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**Notice of Appeal.**

Filed March 24, 1931.

**In Chancery of New Jersey.**

Between	}	On Petition for Divorce. 10	
JERRY GALOPPA,			Notice of Appeal.
Petitioner,			
and			
ANTONETTA GALOPPA,	Defendant.		

The defendant hereby appeals from so much of the decree nisi made in this court, in the above entitled cause, on the 10th day of February, 1930, as orders, adjudges and decrees that the petitioner, Jerry Galoppa, and the defendant, Antonetta Galoppa, be divorced from the bonds of matrimony for the cause of desertion, and that the said parties, and each of them, be freed and discharged from the obligations thereof, unless within three months from the date thereof sufficient cause be shown why said decree should not be made absolute, to the Court of Errors and Appeals in the last resort in all causes. 20 30

WARD & MCGINNIS,  
Solicitors of Defendant.

PETER J. MCGINNIS,  
Of Counsel with Defendant.

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

PETER J. MCGINNIS,  
Of Counsel with Defendant. 40



**Petition of Appeal.**

Filed March 24, 1931.

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

Between JERRY GALOPPA, Petitioner-Respondent, and ANTONETTA GALOPPA, Defendant-Appellant.	}	On Petition for Divorce.  On Appeal from Chancery.  Petition of Appeal.	10
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*To the Honorable, the Court of Errors and Appeals, in the last resort in all causes:* 20

The petition of Antonetta Galoppa, the appellant in the above stated cause, respectfully shows that your petitioner finds herself aggrieved by a decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the 10th day of February, 1931, in a cause above entitled, to wit, an action brought by the said Jerry Galoppa against your petitioner for divorce upon the ground of desertion, in this respect, to wit, that the said decree orders, adjudges and decrees that the said Jerry Galoppa and your petitioner be divorced from the bonds of matrimony for the cause of desertion adjudicated to have been committed by your petitioner, and that the parties to said suit, and each of them, be freed and discharged from the obligations thereof, unless within three months from the

40

*Petition of Appeal.*

date of said decree sufficient cause be shown why the said decree should not be made absolute.

Your petitioner appeals from that portion of the decree which decrees, as aforesaid, upon the ground that the same is erroneous in that, the evidence did not warrant the court in finding that your petitioner was guilty of the charge of desertion.

That the Court should have dismissed the petition filed by the said Jerry Galoppa against your petitioner.

Your petitioner therefore prays that the said decree of the said Chancellor may be in the particulars aforesaid reversed, set aside and for nothing holden, and that the record may be remitted to the said Court of Chancery with direction to dismiss the petition filed by the said Jerry Galoppa against your petitioner, and that your petitioner may have such other and further relief in the premises as to this Honorable Court shall seem meet.

WARD & MCGINNIS,  
Solicitors of Appellant.

PETER J. MCGINNIS,  
Of Counsel with Appellant.

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Order.

Filed April 7, 1931.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

JERRY GALOPPA,  
Petitioner-Respondent,

and

ANTONETTA GALOPPA,  
Defendant-Appellant.

10

Order.

Upon this matter being opened to the Court, by 20  
Peter J. McGinnis, of Ward & McGinnis, of counsel with the appellant, in the presence of Jacob Van Der Clock, of counsel with the respondent, upon an application of appellant to require respondent, her husband, to supply the State of Case for the appeal in this cause, and to waive the rule of the Court to deposit costs.

It is on this second day of April, 1931, ORDERED, 30  
that the respondent pay all the necessary printing bills for the State of Case and Brief; that the rule of this Court, requiring a deposit of \$100.00 by appellant, to cover costs on appeal, be waived.

.....

40

**Summons.**

Filed Oct. 17, 1929.

*New Jersey*, to wit: The State of  
New Jersey to

ANTONETTA GALOPPA

10

*Greeting*: You are hereby cited to  
answer the petition of

JERRY GALOPPA

20

a copy of which petition is here-  
with served upon you, by filing  
your answer in writing in the office  
of the Clerk of the Court of Chan-  
cery at Trenton, within twenty days after the 28th  
day of October 1929; and in default of your so do-  
ing such order or decree will be made against you  
as the court shall think equitable and just.

Witness, his Honor EDWIN ROBERT WALKER,  
Chancellor of our said State, at Trenton, the 17th  
day of October, 1929.

FERD GARRETSON,  
Clerk.

JACOB VAN DER CLOCK,  
Solicitor.

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**Petition.**

Filed October 17, 1929.

IN CHANCERY OF NEW JERSEY.

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

The petition of Jerry Galoppa, of the City of Paterson, in the County of Passaic, and State of New Jersey, respectfully shows: 10

1. Your petitioner was lawfully joined in the bonds of matrimony to his present wife Antonetta Galoppa, the defendant in this suit, on the sixteenth day of July, A. D. nineteen hundred and six, by the City Clerk, at Brooklyn, in the State of New York.

2. Defendant deserted petitioner in the month of December, A. D. nineteen hundred and twenty-four; ever since which time, and for more than two years last past, said defendant has willfully, continuedly and obstinately deserted your petitioner. 20

3. Petitioner and defendant were bona fide residents of the State of New Jersey when this cause of action arose, and they have ever since, and for more than two years next preceding the commencement of this action, continued to be bona fide residents of this State, residing at Paterson, in the County of Passaic. 30

4. Three children born of the marriage aforesaid, to wit: Albert, age twenty and married, Edward, age seventeen years, and Elenore, age thirteen years; said minor children are in the custody

*Petition.*

of the defendant, but being supported by the petitioner.

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

And your petitioner will ever pray, &c.

JACOB VAN DER CLOCK,  
Solicitor of Petitioner.

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**Affidavit.**

IN CHANCERY OF NEW JERSEY.

Between JERRY GALOPPA, Petitioner, and ANTONETTA GALOPPA, Defendant.	}	On Petition for Divorce.  Affidavit.	10
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State of New Jersey, }  
 County of Passaic, }<sup>ss.:</sup>

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

JERRY GALOPPA.

Sworn to and subscribed before me  
 this 16th day of October, A. D. 1929. 30  
     Norah O'Rourke,  
 (Seal) A Notary Public  
                     of New Jersey.



**Testimony.**

#76-79

IN CHANCERY OF NEW JERSEY.

Between

JERRY GALOPPA,  
Petitioner,

and

ANTONETTA GALOPPA,  
Defendant.

On Petition  
for Divorce.

10

No. 1 Exchange Place,  
Jersey City, N.J. 20  
May 6, 1930.

Before Honorable EDWARD THOMAS MOORE,  
Advisory Master.

APPEARANCES:

JACOB VAN DER CLOCK, Esq., Solicitor  
for Petitioner.

JOHN M. WARD, Esq., appearing for WARD  
& MCGINNIS, Esqs., Solicitors for De-  
fendant. 30

JERRY GALOPPA, the petitioner, being duly  
sworn upon his oath according to law, testified as  
follows:

*Direct-examination by Mr. Van Der Clock:*

Q. You are the petitioner in this case? A. Yes,  
sir.

40

*Jerry Galoppa—Direct.*

Q. And where do you live, Mr. Galoppa? A. River Drive, East Paterson.

Q. How long have you lived in the State of New Jersey? A. Since 1906. I was here before.

Q. Are you a registered voter? A. Yes, sir.

Q. And a citizen? A. Yes, sir.

10 Q. When were you married? A. 1906.

Q. Remember the day? A. July 16th.

Q. And by whom were you married? A. In Brooklyn by some alderman.

Q. Brooklyn, New York? A. Yes, sir.

Q. And after your marriage where did you go to live? A. We went to live by my mother-in-law at Ashley Heights, Hawthorne.

Q. And you lived with the defendant until when? A. Until about the beginning of November, 1924.

20 Q. November, 1924? A. Yes, sir.

Q. How many children were born of the marriage? A. Four.

Q. How many are living? A. Three.

Q. What are their names? A. Albert, Eddie and Eleanor.

Q. Albert is how old? A. 21.

Q. And Edward? A. 18.

Q. Eleanor? A. 14 years on her next birthday.

30 Q. Any of them married? A. Yes, sir.

Q. Who? A. Albert.

Q. Now what happened in November, 1924? A. Well it happened long before that, since July, 1923, that we have not cohabited together and she kept on nagging. She wanted to separate first, then she wanted a divorce and after that she went to her own lawyer and had some kind of paper drawn up. It kept on until it got on my nerves and I went down and signed it.

40 Q. At whose request, if any, did you sign the

*Jerry Galoppa—Direct.*

separation agreement? A. My wife's request.

Q. I show you this paper, did you ever see that before? A. Yes. This is the paper.

Q. Is that the separation agreement? A. That's the separation.

Separation agreement offered in evidence  
and marked Exhibit P-1. 10

Q. Where were you living at the time of the separation agreement? A. 593 River Street, Paterson.

Q. And after the separation agreement, what happened? A. Why I went down immediately to see the children, which our agreement called for and about five—(interrupted)

Q. Before that, at the time of the separation, you were living on River Street? A. Yes, sir. 20

Q. Did you continue to live there? A. I did.

Q. And what did the defendant do, if anything? A. I went away on a week-end to see about a job in Albany, and when I came back the house was stripped, and nothing left there but a little cot and one chair, that's all, and a piano which was not paid for as yet.

Q. What did you do after that? A. Why I knocked around here and there for about five weeks and then I went for her on Saturday afternoon. 30

Q. Did you see her? A. I did.

Q. And where was that? A. It was on Mohawk Avenue, I don't remember the number.

Q. In Hawthorne? A. Yes.

Q. What you call Ashley Heights? A. Yes.

Q. Anyone there? A. Yes, I believe all my children were there.

Q. Not what you believe, what you know. A. I am positive they were all there. 40

*Jerry Galoppa—Direct.*

Q. Was Albert there? A. Yes.

Q. Did you see him? A. Yes.

Q. Was your wife there? A. Yes.

Q. On what day of the week was that? A. On a Saturday afternoon.

Q. What month? A. December.

10 Q. What year? A. Same year.

Q. 1924? A. 1924.

Q. What did you say to her? A. I told her that "won't she please come back to Riverside, if not for my sake, for the sake of the children," and she began to holler and she cursed and swore at me, which was one of her habits, and she said, "If I didn't get out quick she would call for the police."

Q. You say she cursed and swore? A. She did very often.

20 Q. Remember the language she used? A. I don't care to repeat those words, there are children around.

Q. As a result of that—(interrupted)

The Court: I think it is quite essential for the witness to repeat the names. Will the children please leave the court for a moment.

30 *By Mr. Van Der Clock:*

Q. What was the language? A. She said "Get out of here, you son of a bitch, bastard, or I will get a cop". She always called me son of a bitch or bastard.

*The Court:*

40 Q. What else was said. Did she refuse to go with you? A. She flatly refused. She said she would never live with me as long as she lived.

*Jerry Galoppa—Direct.**Mr. Van Der Clock:*

Q. Was there anything else said? A. No.

Q. As a result of what took place, did you talk to anyone that day or the following day? A. The next day.

Q. Afternoon? A. On a Sunday. I visited a mutual friend of ours, Mr. Robert Gilpin. 10

Q. Is Mr. Gilpin here? A. Yes.

Q. Where did you live at the time? A. 16th Street. I don't remember the number.

Q. So, tell us what you said to him or what he said to you, and as a result of the conversation with Gilpin did he do anything? A. I told him my wife refused to come back. He went to my wife's home.

Q. And did he see you again after that? A. Yes. 20  
About an hour and a half after.

Q. And did he tell you anything that had taken place at your wife's home? A. Yes.

Q. Now, have you seen your wife since? A. No.

Q. Did you ever go back and ask her again? A. No, sir.

Q. Why not? A. Because the reception I got was not fit for a dog.

Q. And have you been willing to live with her since? A. I have. 30

Q. Was anything said about the separation agreement?

Mr. Ward: I object to that. I think he should be able to tell the whole conversation.

*By Mr. Van Der Clock:*

Q. Tell us if anything else was said? A. I told 40

*Jerry Galoppa—Direct.*

her at the time that I didn't regard it worth the paper it was written on.

Q. On Saturday, why did you not say that to her? A. Why?

Mr. Ward: I object to that question.

10 The Court: Just state what you said to her at the time, did she answer you then?

A. She said she would never live with me and under no condition would she ever have anything to do with me.

The Court: Did you say anything further?

The Witness: I didn't. I was afraid to hang around any longer.

20 The Court: You said you wanted her to come back, if not for your sake for the sake of the children, do you recall that that was all you said? You didn't say you wanted her to come back?

The Witness: I didn't say I wanted her to come back. I did say I wanted her to come back, I said if she didn't want to for my sake, to do it for the children's sake.

30 Mr. Van Der Clock: That is all.

*Cross-examination by Mr. Ward:*

Q. You say the trouble between your wife and yourself started in 1923? A. That was when it got real bad, but the trouble was on for many years. I never lived with her as a husband for a long time.

40 Q. So you had had trouble many years before 1923? A. Yes, sir.

*Jerry Galoppa—Cross.*

Q. You did have trouble many years before 1923? A. Yes, sir.

Q. And you had frequent quarrels? A. Quite often.

Q. And fights? A. Well, if you want to call them fights.

Q. Well you did fight with her and she did fight with you, that's true? A. Yes. 10

Q. Is that so? A. Yes we had quarrels.

Q. You had frequently come to blows with her, hadn't you? A. No, only once when she left me in 1921.

Q. In 1921 you came to blows, did you? A. Yes, sir.

Q. And that was because you say you had separated? A. No. We didn't talk about any separation then. 20

Q. You said that was because she left you? A. No. We had this here fight before she left me.

Q. You had a fight with her before she left you, is that right? A. Yes.

Q. And on that occasion you came to blows, didn't you? A. Well—(interrupted)

Q. Yes or no? A. Yes.

Q. Where was it that that happened? A. At 21 E. 15th Street. 30

Q. In Paterson? A. In Paterson.

Q. What was the cause of your quarrel then, if you remember? A. She did away with a child.

Q. And you quarreled with her because she had? A. Yes, sir.

Q. You were mad at her? A. Well, yes, I was.

Q. And you struck her? A. I didn't. I made a pass, but I didn't hit her.

Q. But you intended to strike her? A. Yes. 40

*Jerry Galoppa—Cross.*

Q. And that was why you made a pass at her?

A. Yes.

Q. What time of the day was that? A. I don't remember. Toward evening I think.

Q. Your children were present then? A. I don't remember.

10 Q. You don't remember whether your children were present? A. No.

Q. That was nine years ago? A. Yes.

Q. Now on other occasions you had quarrels with her, didn't you? A. Yes.

Q. Very frequently these were? A. Yes.

Q. What were these quarrels about? A. Well I couldn't just tell you. Continuously, that's all.

Q. You would become angry and so would she?

20 A. Well no, it was when I asked a civil question I didn't get a right answer.

Q. Well you knew that your wife had a miscarriage, didn't you in 1921? A. She brought it on herself.

Q. You got the medicine for her? A. No, I didn't.

Q. You didn't? A. No.

Q. How many passes did you make at her? A. Only one, that was weeks after she had the miscarriage.

30 Q. Weeks after? A. Yes.

Q. So that you knew this thing for weeks? A. Yes.

Q. And so on this occasion in 1921, after knowing about it for weeks, you say you had a quarrel and made a pass at her? A. Yes.

Q. What business were you in at that time? A. Plumbing.

40 Q. Were you out very much? A. Out until about ten or eleven o'clock at night.

*Jerry Galoppa—Cross.*

Q. Every night? A. Not every night.

Q. Almost every night in the week? A. Four or five nights.

Q. When did you become acquainted with Mrs. Kirkman? A. In 1924.

Q. Had you known her before that time? A. No.

Q. You knew that she had relatives in Butler, didn't you? A. Yes.

Q. You had been up there before 1921? A. No, not until 1925.

Q. That was in 1925 you went to Butler? A. Yes.

Q. When did you go to live with Mrs. Kirkman? A. The first of the year 1925.

Q. When did your mother die? A. May, 1924.

Q. May, 1924? A. Yes.

Q. Your mother had done much to keep you and your wife together? A. Very much.

Q. And that was the reason why you remained with your wife? A. Yes, sir.

Q. Because of your mother? A. Yes.

Q. Then was your mother fond of your wife, did your mother like your wife? A. My mother liked her very much, but she liked my mother like poison. She wouldn't even give my mother a glass of water when she asked her for it.

Q. You were mad at that too? A. I wasn't exactly mad because I knew her disposition.

Q. Didn't you resent the fact that she wouldn't give your mother a glass of water? A. You would too.

Q. Did you? A. Yes.

Q. And all that time you had this feeling against her? A. Not exactly, no.

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*Jerry Galoppa—Cross.*

Q. And all that time your mother was trying to keep you with her, that's true, I mean with Mrs. Galoppa? A. Yes, sir.

Q. Do you remember saying to your wife and your children that as soon as your mother died you would leave Mrs. Galoppa? A. No.

10 Q. Did you ever say that? A. No.

Q. Did you ever say that to anybody? A. Yes, I said I would never live with her after my mother died. I always obeyed my mother.

