure of his Texas experiment." There is not a particle of proof that he did, or why he left as he did. One letter from him says that things were tight in 1893 and it was "hardly possible to earn bread and butter." Nothing is more striking than the lack of proof on defendant's part as to why he left Laredo. The opinion proceeds to say that the original separation in 1891 was not due to any intentional cruelty on the part of defendant. No such idea ever crossed his mind that there was then any separation even; for there was not. The defendant and his wife lived together till he went to Laredo.

All the language on p. 109, sympathetic with the husband, the talk of his poverty and misfortune, etc., has not a shadow of proof anywhere. And, loth to see wrong in his character, the Vice Chancellor makes him take her testimony and other evidence (where?) that his inability to support his family was from habits of intoxication, a thing nowhere imputed to him as of that time. All his testimony is on pages 60-61—a cross-examination—without a ground for it.

A cursory reading of the opinion at pages 109-110 will surprise any one who reads the testimony. At White Plains the defendant took an affidavit of collusion, and that fact is taken into the case as proof that he was at the Keeley Cure there.

No evidence of habitual intoxication is given. What was given was of slight use of liquor; intoxication a few times on the street, but more lately in the last four or five years past. The witness was sworn September 9, 1904. It is upon such testimony that his Honor builds the allegation of habitual intoxication as a reason for his neglect of his wife and his desertion of her, and starts the doctrine that habitual intoxication is no reason why deserting a wife should be decreed.

His argument on p. 111 proceeds on the basis entirely outside of any testimony—the amiable drunkenness imputed to defendant, of which the wife never knew; and that the sudden termination of his letters was for the same reason, which indirectly caused the original separation in 1891—things never thought of in the cause, a separation never existing. “Probably,” “presumably,” “indicating” and the like reiterations of a favorite idea, offspring of strangely prejudiced judgment, occur through the conclusion of the Vice Chancellor. To illustrate: at the bottom of page 113 he says: “The evidence indicates that the defendant desired to live with his wife and support her, but could not resist the appetite for strong drink, which rendered the discharge of his duty to his wife and child practically impossible.” Where, pray, is this “*indication*” in the evidence?

This criticism applies to all said on pages 114 and 115. Again, the alleged separation of 1891 (which never occurred) of drunkenness starving her out of her drunken husband’s home; and not a word saying what is proved, but what is “indicated.” The reasoning on page 113, founded on Judge Reed’s decision, seems to me entirely unsupported.

The last lines of the page say that it is remarkable that the complainant in her testimony refrains from disclosing the fact that the defendant was addicted to drink. Her evidence on this matter is at pages 59-60 and is cited in the conclusion.

Again, does the Vice Chancellor resort to reason-

ing based on the original separation of 1891, when there never was any such separation.

And it seems as if the pleadings in the case had never been regarded by the court. The bill makes no mention of what the Vice Chancellor calls the "original separation of 1891." The first leaving by one of the other alleged in the bill was the departure to Laredo, and that is not alleged to be desertion or separation, but an arrangement by her consent. She alleges non-support during his absence except \$57, and begins her case against him by saying that upon her husband's return to Elizabeth, in September, 1893, he did not come to her or resume or seek to resume marital relations with her; that she was living with her mother then, a fact known to the public; that she had seen him in the streets; that, nevertheless, he made no provision for her support or that of their child, nor has he ever sought to return to her as her husband. And she shows and charges that for more than two years he has wilfully, continually and obstinately deserted her without any just cause or justification therefor. She then alleges want of support for herself and her child, then thirteen years old, and not possessed of any means for her education or support.

The time charged in the bill for desertion is September, 1893—his conduct upon his return from Texas. The defendant filed an answer and cross-bill, to which complainant, on page 13, answers as follows: Desertion began in Texas when complainant and her child were left by him without any support except \$50 for a year and three months. It continued thereon till the present time, ten years or more in all. Where the Vice Chancellor got his idea of a separation in 1891 is unrevealed. The first witness called was Mrs. Foote, and her first evidence was her history after her marriage. That was October 12, 1886. For six months she and her husband lived with her mother; after that we lived in a house which Mr. Foote rented for 21

months, and then *we* visited in New York until June—we went in February and we stayed with mother until June. The month of June I spent with my husband in Elizabeth, and then I went to my mother's again until September 23 in Pine Hill, New York, her summer residence. This was in 1889. He was in Elizabeth, and came to bring me to Elizabeth about a week before. I came down on September 23d. Then he brought me to a house which he furnished in Jersey Street, Elizabeth. We lived there until February, I think, when I went South; oh! my mother came to Elizabeth with me and my brother and they boarded with us, and in February of that year—1890—I went South, with my little daughter, who was some three months' old. When I came back we stayed about a month with Mrs. Foote, Mr. Foote's mother, and then we moved into my own house on Westminster Avenue—a house for which mother had given me the money to build. I built the house; Mr. Foote directed the building. I gave him the bonds and he sold them as he thought fit and paid for the building of the house. "Was it free from encumbrance? No; in 1889, about November, it was mortgaged for \$2,000; Mr. Foote said he hadn't enough money to build it, and so I mortgaged it for \$2,000. We lived in that house from *June, 1890, until June, 1891*, and then, finding Mr. Foote was in debt, I mortgaged my house for \$1,000 more in order to relieve him. We broke up housekeeping in June, 1891; my house was left vacant. I was at my mother's house. My mamma had invited me to spend the summer with her and I went with my little girl to spend the summer."

Mr. Henderson, Mr. Foote's brother, testified that Mr. Foote, being out of business and the house they had lived in vacant, Mr. Foote was residing with his mother and Mrs. Foote and the little girl with her mother when he went to Texas. But there was no separation proved and none existed. The letters from

Texas and to him while there are full of affection. No thought of separation was in Mrs. Foote's mind at any time. No mention of this alleged separation exists in the pleadings on either side.

We have shown that Mrs. Foote was in no wise to blame as to the separation, which certainly began in September, 1893 when Mr. Foote returned to Elizabeth, and which continued thence to the beginning of this suit in 1903; and in doing this have, by the correspondence and other evidence, shown that her husband was to blame. Concisely stated, he owed her support, and love, affectionate regard and honor likewise. His own hand declares in writing that there was a sin, or at least a fault, against her of which he was guilty, as to which he asked, "Is it possible for me to expect forgiveness from you?" He comes home and does not go near her; and when he is asked to an interview and goes, and is asked what is it? he answers "Nothing" and "I must go to the choir." She expostulates, but he goes. This scene is repeated. She seeks him, and this shows her love still in being. The public, doubtless wonders. Occasion exists daily for him to stop on his way past her house to make it all up with a few words. But months and years roll on and he still refuses. At last necessity calls upon the wife to educate their child according to their situation in life. She brings her bill to give herself free use of property left her, now requiring his signature to sell, and her daughter proper education; and to that he answers, saying that it is she who has deserted him, and prays the court to give the child to his care and divorce the mother. And then the cause goes on, and evidence is taken, and he does not, dare not, come as a witness to deny a single word said against him—or one that he put into his answer. And, this course succeeds—*pro tempore*, it is hoped only.

It is asked what induces him thus to despise and cast obliquy on those years which have been given to the comfort of his? What is the cause of this ani-

mosity? this refusal of love already once squandered upon him? And it is a natural question. And a distinguished judge thinks there can be no help for her—suggests a defense never thought of—and dismisses her bill with costs. She has shown herself right in all things—right and considerate. Clearly, her husband was to blame. He failed in all duty. He gave her no support. He gave her no love. They were Episcopalians. Nowhere is the duty of the married, according to law, so fully and tersely stated as in the marriage service of that denomination. Mr. Foote, to the question, Wilt thou love her, comfort her, honor, and keep her in sickness and health, so long as you both shall live; answered, I will. Has he loved her since 1894? He professed then readiness to *serve* her, to *assist* her—what else? Nothing. Has he *honored* her? Circumstances led him to do something which he ought not to have done, or not to do something which he ought to have done. He asked should he be forgiven? The question comes from her—What is it? Was it honoring her to be silent? Was it an act of love that prompted this? If so, why conceal it? Did he wish her to be his wife? Why did he not tell her so? Has he honored her before the community?