Q. When your mother was dead you didn't think it was necessary to obey her any more, did you?

A. I didn't give a darn. I was over twenty-one.

Q. Now who was it that you told that you would not live with Mrs. Galoppa after your mother died?

20 A. I couldn't remember.

Q. Don't you remember anybody you told that to? A. No.

Q. But you did tell to people? A. Perhaps I did.

Q. You know Mr. Schroeder? A. Yes.

Q. He was a neighbor of yours? A. Yes.

Q. You remember telling Mr. Schoeder that as soon as your mother died you would leave Mrs. Galoppa? A. Perhaps I did.

30 Q. You had made up your mind to leave? A. Because it was unbearable to live with her.

Q. Well after your mother died things got worse, didn't they? A. Yes.

Q. Between you and Mrs. Galoppa? A. Yes.

Q. And it was just about this time that you met Mrs. Kirkman, wasn't it? A. No, about six months after.

Q. Mrs. Kirkman has a son? A. Yes.

40 Q. What is his name? A. Robert, I think.

*Jerry Galoppa—Cross.*

Q. Do you know whether it is Robert? A. Sure, you know too.

Q. Now Mr. Galoppa, can you remember exactly when it was that you went to live with Mrs. Kirkman? A. Around the first of the year 1925.

Q. Had you known Robert before that? A. No.

Q. Didn't you go directly from your own home to live with Mrs. Kirkman? A. No. 10

Q. Where did you live during the time? A. I lived in Riverhead.

Q. With whom? A. All alone.

Q. When was it your wife moved to Hawthorne? A. Around the first of November, I should judge.

Q. The first of November, 1924? A. 1924, right.

Q. And after your wife left you, or after your wife as you say moved to Hawthorne, you say you continued to live there? A. Yes. 20

Q. Who took care of you? A. Well, I sent my laundry to the wet wash.

Q. Who did your cooking? A. I ate in the restaurant.

Q. What restaurant? A. All over. I ate most of the time downtown.

Q. And you lived with a cot and a chair in this place? A. Yes.

Q. And for five weeks you lived that way before you went to see your wife? A. Yes. 30

Q. Five or six weeks? A. About five weeks, yes.

Q. Now when did you buy the furniture that you moved into Mrs. Kirkman's home? A. Some in 1925 and some in 1926.

Q. You furnished the home for Mrs. Kirkman, didn't you? A. No. I furnished the home for myself.

Q. Well, it was where Mrs. Kirkman was living? A. Exactly. 40

*Jerry Galoppa—Cross.*

Q. And you moved your furniture and furnished a home for yourself where she had been living?

A. Well, she was my housekeeper.

Q. You know where Mt. Balsam is? A. No, I do not.

Q. What lake was it you and Mrs. Kirkman used to go to? A. Up New York State.

Q. What lake? A. Rockland Lake.

Q. You went up there in 1924? A. No.

Q. Didn't go up there in 1924? A. No.

Q. When did you have your cottage up there?  
A. I never had a cottage. I rented it.

Q. When did you rent it? A. Latter part of 1927.

Q. Ever rent a cottage up there before that? A. No.

Q. Now after your mother died you were still determined that you wouldn't live with your wife, that's so? A. Yes.

Q. Then these articles of separation were drawn up, weren't they? A. Yes.

Q. And that was not in July? A. No.

Q. Counsel asked you Mr. Galoppa what happened in November. A. It didn't happen in November it happened in July.

Q. Now what happened in July, 1923, what happened then? A. Well simply because she wouldn't have anything to do with me and I happen to be human.

Q. You were very human, weren't you? A. Well as much as the average.

Q. You read English, don't you? A. A little bit.

Q. You know Mr. Viviano? A. Yes.

Q. And Mr. Viviano, who is now secretary to

*Jerry Galoppa—Cross.*

Mayor Hendricks, he is the gentleman who drew up this paper? A. Yes.

Q. You took your wife to his office? A. No, she took me there.

Q. Well you went together? A. Yes.

Q. Then these articles of separation marked exhibit P-1, they were drawn up? A. Yes. 10

Q. And you signed that? A. I did.

Q. And you read it over before you signed? A. Yes.

Q. And you knew what it contained? A. Yes.

Q. And you knew it was a paper whereby you and she agreed to live apart? A. Yes.

Q. And you wanted to do it at that time? A. Not so willingly.

Q. But you did want to? A. I had to.

Q. Why did you sign these articles of separation? A. Well to please her. 20

Q. To please her? A. To please her and rest my mind.

Q. Did you want to rest your mind? A. Yes.

Q. Well did you think in order to rest your mind you had to separate from her? A. Yes.

Q. So in order to rest your mind then, in order to be away from her, you signed these articles of separation? A. Not exactly to be away from her. 30

Q. Well to rest your mind? A. I regard it as that.

Q. To rest your mind that was your reason? A. Yes.

Q. And you couldn't rest your mind while you were living with her? A. Because she was tormenting me.

Q. Well no matter what was the reason, you could not rest your mind while you were living with her? A. Yes. 40

*Jerry Galoppa—Cross.*

Q. You know Mr. Rosenberg, don't you, the furniture man? A. Yes.

Q. Know it was he from whom you bought the furniture? A. Yes.

Q. And didn't you buy that furniture in the year 1924? A. No.

10 Q. Just think for a moment. A. 1925.

Q. Didn't you buy that furniture within a month from the time you signed the separation agreement? A. I don't remember.

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

Q. Well it was Rosenberg from whom you bought the furniture that you moved in Mrs. Kirkman's home, that's true? A. Yes.

20 Q. And you don't remember whether that was a month before or month after you signed these articles of separation, do you? A. No, I do not.

Q. Don't you remember if you bought that furniture in December, 1924? A. What date in December?

Q. The exact date I will give you later. December 1924, don't you remember that now? A. Well, I don't know.

Q. Don't you know? A. I thought it was the beginning of 1925.

30 Q. Don't you know it was before the first of the year 1925 that you bought the furniture from Rosenberg? A. Well, if I did, I didn't pay for it then.

Q. Well you bought it before? A. I can't remember that.

Q. Well, as soon as you bought the furniture you moved it into Mrs. Kirkman's home? A. After the first of 1925.

40 Q. How soon after the first of the year 1925?  
A. The first of the year.

*Jerry Galoppa—Cross.*

Q. A few days? A. No. I met her New Year's night.

Q. How many days after the first of the year did you buy this furniture? A. I wouldn't say that it was the first of the year. It was around that time.

Q. You won't say that now, whether it was the first of the year? A. No. 10

Q. There had been a lot of trouble between you and your wife about Mrs. Kirkman? A. Not to my knowledge.

Q. When you were living on River Street with your wife, Mr. Schroeder was a tenant of yours? A. Yes, sir.

Q. Didn't you at the time introduce this woman to Mr. Schroeder? A. No, sir.

Q. Not Mrs. Kirkman? A. No.

Q. Did you ever introduce Mrs. Kirkman as your wife? A. Never. 20

Q. Wasn't she known as Mrs. Galoppa? A. Not to my knowledge.

Q. Do you remember introducing Mrs. Kirkman to a salesman in front of Mr. Schroeder as your wife? A. Never.

Q. Did that ever happen? A. No. If I did, she introduced herself, not me.

Q. Who did it? A. Mrs. Kirkman may have. 30

Q. Mrs. Kirkman did? A. I don't know, she may have.

Mr. Van De Clock: I object.

The Court: Was it ever done in your presence?

The Witness: No.

The Court: Did you hear her say so?

The Witness: Not to my knowledge. 40

*Jerry Galoppa—Cross.**By Mr. Ward:*

Q. Didn't Mr. Schroeder on some occasion tell you that you weren't doing what was right and it was a shame for you to introduce this Mrs. Kirkman as your wife? A. Mr. Schroeder is very much wrong.

10 Q. Did Mr. Schoeder ever tell you anything like that? A. No.

Q. Well, Mr. Galoppa, you lived with Mrs. Kirkman approximately from the time you left your wife up to the time Mrs. Kirkman died, didn't you? A. I didn't live with her.

Q. Well you lived at the same house? A. Yes.

20 Q. You left the place where you had been, bought furniture and put it in her own home? A. In her home? My home.

Q. Your home? A. Yes. She was only a servant.

Q. Did her son live there? A. Yes.

Q. How many bed rooms? A. Three.

Q. Where was the house? A. 593 River Street.

The Court: You said before she was your houskeeper, was she the servant or housekeeper?

30 The Witness: She was a housekeeper. I paid her \$20. a week, \$10. for board and \$10. for service.

*By Mr. Ward:*

Q. You supported the house? A. Well if you want to put it that way. I paid the gas bill, paid the electric bill. I gave her \$20. a week. \$10. for myself and \$10 for board.

40 Q. You supported the house? A. Well, if you want it that way, yes.

*Jerry Galoppa—Cross.*

Q. Well, after these articles of separation were drawn up, then you knew that there was a separation between you and your wife? A. Yes.

Q. Did you have the peace of mind then, that you were looking for? A. To a certain extent, yes.

Q. Where did you live then? A. 593 River Street.

10

Q. With whom? A. All by myself.

Q. Well how long after these articles of separation were drawn up did your wife go to Hawthorne? A. About three days.

Q. Three days after? A. About.

Q. Was it your furniture that was in this house? A. Yes.

Q. Well after these articles of separation were drawn up you say your wife went to Hawthorne two or three days after? A. Yes.

20

Q. And two or three days before these articles were drawn you didn't live with her as a husband? A. No.

Q. What did you say to her about this? A. What could I say.

Q. You had a piano in that house, didn't you? A. Yes.

Q. And that piano was not taken? A. No.

Q. And didn't you tell your wife in the presence of your children that she could have all the furniture in that house except the piano? A. Yes.

30

Q. You told her that? A. Yes.

Q. And then when she left she took all the furniture excepting the piano? A. Yes. I told her she could have everything but the piano because it was not paid for and I would send it back.

Q. And you talked that over about the piano not being paid for and she could have everything she wanted? A. Yes.

40

*Jerry Galoppa—Cross.*

Q. Then she left the piano because of that didn't she? A. Yes.

Q. In accordance with your talk and your agreement? A. Yes.

Q. And after she moved up to Hawthorne then you let five or six weeks go by before you went to see her? A. Yes.

10 Q. You knew where she was? A. Yes.

Q. And then after five or six weeks you went up to see her? A. Yes.

Q. And you say you asked her to come back? A. Yes.

Q. Now, will you just tell us everything that was said? A. I stated that before.

Q. Well, state it again. A. I asked her won't she please come back to Riverhead and live there. She had her own home there and what was the use of living the way she did because my children looked like rag pickers.

20 Q. What did you say? A. I told her to come back if not for my sake for the sake of the children and she told me to get out "you son of a bitch, if you don't get out I will call the police" and she started to holler.

Q. Is that all? A. Yes.

30 Q. And then you got out? A. Yes, that was on the stoop.

Q. That was on the stoop? A. Yes.

Q. Now Mr. Galoppa after she left Paterson and went to Hawthorne you paid her \$30. a week? A. Yes.

Q. For five or six weeks? A. Yes, and long after that.

40 Q. Well that very time that you went up to see her you paid her \$30. a week? A. Yes.

*Jerry Galoppa—Cross.*

Q. Well as soon as she left Paterson and went to Hawthorne you continued paying the money you had agreed to? A. Yes.

Q. Now you remember when you went to Hawthorne you had a pistol? A. Never had a pistol in my life.

Q. Remember you threatened to shoot her? A. 10  
Never, no, sir.

Q. You know Mrs. Bregman? A. No I don't.

Q. Remember your wife ran out of the house in fright and fear and going to a neighbor? A. When?

Q. When you went up there that time. A. She never got off the stoop.

Mr. Ward: I withdraw that question.

Q. You remember your daughter the little girl! 20  
here, running out of the house in fear to the house of a neighbor? A. She never did.

Q. Was your daughter there all the time? A. Yes. It was the first time I had seen her in two and a half weeks.

Q. Did you have a quarrel with your wife that day? A. Well I wouldn't call it a quarrel, she simply refused and when I left it was a heated argument. 30

Q. So you were excited? A. You would be too.

Q. You were excited? A. Yes, more or less.

Q. Did you show your excitement to your wife? A. She was also excited.

Q. She is well acquainted with your excitement? A. Yes.

Q. You get excited very quickly? A. Very quickly, and it blows over quickly.

Q. Do you drink? A. Not to excess.

Q. Did you drink that time? A. I always did. 40

*Jerry Galoppa—Cross.*

Q. Did you ever come home intoxicated before you and she separated? A. No.

Q. Wouldn't you frequently come home in a state of intoxication and tell her about this Mrs. Kirkman? A. That's a lie.

Q. Your son and daughter were living with you then, weren't they? A. Yes.

10 Q. Didn't you in their presence tell your wife about this Mrs. Kirkman, that you were in love with her? A. No.

Q. You were in love with her? A. No.

Q. Don't you remember you came up to my office in reference to a bill that her son had against you and said that the light had gone out of your life when she died? (No answer.)

20 Q. Didn't you say that? A. Well, she had taken darn good care of me, more than my wife did in eighteen years.

Q. Well then you say you didn't love her? A. I didn't love her, I liked her.

Q. Now after you had this interview with your wife in Hawthorne, then you say some friend of yours went up to see your wife and then after that you never went for your wife again? A. No.

30 Q. Your children were living there with your wife? A. Yes.

Q. And from that time until the present you have never talked to your wife? A. No.

Q. But you continued to live with Mrs. Kirkman didn't you? A. I didn't live with Mrs. Kirkman.

Q. Well at the same place? A. Yes.

Q. Well you paid for her operation at the time she died, didn't you? A. No. I never paid.

40 Q. Well, you incurred the bill, didn't you? A. Yes, I did.

*Jerry Galoppa—Cross.*

Q. And you also gave her jewelry? A. I gave her one ring.

Q. A diamond ring? A. Yes.

Q. Did you give her anything more than that? A. Nothing else.

Q. You gave her a bedroom set that she had? A. I did not.

Q. Well, didn't you buy that and didn't you give it to her and after her death let her son take it? 10

A. She bought that herself.

Q. Mr. Galoppa didn't you say that you had bought a frame bed and mattress in which she slept in your house. A. Yes, that was my bed. I have it in my possession yet.

Q. The bed you have in your possession yet? A. Yes.

Q. And is that the bed you say she had bought and paid for in which you slept? A. No. The bed that she bought her son and I slept in. 20

Q. So you bought a bed and she slept in that and she bought a bed and her son and you slept in that? A. Yes.

Q. Who slept in the third bedroom? A. Nobody.

Q. Was it furnished? A. There was a bed there.

Q. Furnished with a bed? A. A small cot. 30

Q. Not a little bed? A. No.

Q. And did anyone sleep there? A. Sometimes when there was company.

Q. There were two bedrooms then, and her son slept in one bedroom and she slept in the other? A. Yes.

Q. And yet there was a third bedroom and you owned the bed and cot and didn't occupy a room alone? A. No. 40

*Jerry Galoppa—Cross.*

Q. You paid her hospital bill of course? A. Yes.

Q. Now during all these years that you lived at the same place with Mrs. Kirkman she never worked except as your housekeeper? A. No.

Q. And you paid all the expenses of the house, didn't you? A. Well there was hardly anything to it.

10 Q. Well whatever it was you paid? A. Well I gave her money as stated before.

Q. Who owned the place? A. Well the Galoppa Realty Company.

Q. The Galoppa Realty Company owned where you lived you had furnished it and her son lived there also? A. He paid board.

Q. How much board? A. \$8.00 a week.

Q. What else did you buy to furnish that house?

20 A. Well I couldn't remember.

Q. Tell us some of the things that you bought that you accuse her son of taking out after her death. A. She went out to buy small things, she told me what she spent and I would pay her back.

Q. You paid all bills connected with the house? A. Yes.

Q. You furnished the house completely? A. Yes.

Q. Were there not two rings that you gave her?

30 A. One ring.

Q. Weren't there two rings about which there was a dispute after her death? A. Well one of them was never given to her. One was given to her outright.

Q. The other ring that she wore belonged to you? A. Yes.

Q. And she wore that all of the time? A. No, not all of the time.

40 Q. Well, she had it when she went to the hospital? A. Yes.

*Jerry Galoppa—Cross.*

The Court: What kind of a ring was it?

The Witness: A simple stone and one was a dinner ring.

*By Mr. Ward:*

Q. Well the dinner ring, what did you pay for that? A. I had the diamond. I took the diamond against a bill I had against a fellow. 10

Q. And where did you have the ring made up? A. I think it was a fellow by the name of De Passo, on Cross Street.

Q. And the other ring, where did you get that, is that the one that you now claim? A. No.

Q. Where is that ring? A. In hock.

Q. How much was that worth? A. I think I got \$35.

Q. Whereabouts is it in hock? A. In New York. 20

Q. Whereabouts? A. I don't remember.

Q. You don't remember where it is in hock? A. I have the ticket home.

Q. Now after your wife left you continued to pay her the amount of money that was agreed under this agreement for some time, didn't you? A. Yes.

Q. In fact you always paid her money after that agreement, is that right? A. Yes. 30

Q. Now did you ever ask your second boy to come and live with you? A. No.

Q. Did you ever ask him to go up to the country to the lake with you? A. I think I did once.

Q. To go with you and Mrs. Kirkman? A. Yes.

Q. I see, and Mrs. Kirkman went along to the lake with you? A. Not often.

Q. When you asked this boy Edward to go up 40

*Jerry Galoppa—Cross.*

to the lake with you, and Mrs. Kirkman did he refuse to go? A. Yes.

Q. And you told your boy Edward that Mrs. Kirkman would be his new mother? A. No.

Q. Did you ever tell that to him? A. No.

Q. On any occasion? A. No.

10 The Court: Why did you continue to pay the money under the agreement, if you stated to her, as you say you stated, that the agreement was not worth the paper it was written on and after she refused to live with you?

The Witness: The children had to be taken care of. I missed one time and they called me up and gave me a fine bawling out.

20 The Court: Did you pay the money because the agreement was still in force or did you pay it because you felt it was just and fair that you should support her?

The Witness: I paid her towards the moral standpoint and for the sake of the children.

*By Mr. Ward:*

30 Q. You paid her because you agreed? A. I disregarded that agreement.

Q. Now after the period of time (question withdrawn)

Mr. Ward: That is all.

*Redirect-examination by Mr. Van Der Cloek:*

Q. Mr. Galoppa who is Mr. Schroeder? A. Mr. Schroeder is an ex-druggist.

40 Q. Friend of yours? A. Well I would call him a two-faced friend.

*Jerry Galoppa—Redirect.*

Q. Two-faced friend? A. Yes.

Q. You are not exactly friends? A. No.

Q. Any business dealings with him? A. Plenty.

Q. Tell us? A. He owes me money for work that I did.

Q. Have you tried to collect it? A. I have.

Q. Were you successful? A. No.

10

Q. Did he ever try to borrow from you? A. No.

Q. Did he ever offer to give you any checks? A. A rubber one.

Q. With reference to this time you went up to see your wife, to the best of your recollection can you state everything that took place? A. Everything I could remember?

Q. Everything you could remember. A. Yes.

The Court: Did you state to Mr. Ward, when he asked you what conversation took place between you and your wife, did you state the entire conversation that took place between you and your wife at that time?

20

The Witness: I think I did to the best of my knowledge.

*By Mr. Van Der Clock:*

Q. Did you ever have anything to do with Mrs. Kirkman? A. No.

30

Q. Now Mr. Ward in asking you a question used this phrase "living with Mrs. Kirkman".

Mr. Ward: I showed that I didn't intend it that way and didn't think the witness would be foolish enough to answer it.

Mr. Van Der Clock: He did answer it.

Q. Did you ever commit adultery with Mrs. Kirkman? A. No.

40

*Jerry Galoppa—Recross.*

Q. She was your housekeeper? A. Yes.

Q. Now do you know whether or not after 1924, December 1924, beside Mr. Gilpin, whether anyone else talked to your wife about coming back to you?

A. Not to my knowledge.

Q. Well did anyone ever tell you about it? A.

10 No. (question withdrawn)

Q. Did you know—(question withdrawn)

Q. Your oldest son's name is Albert is it not?

A. Yes.

Q. He is married? A. Yes.

Q. When did he leave your wife's home? A. I think a year ago last April.

Q. 1929? A. Yes.

Mr. Van Der Clock: That is all.

20 The Court: Did you ever authorize anyone in your name to go to see your wife?

The Witness: Yes. Mr. Gilpin. He asked me if he could go.

*Recross-examination by Mr. Ward:*

30 Q. When you were living at East 15th Street, with your wife, was there not a time when you struck your wife and when you took a knife and threw it on the table and into the table and said to your children, "If any of you ever take her part that's what you will get"? A. No, sir.

Q. For how long a period of time did you and Mrs. Kirkman live together under the circumstances that you have stated? A. From the first of the year 1925 until she died.

Q. And that was when? A. September 17, 1929.

Mr. Ward: That is all.

40

*Jerry Galoppa—Recross.**Redirect-examination by Mr. Van Der Clock:*

Q. How long did you continue to live at 593 River Street? A. About two months after that.

Q. That would be about November? A. About November.

Q. Then you moved to River Drive? A. Yes.

Q. When your wife left you in November, as I understand it, she took practically all the furniture? A. Yes.

Q. So that if you wanted to go into housekeeping you would have to buy the furniture? A. Yes.

Mr. Van Der Clock: That is all.

The Court: Can you tell the court of your attempt to get her to come back, why you never made any further attempt to try to induce her to return, except through Mr. Gilpin.

The Witness: For the simple reason that I know her mind pretty well and she told me and different people that she would never live with that son of a bitch.

*Recross-examination by Mr. Ward:*

Q. Mr. Galoppa in answer to his Honor's question you said that because she had told other people? A. Yes.

Q. You say these other people told you this? A. Yes.

Q. Who were they? A. Well, I couldn't just recollect who they were.

Q. You can't recollect a single one? A. Yes.

Q. Who? A. Several people, mostly the fellows who worked for me.

*Jerry Galoppa—Recross.*

Q. Who? A. One of them is David Swinn.

Q. Is he here? A. No.

Q. Have you told your counsel about that David Swinn? A. No.

Q. What is his address? A. In Hawthorne.

Q. How do you spell his last name? A. S-w-i-n-n.

10 Q. And he lives in Hawthorne you say? A. Yes.

Q. When did he tell you that? A. A year and a half ago.

Q. Where did he tell you that? A. In the shop.

Q. What shop? A. My shop.

Q. Did he work for you? A. He is my partner.

Q. He is your partner? A. Yes.

Q. And you haven't got him here today? A. No.

20 Q. Where do you say that your wife told him that? A. In her house.

Q. Whose house? A. Her house.

Q. What did Swinn tell you? A. He said that she would never live with me.

Q. Is that all that he told you? A. That's all.

Q. That is every word he told you? A. That's all.

Q. Who else ever told you any such thing as that? A. Nobody else.

30 Mr. Ward: That is all.

#76-69.

## IN CHANCERY OF NEW JERSEY.

Between

JERRY GALOPPA,  
Petitioner;

and

ANTONETTA GALOPPA,  
Defendant.

On Petition  
for Divorce.

10

No. 1 Exchange Place,  
Jersey City, N.J.  
May 6, 1930.

Before Honorable EDWARD THOMAS MOORE,  
Advisory Master.

20

## APPEARANCES:

JACOB VAN DER CLOCK, ESQ., Solicitor  
for Petitioner.

JOHN M. WARD, ESQ., appearing for WARD  
& MCGINNIS, ESQS., Solicitors for De-  
fendant.

30

ROBERT GILPIN, a witness produced on behalf  
of petitioner, being duly sworn upon his oath ac-  
cording to law, testified as follows:

*Direct-examination by Mr. Van Der Clock:*

Q. Where do you live Mr. Gilpin? A. 63 E. 16th  
Street, Paterson.

Q. And do you know Mr. Galoppa? A. Yes.

Q. And you know his wife? A. Yes.

40

*Robert Gilpin—Direct.*

Q. And did you ever visit their home? A. Yes, I have been to their home.

Q. Friendly to both of them? A. Yes.

Q. Friendly to Mrs. Galoppa? A. Yes.

Q. You remember the month of December, 1924?

A. Yes, I remember.

10 Q. And you remember talking to Mr. Galoppa at the time? A. Yes.

Q. Do you know whether or not he was living with his wife at the time? A. No, he was not living with her.

Q. As a result of something that was said to him or something that was said by you, did you do anything or go anywheres? A. Yes.

Q. On the occasion that I have reference to did Mr. Galoppa come to your house? A. Yes.

20 Q. And what was his general condition when he came there that time? A. Well, he came there and he was all downhearted. He said that he had been for his wife and she would not come back again.

Q. Remember what day this was? A. I don't know whether it was Saturday or Sunday because I never thought any more of it until this just came up. I think it was Saturday. I will not swear to it.

30 Q. What did he say? A. Well, he felt so bad and told me that he had been over to see his wife.

Mr. Ward: I object to the above question on the ground that it is hearsay.

The Court: Objection allowed. Why not prove the truth of the statements made, giving explanation as to the cause of doing something that was probably pertinent to the issue.

40 Q. Did you go there to her home? A. Yes.

*Robert Gilpin—Direct.*

Q. Did you see her? A. Yes.

Q. Did you talk to her? A. Yes.

Q. Now tell us as nearly as you can recall what she said and what you said. A. I said to her that as a friend I had come to ask her to come back because I'd rather speak to both of them, and she said she could not go back, would not go back and I said very little more to the woman. She said she would not go back. 10

Q. Remember anything else that was said? A. I could not say now, only just that she finally said she would not go back.

Q. After you left the house did you see Jerry? A. Yes.

Q. Did you tell him what had taken place? A. Yes.

Mr. Van Der Clock: That is all. 20

*Cross-examination by Mr. Ward:*

Q. Mr. Gilpin, you are not quite sure of the day of the week? A. I cannot really, I would not want to say I was positive of the day.

Q. You are doing the best you can? A. Yes.

Q. And your recollection was not very clear as to the day of the week? A. No, I am not positive. I think it was Sunday, either Saturday afternoon or Sunday afternoon, either one. I could not swear to which it was. 30

Q. You don't remember the exact words you used? A. I only remember that I went and asked the woman—(interrupted)

Q. You do not remember the exact words you used at that time? A. No.

Q. You are giving us the best recollection you now have of what took place, you are not directed 40

*Robert Gilpin—Cross.*

to use the exact words now that you used on that day? A. Not every one of course, I know what I went for.

Q. You went to her to tell her you had come to see if she would go back to Jerry or words to that effect? A. Yes.

10 Q. And if she were willing to go back that you would see that she got back? A. Yes.

Q. You said that you would see that it was arranged? A. Yes.

Q. In other words you were going to take it on yourself as a friend to arrange it? A. Yes.

Q. And you remember that she said "No that she would not come back the way things are," that was right? A. Yes.

20 Q. And then she gave you several reasons why she could not go back the way things were, is that right? A. Yes.

Q. And you told her you were sorry? A. Yes, that's right.

Q. And that you had only come as a friend and didn't know about the trouble between her and her husband? A. Yes.

Q. You told her that? A. Yes.

30 Q. She gave you several reasons that time? A. Yes.

Q. Tell you that her husband was in love with another woman? A. No, not that.

Q. Well, she gave you several good reasons, didn't she, Mr. Gilpin?

Mr. Van Der Clock: I object to the word "good."

Q. Well she gave you several reasons, didn't she? A. Yes.

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*Robert Gilpin—Cross.*

Q. And you remember what those reasons were?

A. I remember one reason.

Q. Do you remember any more than one? A. When I said several I didn't mean there were seven.

Q. I didn't say seven, I said several, that's true, isn't it? A. Yes.

Q. And to you they seemed to be good reasons, didn't they? A. I can't say. 10

Q. You can't say? A. Not now.

Q. You knew that time of the trouble about Mrs. Kirkman, you knew of that? A. No, I didn't know anything about Mrs. Kirkman.

Q. Was it later that you heard about it? A. It was later.

Q. How much later? A. Quite a while.

Q. How much later? A. Well, I could not say. 20

Q. When was it you went to see Mrs. Galoppa? A. It was five years ago in December, I forget.

Q. How long before Christmas of that year was it? A. Must have been in November.

Q. In November? A. Yes.

Q. You are sure of that? A. I am not positive.

Q. Still your recollection about the whole thing is dim and indistinct? A. No, I know I was there.

Q. I don't mean about your remembering you were there, I mean your recollection is indistinct as to what month you were there, what day of the week you were there and just what was said. A. I know that it was five years ago. I think it was 1924. I know one reason that she told me I could tell you. 30

Q. Did she tell you about the separation agreement? A. Yes.

Q. Did she or not tell you about that? A. Yes, she said there was a separation agreement. 40

*Robert Gilpin—Cross.*

Q. Did she tell you about his beating her? A. No.

Q. Tell you about his abusing her? A. She told me about something about the house being sold or transferred.

Q. The house in which they had lived? A. Yes.

Q. That he had transferred back? A. Yes.

10 Q. Did she tell you about his telling her to take the furniture and get out? A. No.

Q. Nothing about that? A. No.

Q. Did she tell you about having moved the furniture out after the agreement with her and left the piano for him as he had instructed her? A. That was all new to me when I came here today.

Q. Did you ever see her again after you had learned about Mr. Galoppa and Mrs. Kirkman? A.

20 You mean after the time I was there?

Q. Yes. A. I met her once on Main Street.

Q. That was all? A. Yes.

Q. You know that Mrs. Kirkman was living in his house as his wife? A. No.

Q. Under his name? A. Positively not.

Mr. Ward: That is all.

*By the Court:*

30 Q. Do you recollect whether or not she referred to the fact that the husband had been to see her to ask her to come back and she had refused before you went there? A. No, she didn't say anything to me about that that I know of.

The Court: That is all.

*Albert Galoppa—Direct.*

ALBERT GALOPPA, a witness produced on behalf of petitioner, being duly sworn upon his oath according to law, testified as follows:

*Direct-examination by Mr. Van Der Clock:*

Q. Where do you live? A. 942 E. 19th Street, Paterson.

Q. And are you a son of Jerry Galoppa and Antonetta Galoppa? A. Yes.

Q. And you are married now? A. Yes.

Q. And your wife is here with you? A. Yes.

Q. Now you lived with your mother up and until what time Albert? A. April 27, 1929.

Q. 1929? A. Yes.

Q. Now you remember your mother and father separating? A. Yes.

Q. Do you remember how they got along before that? A. Yes.

Q. Did they sleep together before the separation? A. Well, not for a year before.

Q. Any quarrels before the separation? A. Well yes, they quarreled.

Q. Now do you remember (question withdrawn).

Q. Do you remember anything about the paper that was signed by your mother and father? A. About the separation agreement?

Q. Yes. A. Well, nothing that I could say.

Q. Do you remember that such a thing took place? A. Yes, I remember that.

Q. Where were you living at the time? A. 593 River Street, Paterson.

Q. Did your mother move from there after that? A. Yes.

Q. And you went to live where? A. 19 Mohawk Avenue.

Q. Now after you moved to Mohawk Avenue, did

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*Albert Galoppa—Direct.*

you ever see your father at the house there? A. After we moved up there?

Q. Yes. A. He was there once.

Q. Do you remember about how long it was after you moved to Mohawk Avenue? A. About five weeks or so.

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

Q. Did you hear your father talk to your mother? A. Yes.

Q. What did he ask her? A. He just asked her to come back to the house just for the sake of the children anyway.

Q. And where did this conversation take place? A. On the porch.

Q. Where were you? A. In the alley.

Q. Heard everything that was said? A. Yes.

20 Q. What did your mother say? A. She told him to get away otherwise she would send for the police.

Q. Any threats made by your father or mother at that time beside that police threat? A. I don't remember that.

Q. You were there? A. Yes, I was there but I don't remember any threats.

30 Q. Now do you remember the exact language used by your father? A. Not the exact language.

Q. Tell us to the best of your recollection what was said.

*By the Court:*

Q. What was the first thing he said when he was there? A. "I came here to ask you if you would come back to live at the house again, if not for my sake for the sake of the children."

40 Q. Did your mother do anything at the time or say anything to your father? A. Well, yes.

*Albert Galoppa—Direct.*

Q. Besides speaking about the police? A. No.

Q. Hear her do or say anything? A. Yes, she did, she hollered for police.

Q. What was the nature of the language used by your mother? A. Pretty bad.

Q. Well, tell us to the best of your recollection.  
A. Well, I don't know, get out of here you son of a bitch bastard. 10

Q. Did you ever hear these same expressions used by your mother to your father before the articles of separation? A. Yes, often.

Q. Now that was in December, 1924 was it not?  
A. Yes.

Q. And you lived with your mother up and until 1929? A. Yes.

Q. Did you ever hear your mother ever express an opinion about your father between this period of time? A. She often said she would never live with him. 20

Q. Did she tell him that more than once? A. Many times.

Mr. Van Der Clock: That is all.

*Cross-examination by Mr. Ward:*

Q. How long is it since you have seen your mother? A. Since New Year's Day. 30

Q. Since you talked to her, are you friendly with her? A. Well, I was up and until last New Year's day.

Q. Up and until about two year's ago? A. A few months ago.

Q. A few months ago. I understood you to say about two year's ago, last New Year's? A. Yes.

Q. You were friendly with her up to that time?  
A. Yes. 40

*Albert Galoppa—Cross.*

Q. Are you friendly with her now? A. I don't know, the last time I went there I didn't get such a wonderful reception

Q. You are married? A. Yes

Q. Living with your wife? A. Yes.

10 Q. See your father quite often? A. Yes, I work there.

Q. You work with your father? A. Yes.

Q. How long have you been working for your father? A. Since last October.

Q. As what? A. As apprentice.

Q. And you are dependent upon your father in your work? A. I am working in that establishment, yes.

Q. How long have you been working for him? A. Since October, about the 7th of October.

20 Q. You came down here with him this morning, you and your wife? A. Yes.

Q. And under subpoena? A. No.

Q. So you came because your father asked you to? A. Yes.

Q. And you came because you wanted to help your father is that right? A. Yes.

Q. And you knew in coming that you were hurting your mother? A. Well—(interrupted)

30 Q. Did you know that or not? A. Yes.

Q. You knew that your mother's future support depends upon whether your father gets this divorce, didn't you?

Mr. Van Der Clock: I object to the above question.