The Vice Chancellor thinks technical law prevents the divorce sought—the rule that calls for corroboration of the cause producing the desertion.

This rule is best stated by Chancellor McGill in *Costill v. Costill*, 2 Dick., 350. He says, deciding that there was no obstinate desertion (the case was really one of collusive fraud) “the rule endorsed by the Court of Errors and Appeals in *McShane v. McShane*, 18 Stew., Eq., 341, that a divorce will not be granted in this state upon the *unsupported* testimony of the petitioner as to the causes of separation, would here apply.”

The rule does not require nor is it always satisfied by the testimony of other witnesses. When the testimony of the petitioner is supported by letters of the

parties and documents; by the conduct of the defendant as a witness in the cause, and the cause of the separation is not proved, because it is unknown, because the active separator will not disclose it, the case becomes one where the oath of the petitioner is supported; and so supported as that the oral evidence almost ceases to be the constraining testimony in the cause.

Now, the complainant alleges that her husband was a near neighbor, living within sight of her residence, and never, since his arrival from Texas in Elizabeth, to the filing of the bill, ever sought to return to her as her husband. This he admits in his answer, except that he asserts one visit, at which he said nothing to her as to resumption of marital life, not thinking it a sufficiently private opportunity; and another meeting, at the house of a friend, which, he says, he appointed—but did not—at which he proposed that they should live together through money to be obtained equally from his and her mother. This she denies, but admits an interview at a friend's house, arranged by her; denying, however, that anything then occurred touching the subject of their lives. Thus contradicted, he does not appear in the case personally, but does by counsel. Then she gives the history of their lives from the day he left for Texas with her consent till the date of her examination, and produces letters proving every point. To all of which he makes no denial. She shows, first, his departure to Texas; his stay there; their correspondence; his ceasing to provide for her or her child during the nearly two years of absence.

Now, the case of complainant as to desertion and its character is:

1. That after September 11, 1892, when in Texas, to the beginning of this suit, the defendant never gave a cent to her for her support or that of her child, and never explained why not.

2. That for some reason never explained, though often asked, he never answered any letters which she

3. That in September, 1893, he wrote her, announcing his speedy arrival at Elizabeth; the contents of which letter shows that he had done or not done something for which he needed *her* forgiveness.

4. That he did return to Elizabeth, but, she being away, he did not seek for her, though her temporary residence was not far off and was known to him. His arrival there was in the latter part of said September. She got home not very long after.

5. They lived within sight of each other. They met once or twice in the street. He never accosted her or wrote her till March 22d or thereabouts, 1894, when she saluted him in the street, and next day he wrote her a letter asking her to go to Communion with him on Easter Day, to which she replied, suggesting that he come to her next day for a few minutes' conversation, which he did.

6. That thereupon in this conversation she asked him to relate what he had been doing, referring to his letter for forgiveness, and "why he had not written me for so many months, and could he give me any explanation of his silence, of the long time he had been away, and all the time he had been in Elizabeth and had not written me, and why he had not been to see me before;" upon which he immediately went away without doing so, pleading an engagement with an organist, etc., and notwithstanding her urging him to stay for so important a talk.

7. That a few days thereafter she made an appointment by letter with him to meet her at a mutual friend's, which he kept, but at which he said nothing as to the relations between them, though for that she had hoped and expected, a fact he must have guessed.

8. That, though casually meeting each other afterwards the subject of the renewal of martial relations has never been mentioned by him to her, while she had shown what she gave him full right to believe by her demeanor.

10. That in April, 1895, she wrote him a letter in

the following words: "In all your notes to me, over a year ago, by the by, you assure me of your anxiety to do something for me. You can do something for me and now. Tell me why you so suddenly ceased to be as anxious to please me. *Have you forgotten that I am your wife?*" To which no reply was ever given.

11. That while he was in Texas, and during the period after his letters to her ceased, she wrote him, October 23, 1892, complaining of his silence, when there were letters and messages to others, exhibiting thereby affection, and signed "*Your wife.*"

12. That, January 15, 1893, she wrote him again, asking him to tell her in what state of mind he expected her to spend the rest of her life? and adding: "I gave my approval when you proposed Laredo, trusting it would prove conducive to the comfort of both of us. I now withdraw my consent to your remaining any longer."

13. That in the intercourse between them in March, 1894, when she received offers of services, there never fell from him a word indicating desire to be again her husband, nor did any such word fall from him afterward.

With these letters and uncontradicted statements, remembering his silence all through—with remembrance, too, of his earlier history, and of his few letters from Laredo—let us see whether a better theory cannot be framed more likely to be correct than that of the Vice Chancellor, because not only proved by the oath of the complainant, but supported by convincing testimony.

Let us weigh the facts. The husband had had a good place and competent salary when he married. He lost them; why, does not appear. For a year and a half, his brother-in-law says, before he went to Texas, he believes he did nothing. Then this place as manager of an electric company was obtained by him. It was evidently a lift—his wife agreed to his going. He had an opportunity. Everything was rose-colored in his

prospect; more so when he got there. On page 95 is his long letter describing the situation; he paints a semi-paradise: A great deal of society; an American fort within a mile; English officers and Americans with their wives; always something going on; only there five days and he has had two invitations—one to a swell hop; another, next evening, at the casino; hotel good; food above the average; the market superb; nights cool, though days hot. A second letter, short, but of the same sort.

He is in charge of the money of the plant. He speaks of it as used by him and a reason why he don't send money to his family. Little, comparatively, though much to him to do; a siesta every day; money in his hands; the associate of swells at balls, casino, plaza—a life of luxury. The Rastian Social Club, the swell club of the town, and the Executive Committee composed of the W. Union Tel. operator, the telephone manager and the asst. engineer of the Electric Light Co., "but they all wear dress suits." The last letter tells of being to a swell Mexican ball. August 11, 1893 sending the only contribution that he has made from that to the present date towards the support of his wife and baby, whom he mentions in every letter; but when he returns to Jersey, never visits or cares for.

What do we next find about him? From August, '92, to September, 1893, a year and, counting days more than a month, silence—complete—notwithstanding loving reproaches. After that silence, at Elizabeth, too, for six months, when he comes at the wife's request to her house, as stated. Prosperity was his downfall. No one can doubt that to be brought home, as he was, if by the money of his friends, added to his sense of ignominy over his fault, whatever it is.

But what had happened to him in Laredo that caused him to behave as he did to his wife and child? Of all things, a swell hates a monitress. She had become such to him. She had not only reproached him for neglect of her—and she had plenty of right to do

that—but she had actually told him to come home, revoking her former permission. He had been annoyed, apparently, by her “blue letters,” as he called them. There must have been, besides, something in his conduct at Laredo to cause his sudden departure. The language of his letter of September 17, 1893—“Is it possible for me to expect forgiveness from you?” “Write me a line at Elizabeth and let me know what kind of a reception I may expect”—such strong language indicates expectation to state what he had done; even a belief that it was already known.

Her awaiting his call upon her gave him probably a breathing spell. His love for her was chilled. The letter was to secure a retreat. Then he resolves not to tell what he had done, and to avoid his wife; even to cease to be her husband or the father of his child rather than reveal what, if she knew all, might get abroad and derogate from his self-esteem.

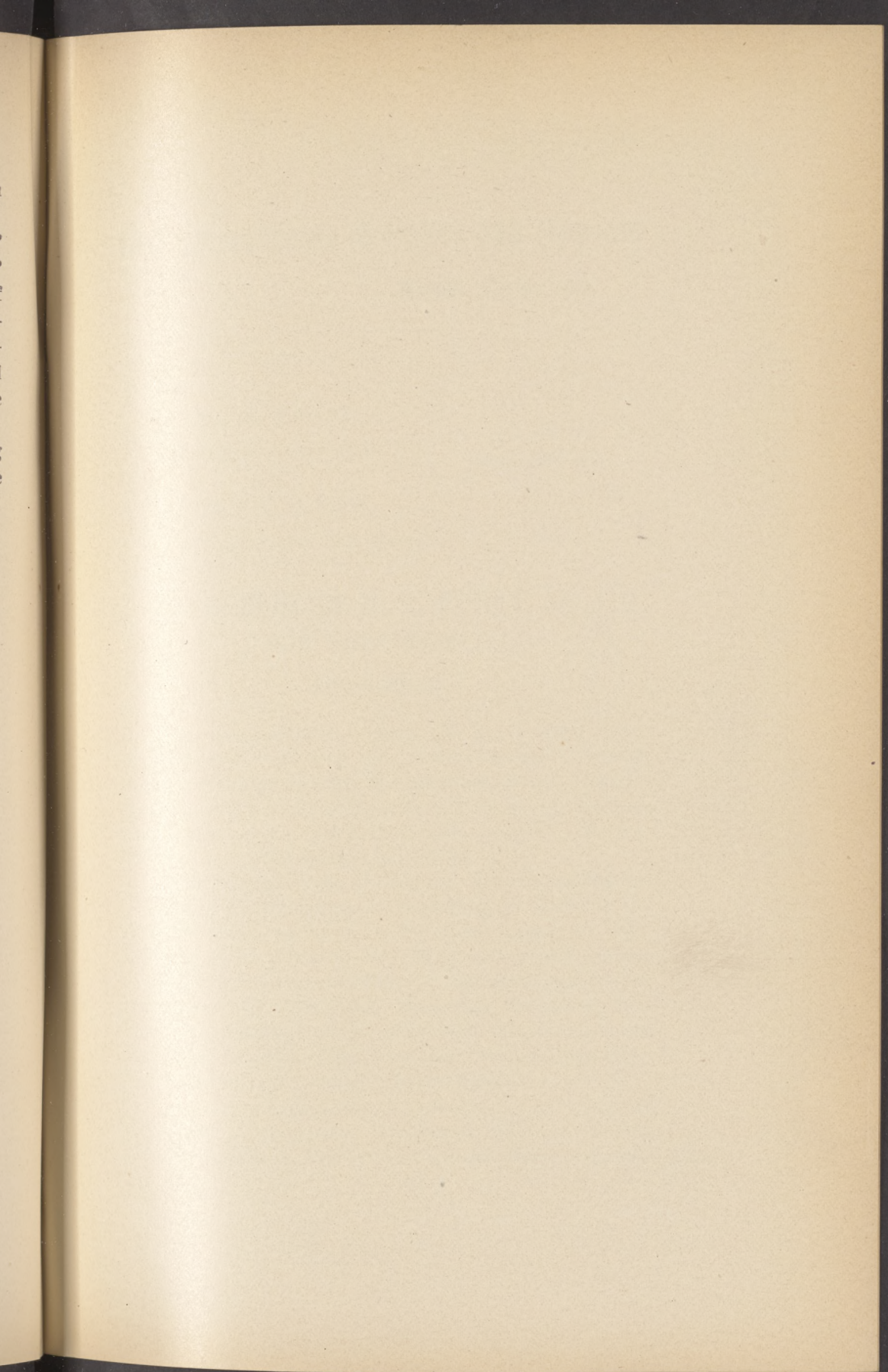
The court may pity a man under these circumstances for silliness and want of manhood, but they cannot take his part against his wife and child to save him from exposure. The course he has taken has condemned her to a life of bitterest sorrow. She and her husband were members of the highest social circle. She has had to sacrifice her youth, her personality, and be the object of wondering pity. She has borne dreadful griefs. She lives for but one object—the education and settlement in life of her child. For this has she brought this suit. Besides, as stated, some of her small property in a distant state is coming into market, and she cannot make good title to it without his signature. It is degradation to her to prove what she has had to prove. But what better course can she take?

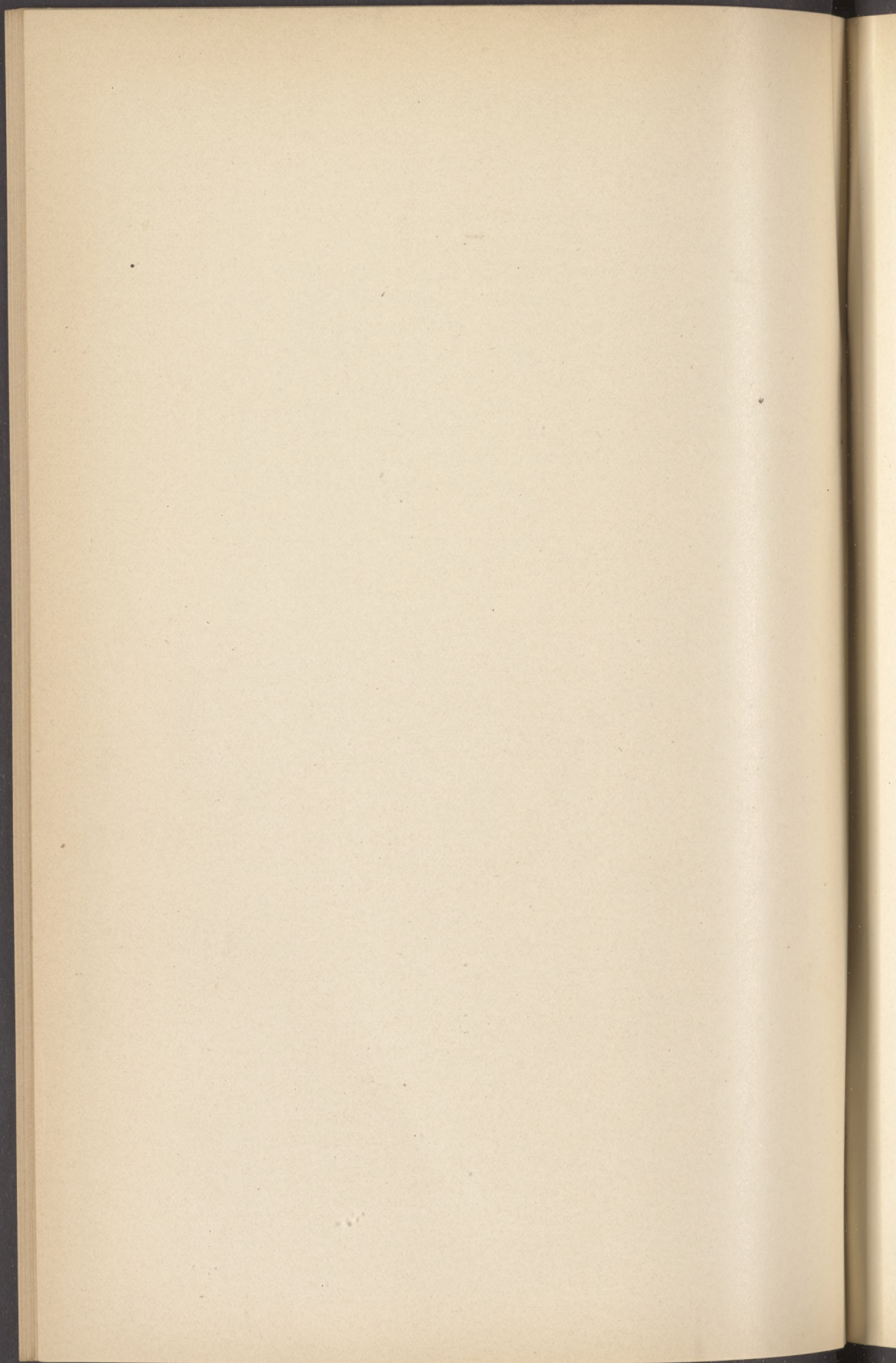
And so the legal questions must be decided. Has there been, not constructive desertion, but actual desertion, by the defendant of his wife for a period of two years prior to the filing of this bill? We say,

yes—certainly from September 1893, possibly for a longer period.