*By Mr. Ward:*

40 Q. You knew that didn't you? A. Well, yes, I thought so.

*Albert Galoppa—Cross.*

Q. Do you love your mother? A. Well surely I do.

Q. And yet you are willing to come down here and testify at your father's request and without being compelled to come, that's true? A. Yes.

Q. You lived with your mother up and until what time? A. April 27, 1929. 10

Q. And was that when you were married? A. I was married April 28, 1929.

Q. So that for a year before you were married you didn't live with your mother? A. Yes, I have always lived with my mother up and until the time I was married.

Q. Then you and your wife went out and kept house together, is that right? A. Yes.

Q. Now before your mother moved to Hawthorne in 1924, your mother and father had considerable trouble? A. Yes. 20

Q. Were there any fights? A. There were always arguments.

Q. And fights too? A. Arguments I would call them.

Q. Your father used to strike your mother? A. I never saw him strike her.

Q. What did you see? A. I have always seen the arguments. 30

Q. What kind of arguments? A. Heated.

Q. Your father was very excitable? A. No.

Q. You knew about your father and Mrs. Kirkman? A. I never knew anything about Mrs. Kirkman until I guess a couple of years after they were separated.

Q. Didn't you go to see your father where he was living with Mrs. Kirkman, where he was living with Mrs. Kirkman after the year 1925? A. No. 40

*Albert Galoppa—Cross.*

Q. Do you see him quite often now? A. I do now.

Q. After the first of 1925, the first of the year, you didn't see your father for how long? A. I didn't see him for I don't remember just how long.

10 Q. About how long, how many years? A. Must have been between a year and two years, over a year I believe.

Q. Well now they separated in 1924, just before the first of the year? A. Yes.

Q. What year was it you next saw your father, 1926 or 1927, when? A. I saw him the same year.

Q. Where? A. Down at the house.

Q. That was before the first of the year he came up five or six weeks after they separated, you saw him then? A. Yes.

20 Q. That was just before the first of the year 1925, you didn't see him in 1925 at all in your house? A. No.

Q. 1926 you didn't see him? A. Yes, I did.

Q. When? A. Toward the middle of the year, I went to work for him.

Q. You went to work for him? A. Yes.

Q. Did you go to his home then? A. Towards the end of the year I did once.

30 Q. Did you know about Mrs. Kirkman then? A. She was living there as a housekeeper.

Q. After that year and a half then he never came near you children? A. No.

Q. And you never went to their home did you? A. No.

Q. And after you went to work for your father you used to eat your meals there at Mrs. Kirkman's? A. No.

40 Q. Never had your meals there? A. No, never, I had supper there once.

*Albert Galoppa—Cross.*

Q. In 1924 or 1921, going back to 1921, do you remember your father making a pass at your mother, were you present then? A. I don't know whether I was or not.

Q. Do you remember her leaving the home because he had struck her in 1921? A. I don't remember.

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

Q. Did your father get intoxicated? A. No, I never saw him intoxicated.

Q. He drank pretty heavily? A. Not heavily.

Q. You have seen him under the influence of liquor when he came home and had trouble with your mother? A. No.

Q. Never have seen that? A. No.

Q. Now in 1924 you remember about the signing of this paper? A. Yes.

Q. You remember that your father told your mother she could take all the furniture she wanted? A. I don't remember him telling her to take all the furniture she wanted.

Q. Do you remember him telling her to leave the piano, because it was not paid for? A. I remember something like that.

Q. You remember something like that but not much? A. I am not positive.

Q. You remember there was a conversation about the piano and about the piano not being paid for, some conversation but you don't remember just what it is? A. I don't remember.

Q. Do you remember there was a conversation? A. There was something said about the piano.

Q. That was in November? A. I don't remember.

Q. You don't remember the time and yet you remember the conversation which took place between

*Albert Galoppa—Cross.*

your father and mother you remember the words, don't you? A. Well, I was there at the time.

Q. Weren't you right there at the time the conversation took place about the piano? A. Yes.

Q. Yet you cannot remember a single thing that was said about it? A. I remember him saying that  
10 it was not paid for.

Q. That was all; did you ever tell your father you heard this? A. Yes, six weeks later.

Q. Did you? A. Well, yes, there was only a few words said.

Q. How many times have you talked to your father about this, or have you never talked to your father about this? A. Well, yes, when we were down the lawyer's office.

Q. When was that? A. The last time I was there  
20 was last night.

Q. When was the first time before last night, when was the first time that you ever told your father that you knew about what was said? A. When I was informed about the divorce proceedings. I went down to the lawyer's office and he asked me if I knew anything and I told him everything I knew.

Q. When was that? A. I don't remember, quite  
30 a while ago.

Q. That was when you were still friendly with your mother? A. Yes.

Q. And you made an affidavit for your father? A. Yes.

Q. You were working for your father then? A. Yes.

Q. And you went down the lawyer's office and you knew you didn't have to do that? A. Yes.

Q. And that was when your mother was asking  
40

*Albert Galoppa—Cross.*

alimony from this court? A. Well she was getting it.

Q. Well that was when she asked for it, wasn't it? A. She was—(interrupted)

Q. Now what was it you heard your father say when he came up to Hawthorne, what was the first thing you heard him say? A. Just asked her to come back . 10

Q. What were the words he used? A. He said, "won't you please come back, if not for myself for the sake of the children."

Q. Those were the exact words? A. I believe they were.

Q. And those were the exact words that were in your affidavit, weren't they? A. I think they are.

Q. Have you read your affidavit? A. Yes.

Q. Did you read it last night? A. Yes. 20

Q. And after all these years you remember those exact words do you, "won't you please come back, if you don't do it for me do it for the sake of the children," those were his exact words? A. It may have been.

Q. And that was all that was said by your father? A. I believe it was.

Q. And what did your mother say? A. She said if he didn't get away she would call in the police and in fact she was calling for the police. 30

Q. She told him to get out and if he didn't get out she would call the police? A. Yes.

Q. Have you learned this? A. No, I know it.

Q. Was that all your mother said? A. Except call him a son of a bitch and bastard.

Q. Is that all? A. That's about all at the time.

Q. That was all that was said? A. Yes.

Q. Your father didn't say another word? A. I believe there was a little argument. 40

*Albert Galoppa—Cross.*

Q. What else was said? A. I don't remember.

Q. You don't remember what else was said? A. Yes.

Mr. Van Der Clock: I object to that question.

*By Mr. Ward:*

10 Q. You knew after this length of time the exact words you heard were important? A. Yes.

Q. Who told you that? A. I knew it was important evidence in the case.

Q. Did your father or his lawyer tell you that it was important for you to remember the exact words? A. Well, no, anybody would know they would be important.

20 Q. Why did you think they were important? A. Well, I think it is important because I believe what I say has a lot to do with the case.

Q. That's why you think it is important? A. Yes.

Q. That's why you remember these exact words, is that so? A. I didn't say they were the exact words.

Q. You knew what these quotation marks in this affidavit meant? A. Yes.

30 Q. You knew that that was supposed to be your exact language? A. Yes.

Q. Was "Won't you please come back home, etc. your exact language or his exact language really that you were reading, you knew that, answer, please? A. Yes.

Q. And yet you don't remember anything else that was said there? A. No, I don't.

40 Q. Why do you remember this and not remember the rest of what was said, you can't tell that? A. I think I said that.

*Albert Galoppa—Cross.*

Q. Your mother started to curse and holler that if he didn't get out she would call the police? A. Yes.

Q. You knew that was important? A. Yes.

Q. Those important things, why do they seem any more important to you than the rest of the conversation that took place there? A. I don't know, that's all I remember of it. 10

Q. And yet you are sure there were other things said? A. I cannot state there was, I didn't say there were.

Q. So this is the first thing that you heard your father say "won't you please come back home"? A. He said, "I have come to see if you will come back to me."

Q. Was that the first thing you heard, was that first you saw him when you heard the words? A. Yes. 20

Q. You didn't see him come on the porch? A. No, I was just walking out the alleyway.

Q. You were walking out of the alley? A. Yes.

Q. And you didn't know he was there until you heard these words? A. Yes.

Q. And did you keep on walking? A. No.

Q. You just stopped at the point where you could hear him say, "won't you please come back home"? A. Yes. 30

Q. And your mother instead of answering started to holler, curse and swear and told him that if he didn't go she would call the police, did he go right after that? A. Yes.

Q. Did he say anything else? A. I don't remember.

Q. You don't remember anything else that he said? A. No. 40

*Albert Galoppa—Cross.*

Q. Do you remember your sister going to the house next door to the neighbor? A. No.

Q. Did you hear your father threaten your mother? A. No.

Q. Did he threaten your mother in your presence? A. I don't believe he did.

10 Q. You don't believe, don't you know? A. No, he didn't.

Q. Did you hear him threaten to shoot your mother? A. No.

Q. Did you know that this neighbor came across when your sister went out for her, do you remember Mrs. Bregleman coming to your house? A. No.

Q. So you just happened to come along the alley way, did you? A. Yes.

20 Q. What were you doing in the back yard? A. Just hanging around, that's all.

Q. How long were you in the back yard? A. I don't remember.

Q. Where were you going that day when you came out? A. I was going out.

Q. Where out? A. Just taking a walk.

Q. So you had been hanging around the back yard and just came out of the alley in time to hear these words and were going to take a walk? A.

30 Yes.

Q. When your father went away did you go with him? A. No.

Q. Did he speak to you? A. No, he didn't.

Q. Did you see your sister there? A. My sister was inside.

Q. Did you see your other brother there? A. No, I didn't.

40 Q. Now you remember right after you signed this affidavit or shortly after you went down to see your mother, didn't you? A. I was living with her.

*Albert Galoppa—Cross.*

Q. When you signed this affidavit you were living with her? A. No, after that.

Q. Don't you remember that even? A. Yes, I said yes.

Q. When were you married? A. April 28, 1929.

Q. Then you were not living with your mother when you signed this affidavit? A. No, I was married at the time. 10

Q. Do you remember after signing the affidavit going down to see your mother? A. I was going down regularly all the time.

Q. Do you remember telling her you were sorry for what you had done? A. I didn't say that to her.

Q. When was it that you next went to see your mother after you signed this affidavit? A. I don't know, I went a few days after I guess it was. 20

Q. Do you remember telling your mother then, (question withdrawn)

Q. Wasn't it just shortly before Christmas that you went to see your mother after signing this affidavit? A. I believe it was.

Q. And you signed this affidavit in November? A. Yes.

Q. So you didn't go to see your mother for about a month, did you? A. Yes. 30

Q. That's about right, isn't it? A. Yes.

Q. And then when you went to see her do you remember telling her you were sorry you had signed the affidavit? A. No.

Q. Do you remember telling your mother in the presence of both your sister and your brother that your father had told you you would lose your job if you would not sign it? A. No, I never said that.

Q. Yet you saw your mother? A. Yes.

Q. You knew that you had done something 40

*Albert Galoppa—Cross.*

against her, didn't you? A. Yes.

Q. You knew that you had done it for your father against her? A. Yes.

Q. You were still friendly with her? A. Yes.

Q. Wasn't this affidavit that you signed mentioned by her? A. Yes.

10 Q. And didn't you say that you were compelled to sign it and that if you didn't sign it you would lose your job? A. No.

Mr. Van Der Clock: I object to the question having been asked and answered.

*By Mr. Ward:*

Q. Now then, didn't you also tell your mother that your father had paid you money to sign this affidavit? A. No, I didn't.

20 Q. Didn't tell her that? A. No.

Q. You remember that emphatically? A. I never said anything to her about that. I never said I got paid for signing it.

Q. Never said anything to her about signing what? A. Signing the affidavit.

Q. Did you ever get paid? A. No, I didn't.

Q. I suppose you get your regular pay, do you or not? A. Certainly because I work on salary.

30 Q. Now do you remember your mother and brother and sister telling you at the time that you had not been there at all when your father came up? A. I had been there.

Q. Don't you remember your mother telling you you had not been there? A. I was there.

Q. I haven't asked you, did your mother tell you? A. I answered no.

40 Q. You mean that she didn't say that to you? A. No.

*Albert Galoppa—Cross.*

Q. Didn't your brother and sister both stand by and tell you that "how could you do such a thing", when your father came were you there? A. I was there. I told you where I was.

Q. Didn't you tell her, your mother, on this occasion shortly before Christmas that you were sorry for what you had done to her? A. No.

10

Q. And when it came down to the end that you would tell the truth, didn't you tell her? A. No.

Q. You didn't tell her you would tell the truth? A. I am telling it here right now.

Q. For how long a time did you say you had been in the back yard on the occasion your father came up? A. I don't remember how long.

Q. About how long; ten or fifteen minutes? A. Perhaps.

Q. Had you gone to the back yard from the house or where? A. Yes, I just walked out of the house.

20

Q. Do you remember what you were doing in the back yard? A. Sitting down.

Q. For about ten or fifteen minutes? A. About that.

Q. Then you walked down the alley, saw your father and when you heard these remarks went on your way for a walk? A. No, I was going back.

Q. Where was your sister? A. In the house taking a bath.

30

Q. Do you mean that when your father was there your sister was in the bath? A. Yes.

Q. How do you know that? A. My mother told me that Eleanor was in the bath.

Q. How did you know? A. Well, she was preparing it.

Q. You don't remember where you were going that afternoon when you left to go out through the alleyway? A. No.

40

*Albert Galoppa—Cross.*

Q. And in December you sat around that back yard for fifteen or twenty minutes doing nothing before you walked out through that alleyway, that what you did? A. Yes. I have answered that.

Q. A cold day was it in December? A. It wasn't a very cold day, I remember that.

10 Q. Where did you sit for this fifteen or twenty minutes? A. Right on the porch in the back.

Q. What day of the week was it? A. I believe it was Saturday.

Q. And the time of day? A. Afternoon sometime.

Q. What time? A. I don't remember the exact time.

Q. About what time? A. In the afternoon.

20 Q. Didn't you have friends with you that Saturday afternoon? A. No.

Q. So when you did stroll down the alleyway you strolled down to do nothing, just to go for a waik? A. Yes.

Q. Were you ever to the lake in New York State with your father? A. Yes, I was.

Q. Ever there with Mrs. Kirkman and your father? A. The whole bunch of us were there.

30 Q. Whole bunch of you? A. Quite a few people. I was there with my wife.

Mr. Ward: That is all.

*Redirect-examination by Mr. Van Der Clock:*

Q. Before that time you had often strolled down that alley? A. Often that's the only way to get out.

40 Q. Did you ever see your mother strike your father? A. No.

*Albert Galoppa—Redirect.*

Q. Or threaten to strike him? A. Well, in her arguments.

Q. They became very excited? A. Yes, they would be very excited.

*Recross-examination by Mr. Ward:*

Q. I asked you if you didn't know that by testi- 10  
fying here you would be hurting your mother, you also knew that you were going to tell the truth and you are telling the truth? A. Yes.

Q. And isn't it a fact that at the time you knew that your mother and father had separated a short time before that? A. Yes.

*Redirect-examination by Mr. Van Der Clock:*

Q. Anything unusual for you to come out that 20  
alleyway? A. No.

Q. And you did come out that day? A. Yes, just like I had many other times.

Q. Did you see this neighbor come there that day? A. No.

Q. Know who she is? A. Yes, I know.

Q. She in court this morning? A. Yes, she is in court.

30

*Recross-examination by Mr. Ward:*

Q. You were working for George Meyer & Co. on that day, weren't you? A. No, I don't believe so.

Q. You were actually at work when your father came to this home? A. No.

Q. Where were you working on this occasion?  
A. I was going to school.

Q. Weren't you on that day working for George 40

*Albert Galoppa—Recross.*

Meyer & Co.? A. I don't believe I was.

Q. You don't believe so? A. I was there on that day.

Q. Did you work for George Meyer & Co. about that time? A. Before that.

Q. Did you work for him during the months of November and December, 1924? A. No.

10 Q. You didn't work for him at all during that time? A. I don't believe so, I don't remember.

Q. Don't you know when your father came to your house it was in the morning, don't you remember? A. No.

Q. Would you say now it was in the afternoon that your father came there? A. I am positive.

Q. You are positive are you? A. Yes.

20 *Redirect-examination by Mr. Van Der Clock:*

Q. When did you work for George Meyer & Co.? A. I don't remember exactly. I know I was going to high school at the time I was working for him.

Q. You remember moving to Hawthorne? A. Yes.

Q. After you moved to Hawthorne don't you remember that you were working for Meyer & Co.?

30 A. I don't remember. I know I didn't work very long.

Mr. Van Der Clock: That is all.

*Recross-examination by Mr. Ward:*

Q. Will you testify that you were not working for Meyer during the months of November and December, 1924 after you moved to Hawthorne? A. I don't remember.

40 Q. Will you testify now that you didn't work

*Albert Galoppa—Redirect.*

for him all day on Saturday? A. Yes, I used to work all day on Saturday.

Q. And isn't it true that you worked all day Saturday until after the first of the year 1925? A. I don't remember. I don't believe I did.

*Redirect-examination by Mr. Van Der Clock:*

10

Q. But you were there this afternoon in question? A. Yes.

*By the Court:*

Q. Do you remember at any time if you heard your mother and father discuss the separation agreement that has been offered in evidence? A. What do you mean?