Has this desertion been wilful? Who can doubt it? Has it been continued during the requisite period? Certainly. Has it been obstinate? Has not the proof shown beyond all controversy such approaches to outright invitation as the law requiring from a wife toward a deserting husband? Has there been any period when he did not know that he could have his wife again if he wished? Was ever mule more obstinate?

The court will do a right thing, a just thing, a thing to authorize satisfaction through life, by granting the prayer of this complainant.





New Jersey Court of Errors and Appeals

March Term, 1906

Between

ADA H. FOOTE,
Complainant and Appellant,
and
HENRY H. FOOTE,
Defendant and Respondent.

*On Appeal
from Chancery.*

ARGUMENT OF H. C. PITNEY, JR., FOR RESPONDENT.

STATEMENT.

The comprehensive opinion of the learned Vice-Chancellor, who advised the decree reviewed herein, so fully and clearly states the essential facts in the case that, to avoid a needless repetition, I do not give a general re-statement of the facts in this argument. A careful reading of that opinion is invoked.

In brief,—complainant charges that defendant deserted her, his abandonment beginning in Texas in the year 1892, after his letter to her dated August 11, 1892, and continuing down to the filing of her bill herein; while defendant contends that he has never deserted or abandoned her. The proofs show that the parties have been separated since June, 1891; but that in the years 1892, 1893, 1894 and 1895 there have been various interviews and correspondence between them.

For the complainant, two witnesses were examined and sundry letters were introduced before a Master. For the defendant, sundry letters, drawn from complain-

ant, were marked but no witness was called. Upon the depositions and exhibits returned by the Master and upon the pleadings, the cause was heard before Vice-Chancellor Stevenson.

PRELIMINARY POINTS.

1. Defendant should not be prejudiced because of his not having testified or appeared in person before the Master and Examiner. No testimony was given for complainant which required a denial or answer from him. Presumably, his counsel advised him that he needed not to testify. Likewise, by refraining from testimony he avoided a recrimination of the charge of desertion made by his cross-bill. He had previously, by stipulation of counsel, withdrawn his demand for custody of the child.

2 As to the tone and matter of defendant's letters written from Texas in 1892,—they are frank, almost boyish, and natural. There is some exhilaration in his active occupation, a welcome activity following a year of inaction. The associations and recreations of the men with whom he is thrown are freely described; his sharing in them is inevitable in his circumstances; as a newcomer in business he must cultivate relations with his new acquaintances and associates. These recreations he *satirizes* and *ridicules*, in his letter of July 28, 1892, for the amusement of his wife. Not the least immorality is discernible. But it soon appears that his business does not pay. And this fairly accounts for the cessation of his letters. (It was the year of panic, 1892-1893.)

3. There is no ground for insinuation of marital infidelity in the defendant. This is not suggested in any of his letters or elsewhere in the proofs. His pathetic letter of Sept. 17, 1893, is sufficiently explained by reference to the apparent facts: that for some months, about a year, he had neglected to write from Texas to complainant and during the same time has failed to send funds to her; and now the panic had desolated the Southwest. That for which he expresses regret is something *neglected* or *omitted*, "What I have *not*

done." For this his expression of regret is not too strong; it is merely consistent. And the same feeling is expressed in his later notes. But there is nowhere a remorse for a positive transgression or a conscious marital offence.

4. There is, however, in his later notes a clear indication that he felt himself to be *persona non grata*—as where he writes that, in an interview which he seeks, their conversation may be as limited as she pleases. From this is to be inferred not a consciousness of offence or desertion but rather the converse. He seems to deprecate an aversion from him in the feelings of complainant.

5. Complainant admits that defendant went in June, 1892, to Texas, to make a new start in life, *with her consent*. She could not expect that, having embarked in business there, he should break away and immediately return, in response to her letter of Jan. 15, 1892.

6. From June, 1891, onward and until long after defendant's return from Texas these parties lived apart, by the ~~consent~~ ^{volition} of the wife if not by mutual consent. Never, since his return from Texas, has defendant had a fair welcome from his wife. An aversion from him is evident in all her conduct.

7. Some recent cases, which may be noticed, should be distinguished.

Wilson v. Wilson, 21 Dick. Ch. 238.

(Stevenson, V. C. ; 1904).

In that case the husband voluntarily left the wife. The desertion was clearly willful and continued. The Master so reported; and he was overruled by holding that the desertion was also obstinate—that the wife had not consented.

Alward v. Alward, 20 Dick. Ch. 28.

(Chan. Magie ; 1903).

In that case the husband disappeared without warn-

ing and could not be discovered by a search made by his wife and some friends of both parties. From the evidence the Chancellor inferred that the defendant remained alive and, further, that he was free, and able to return; and thereupon applied to his unexplained absence the doctrine of *Sergent v. Sergent (infra)* and treated his absence as indicating intent to desert. The question of obstinacy seems not to have been considered.

Coe v. Coe, 59 Atl. R. 1059.

(Pitney, V. C. ; Feb. 2, 1905).

In that case the absent husband withheld from the wife money which he had to spare; he sent no money to her but asked her to send money to him. *He never returned.* The Master was overruled by holding that the wife had not acquiesced in her husband's absence. It was also held, that the husband's conduct from the start was that of a deserter; and that he was not doing his best to support and live with his wife. He had good employment but he did not keep it; and his want of success was due entirely to his own misbehavior.

Sergent v. Sergent, 6 Stew. Eq. 204;

(Van Fleet, V. C. ; 1880).

S. C., reversal, 9 Stew. 644;

(Paterson, J. ; 1883).

In that case the finding of facts was approved. The husband abandoned his wife, without warning or notice. Thereafter the wife made to him regular supplies of money. The Vice-Chancellor inferred consent in the wife. On this point the decree was reversed.

The principle that the husband's obligation to seek a restoration of conjugal relations is higher than the wife's is recognized. But the application of this principle to the present case must be governed by the peculiar facts of the case. If, as the respondent here contends, there has been an original and continuing consent by appellant to the separation, then she should have made a more than ordinary effort or advance toward a reunion. She should not have let respondent drift on in a recognized separation, under the impression that it was agreeable to her.

MARCH TERM 1906.

ARGUMENT OF H. C. PITNEY, JR.,

FOR RESPONDENT.

Here read Part IV facts
I.

No intention, nor even desire, in the defendant to desert his wife can be found in the evidence. Every indication and every fair inference negatives such intention and desire. There is nothing to indicate them but the mere separation of the husband and wife.

An intention or desire in him to desert cannot be inferred from the most pointed and pertinent evidence in the cause,—the conscious testimony of the wife.

Sundry Interviews Between the Husband and Wife, occurring after the Husband's return from Texas, are related by the Wife, as follows :

FIRST INTERVIEW. [Case : Direct, pp. 21, 22.]

Q. This was at your mother's house, you say?

A. Yes.

Q. According to the invitation in your letter?

A. Exactly.

Q. Well, he came, did he? A. Yes.

Q. And what occurred?

A. Well, we had a talk—an interview, and I asked him what he had been doing, and why he had not writ- 40
ten me for so many months and *who had told him to come there then to see me.* [p. 22]

Q. Anything else you recollect?

A. And could he give me any explanation of his silence, of the long time he had been away, and all the time he had been in Elizabeth and hadn't written me; I asked him why he hadn't come to see me before.