Q. At any time was it discussed in your presence by either one of them when they were together? A. Very often. I heard my mother say she wanted to be separated; that she didn't want to live with him. 20

Q. That was before the separation? A. Yes.

*Recross-examination by Mr. Ward:*

Q. You heard your father say that? A. I didn't hear my father say that.

Q. Ever hear your father say that he wasn't in love with your mother after his mother died? A. No. 30

Q. You never heard him say that it was only because his mother was alive that he continued to live with your mother? A. No.

Q. Because he wanted to obey her? A. No.

Q. Have you ever heard him say that he was living with your mother because of his mother and he wanted to obey her? A. No. 40

*Lucy Bregleman—Direct.*

Q. Ever hear anything of that kind? A. No.

Mr. Ward: That is all.

LUCY BREGLEMAN, a witness produced in  
10 behalf of the defendant being duly sworn upon her  
oath according to law, testified as follows:

*Direct-examination by Mr. Ward:*

Q. You live in Hawthorne? A. Yes.

Q. Did you live there in the latter part of the  
year 1924? A. Yes.

Q. Remember when Mrs. Galoppa came to live  
in Hawthorne? A. Yes.

20 Q. Did she become a neighbor of yours? A. Yes.

Q. And whereabouts was it that she lived? A.  
19 Mohawk Avenue.

Q. You lived at what number? A. 23.

Q. Was yours the next house? A. Yes.

Q. And do you remember any occasion when Mr.  
Galoppa came up there sometime after she had  
come to live there? A. Yes.

Q. What day of the week was it, do you recollect?  
A. Saturday.

30 Q. What time on Saturday? A. Before dinner.

Q. In the morning? A. Yes.

Q. You are sure of that? A. Positive.

Q. Will you just tell his Honor what had occur-  
ed and what you had seen? A. I heard the little  
girl come out screaming for help so I came.

Motion made to strike out above.

40 Q. Was her father there at the time? A. I did-  
n't see him at first. I ran in and passed him in  
the alley.

*Lucy Bregleman—Direct.*

Q. He was in the alley? A. Yes.

Q. Did you see anything in his hand? A. No.

Q. What was the condition of Mr. Galoppa? A. I didn't take time to look.

Q. He was in the alleyway at the time as you went along? A. Yes.

Q. Where did you find Mrs. Galoppa? A. In 10  
the house.

Q. Did you see anything of the boy that was on the stand? A. No.

Q. Was he there at all? A. No.

Mr. Ward: That is all.

No cross-examination.

*Schroeder*

20

H. J. ~~SEIBY~~, a witness produced on behalf of defendant, being duly sworn on his oath according to law, testified as follows:

*Direct-examination by Mr. Ward:*

Q. Where do you live? A. 369 East 18th Street.

Q. And what is your business? A. Travelling salesman.

Q. You know Mr. Galoppa? A. Yes.

Q. Mrs. Galoppa? A. I do. 30

Q. Remember when they lived on River Street, No. 593? A. Yes.

Q. Were you a tenant of Mr. Galoppas' at the time? A. Yes.

Q. Remember the time of the separation when Mrs. Galoppa moved to Hawthorne? A. I know when she moved.

Q. You remember her leaving? A. Yes.

Q. Before that time did you have any conversa- 40

tion with Mr. Galoppa? A. Mr. Galoppa told me in the store, that just as soon as his mother was dead he would not live with his wife.

Q. He told you that? A. Yes.

Q. You remember when his mother died? A. Yes.

10 Q. Before his mother died did you ever talk to him about his wife? A. Just the conversation that he would leave his wife as soon as his mother was dead.

Q. Do you remember whether it was after he and his wife separated? A. Well just the exact time I don't know, sometime later.

Q. Sometime after his mother's death? A. Yes.

20 Q. How many times was it he told you that he would not live with his wife after his mother's death? A. A couple of times.

Q. Did you know Mrs. Kirkman? A. Only when she came there to live.

Q. When was it she came there to live? A. Just the exact date I cannot tell.

Q. How long after Mrs. Galoppa left did Mrs. Kirkman come there? A. After the furniture came in.

Q. After the furniture came in? A. Yes.

30 Q. Do you remember how long Mrs. Galoppa was out after Mrs. Kirkman came? A. I don't know. I have to tend to my business.

Q. Was it days, weeks or what? A. That I cannot say.

Q. Before Mr. Galoppa and Mrs. Galoppa separated did you ever hear any trouble between them? A. I can't say that I did, no.

40 Q. And after Mrs. Galoppa had moved to Hawthorne was there ever any occasion when Mr. Galoppa was in your presence and Mrs. Kirkman was

*Schroeder**H. J. Setby*—Direct.

also in your presence when you were talking to some salesmen? A. Just the exact date I cannot tell you.

Q. Can you tell us about when? A. Sometime around dinner hour a couple of salesmen had seen Mr. Galoppa. As they left they got up and said to Mrs. Kirkman, "Good bye Mrs. Galoppa" and I told him I didn't think it was fair for the sake of the children. 10

Mr. Vanderclough: Was Mr. Galoppa there when they said that to her?

A. He was on the sidewalk.

*By Mr. Ward:*

Q. Was he within hearing? A. Yes.

Q. How far was he? A. Right together saying good bye. 20

Q. At the time when all these salesmen said good bye to Mr. Galoppa and Mrs. Kirkman? A. Yes.

Q. How long after that when he came to your store? A. Five minutes.

Q. What did you say? A. I told him that I didn't think it was just for the sake of the children for them to say "Good bye Mrs. Galoppa."

Q. What did he say? A. He didn't give me any answer at all. 30

Q. During the period of time before that when Mrs. Galoppa was actually living there do you know what his habits were, Mr. Galoppa's habits were? A. Well he seemed to have business that he could not come home to meals on time.

Q. What about nights? A. I was not down the store to see what time he came home nights.

Q. When did Mr. Galoppa tell you about not living with his wife after his mother died, what 40

did you say if anything to him? A. I thought that for the sake of the children he ought to live with his wife.

Q. What did he reply? A. He said he would not live with her after his mother's death.

10 *Cross-examination by Mr. Van Der Clock:*

Q. This all took place after he separated, about his mother? A. Yes.

Q. Didn't on a great many occasions Mr. Galoppa walk home with you from the store? A. When he lived on 15th Street.

Q. When he lived on 15th Street? A. Yes.

Q. And you lived where? A. On 18th Street.

20 Q. Now you say on several occasions he said to you that if it wasn't for his mother he would not live with his wife for a month or words to that effect? A. He said that.

Q. He complained to you bitterly about the way his wife was treating him didn't he? A. I cannot recall.

30 Q. He didn't say that out of the clear sky "the minute my mother dies I am going to leave my wife"? A. He was discouraged that's all and then he made that statement.

Q. He was discouraged and he told you that? A. He didn't tell me any of his troubles.

Q. But he did say something to you? A. He said he was finished and would not live with her.

Q. After his mother died? A. Yes.

Q. Did he tell you at all why? A. No.

Q. You never heard any remark? A. No.

40 Q. You know he was out a great deal and spent a great deal of that time with you? A. No.

Q. He walked home with you nights? A. He walked home with me.

Q. You are friendly with Mr. Galoppa? A. I speak to him.

Q. You are not friendly with him? A. Not any more than he is with me.

Q. You had some financial trouble? A. Finan- 10  
cial?

Q. Yes. A. Yes.

Q. You gave him a couple of bad checks? A. No.

Q. Were you ever arrested for passing bad checks? A. No.

Q. Were you ever sentenced for giving bad checks? A. No.

Q. You owe him money? A. No.

Q. Don't owe him any? A. No. 20

Q. Don't you owe him \$95? A. No.

Q. Are you subpoenaed? A. No.

Q. How do you come to be here? A. Mrs. Galoppa came to my house.

Q. When? A. About two weeks ago.

Q. About two weeks ago and asked you to come? A. Yes.

Q. How did you come down? A. By automo- 30  
bile.

Q. You were brought down by her? A. Her brother.

Q. Her brother? A. Yes.

Q. You have no hard feelings towards Mr. Galoppa? A. No.

Q. Mr. Galoppa introduced Mrs. Kirkman to you as his wife, all you heard was that these salesmen said goodbye to Mrs. Kirkman? A. Yes, that's right. 40

*Redirect-examination by Mr. Ward:*

Q. Did you notice any difference between the way he treated his wife and the way he treated Mrs. Kirkman? A. Yes.

10 Q. Will you please tell the difference? A. Well when he was boarding there as he stated to you, he would be home on time for his meals regularly as a clock but when his wife had his meals prepared he wouldn't be home.

Q. What about his actions towards Mrs. Kirkman? A. They would go to a show at different times.

Q. Did you see him go out with her? A. I saw them get in the car.

20 Q. Did he ever take his wife out that you saw? A. Very seldom.

Q. How did that compare with the way he treated Mrs. Kirkman? A. Like day and night.

Q. Which did he treat better? A. Mrs. Kirkman.

*Recross-examination by Mr. Van Der Clock:*

Q. Are you a Mason?

30 Mr. Ward: I object to that question. That's so highly improper. I resent that sir, as a Mason.

Q. Are you a Mason in good standing?

Mr. Ward: I again object to that question. I resent it.

*By Mr. Van Der Clock:*

40 Q. Did you or did you not give anyone a bad check?

Mr. Ward: I object to that. It is not proper. The only thing he can ask is if the man has been convicted of a crime.

By the Court: You have shown prejudice. I don't think we have to go further.

*By Mr. Van Der Clock:*

Q. And you say you don't owe Mr. Galoppa any money whatever? A. No.

10

Mr. Van Der Clock: That is all.

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MARGARET STRAZZULLO, a witness produced on behalf of defendant, being duly sworn on her oath according to law, testified as follows:

20

*Direct-examination by Mr. Ward:*

Q. Mrs. Strazzullo you are a sister of Mrs. Galoppa? A. Yes.

Q. You remember when Mr. and Mrs. Galoppa lived on 15th Street, Paterson? A. Yes.

Q. In fact I believe you have been acquainted with them ever since her marriage to Galoppa? A. Yes.

Q. You remember when they left River Street and moved to Hawthorne? A. Yes.

30

Q. With whom did she come to live? A. She came with her three children.

Q. Now prior to that time did you ever visit your sister? A. Yes.

Q. How often did you go to visit your sister? A. About once a week.

Q. Whereabouts? A. Different places, she lived on River Street, No. 15, wherever she lived.

40

*Margaret Strazzullo—Direct.*

Q. And the last place she lived before she came to Hawthorne was River Street? A. Yes.

Q. Do you remember any occasion in 1921 when your sister left her husband? A. Yes, she left him because he beat her up.

10 Q. Did you see any marks of that? A. Yes, she had black and blue marks.

Q. Where? A. On her legs.

By the Court: When was that?

The Witness: Just the time she left him and came to my mother's house.

Mr. Van Der Clock: I ask to have the testimony stricken out.

*By Mr. Ward:*

20 Q. Did you ever talk to her about that afterwards? A. I talked to her at different times.

Q. I mean about that? A. No.

Q. But you do remember an occasion when she was black and blue? A. Yes.

Q. Where were these black and blue marks? A. On her legs.

30 Q. Now on several occasions when you went down to visit her during the two years they lived on River Street prior to the time your sister came to Hawthorne, you say you came to see her weekly? A. Yes.

Q. Did you see Mr. Galoppa? A. Not always.

Q. Never? A. Sometimes.

Q. Did you ever see him there at River Street? A. I saw him. Not always.

Q. How did he treat your sister during the times that you went to see her? A. He never treated her right.

40 Q. In what respect didn't he treat her right? A.

*Margaret Strazzullo—Direct.*

He was always mean to her. He told me that as soon as his mother died he would leave her.

Q. Did you ever hear him call her any names?

A. Yes.

Q. What names did he call her? A. All bad names.

Q. What were they? A. He called her those 10  
different names, son of a bitch and all.

Q. He called her all those names? A. Yes.

Q. Did you ever see him strike her? A. No.

Q. Now that continued up to the time she left, did it? A. Yes.

Q. She left his house? A. Yes.

Q. Before that when they lived on 15th Street did you go to see them, how did he treat her? A. He didn't treat her right.

Q. How did he treat her? A. Didn't treat her 20  
right.

Q. Just tell us what you yourself saw or what Galoppa told you? A. He didn't tell me anything.

Q. Did you ever hear him call your sister names on 15th Street? A. Well, I don't remember whether it was on 15th Street but I know he called her names.

Q. Do you remember any occasion when he came up to your home at Mohawk Avenue a few weeks 30  
after she had moved to Hawthorne? A. No, I was working. I was not home. My sister told me when I came home.

Q. What time did you get home on Saturday?  
A. I worked all day.

Q. So you were not there? A. No, I was not there when he came up.

Q. Do you know Albert? A. Yes.

Q. Do you remember an occasion shortly before 40  
Christmas in 1929 when Albert came up to your

*Margaret Strazzullo—Direct.*

sister's home or your home? A. No. It was his mother's home.

Q. Were you present? A. No. It was my other sister.

Q. Your other sister? A. Yes.

Q. Is your other sister here? A. No.

10 Q. How many occasions were there that he said that when his mother died he would not live with his wife. You understand my question? A. No.

Q. How many times were there when Mr. Galoppa told you that when his mother died he didn't intend to live any longer with his wife? A. It was before Christmas that he told me that he didn't want to go back to her any more, that he had no more love for her and never would.

20 Q. Now Mrs. Strazzullo you testified a short time ago that before his mother died, before Galoppa's mother died, that Galoppa had told you a number of times that as soon as his mother died he would not live with his wife any longer, how many times did he tell you that? A. I can't remember exactly.

Q. About how many times, was it once or twice? A. More than once.

Q. Well how many times? A. Several times.

30 Q. You just mentioned something with which I was not familiar, you said that on a certain Christmas he came up? A. Yes, 1929.

Q. This last Christmas? A. Yes.

Q. Where did he come? A. He came to my house.

Q. What did he tell you? A. He asked me to go to the lawyer with him.

40 Q. What did he say to you? A. He asked me if I would come to sign a paper at the lawyer's and he would make it all right with me.

*Margaret Strazzullo—Direct.*

Q. What did he say to you about his wife or love for his wife? A. He said he would not live with his wife. He had no love for her and never would.

*Cross-examination by Mr. Van Der Clock:*

Q. You made a statement here that you said that you didn't remember what took place on 15th Street but he called her names anywheres, you don't remember what took place on 15th Street?

A. Yes.

Q. But you used the expression that he called her names anywhere. Isn't it a fact that you are telling us now what your sister told you? A. No.

Q. You weren't there that Saturday when he came up there? A. I said I was not there.

Q. You weren't there on the other occasions when he came? A. Of course not.

Q. And you don't remember anything about 15th Street. A. I remember an argument. She came to my mother's house and had black and blue marks.

Q. But she only told you how she got them? A. Yes.

Q. Mr. Galoppa came up to your house before Christmas and asked you to testify against his wife and that you said to him that you didn't want to hurt your mother's feelings? A. I told him I would not go against my people.

Q. And said you didn't want to hurt your mother's feelings? A. My husband would not let me either.

Q. You were willing to testify that the wife refused to live with him? A. She said because he came up there with a revolver.

*Margaret Strazzullo—Redirect.*

Q. Now Mr. Galoppa came to your house and told you that his case was coming up, didn't he?

A. Yes.

Q. And he asked you to be a witness for him as to what took place on the Saturday that he asked his wife to come back? A. Yes.

10 Q. And you said to him that you weren't there?

A. Yes.

Q. And wasn't that all you said and he then left? A. Yes.

Q. And he then left? A. No he stayed for half hour.

Q. What else did he tell you? A. He said he didn't want to have anything to do with my sister, he had no love for her and never would.

20 Q. But you did say to him that if it wasn't for hurting your mother's feelings you would testify for him? A. No.

Q. What did you say about your mother? A. I told him I would not do it, because my mother was taking care of my little girl.

Q. Because your mother was taking care of your little girl and you didn't want to hurt your mother's feelings? A. Yes.

30 *Redirect-examination by Mr. Ward:*

Q. And when you were having this half hour's talk with him he asked you to testify what had taken place the Saturday afternoon that he came up to Hawthorne? A. Yes.

Q. Did you and he talk it over? A. He told me he wanted me to go.

40 Q. Did you tell him what you had heard about it? A. He wanted me to say that I saw this—(interrupted)

*Margaret Strazzullo—Recross.*

Q. Did you hear what had taken place? A. Yes I heard.

Q. Did you tell him what you heard? A. Yes.

Q. What did you tell him you heard about it?

A. I told him I heard that he came in the morning. My sister and the children were in the house. He came with a revolver and said to her to come back because he didn't want to live that way any more. She said to him that if you come back like a man, all right. 10

Q. What did he say about the revolver? Did he deny it? A. Yes he denied it.

Q. What did Galoppa at that time say about having a revolver when you told him what you had heard? A. He didn't say he had a revolver.

Q. Did he say anything one way or another? A. No. 20

Mr. Ward: That is all.

*Recross-examination by Mr. Van Der Clock:*

Q. Did he say anything to you about the revolver? A. No.

Q. Not a word? A. No.

Q. But when you told him what his wife had told you about the revolver didn't he say anything? A. No. 30

Q. He didn't mention it? A. I didn't mention it either.

Mr. Van Der Clock: That is all.