Q. And what did he say?

A. He made no answers except "Nothing," "I don't know," and then he said he must go, he had a choir rehearsal and he must go; I said "But why must you go; this may be the chance of your life; it is the chance of your life, why cannot you tell me why you have been away from me and neglected me for these years and deserted me?" He said he had to go, that he made an appointment with the organist, and he had to go and so he went

Q. You have related substantially all that occurred in that interview?

20 A. I think all; there may be one or two other questions bearing.

Cross Examined: [pp. 49, 50, 51.]

Q. And who was present in the room? [p. 49]

A. *My mother.*

Q. And who else? A. No one else that I know of.

Q. But you were present? A. I was.

Q. And Foote? A. Yes, sir.

10 Q. The three of you? A. Yes.

Q. When Mr Foote came in where was your mother standing or sitting?

A. She was seated and arose as he entered the room and bowed to him.

Q. *Was your brother, Manny Henderson, in the room at the time?*

A. He was not.

Q. Was he there during the interview?

A. *He was in the hall, near the door possibly, I don't*
20 *know, my back was to the door so that I didn't see him in the room.*

Q. And the hall was a small room adjoining the parlor? A. Yes, sir.

Q. Then he was within hearing of the conversation?

A. If voices were raised, yes.

Q. Did your mother at all during the interview turn her back upon you?

A. No, sir, her side, she was reading a book.

Q. Then do you mean to say that Mr. Foote's statement that your mother and your brother, when he entered, were seated with their backs turned towards the door is false? A. Is false.

Q. You are positive about that. A. I am positive.

Q. There could be no mistake? A. No mistake.

Q. How was it that Mr. Foote had come to see you at that time, in answer to a letter, was it?

A. He had written to me asking me to go and [p. 50] take communion with him the following Easter Sunday, the 25th.

Q. And you had answered it?

A. I had answered—and if he would meet me in the street and I had answered that I would prefer to meet him in my mother's house after so long a separation, for a few minutes' conversation.

Q. I call your attention to Exhibit C. 7, and ask if that is the letter you refer to. A. That is the letter.

Q. Well, you say here "Come here to my mother's home at eight o'clock this evening when I feel sure there will be no interruption." Do you remember that?"

A. Perfectly.

Q. Then Mr. Foote had a right to expect there would be no interruption, did he? A. Yes.

Q. And when he arrived you expected him to talk over family matters, did you not?

A. I expected him to, yes.

Q. And your mother was in the room and your brother within hearing in the hall? A. Yes, sir.

Q. Is that a fact?

A. Positive; he was within hearing.

Q. What did Mr. Foote say to you at that meeting?

A. I asked him why he had come, and then I asked him who told him to come; getting no reply to that—he said no one—I asked him if he could give me an explanation of his silence and why had he so treated me; he said he didn't know; I said why didn't you answer my letters, he didn't know.

Q. Then you expected him to talk of family matters before your mother? A. Why not?

Q. I didn't ask you why not, I said, did you?

A. Certainly, unquestionably, she had supported me 40 and my child.

Q. Don't you think the reason he didn't speak [p. 51] of family matters was your mother's presence?

A. Not at all, the room is large enough if he had lowered his voice to have a private conversation.

Q. How big is that room?

A. Twenty feet by eighteen.

Q. Do you mean to say he could have a private conversation concerning family matters with your mother there and she not hear it?

A. Private conversations have been had in that room 10 before.

[SECOND INTERVIEW. [Case: Direct, p. 22.]

Q Well, now after that time?

A. He came to the house on Friday morning, which was the next morning, with a little scrap of paper and asked if he might do anything for me, any service would be a pleasure to him.

Q. Have you got that paper? A. Yes

30 Q. What year was that? A. 1894.

Q. Do you remember what the contents were?

A. Yes, about what I said, that if he might be any service to me, he was willing, and could he do anything for me; that was the whole idea, it was a very short note, two or three lines on a half sheet of paper

Q. Did he make any further propositions at any time to do anything substantial for you? A. No.

Cross Examined: [pp. 51-52]

Q. Do I understand that he returned the next morning? A. He did.

Q. Did he send any message in?

A. A slip of paper.

Q. Have you that slip of paper? A. Yes.

Q. Who has it now?

20 A. I think it is with Mr. Parker's papers.

* * * * *

Q. Where did you see him at that time—did you see 30
him that morning? A. I did.

Q. In the same room? A. No.

Q. Where? A. In the hall.

Q. He didn't enter the house?

A. He did enter the house, in the hall.

Q. He entered the hall? A. Yes. 40

[p. 52] Q. What was the conversation there?

A. I don't remember.

Q. Who was present? A. No one but myself.

Q. And you can't remember what was said at that
conversation?

A. Not at all; I waited for him to say something.

Q. Do you remember what he said? 10

A. Not at all.

Q. Do you remember what you said?

A. I asked him if he wouldn't like to see his child; he said he didn't think he could stand it; I said I had stood it for these unbroken months, I thought he might be able to stand it for once; that I remember distinctly.

Q. Is there anything else that comes to your mind,
of that conversation? A. No, sir.

THIRD INTERVIEW [Case : Direct, pp. 22, 23.]

Q. Well, after that time had you a further interview 40
with him?

[p. 23] A. That was Friday morning, on Saturday
morning he came again with a note, the same kind of a
note.

Cross Examined: [pp. 52, 53.]

Q. When was the next meeting?

A. Saturday morning

Q. The very next morning?

A. The very next morning. 30

Q. How did he gain admittance at that time?

A. He rang the bell.

* * * * *

[p. 53] Q. Do you remember the conversation that
took place on Saturday morning. A. No, I don't.

- Q. Don't remember what he said? A. No.
 Q. Or what you replied or what you said? A. No.
 Q. But you remember distinctly the conversation on
 Thursday and that your mother was present?
 A. Yes; I hadn't seen him for months.
 Q. But the Friday conversation and Saturday you
 20 don't remember?
 A. It lasted possibly five minutes.

FOURTH INTERVIEW.

Cross Examined: [pp. 53, 54.]

- Q. Did he return again?
 A. Sunday afternoon he came again.
 30 Q. Was there a paper that time? A. No.
 Q. How did he gain admittance at that time?
 A. I saw him coming and opened the door for him.
 Q. Did he enter the hall?
 A. He did and the parlor.
 Q. And were you alone?
 A. I brought my little daughter in to see him?
 Q. Were you the only ones present, he and you and
 40 the daughter? A. Yes.
 [p. 54] Q. Your mother wasn't present? A. No.
 Q. Can you tell what the conversation was?
 A. I asked him if he thought she had grown, if she
 was what he expected her to be; he hadn't seen her for
 a long time. and then I asked her who it was, and she
 said she didn't know, and I said, why, don't you know,
 and then I told her
 10 Q. Told her it was her father? A. Her father.
 Q. Do you remember anything else of the conversation?
 A. Very short; *it was my daughter's tea time* and I
 had to prepare the meal, I had no servant of my own,
 and I told him he would have to leave the house. I had to
 put my child to bed.

FIFTH INTERVIEW. [Case: Direct, p 23]

- Q. I show you here this note; is this your handwriting?
 A. Yes.

Q. And it is a copy of what?

A. One that I sent him some time after this interview, that was before Easter; these interviews of which we are speaking.

Mr. Parker. I offer this note in evidence; it 10
reads as follows: "My dear Harry: I should like
very much to see you to-morrow, Tuesday morning,
at Edith's house, half past nine. Very sincerely,
Ada H. Foote, Monday." Marked Exhibit C. 2.

Q. Well, who is Edith?

A. She was a relative of Mr. Foote's and a great
friend of mine.

Q. Of yours? A. A great friend of mine. 20

Q. And did you meet him there? A. I did.

Q. Well, what occurred between you then?

A. Nothing particularly.

Q. What was the conversation about?

A. *Mainly, I think, about a wedding which was about
to take place for which invitations had been sent to Mr.
Foote's house; it was unusual for them to go there, they
generally came to me, and I asked him to send me the 30
admittance card, so that I might go to the wedding; I
don't remember anything else that occurred.*

Cross Examined: [pp. 57, 58, 59.]