*Edward Galoppa—Direct.*

EDWARD GALOPPA, a witness produced in behalf of the defendant, being duly sworn on his oath according to law, testified as follows:

*Direct-examination by Mr. Ward:*

10 Q. You are a son of Mr. and Mrs. Galoppa, parties to this suit? A. Yes.

Q. How old are you? A. Seventeen.

Q. You live with your mother? A. Yes.

Q. You remember when your father and mother lived on River Street? A. Yes.

Q. Before that time what was the conduct of your father toward your mother? A. He was very cruel to my mother.

20 Q. Well tell us what he did? A. It was one night he came home and started to fight about my grandmother, who was his mother. She happened to have a quarrel but he blamed it on my mother who was sick. He started to fight with my mother and put her out of the house.

Q. Did he beat her? A. Yes.

Q. How did he beat her? A. He struck her with his hands.

Q. When was this? A. About eight years ago.

30 Q. Where were you living at the time? A. E. 15th Street.

Q. How did he get your mother out of the house? A. He just kicked her out.

Q. How long was your mother gone? A. A few hours that night. When we wanted to go out he held the door. He threw a knife on the table and said, "Anyone of you that want's to go out of the door will get the same dose of medicine".

40 Q. What sort of a knife? A. It had a blade about six inches long.

*Edward Galoppa—Direct.*

Q. What kind of a knife? A. It was a bread knife.

Q. That was about eight years ago. You were living in 15th Street, do you remember any other occasion that he struck her? A. On River Street he struck her.

Q. What was the reason? A. He had a nasty temper and always drank a lot. 10

Q. He drank a lot? A. Yes.

Q. And when he came home what would happen? A. He started to fight over nothing. It might be a button he lost on the shirt and he would right away blame my mother.

Q. How many times have you seen your father strike your mother? A. About five times.

Q. When was the last time? A. Before my mother separated from him. It was a Tuesday morning that he struck her. 20

Q. Tuesday morning? A. Yes.

Q. When else? A. He came home on a Wednesday and started to fight with mother over a suit that was filthy.

Q. Suit? A. Yes.

Q. Whose? A. His.

Q. What did he want? A. He wanted my mother to press it and my mother said "Send it to the cleaner and I will press it for you. I don't want you to run around with a suit of dirt." 30

Q. That was a Wednesday? A. Yes.

Q. Then he hit her? A. Yes.

Q. How? A. With his hand.

Q. What happened after that? A. Well, after that he went out.

Q. That was on a Wednesday and how long after that was it that they separated? A. On a Sun- 40

*Edward Galoppa—Direct.*

day we moved away to Hawthorne.

Q. On the following Sunday you moved away?

A. Yes.

Q. That was November? A. Yes.

10 Q. And I thought that Mr. Galoppa testified that it was the following Sunday after the separation agreement was signed that she moved away. Did your mother ever abuse your father? A. No. She always tried to do what was right, he didn't seem to have a sense of feeling what was right.

Q. Did he ever take your mother out? A. Once every four years.

Q. Did he ever call your mother names? A. He called her a son of a bitch and bastard, bum and a good for nothing.

20 Q. Did you know whether or not your father and mother occupied the same bed for some months before they separated? A. Yes, my mother always slept with my father.

Q. Now at the time he struck her on this Wednesday before she and the rest went to Hawthorne, did she sleep with him after that or not, do you know. A. I think she did.

Q. And that on the following Sunday after this incident you went to Hawthorne? A. Yes.

30 Q. And do you recall the conversation that was had between your mother and father about her moving the furniture out? A. Yes.

Q. Will you just tell his Honor about that? A. Well your Honor my father said to my mother that she could have everything but the piano which was not paid for.

40 Q. Did your father know where your mother was going? A. I guess he did because she told him.

*Edward Galoppa—Direct.*

Q. Did your father know when your mother was leaving? A. No, he was away.

Q. Before that time do you know whether or not your father was acquainted with Mrs. Kirkman?

A. Before that time I could not really tell you whether he was acquainted with her but I know he was out with other women.

10

Q. When he would come home in the condition you described under the influence of liquor, would he talk about the things outside? A. He would mention about the women he went out with. He would say he had a good time.

Q. When he came home in such a condition did he say what had happened? A. He said he was out on a party and had a good time.

Q. You weren't present when this separation was drawn? A. No.

20

Q. You knew about it? A. My mother told me.

Q. Then your mother went to Hawthorne? A. Yes.

Q. She went to live with your aunt? A. Yes.

Q. From the time you left, do you remember about five or six weeks after your mother went to Hawthorne, remember a time your father came to Hawthorne to see your mother? A. Yes.

Q. Will you please tell his Honor what happened that day? A. Your Honor my father came up there in a mood that was not agreeable to a man. He came in and just threw the money which was in an envelope on the table in a nasty manner and then he says, "I want my children back", like that. He didn't ask my mother to come back because I know he hates her.

30

Motion made that last part be stricken out.

40

*Edward Galoppa—Direct.*

Q. Did he ask her to go back? A. No.

Q. Did he say anything at all about going back?

A. No he just wanted the children back.

Q. Did your mother curse and swear at him?

A. No, she didn't.

10 Q. Did your mother call him son of a bitch and bastard? A. No she didn't call him any vile names.

Q. What happened after that? A. After that he saw that he could not succeed in his way he grabbed my mother by the throat and threatened to shoot her.

Q. Did you see the revolver? A. Yes.

Q. Where was your sister? A. She was right in the room.

20 Q. What did she do? A. She ran out and called for help.

Q. Was Albert there? A. He was not.

Q. Did this occur on the front porch? A. No, it did not occur on the front porch.

Q. Where did it actually occur? A. In the dining room, beside the kitchen.

Q. Where was Albert at the time? A. He was working for George A. Meyer.

30 Q. Where is George A. Meyer's place? A. One block down Washington Street, Paterson.

Q. And this actually occurred in Hawthorne? A. Yes.

Q. What time of day did this happen? A. About a quarter to twelve right before dinner.

Q. In the morning? A. Yes.

Q. What day of the week? A. On a Saturday.

Q. Your grandmother was she present? A. No she was not present she came after that happened.

40 Q. Was your other aunt who is not here, was

*Edward Galoppa—Direct.*

she present? Who was present? A. My sister, myself and my mother, that's all.

Q. Now did your mother refuse to go back with him or anything of that kind? A. No, because he didn't ask her to.

Q. Do you remember Mrs. Bregelman coming over to your house? A. Yes. 10

Q. Your father had just gone out? A. Yes, just gone out.

Q. After that were you present at the time Mr. Gilpin came up? A. Yes I was present.

Q. Will you just tell his Honor what occurred when Mr. Gilpin was there? A. He said that Jerry had sent him to see if my mother would go back to him. My mother said if Jerry wants me why doesn't he come over himself. She said, "I would be willing to come back if Jerry would talk to me. 20

Q. Was that all? A. Yes. And she gave several reasons why she would not go back to Jerry but if he would come to ask her himself she would go.

Q. Do you know whether your mother, or hasn't your mother told you since this separation that she was willing to live with your father and you and the children? 30

Mr. Van Der Clock: I object.

The Court: Objection overruled.

A. She said yes, because if my father was willing to take her back and treat her right she would.

Q. You knew when your brother Albert signed this affidavit, this paper that's been here in court?

A. Yes.

Q. Now after that, just before Christmas, 1929, 40

*Edward Galoppa—Direct.*

did your brother come to the house? A. Yes, just before Christmas.

Q. And at that time did your mother or not say to him in these words or words that mean the same thing "Albert you know you were not here when your father came here"? A. Yes, she said that.

10 Q. And what did he say? A. He said, "I know I was not", but it will all turn out all right.

Q. Did he or not say that his father had given him money? A. My father had given him \$50. for Christmas and \$50. for a marriage present which he told me himself.

Q. He told you people that at the time? A. Yes.

20 Q. Now after you went to live in Hawthorne, did you ever see your father? A. I saw my father. I was actually working for him about a year in 1927.

Q. Did you ever see him with Mrs. Kirkman? A. Yes, three times.

Q. How did she speak of Mrs. Kirkman to you? A. He always praised her as a good woman and all that.

30 Q. Tell his Honor everything he said about Mrs. Kirkman? A. He said she was better than my mother, a good housekeeper and good cook.

Q. Did he ever say anything about the future with Mrs. Kirkman? A. Well several times, about three or four times he asked me to go and live with him. He said leave your mother and live with me and you will have a good mother. A lot of times he wanted to take me up to the lake with him. I always refused to go.

*Edward Galoppa—Cross.**Cross-examination by Mr. Van Der Clock:*

Q. So your mother told you she was willing to go back to her father, did she? A. Yes.

Q. And said that to you quite often? A. Quite a number of times.

Q. And when was the last time she said that? 10  
A. About a year ago.

Q. And why do you fix it about a year ago that she was willing to go back? A. We had been talking about it.

Q. She said that in spite of the beatings etc.? A. Yes.

Q. And she discussed that with you? A. Yes, a few times.

Q. What else did she say? A. She said that she would go back to my father if he treated her as a wife. 20

Q. And did she remind you of the time he beat her up? A. No.

Q. You were about eight or nine years old about that time? A. Yes, I remember everything distinctly that I saw.

Q. And a lot that you didn't see that your mother told you? A. No.

Q. Your mother often discussed it with you, didn't she? A. Discussed what we saw. 30

Q. Your mother often talked about your father to you? A. I guess she did.

Q. Did she ever tell you in 1921 she wanted a separation and went to a certain lawyer and the lawyer refused to have anything to do with her, did she ever tell you that? A. No.

Q. That's one thing she didn't tell you? A. Yes.

Q. Where were you going to school when you 40

*Edward Galoppa—Cross.*

were nine years old? A. Public School number 21.

Q. Where is that? A. In Paterson.

Q. I know in Paterson, whereabouts? A. Madison and 11th Avenue.

10 Q. What was the name of your teacher? A. Miss O'Neill.

Q. What grade was that you were in? A. Fourth grade.

Q. And you were nine years old? A. I was.

Q. What was the name of the principle? A. Mr. Hasbrouck.

20 Q. Now tell us something else that took place in your family when you were nine years old or eight years ago. A. My father used to come home drunk. Lots of times he used to say "When my mother is dead I am not going to have anything to do with your mother".

Q. Do you remember anything good about your father since you were nine years old? A. He was good at times.

Q. Did you ever see Mr. Bradley? A. He was a good friend of ours.

Q. Of your mother's too? A. Yes.

30 Q. Were you ever present when Mr. Bradley was in your home? A. Yes.

Q. Did you ever hear your mother nag your father? A. No.

Q. Never said a word out of the way to him? A. Not that I recollect.

Q. Always kind and gentle? A. Yes.

Q. Positive about that? A. Yes.

40 Q. When you were nine years old and up until 1924 did you ever hear her say a cross word? A. No.

*Edward Galoppa—Cross.*

Q. Always smiling and pleasant to him? A. Yes.

Q. Then will you account to us why your mother wanted to separate in 1924.

Mr. Ward: I object.

Q. You know that there was a separation drawn? 10  
A. After it was drawn I knew about it.

Q. You knew that there was a separation didn't you? A. After it was drawn I was told about it.

Q. You told us in your direct-examination you heard your father and mother discuss it. A. I didn't.

Mr. Ward: I object.

Q. You heard it discussed about the furniture?  
A. According to the agreement. 20

Q. You did know about the agreement? A. After they told me about the agreement.

Q. Why did you say according to the agreement?  
A. What?

Q. Why did you just now say according to the agreement? A. According to the way the agreement is written up.

Q. Is there anything in the agreement about furniture? A. About payments.

Q. Anything in the agreement about furniture? 30  
A. I don't know.

Q. That's one thing you don't know, and any discussion about the furniture was in accordance to that agreement? A. Well I heard my father tell my mother.

Q. In what part of the house did you hear your father say that and where were you living at the time? A. In the kitchen at 593 River Street.

Q. And what time of day was this you heard this discussion? A. About the morning. 40

*Edward Galoppa—Cross.*

Q. Kind of hazy about that? A. No.

Q. Was that the subject of the discussion the first thing in the morning? A. No.

Q. What else did they say that morning? A. My father brought up about the separation.

10 Q. What about the separation, this morning what else was said about the separation? A. What to do about it.

Q. What they were going to do about it? A. Yes.

Q. Isn't it a fact that how you know about this is the fact that your mother talked it over with you? A. No.

Q. Ever talk it over with her? A. No.

Q. Did you not testify that you often discussed your father with your mother? A. I didn't.

20 Q. What else did you discuss with your mother about your father separating nine years ago? A. I didn't discuss anything. Just discussed about whether she would go back to him.

Q. What other things did you discuss when you and your mother were discussing about going back to your father? A. What I told you.

Q. Just that she said she would go back? A. If he treated her like a wife.

30 Q. Who suggested that fact? A. My mother, for our sake.

Q. And how would she lead up to it? A. Just got talking about it. Most likely I was working for my father. I would say my father was going out to the lake and wanted to take me.

Q. You state you never heard your mother say an unkind thing to your father nor curse or swear at him or do anything at all?

40 The Court: He said that three times.

*Edward Galoppa—Cross.*

A. No.

Q. In spite of the fact that your father came home drunk, your mother never said a word? A. Never said a word.

Q. Nine years ago you say that your father kicked your mother? A. Eight years ago.

Q. Eight years ago, and where were you living at the time? A. 121 E. 15th Street. 10

Q. And your mother had to run out of the house? A. Yes.

Q. And whereabouts in the house did he kick her and beat her? A. In the kitchen.

Q. All these things took place in the kitchen? A. Yes.

Q. Any other part of the house? A. Well, he might have kicked her in the kitchen and he would pull her to the bed room. 20

Q. Where was Albert? A. He was in the house.

Q. He wanted your father to put the knife down but couldn't do anything? A. Yes.

Q. Were the three of you around the table? A. Yes.

Q. Albert was there when your father beat your mother? A. Yes.

Q. Albert was not there when your father came to ask your mother to come back? A. No one was there, just my sister and I. 30

Mr. Van Der Clock: That is all.

*Eleanor Galoppa—Direct.*

ELEANOR GALOPPA a witness produced on behalf of the defendant being duly sworn on her oath according to law, testified as follows:

*Direct-examination by Mr. Ward:*

- Q. How old are you Eleanor? A. Thirteen.
- 10 Q. You remember when you were living on River Street in 1924, six years ago? A. Yes.
- Q. You were about seven years of age at that time? A. Yes.
- Q. Now you remember your mother going away from River Street and going to Hawthorne? A. Yes.
- Q. Know whether or not your mother and father talked about her going away before she went away, anything about the piano or furniture? A. In the
- 20 lawyers's office.
- Q. Were you there? A. Yes.
- Q. You were all there when this paper was signed, Exhibit P-1? A. Yes.
- Q. And you were with your mother and father when this paper was signed? A. Yes.
- Q. And they talked about furniture and what she could take? A. Well he said she could have everything but the piano and a collie we had and
- 30 a few bottles of beer.
- Q. These things she was to leave? A. Yes.
- Q. Now then your mother went to Hawthorne after that? A. Yes.
- Q. Do you remember anything that occurred Wednesday before during the week before, anything that happened between your father and mother before she left? A. Yes.
- Q. Will you tell his Honor about that? A. It
- 40 was on Wednesday morning my father was out Tuesday night. He had a suit which was filthy.

*Eleanor Galoppa—Direct.*

My mother was washing me to go to school. He wanted her to press the suit. She told him to send the suit to the cleaner to have it cleaned.

Q. What happened then? A. Then after a while they quarreled over the suit because he wanted to have his way and my mother wanted to send it to the cleaner. Then he struck my mother and after a while he got talking about the separation. 10

Q. He did? A. He did. It wasn't my mother who wanted the separation but it was him.

Q. And then after that she moved away the following Sunday, she moved to Hawthorne? A. Yes.

Q. Do you remember your father, after your mother had come to Hawthorne, do you remember five or six weeks after, your father came up there. A. Yes.

Q. Was your brother Albert there? A. No. 20

Q. Where did this happen to take place inside or outside? A. Inside.

Q. Will you just tell about your father coming there and what was said and done? A. He came in and said he wanted the children. My mother would not give him the children. He started to call my mother many names. Then he pulled out a gun and had one hand around my mother's throat and the other on the gun. I became afraid and ran outside and called for help. 30

Q. Where did you go? A. To Mrs. Bregleman's house.

Q. The lady on the stand this morning? A. Yes.

Q. Through the alley? A. Yes.

Q. When your father was up there did he ask your mother to come back to live with him at all? A. No.

Q. Did he say anything at all about that to her? A. No. 40

*Eleanor Galoppa—Direct.*

Q. Did she refuse to go back to live with him?

A. He didn't ask her to.

Q. Did she call him any names? A. No.

Q. Then your father went away? A. Yes.

Q. Now how long was it from that time until you saw your father again? A. I should say about a few months.

10

Q. Where was your brother Albert working at the time? A. George A. Meyer.

Q. Was he home at all at the time? A. No.

Q. A few days after, do you remember Mr. Gilpin coming up? A. Yes, I remember.

Q. Will you tell his Honor in your own way just what took place between your mother and Mr. Gilpin? A. He said my father had sent him to ask her to come back. My mother said why didn't he come himself and ask my mother. My mother told him how things were and Mr. Gilpin said he didn't want to have any trouble.

20

Q. Did your mother refuse to go back to your father? A. No, she didn't.

Q. Do you remember shortly before last Christmas Albert coming there to your home? A. Yes.

Q. Did he or not at that time say to your mother that he was sorry that he had signed the affidavit?

30

A. Yes.

Q. And did he or not at the time say to your mother that the reason he had signed it was because he was afraid to lose his job? A. Yes.

Q. Did your mother in general words meaning what I mean, say to him that time that he knew that he had not been there, was not at home when your father came up? A. Yes.

Q. What did he say? A. He said he knew he had not been there and was sorry he did.

40

*Eleanor Galoppa—Cross.**Cross-examination by Mr. Van Der Clock:*

Q. What was it now Albert said when he came to the house before Christmas? A. He said Hell, first. He sat down and started to talk. He seemed different. We asked him what was the matter. We had also gotten the affidavit. He told us then that he was sorry he had signed it. 10

Q. I see, anything else said by Albert at that time? A. Well he said in the end that he would say the truth.

Q. That he would tell the truth? A. Yes.

Q. You heard your brother testify this morning on the stand? A. Yes.

Q. You are how old? A. Thirteen.

Q. And six years ago you were living on River Street? A. Yes. 20

Q. Remember everything that took place? A. Yes.

Q. Everything? A. Yes.

Q. Remember Mr. Gilpin coming to your house? A. Yes.

Q. And what was it your mother said to him? A. She told him if her husband wanted her to go back why didn't he come himself.

Q. How long after was that your father came up and visited at River Street? A. A few weeks after. 30

Q. Don't you know it was the following day that your father had been there, don't you know that? A. No.

Q. You don't know that? A. No.

Q. And didn't your mother tell Mr. Gilpin that your father had been (question withdrawn)

Q. Did your mother say anything to Mr. Gilpin 40

*Eleanor Galoppa—Cross.*

about your father drawing a revolver? A. I don't remember.

Q. Did you hear your father's testimony this morning? A. Yes.

Q. Did you hear him say that he went to the house? A. Yes, it was not a day after, it was a couple of weeks after.

10 Q. After your father had been up there in 1924? It is 1930, you know that? A. Yes.

Q. When was the first you talked about this, about your father coming back? A. I didn't talk to her about it.

Q. Never talked to her about it until this suit started? A. No.

Q. Not once? A. No.

20 Q. You remember this after six years when suit was started against your mother? A. Yes.

Q. When did you tell Mr. Ward or Mr. McGinnis about what you saw? A. Yesterday.

Q. First time you ever told him? A. Yes.

Q. Sure about that? A. Yes.

Q. Did your mother ever tell you she was being sued by your father? A. No.

30 Q. And you say that this morning is the first time you talked to Mr. Ward about it? A. Not this morning, yesterday.

Q. Where? A. At his office.

Q. Was your mother with you? A. Yes.

Q. Did you see the papers that your father had in his case? A. I don't know.

Q. Did you know that your brother had taken an affidavit? A. I saw that one.

Q. Did you see your father's affidavit? A. No, I don't think I did.

40 Q. Did you see Mr. Gilpin's affidavit? A. Yes.

*Eleanor Galoppa—Cross.*

Q. But you didn't see your father's? A. I don't remember seeing it.

Q. Weren't they all together? A. I don't know if they were together. I didn't look at that one.

Q. Why not? A. I just didn't look.

Q. Does your mother read English? A. Yes.

Q. Didn't you read these affidavits to your mother? A. No, she can read herself. 10

Q. Who else beside Mr. Gilpin came to your house in December, 1924? A. Nobody else besides my father.

Q. Your father? A. Yes.

Q. And that was the time he drew a revolver? A. Yes.

Q. How often did you talk that over with your mother? A. I didn't talk about it.

Q. Never talked to her about it? A. No. 20

Q. Did your mother say anything to any of her relatives when they visited her? A. I don't know.

Q. Did you ever hear her? A. No.

Q. Did you ever hear your relatives talk to your mother about it? A. No.

Q. Isn't it true that your mother never said one word about the revolver from 1924 and up until the time suit was started? A. I never heard—(interrupted) 30

Q. And isn't the first time you heard about the revolver yesterday? A. No.

Q. When was the first time? A. I didn't hear I saw.

Q. When was the first time you heard any discussion between 1924 and yesterday? A. Yesterday.

Q. The first time you heard it mentioned by anybody? A. Yes. 40

*Eleanor Galoppa—Cross.*

Q. Never by your mother, brother or anybody else? A. Yes.

Q. And who first mentioned about the revolver in Mr. Ward's office? A. I did.

Q. Nobody else thought of it but you? A. My mother thought of it.

10 Q. Did she mention it? A. Yes.

Q. When? A. Yesterday.

Q. Before you said anything about it? A. No.

Q. After you spoke about it? A. Yes.

Q. And what were you talking about just before you spoke about the revolver? A. It was after the separation.

Q. You got to the separation? A. Yes.

20 Q. What was said by your mother in Mr. Ward's office about the separation before the revolver was mentioned? A. Well he asked if he had come over after the separation.

Q. Now did he talk with your mother before he talked to you? A. I don't know.

Q. You know your mother had been to the office before that? A. Yes.

Q. Had you ever been to the office before that? A. Yes.

Q. How many times? A. About five.

30 Q. And yet you never said anything about the revolver until yesterday? A. No.

Q. And your mother never said anything? A. Yes.

Mr. Van Der Clock: That is all.

The Court: You say that your father wanted the separation agreement and not your mother?

The Witness: Yes.

40 The Court: Did you hear him say that?  
The Witness: Yes.

*Cross-examination by Mr. Van Der Clock (continued):*

Q. You say that six years ago your father wanted a separation? A. Yes.

Q. What was the exact language he used six years ago about the separation? A. He would come home drunk at night and say that he had been out with a woman and then he said he wanted to be free because he didn't care for my mother any more and wanted a separation. 10

Q. Don't you know that this separation came about after he had given her a beating? A. Yes.

Q. Is that right? A. Yes.

Q. Sure about that? A. Yes.

Q. And you say your father was out all night that evening? A. Yes.

Q. On what night? A. Tuesday.

Q. What took place on Monday night before that? A. I don't think he was home. 20

Q. Do you know whether he was home or not? A. No.

Q. And do you know whether he was home on Sunday night before that? A. He usually was away on Sunday night.

Q. Was he home on Monday night before? A. I don't know.

Q. Was he home on Thursday night before that? A. No. 30

Q. You know everything that took place that week? A. Yes.

Q. Did you go to school every day that week? A. Yes.

Q. You weren't late? A. Yes.

Q. What grade were you in? A. Second.

Q. You were how old? A. Seven.

Q. What else took place at that time that you remember regarding school (question withdrawn) 40

*Eleanor Galoppa—Cross.*

Q. Do you know what day Thanksgiving came that year? A. No.

Q. Do you know what day Christmas came that year? A. The 25th.

Q. It always comes on the 25th? A. Yes.

Q. Because it always comes on the 25th? A. Yes.

10 Q. Is there anything else you remember about Wednesday your father came home drunk? A. Not about Wednesday.

Q. He was out all night Tuesday? A. Yes.

Q. How do you know? A. Because I was getting up when he came home.

Q. What time? A. Eight o'clock.

Q. You don't know whether your father was out all night or not? A. No.

20 Q. Did he ever come home for coffee in the morning? A. Yes.

Q. Then how did you know he was out? A. I knew he was out.

Q. Didn't you say that because your mother said so? A. No.

Q. You haven't very much use for your father? A. No.

30 Q. And beside a talk in Mr. Ward's office about the case did you ever talk to your mother about having your father come back? A. No.

Q. Did you ever hear your mother say she wanted to come back? A. She said if he treated her like a wife she would go back.

Q. Ever hear your mother swear? A. No.

Q. As to your recollection before 1924, did your mother always treat your father kindly? A. Yes.

Q. Ever get excited? A. No.

40 Q. Ever quarrel with him? A. Well he started quarrels.

*Eleanor Galoppa—Cross.*

Q. Did she quarrel with him? A. Well after he started she would quarrel.

Q. After your father started to quarrel with her then your mother started to quarrel with him? A. Yes.

Q. She was using kind language then, was she? A. Yes. 10

Q. Talked very quietly, did she? A. She tried to.

Mr. Van Der Clock: That is all.

*By the Court:*

Q. In the presence of your brother did you ever see your father quarrel with your mother? A. Yes.

20

JOSEPH RAYMOND, being duly sworn on his oath according to law testified as follows:

*By the Court:*

Q. Do you understand the English language? A. Certainly.

Q. You understand the Italian language? A. Certainly.

Q. You can translate? A. Sure.

Q. You swear that you will translate the questions asked in English into Italian and the answers received in Italian to English? A. Yes. I do. 30

40

*Maria Summa—Direct.*

MARIA SUMMA, a witness produced on behalf of the defendant, being duly sworn on her oath according to law, testified as follows:

*Direct-examination by Mr. Ward:*

Q. You are the grandmother of this mother? A. Yes.

10 Q. Do you know Jerry? A. Yes.

Q. Do you remember when Jerry Galoppa and his wife separated when they were living on River Street, in November, 1924? A. Yes, I remember.

Q. About a month or six weeks after that did Jerry Galoppa come to see you at your home? A. Yes.

20 Q. Do you remember when your granddaughter was living in Hawthorne after she and her husband Jerry separated? A. Yes, I remember.

Q. After they separated and while your granddaughter was living in Hawthorne did Jerry Galoppa come to you and talk to you? A. Yes, he talked to me.

Q. What did he say to you? A. He didn't want to see her or hear from her any more and I begged him to sit down and talk to me but he would not listen.

30 Q. Did he say anything to you about having been up to Hawthorne to see his wife and what he did up there? A. He came to my home which is a block and a half from Mohawk Avenue, he came there before visiting Mohawk Avenue.

Q. What did he say to you then? A. He came to see me before going to Mohawk Avenue and he said he was going to blow her brains out.

Q. Whose brains did he say he was going to blow out? A. His wife's Antonette.

40

*Maria Summa—Cross.**Cross-examination by Mr. Van Der Clock:*

Q. How old are you mother? A. Eight two years.

Q. When was this that Jerry came to see you?

A. Right after the time he was up to Mohawk Avenue.

Q. And when was that? A. Around Christmas, I don't remember exactly. 10

Q. This last Christmas? A. Yes, about five years ago.

Q. Don't you know that Jerry hasn't been to your house since you (question withdrawn).

Q. Did you tell your daughter or granddaughter about Jerry coming up to your house? A. I did and I went there right away.

Q. When did you tell your granddaughter? A. The same day. 20

Q. What else did Jerry say to you that day? A. He says like that—and beat it.

Q. Didn't say anything else? A. He told me she hollered for help, she got her kids together and he got away.

Q. Did Jerry tell you anything else at the time? A. That's all he told me.

Q. Did he tell you why he came to your house to tell you that he was going to blow your granddaughter's brains out? A. No. 30

Q. Did he come to the house to tell you this or outside? A. In my house.

Q. And how did he get in your home, front door or back door? A. There is only one entrance.

Q. Did he sit down? A. As soon as he says like that he went away.

Q. So he came into your kitchen, said this—and then left? A. Yes. 40

*Maria Summa—Cross.*

Q. Did he say good bye or hello? A. No, he just went away.

Q. Don't you know that Jerry hasn't been in your house since a long time before they separated? A. No.

10 Q. But you have never seen Jerry since, have you? A. I didn't see him on account of my eyesight.

Q. Did you ever talk to him since five years ago? A. Yes.

Q. When? A. I used to talk to him when I met him and tried to make peace.

Q. Since the separation? A. Yes, when I used to see him I spoke to him.

20 Q. When did you first talk to your granddaughter about him being up there about the revolver? A. Right away.

Q. When did she next talk about it? A. When they used to get in conversation they used to talk about it.

Mr. Van Der Clock: That is all.

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30 ANTONETTA GALOPPA, the defendant being duly sworn on her oath according to law, testified as follows:

*Direct-examination by Mr. Ward:*

Q. You are the defendant in this case, aren't you? A. Yes.

Q. How old are you? A. Thirty six years.

Q. You have been married to Galoppa since 1906? A. Yes.

40 Q. You remember when you and he separated? A. Yes.

*Antonetta Galoppa—Direct.*

- Q. That was 1924? A. Yes.
- Q. November? A. Yes.
- Q. Shortly after these articles of agreement? A. Yes.
- Q. Before that time how did Mr. Galoppa treat you? A. Very unkind.
- Q. Will you explain to his Honor just what you mean, giving specific instances? A. He treated me very mean. He told me right to my face that he had another woman in his life and he said just as soon as his mother died he would get rid of me. 10
- Q. How many times did he tell you that? A. Many times.
- Q. How many times did he tell you he didn't love you? A. Many times.
- Q. About how often? A. Quite often.
- Q. Will you please tell me whether it was once a week, once a month or once every five years. A. All the time. 20
- Q. What do you mean by all the time? Was it more than once a week or not? A. Yes.
- Q. How many times did he strike you? A. About five or six times.
- Q. Remember the incident when you were living on 15th Street when he had a quarrel? A. Yes.
- Q. What was that quarrel about? A. Why he quarreled over nothing. 30
- Q. What did he do to you then? A. He struck me in the face, kicked me and threw me down. I ran out and the people next door took me in.
- Q. Were your children present at the time? A. Yes, the four were.
- Q. Getting down to 1924, November, just before you signed these articles of separation, rather had you had any trouble with him? A. Yes.
- Q. Will you relate to the court what that was? 40

*Antonetta Galoppa—Direct.*

A. Well, it was in December, 1924, he was very mean to me and he said that he never had no use for me and never would have and never loved me and had another woman in his life; that after his mother died he would never live with me.

10 Q. You said that he told you he would not live with you after his mother died, when did his mother die? A. May 23, 1924.

Q. And after that did his conduct toward you grow worse or not? A. Yes.

Q. Did you have any quarrel or fight on the Wednesday before you went to Hawthorne? A. Yes.

20 Q. Tell his Honor about that? A. We had a quarrel on Tuesday night. Wednesday morning he wanted me to press his suit which was filthy. I told him it would not do for me to press it but to send it to a cleaner.

Q. What then? A. We quarreled and he struck me in the face.

Q. What happened then? A. Then he beat me and said he wanted a separation, wanted to get rid of me.

Q. What did you do? A. Went to lawyer Ward.

Q. When? On a Saturday? A. Yes.

30 Q. The following Saturday? A. Yes.

Q. Did he go with you? A. I went with my little girl and he came later.

Q. These the articles of separation, Exhibit P-1, that's correct? A. Yes.

Q. Did you have any discussion with reference to the furniture and with reference to moving out and all that with him? A. He told me I could have everything else except the piano because it was not paid.

40 Q. And did you do so? A. Yes.

*Antonetta Galoppa—Direct.*

Q. And wasn't that in accordance with the agreement? A. Yes. Then I went to 19 Mohawk Avenue.

Q. Did he pay you under this agreement? A. Yes.

Q. Continue to pay you? A. Yes.

Q. Did you then leave in accordance with the terms of this agreement? A. Yes. 10

Q. And under the terms? A. Yes.

Q. Do you remember his coming up to see you in Hawthorne about four or five or six weeks after the separation? A. Yes. He came one Saturday morning about a quarter to twelve, he put the money on the table and said he wanted his children. I told him he could not have the children. He then quarreled and took out a gun and threatened to kill me. My little girl went out for help. 20

Q. Who came in? A. Mrs. Bregleman.

Q. Then he went away? A. Yes.

Q. Albert, where was he? A. Working.

Q. Where was it this took place? A. In the kitchen.

Q. In your house? A. Yes.

Q. This all took place outside on the porch or within? A. Inside.

Q. Did you have any words with him on the front porch? A. We had words in the kitchen. 30

Q. And where was Albert working at that time? A. George A. Meyer.

Q. You are sure that was in the morning? A. Yes.

Q. Did this man say to you at the time "won't you please come back to live with me, if not for my sake for the sake of the children? A. No.

Q. Nothing of the kind? A. No. 40

*Antonetta Galoppa—Direct.*

Q. Did you refuse to come back to live with him?

A. No.

Q. Did he make any suggestion at all? A. No, just wanted his children.

Q. Did you curse and swear at him? A. No, he did at me.

10 Q. Who was present? A. My little girl and little boy.

Q. These two witnesses who were on the stand? A. Yes.

Q. Do you remember some time after a Mr. Gilpin coming to see you? A. Yes, I do.

Q. How long after that, do you remember? A. About a week after.

Q. Mr. Gilpin came to see you? A. Yes.

20 Q. Well, you tell the court what he said to you? A. He said my husband sent him down to ask me if I would come back to him and I said if he really wanted me he would ask me himself.