Q. To get to the meeting at Edith Thompson's, that
was in answer to a letter of yours? A. Yes, sir. 20

Q. And when was that held?

A. I think the 21st of May.

Q. That was 1894?

A. Yes, thereabouts, some time in May, the latter
part of May.

Q. And this Mrs. Thompson was a distant connection
to Foote, was she not?

A. Married his first cousin.

Q. And was an intimate friend of yours. A. Very. 30

Q. Did you suggest her name for the meeting?

A. Probably.

Q. What room in the house was that meeting held
in? A. In her parlor.

Q. What time of day?

A. Nine o'clock in the morning or half past nine.

Q. Was she present?

A. She greeted him when he came in and went up-
40 stairs.

[p. 58] Q. She knew the purpose of the meeting?

A. Nobody knew the purpose of the meeting

Q. She knew you were both to meet there? A. Yes.

Q. Did you tell her you were coming?

A. Yes, I did.

Q. So you arranged it? A. Yes.

10 Q. Foote had nothing to do with the arrangement,
did he?

A. As far as I recollect he had none.

Q. In what room of the house did you say that was
held? A. In her parlor.

Q. And only you and Foote present?

A. That is all.

Q. Now, can you state the conversation at that meet-
ing?

A. I think I told him at that meeting that a friend of
20 mine was to be married, a Mr. V—— to Miss G——, and
I wished very much to go to her wedding and the invita-
tion was left at his house instead of mine, *and I wanted
the card to go to the wedding; he asked if he might go
with me and I said I didn't care to have him go with me, and
that was about all, I think.*

Q. That wasn't the purpose of the meeting?

A. I hoped that he would offer me help, that is why
I went there. I expected he would talk of that.

Q. Are you positive that he didn't talk of that?

30 A. Positive.

Q. Have you stated all the conversation that occurred
at that time?

A. As nearly as I can recollect.

Q. The only subject mentioned was a wedding?

A. A wedding and some incidental things; that was
a very important thing to me and I should have remem-
bered it

* * * * *

[p. 59] Q. You never asked him what the purpose of his coming there was? A. No.

Q. And after that when did you meet him again?

A. I don't think I met him again since. 20

Their *fifth* interview was held at the house of Edith Thompson. Their *sixth* and subsequent interviews are related by complainant as follows :

Cross Examined : [pp. 56, 57.]

Q. Now this was Monday morning the 26th day of March, 1894, am I right? A. Yes.

Q. Now, when did he come to the house after that?

A. He has not been there since, I think.

Q. When did you next meet him after that?

A. In the street.

Q. Where? 30

A. Nearly in front of his own house, adjoining it?

Q. What date was that?

A. I don't remember the date, somewhere along up to the 21st of May, *we met together frequently, and we took a long walk around.*

Q. Did he accompany you to New York during that time?

A. We went on the same boat and the same train to New York and parted at the ferry.

Q. Now, how many times were you with Mr. Foote 40 between those dates—between that Monday in [p. 57] March, 1894, and the month following on up to May 20th, say?

A. Possibly four or five times.

Q. Now, Mrs. Foote, was there ever to your knowledge anything said by Mr. Foote that he was going to leave you?

A. I don't think so.

Q. *He never gave you to understand that he intended to desert you, did he?* A. No. 10

II.

The *Letters* and *Exhibits*, invariably negative the desire and intention to desert.

The husband's letters and notes show attachment, affection and love; and never indicate any coldness or estrangement in his feelings.

The following are typical and expressive of his feelings :

(Case, p. 94) Exhibit D. 6 : marked July 14, 1904.

Laredo, Texas. Sept. 17, 1893.

My dear Sistada :

I wrote to you at Eliz. telling you that I expected to return home the first part of this week, but not knowing whether you were there or at Pine Hill I write to both places. Is it possible for me to expect forgiveness from you for what I have not done? My heart is too full to write. I don't know where to commence. Write me at Eliz. and let me know what kind of a reception I may expect. I don't know what I shall do when I arrive home, but the panic has laid S. W. Texas desolate and it is hardly possible to earn bread and butter. My obligations to your mother can never be paid for all her kindness to you and the baby, and with all my misfortune and suffering if I could only see you and the baby and hear your laugh I should be happy.

Very affectionately, HARRY.

(This letter from Texas was not answered)

(Case, pp. 102, 103) Exh. D. 21 : marked July 14, 1904.

Wednesday morning.

My dear Stada :

I must take this opportunity to thank you very much for speaking to me on the street the other day, and I have a request to ask you which I hope you may see your way clearly in granting. Will you not take your Easter communion with me at Christ Church at the 7 o'clock celebration? You leave home about quarter of seven and I will meet you and go with you. Our conversation may be as limited as you choose to make it, or to have it made, and I assure you that I will appreciate this favor more than I can possibly express. Please assist me in my hope and believe me always

Your devoted

Mch. 21, 1894.

HARRY.

(Case, p. 93) Exh. D. 4: marked July 14, 1904.

Good Friday, March 23, 1894.

Friday morning.

My dear Sistada:

Is there any service that I can render you this morning? That I may show you even by my smallest action that I am sincere (and desire forgiveness.)

Yours, HARRY.

I gave the note to him for this addition.

(Case, p. 92) Exh. D. 1: marked July 14, 1904.

Saturday morning.

My dear Sistada:

Is there any service that I can render you this morning? I assure you I should be most happy to render you any assistance that is in my power.

Yours devotedly and affect'y

HARRY.

(Case, p. 92) Exh. D. 2: marked July 14, 1904.

Monday morning.

My dear Sistada:

My daily question is and shall be: What assistance may I render to her to whom I owe so much? I shall be at home all this morning doing some writing for Al Lukens, but that may be a secondary consideration in serving you.

Your devoted HARRY.

(Case, p. 105) Exh. D. 25: marked July 14, 1904.

Friday evening.

My dear Sistada:

May I not have the pleasure of seeing you some time tomorrow or on Sunday? or both? I just plain want to see you. What were you doing on Eliz. ave? I must see you, it is such a satisfaction and I know you will give me that much pleasure. I will be at Toler's in the morning and, if you are going by about 9 o'clock your one look will tell me whether my wish may be gratified.

Your devoted, HARRY.

Mch. 30, '94. Eliz. N. J.

(Case, p. 104) Exh. D. 23: marked July 14, 1904.

My dear Sistada:

I was awfully sorry not to have seen you yesterday, but of course under the circumstances it was unavoidable. I trust nobody is seriously ill and I hope the servant question will be easily settled. I am at your service at any time.

Your devoted, HARRY.

Monday, Apl 9, '94. Eliz., N. J.

(Case, p. 104) Exh. D. 24 : marked July 14, 1904.

Eliz , N. J., May 21, '94.

My dear Sistada :

I expect to go away tomorrow for a few days on a business trip for Harry Toler, up in Vermont & New Hampshire, and I should very much like to see you in the morning about 8.30 o'clock for a few moments. I don't know what the outcome will be but it may be a start and that is something. I hope that you and the baby are well, but I have not seen you in so long that I wonder and hope for the best.

With all my love, HARRY.

Arguing that these letters and notes from the husband, or any of the others from him, are insincere and merely designing is arguing to an hypocrisy that is impossible

The wife does not say that her husband asked pecuniary assistance of her. Interrogated upon one opportunity for such a request, she denies that he asked assistance : Case, p. 58, line 38, to p. 59, l. 11.

Though she had some independent means, she advanced no money to or for him after his departure for Texas—nor indeed after June, 1891. And he asked none. Money of his own or from his own kindred brought him from Texas to Elizabeth. (Page 60, lines 15-20.)

III.

About eight months after complainant wrote to defendant requiring him to return from Texas, he wrote her two letters announcing his return ; and he did return,—without a welcome. She did not answer these letters ; though being at Pine Hill away from Elizabeth she should have done so. In all the other circumstances of their separation it seems to be unmistakably plain--so plain

that he must have understood—that his return to his wife would not be welcome unless he came with a promise and prospect of supporting her and her child. In other words,—he was barred from her by his misfortunes in life. But this is not desertion.

Skean v. Skean, 33 Eq., 6 Stew. 148; (1880).
Vice-Chan. Van Fleet, at pp. 151, 152.

That case is strikingly similar to the present; and the reasoning there may be closely applied here.

“It is well settled that a mere separation of husband and wife does not constitute desertion within the meaning of the statute.”

Moore v. Moore, 1 C. E. Gr. 275, at p. 280;
(Chan. Green, 1863).

Meldowney v. Meldowney, 12 C. E. Gr., 328;
(Van Fleet, V. C., 1877).

Taylor v. Taylor, 1 Stew., 207, at p. 208;
(Van Fleet, V. C., 1877).

Hankinson v. Hankinson, 33 Eq., 6 Stew. 66;
(Chan. Runyon, 1880).

Complainant's bill does not charge that she was *compelled* to leave her husband or to remain apart from him.

Smithkin v. Smithkin, 62 Eq., 17 Dick. Ch. 161.
(Reed, V. C., 1901.)

Nor is such a charge supported by any proof in the case.

Complainant's brother, *James S. Henderson* (Case, pp. 73-85), testifies merely that defendant lived apart from his wife in Elizabeth after his return from Texas, that he failed to contribute to the support of complainant and that he drank and was seen several times intoxicated in public.

This witness fails in the point of desertion and gives no corroboration to complainant's testimony thereto.

He was not present at any interview between the husband and wife (pp. 83, 84).

As to defendant's drinking he testifies : (Case, page 79, l. 24-26 ; l. 35-39 ; p. 80, l. 3-8 ; p. 82, l. 2-6).

But if it were proved—as it is not—that defendant had drinking habits in and prior to 1891, such habits, though they might furnish a partial explanation of the separation of the parties, would not justify the wife in separating herself from her husband ; and much less would they support the charge of willful and obstinate desertion against the husband.

Laing v Laing, 6 C. E. Gr., 248.

(Chan. Zabriskie, 1870.)

Skean v Skean, 33 Eq., 6 Stew. 148.

IV.

The separation of this husband and wife began in *June, 1891*. For the beginning of it no sufficient cause has been assigned. It seems to have begun by the voluntary act of the wife, after the husband lost his position with Kountze Bros. and ceased to support his family. *They were living in a house owned by complainant*. They "broke up house-keeping"; and the wife in June, 1891, went with her child to spend the summer with her mother in her country home. Complainant's house was closed and she remained in her mother's house (page 18, l. 1-11 ; p. 37, l. 22-31 ; p. 41, l. 27). *Defendant did not go to live in her mother's house. He could not go to live there, uninvited.*

There is no proof, sufficient under the rules, that since then she has at any time desired to resume cohabitation or domestic life with her husband.

Palmer v. Palmer, 7 C. E. Gr., 88.

(Chan. Zabriskie, 1871).

Rogers v. Rogers, 3 C. E. Gr., 445.

(Chan. Zabriskie, 1867).

Test v. Test, 4 C. E. Gr., 342.

(Chan. Zabriskie, 1868).

- Leaning v. Leaning*, 10 C. E. Gr., 241.
(Chan. Runyon, 1874).
Hankinson v. Hankinson, 6 Stew. 66 ;
(Chan. Runyon, 1880).

“The person deserted must not be a consenting party.”

- Costill v. Costill*, 2 Dick. 346. at p. 348.
(Chan. McGill, 1890).
Jennings v. Jennings, 2 Beas. 38.
(Chan. Green, 1860).
Moore v. Moore, 1 C. E. Gr. 275 ;
(Chan. Green, 1863).
Meldowney v. Meldowney, 12 C. E. Gr. 328 ;
(Van Fleet, V. C., 1876).
Taylor v. Taylor, 1 Stew. Eq. 207 ;
(Van Fleet, V. C., 1877).
Johnson v. Johnson, 8 Stew. Eq. 20 ;
(Chan. Runyon, 1882).
Newing v. Newing, 18 Stew. Eq. 498 ;
(Van Fleet, V. C., 1889).

The learned Vice-Chancellor, in his conclusions, after the most careful consideration, takes the view that there is no proof nor even indication “that the defendant intentionally separated himself from his wife, or intentionally produced the conditions which compelled such separation. * * * “Although the complainant had some means, she seems to have preferred not to share with her husband the discomfort and misery of a drunkard’s home.”

Conclusions: Case, p. 111.

Unless this view be taken, there is no explanation, in complainant’s pleadings or in the proofs, of the “causes of the separation” or of the continuance of the separation. The case will then show a mere separation ; and the charge of desertion will be left without any support whatever.

V.

If the statutory—"willful, continued and obstinate"—desertion can be inferred at all from the proofs, it must be drawn entirely and exclusively from the complainant's testimony. And the total lack of corroboration of her testimony respecting desertion is fatal to the relief prayed by her bill.

Corroboration as to the "causes of separation," as essential in complainant's case, is indispensable.

- McShane v. McShane*, 45 Eq., 18 Stew. 341 ;
(Court of Appeals, 1889).
Costill v. Costill, 47 Eq., 2 Dick. Ch. 346, p. 350 ;
(Chan. McGill, 1890).
Herold v. Herold, 47 Eq., 2 Dick. Ch. 210 ;
(Green, V. C., 1890).
Fisher v. Fisher, 3 C. E. Gr. 300 ;
(Chan. Zabriskie, 1867).
Franz v. Franz, 5 Stew. Eq. 483 ;
(Chan. Runyon, 1880).
Sandford v. Sandford, 5 Stew. Eq. 420 ;
(Chan. Runyon, 1880).
Pullen v. Pullen, 2 Stew. Eq. 541 ;
(Chan. Runyon, 1878).
Tate v. Tate. 11 C. E. Gr. 55 ;
(Chan. Runyon, 1875).
Belton v. Belton, 11 C. E. Gr. 449 ;
(Chan. Runyon, 1875).
Woodworth v. Woodworth, 6 C. E. Gr. 251 ;
(Chan. Zabriskie, 1870).
Cummins v. Cummins, 2 McCart. 138 ;
(Chan. Green, 1862).
Palmer v. Palmer, 7 C. E. Gr. 88 ;
(Chan. Zabriskie, 1871).

VI.

It is submitted that the allegation of the bill that defendant has not sought to return to complainant as his wife is not supported by the proofs. And it is submitted, on the contrary, that the proofs do show that he has

sought to return to his wife and has gone as far as he could without the actual means of supporting her in an independent home. When he departed for Texas, she was living voluntarily in the home of her mother, where it is not suggested that he was a welcome guest or visitor. When he returned to Elizabeth, his wife was still living in the home of her mother; and he had no answer to his last letter. To seek her there he was little encouraged, in his circumstances. But, prompted by a recognition which he gratefully acknowledged in his note of Mar. 21, 1894, he did seek a meeting with her. What was her feeling toward him in this meeting? She does not explain it. Was it a *false pride*, because she was receiving him in her mother's home? Or was it *anger*, because of some fancied fault or transgression, of which she did not distinctly accuse him? Why did she tax him with sharp questions in the presence of her mother and brother? The reception which he met certainly put him in a difficult position. To confess failure and offer empty promises would have been futile as well as painful. The only sufficient reply to his wife's questions would have been: "Come to my independent home!" Until he could say this, there was no prospect for him but a life of separation from his wife and child, for whom nevertheless his letters evince his love and affection.

If, in their subsequent meetings, she felt a wish for reunion, she did not express it.

There is no evidence to charge the defendant as an intentionally and wrongfully delinquent husband and father. There is no charge that he has possessed and withheld from his family any means for their support. His continued residence with his own mother indicates that he had no means of an independent home; and it may also indicate that he had hopes of a better condition, in which he might resume life with his wife and child.

To achieve this without the society and sympathy of the wife is a heavy task.

The separation presented in this case is inconsistent with a willful, continued and obstinate desertion. It is

a social misfortune. But there is not in it that willful offence by the husband on which may be imposed, under the statute, the heavy and final penalty of divorce *a vinculo matrimonii*.

The decree should be affirmed.

HENRY C. PITNEY, JR.,
for Defendant.



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New Jersey Court of Errors and Appeals

November Term, 1905

Between

ADA H. FOOTE,

Appellant and Complainant below,

and

HENRY H. FOOTE,

Appellee and Defendant below.

In Divorce.

*On Appeal
from Chancery.*

ARGUMENT FOR THE APPELLEE HENRY H. FOOTE.

At the hearing and argument of this cause before his Honor Eugene Stevenson, Vice-Chancellor, in the Court of Chancery, the following argument on behalf of the defendant was submitted in writing by his counsel (the late) William Pennington Toler, Esq., who was then his solicitor in the record and who afterwards, on July 25, 1905, died.

New Jersey State Library

In Chancery of New Jersey

ADA H. FOOTE,

Complt.,

and

HENRY H. FOOTE,

Deft.

} *Defendant's Memo-*
randum, etc.

STATEMENT.

Complainant by bill of complaint seeks divorce herein on the ground of *desertion* (case page 1-4).

Defendant in answer denies the alleged desertion and by cross-bill seeks divorce upon the same ground of *desertion* on the part of complainant and asks for the custody of the child of the marriage. (Case p. 4-9.)

Subsequently Defendant withdraws his demand for the custody of the child by stipulation which, however, seems to have been omitted in the printed case.

Replication to Cross-Bill (case p. 9 to 13).

No testimony was offered before the Master on the part of Defendant. The Court is therefore asked to pass upon the right of Complainant to a divorce herein solely upon the evidence offered by her, Defendant claiming that no case of *desertion* has been proved herein.

I.

COMPLAINANT HAS FAILED TO PROVE
WILLFUL DESERTION—OR ANY DESERTION
—ON THE PART OF DEFENDANT, WHATEVER.

Married in 1886 Complainant and Defendant lived happily together until 1891. In that year Defendant lost his position as paying-teller with Kountze Bros., bankers, New York City, housekeeping was given up, Complainant raised \$1000 by mortgage to meet the debts for necessities, such as meat bill, milk account, servant's wages, &c., and Complainant upon advice goes to her mother in her country home (case pages 36 to 41 inclusive).

Then in 1892 follows the trip to Texas, which might well have been omitted entirely from the case inasmuch as the same relations were resumed between the parties after as before, namely: by mutual agreement Complainant lived with her mother at No. 520 Westminster Avenue, Elizabeth, and Defendant with his mother on the *next block* at No. 433 (case p 81, Henderson Cross-Ex.).

Defendant left for Texas in good spirits, anticipating a successful business venture and having Complainant join him there (case Compl. Cross-Ex., p. 41 and 42). The venture ended disastrously (Ex. D-6 case p. 94), money being forwarded to enable defendant to return home (case p. 60).

A large part of the evidence deals with the fact that Defendant failed to carry on the correspondence with Complainant, but in any other respect has, it is admitted, no material bearing on the case. Finally Defendant wrote, Sept. 17, 1893 (Ex. D-6 case p. 94) of his homecoming—a pathetic letter truly—which was never answered by Complainant. (Case p. 48.)

After Complainant had sent registered letters to

Texas upon the advice of her mother, page 44, pages 46 to 60 inclusive of Complainant's cross-examination relate the experiences of Defendant in his efforts to assist Complainant and endeavor to plan for their coming together once more in the marital relation.

In brief: First meeting was placed in 1894 (p. 48). Defendant had written Complainant asking her to go and take communion with him the following Easter Sunday—the 25th of March. Complainant had answered by Exhibit C-7, p. 90, asking Defendant for a few minutes' conversation and requesting Defendant to come to her mother's house in the evening at 8 o'clock, when, as Complainant stated, "I feel sure there will be no interruption." Defendant kept the appointment, but upon entering found his mother-in-law seated in the room, which was not over twenty feet by eighteen, and the brother of Complainant seated within hearing in the hallway (pages 50 and 51), in spite of the assurance from Complainant that there would be no interruption. It is needless to add that family matters were not broached at this meeting; but Defendant returns next day and hands in a slip of paper at the door (Ex. D-1, page 92, marked July 14, 1894), in which Defendant offered to render any services possible. Only Complainant and Defendant were present at this interview but Complainant has no recollection of what was said in the way of conversation, except one short antagonistic reference to the child of the marriage on the part of Complainant. (Case page 52)

Defendant again appears next morning, but Complainant while remembering that admittance was gained by ringing of the bell fails to remember whether any letter or paper was handed in by Defendant, but admits there might have been (pages 52-53). Again Complainant's memory fails her utterly as to what was said at this meeting, although the conversation on Thursday, when the mother and brother were present, she distinctly remembers. On the following day, Sunday, Defendant

again appears, Complainant opening the door herself and Defendant entering the hall and parlor,—Complainant, Defendant and the daughter being the only parties present. Complainant testifies that at this meeting conversation was very short and Defendant was told to leave the house, that the child had to be put to bed (page 54), but remembered nothing that Defendant said at the said meeting. On Monday morning Defendant again appears—breakfast time—and hands in Exhibit D-2 (page 92), again offering assistance and to do all in his power for his wife.

Complainant (on page 56) then recollects meetings in the street and relates one instance of Defendant accompanying her to New York when they parted at the ferry. (On page 57) She tells of the meeting at Edith Thompson's, an intimate friend of Complainant and a distant connection by marriage of Defendant.

Of this meeting Complainant's recollection is that nothing was said as to the personal situation of the parties, but that a wedding was the chief topic of conversation.

(On page 60) Solicitor for Defendant admitted in the evidence that Defendant had been a slave to drink and had taken the cure at White Plains. It is submitted, however, that the question of defendant's drinking is not made a cause or adjunct of the desertion claimed in the Complainant's bill.

It is respectfully submitted, that, if two persons live within a block of each other by mutual consent, meet on the street, go to the City together, for a number of years without objection, the husband making effort to assist the wife and bring about a resumption of marital relations,—the wife is not entitled to a divorce upon the ground of desertion.

Complainant was asked on cross examination (on page 57) the following questions :

Q. "Now, Mrs. Foote, was there ever to your knowledge anything said by Mr. Foote that he was going to leave you?" A. "No; I don't think so."

Q. "He never gave you to understand that he intended to desert you, did he?" A. "No."

II.

COMPLAINANT'S TESTIMONY IN RELATION TO THE DESERTION IS ENTIRELY WITHOUT CORROBORATION, AN ADMITTED ESSENTIAL ELEMENT TO THE GRANTING OF A DIVORCE UNDER THE COMMON LAW.

A perusal of the evidence of the only witness produced by the Complainant, her brother, James S. Henderson, will show that he knew nothing of his own knowledge concerning the Complainant and Defendant's living together, never having been present at any of their meetings, in other words, being in utter ignorance of the relations existing between the parties herein, except that one lived on one block and one on the other.

FOR THE REASONS INDICATED COMPLAINANT'S BILL OF COMPLAINT SHOULD BE DISMISSED.

Respectfully submitted,

WM. P. TOLER,

Solicitor for Defendant.