Q. Did you tell Mr. Gilpin that you would refuse to live with Mr. Galoppa? A. No.

Q. Who was present? A. My both children were there.

Q. You had some further talk with Mr. Gilpin, I believe. A. Not much.

30 Q. Then Mr. Gilpin left? A. Yes.

Q. Now, from the time your husband signed these articles of separation has he ever asked you to live with him? A. No.

Q. Have you or not been willing to live with him? A. Yes, I have if he would treat me right.

Q. Didn't want him to beat you? A. No.

Q. Do you remember when Albert signed this affidavit? A. Yes.

40 Q. After that, the Christmas following, in 1929, did Albert come to your home? A. Yes.

*Antonetta Galoppa—Direct.*

Q. Just relate what he said to you and what you said to him? A. He told me he had signed the affidavit and I asked him why he signed that and told so many lies. He said he was sorry he had done it, that he had got some money from his father, and that if he didn't sign he would be out of a job and he was sorry he did it.

10

*By the Court:*

Q. How long have you known Mr. Gilpin? A. I don't know him very much. He just came to the house once in a while.

Q. Were you friendly with him at all? A. Not much. He just came over to see Mr. Galoppa and if he wasn't home he would go right back again.

Q. Do you remember any part of the conversation other than that your husband had asked him to ask you to return to live with him? A. No, sir.

20

Q. Is that the first time your husband notified you that he wanted you to come back to live with him? A. Yes.

Q. Did you make any statement at that time as to what you would do if your husband would come back? A. I gave him several reasons if he would come back.

Q. Do you remember the reasons? A. He would always quarrel and other reasons and he said he didn't want to know any of my troubles.

30

Q. After you finished telling him the reasons how did you end it up, did you tell him a lot of reasons why you wouldn't go back or did you give him a lot of reasons why you would go back? A. I told him the reasons I didn't go back was because he treated me mean, that if he wanted me back he would come himself.

Q. About the separation agreement, did you want that drawn or your husband? A. He did,

40

*Antoietta Galoppa—Direct.*

because he had no love for me, and wanted to get rid of me.

Q. How long did you live together as husband and wife? A. Eighteen years.

Q. During that eighteen years he struck you five times? A. Yes.

10 Q. Before the separation agreement was signed was it safe for you to live with him under the circumstances? A. No.

Q. In what way was it unsafe? A. He always had a loaded gun in his pocket. I was afraid to go to sleep.

Q. Were your nerves affected by this? A. They were affected when I lost my boy six years ago.

Q. Would you have stayed with him? A. If he had treated me right.

20 Q. Under the former treatment that you were then receiving would you be willing to remain? A. No, I could not stand it any longer so I had to break.

Q. In view of the circumstances was it all right for you to stay with him, in view of the former treatment? A. It wasn't perfectly safe to live with him the way things were.

Q. You thought there was danger? A. Yes.

30 *By Mr. Ward:*

Q. Were you not willing or would you have continued to live with him if he had not forced this separation agreement? A. Yes.

Q. For whose sake? A. For the childrens'.

*Cross-examination by Mr. Van Der Clock:*

Q. Not for your own? A. No, for the children.

40 Q. You say that it was the loaded gun that kept you from returning to live with him? A. Yes.

*Antonetta Galoppa—Cross.*

Q. That loaded gun belonged to his stepfather?

A. No, it was his gun.

Q. You had gotten rid of it a long time before?

A. I never said that. The gun I saw came from New York by parcel post.

Q. When did that come? A. Years ago.

Q. He had that gun all that time? A. Yes. 10

Q. You lived with him all that time? A. Yes.

Q. And he had the gun for years? A. Yes.

Q. In his pocket? A. Yes.

Q. So that the same circumstances existed in November, 1924 and had existed for years so far as the gun was concerned, isn't that true? A. Yes.

Q. Why didn't you separate ten years before on account of the gun? A. I thought he would change. 20

Q. And you thought so in 1924? A. Yes.

Q. And you say that he continued to pay you this money under the separation agreement, \$30. a week? A. Yes, and then he paid me \$20.

Q. When? A. He cut me off way before my boy got married two years this Christmas.

Q. Don't you know that agreement, under the terms of this contract he could have reduced the \$30. four years ago if he wanted to? (Mr. Van Der Clock reads paragraph of agreement) which is as follows: 30

It is further mutually agreed by the parties hereto that, in the event, that the party of the first part shall fail to make the stipulated weekly payments in accordance with the conditions herein contained, this agreement shall become void and of no effect at the option of the party of the second part. 40

*Antonetta Galoppa—Cross.*

Q. That was in there wasn't it? A. Yes.

Q. Albert pay you any money? A. I don't get a cent from my boy.

Q. Didn't he pay board? A. No.

Q. Didn't his father pay him anything? A. I don't know whether he did. I wouldn't get a cent.

10 Q. You didn't get a cent? A. No.

Q. Why didn't you put him out? A. Because he was my son.

Q. You weren't sore at him for that? A. No.

Q. You were getting \$30. a week? A. Yes.

Q. You weren't put on the street then? A. No.

Q. And you went to work besides? A. I had to.

Q. I didn't ask you that. You went to work?  
A. Yes.

20 Q. Well, you were getting \$30. a week and you went to work didn't you? A. Yes.

Q. Isn't it true that you tried to get a separation from your husband in 1921; three years before you went to Mr. Viviani? A. He beat me up.

Q. I asked you if you tried to get a separation then? A. Yes.

Q. Then came down to my office and said you wanted a separation? A. Yes.

30 Q. Did you say anything that time about a beating? A. Yes.

*By the Court:*

Q. When this husband came to see you after the separation agreement he had a talk with you, did he not? A. No, he came just that one time. He wanted the children.

Q. As to the conditions, didn't he tell you that time he didn't regard them as even worth the piece

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*Antonetta Galoppa—Redirect.*

of paper they were written on or words to that effect? A. No.

*By Mr. Van Der Clock:*

Q. No statement about the separation agreement at all? A. No, he just wanted the children.

Q. You say there was no offer on his part that time to return to live with you? A. Mr. Gilpin first offered that suggestion. 10

Q. Do you recollect the last time you and your husband had sexual relationship? A.

*Redirect-examination by Mr. Ward:*

Q. You remember the last time you had intercourse with your husband? A. I was in the same room but he told me to get away from him because he never wanted to see me again. 20

Q. When was the last time? A. Months before.

Q. How long? A. About four or five months.

Q. Before November? A. Yes.

Q. After that did you ever have intercourse? A. No.

*Recross-examination by Mr. Van Der Clock:*

Q. When Mr. Gilpin came to your house and told you that your husband had sent him, did you tell him about your husband being there a week before and pointing a revolver at you? A. No. 30

Q. Why didn't you tell him? A. Because I didn't care to tell anyone.

Q. Why didn't you tell him he pulled a gun on you? A. Mr. Gilpin knew how my husband treated me.

Q. Did you think he knew about his pulling the gun on you? A. He knew everything. 40

*Antonetta Galoppa—Recross.*

Q. He knew about his pulling the gun? A. He knew everything because he was told by others.

Q. Did he tell you he knew? A. Yes.

Q. That day? A. Yes.

Q. So that he in fact mentioned the gun incident to you? A. Yes.

10 Q. When the court asked you if anything else was said why didn't you tell the court what Mr. Gilpin had told about the gun? A. Because I didn't think of it.

Q. Did Mr. Gilpin say to you "I came to see if you would go back to Jerry and if you are willing I will see that you get back together"? A. He said that he was (interrupted).

Q. Yes or no? A. No

20 Q. Did he say "Well, I am sorry Mrs. Galoppa but I have come as a friend, I don't know the trouble between you and your husband? A. Yes.

Q. So he didn't know the trouble? A. Just what was going on then.

Q. You said he knew everything? A. Yes.

Q. You said he knew everything about your trouble, which is correct? A. He knew everything.

30 Q. But he did say to you that he didn't know anything, didn't know the trouble between you and your husband, he told you that, didn't he? A. (No answer).

Q. Willing to live with your husband now, Mrs. Galoppa? A. If he treated me right.

Mr. Van Der Clock: That is all.

*William L. Bradley—Rebuttal—Direct.*

WILLIAM L. BRADLEY, a witness produced on behalf of the petitioner in rebuttal, being duly sworn on his oath according to law, testified as follows:

*Direct-examination by Mr. Van Der Clock:*

Q. Where do you live? A. 17 W. 88th Street, New York. 10

Q. Do you know Mr. Galoppa? A. Yes.

Q. How many years? A. Seven or eight years, approximately eight years.

Q. And do you know Mrs. Galoppa? A. I have met her, yes.

Q. Were you ever up to their home? A. Yes.

Q. On River Street? A. Yes.

Q. And have you been more or less intimate in a business way and somewhat in a friendly way with Mr. Galoppa? A. Yes. 20

Q. Ever find him to be a drinking man? A. No.

Q. Ever see him drunk? A. No.

Q. Come in contact with him quite often? A. Very often.

Q. And you say that you were in their house? A. Yes.

Q. While they lived on River Street? A. Yes.

Q. What was Mrs. Galoppa's attitude and actions toward Mr. Galoppa when you saw them? A. They weren't very pleasant. 30

Q. Can you describe what her attitude was towards him? A. A. I cannot say that. I imagine she was nagging him, that she nagged him quite a bit.

Q. You could not understand the language? A. I didn't pay any attention to it.

Q. What would he do or say? A. He was so in- 40

*William L. Bradley—Rebuttal—Direct.*

terested in business that we were transacting that there wasn't very many answers.

Q. Who did most of the talking? A. Mrs. Galoppa seemed to be doing most of it.

Q. And was her attitude friendly or not? A. No, it was rather an unfriendly attitude, I took it for granted.

10 Q. Were you ever in his home when he lived in the same house with Mrs. Kirkman? A. Yes.

Q. And were you ever up to the bungalow? A. Yes.

Q. Was Mrs. Kirkman ever introduced to you as his wife? A. No.

Q. How was she introduced to you? A. I was so intimate with her that I called her Lena, she was introduced to me as Lena Stanley.

20 Q. Ever see Mr. Galoppa take a drink? A. He and I have drunk a glass of wine together.

Q. Ever see him intoxicated or under the influence of liquor? A. No.

Mr. Van Der Clock: That is all.

*Cross-examination by Mr. Ward:*

Q. You knew her so well that you called her Lena? A. Yes.

30 Q. And the only reason you knew her so well was through Mr. Galoppa? A. Yes.

Q. Used to go up on parties? A. Yes.

Q. She was Galoppa's companion not yours? A. Certainly, not my companion. We were all the time together.

Q. She was Galoppa's companion, wasn't she? A. Yes.

40 Q. Did you ever come in contact with her except

*William L. Bradley—Rebuttal—Redirect.*

through your friendship with Galoppa? A. What do you mean?

Q. Just exactly what I say, except through your friendship with Galoppa? A. I knew Jerry before I knew Mrs. Stanley.

Q. You never went on parties with Mr. Galoppa and his wife? A. No.

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*Redirect-examination by Mr. Van Der Clock:*

Q. When you say parties was that up the lake? A. Yes.

Q. Did you sleep there? A. Yes, Jerry and I slept in the same room.

*By the Court:*

Q. What was her position in the house? A. I know she was his housekeeper.

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Mr. Van Der Clock: That is all.

Motion made for answer to be amended as to recrimination.

Upon motion of counsel for defendant and upon consent of solicitor for the petitioner answer is amended to read as follows:

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Defendant for answer by way of recrimination charges:

1. That the petitioner and defendant lived together as husband and wife until the end of November, 1924, at which time, following a course of inhuman treatment, petitioner compelled defendant to leave him under the circumstances hereinafter set forth.

2. Defendant shows that her husband, the peti-

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*Amended Answer as to Recrimination Charges.*

10 petitioner, for a long time prior to the end of November, 1924, had lost all his love and affection for her. That during the years they lived together, he committed various assaults and batteries upon her for no reason whatsoever. The following are some, but by no means all, of the acts of cruelty practiced upon the defendant by the petitioner, shortly before the separation.

3. Defendant for years had been a heavy drinker. When he would return home under the influence of liquor, he had an extremely nasty disposition, and would become very abusive to defendant. He would call her vile and abusive names, such as "son of a bitch."

20 4. In the Spring of 1922, petitioner committed an assault and battery upon defendant, in that he punched her in the face, kicked her, and threw her downstairs, and made her get out of the house. On this occasion, he called her vile and abusive names and struck her so hard, that she suffered pain for a long time thereafter.

30 5. In the first part of the month of November, 1924, the petitioner committed an assault and battery upon the defendant, in that he struck her in the face with his fists and knocked her to the floor of her home, and on this occasion he called her vile and abusive names, and threatened to put her out of the house.

6. About the middle of November, 1924, the petitioner committed an assault and battery upon the defendant, in that he struck and punched her in the face, and on her body, inflicting upon her, severe injury and suffering.

40 7. At the end of November, 1924, and just prior to the separation, the petitioner struck and beat the defendant when she refused to press some dir-

*Amended Answer as to Recrimination Charges.*

ty and filthy clothing that he had worn and had just returned in from a party. On this occasion he called her vile and abusive names, and told her that he was through.

8. That for a long time prior to November, 1924 and for a long time prior to the separation, the petitioner carried upon his person, a revolver, and very often threatened the defendant, telling her that he would kill her. 10

9. That for a long time prior to November of 1924, petitioner kept continually telling defendant that he had lost all his love for her; that there was another woman in his life; that he loved her (the other woman); that when his mother died, he would not live with the defendant any longer.

10. That for quite some time prior to November of 1924, and including November, 1924, the defendant, by reason of the acts complained of above, was often in fear of the safety of her life, and because of such existing conditions, was compelled to separate herself from her husband. 20

All of the foregoing, this defendant is ready and willing to maintain and prove, and prays to be hence dismissed with her reasonable costs and charges in this behalf most wrongfully sustained. 30

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It is stipulated that whatever charges of cruelty that have been testified to by any of the witnesses of the defendant that have not been denied by petitioner are categorically denied. 40



*Opinion of Advisory Master.*

As to the recrimination, the charges of cruelty were not sufficiently made out and do not constitute a defence since under the well established rule the facts set up by way of recrimination must amount to a matrimonial offense.

*Cilente v. Cilente*, 146 Atl. 469.

The petitioner and defendant lived together for many years until their separation in November of 1924. This separation was by mutual consent and under an agreement of separation whereby petitioner agreed to contribute to defendant's support. The children of the parties took up their residence with the defendant. The petitioner's testimony is to the effect that in December, 1924, he went to the house where defendant was living and asked her to come back to live with him, if not for his sake, for the sake of the children. She refused to return to him, ordered him out, called him vile names and threatened to call the police to put him out. According to his testimony he did not return because of the reception he received from her. A week or two later he sent a friend as his emissary to again ask her to return and she again flatly refused to do so. The older son of the parties overheard the conversation at the time of petitioner's visit and fully corroborates his father. The son continued to live with the mother for several years and until the year 1929. Up to that time he testified he heard his mother frequently say that she would never live with petitioner.

It is contended on behalf of the defendant that these facts failed to make out the continued, wilful and obstinate desertion for two years required by the statute. I am of the opinion however that

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*Opinion of Advisory Master.*

the requirements of the statute have been met. The desertion took place in November of 1924, when defendant refused to return to live with petitioner. It was established that she never did live with him thereafter and that her attitude of mind in refusing to live with him persisted until  
10 at least as late as 1929. It is contended for the defendant that petitioner was required to renew his efforts to bring her back to him by continued requests to her to return. I do not so understand the law to be under the circumstances as shown here.

The Court of Errors and Appeals in *Marsh v. Marsh*, 89 N. J. Eq. 419 lays down the rule that when it is clear that any effort by the husband to induce the wife to return will be unavailing to  
20 terminate the desertion there is no further duty on the husband to make further advances to her. The court says:

“The husband is bound to do those things which might reasonably be expected to remove the trouble and induce the wife to return. This court in the case of *Hall v. Hall*, 60 N. J. Eq. 470, 46 Atl. 866, formulated the rule on the subject and said: ‘But the law does not impose this duty upon the husband in every case arbitrarily and without regard to the facts and circumstances by which it is surrounded. The husband is bound to make such advances and concessions only where there is reasonable ground to suppose that such action on his part will terminate the wife’s desertion. Where it is manifest from the circumstances under which the desertion took place, or from her temper or disposition, or from any other fact in the case, that honest effort on the husband’s part to terminate the separation would be unavailing, or, if successful in bringing the deser-  
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*Opinion of Advisory Master.*

tion to an end, would be so only temporarily, the duty of making it does not exist' (citing *Trall v. Trall*, 32 N. J. Eq. 231; *Lammertz v. Lammertz*, 59 N. J. Eq. 646; 45 Atl. 271.)

It would serve no useful purpose to state the evidence in detail, showing the wife's attitude toward her husband. It is sufficient, by way of illustration, to cite a passage from one of the wife's letters, known as the "Hound of Hell" letter, Exhibit P-3, which reveals the attitude of her mind and the promptings of her heart, toward her husband. It demonstrates to our satisfaction, the utter futulity of any attempted reconciliation by him. In view of this letter, which is in accord with much of the testimony in the case, on this point under discussion, any attempted reconciliation on the part of the husband, it seems to us, would have been a meaningless formality. In this case, no such duty existed on the part of the husband. In cases of this kind, the law exacts no such formality."

In the present case the husband was called vile names, ordered out of the place and he was threatened with arrest by the wife. This indicates a fixed and unalterable determination on the wife's part not to return to him. This same attitude was shown to his friend who went to see her on the husband's behalf soon after; and by the testimony of the son it was shown that many times during more than four years after the desertion she reiterated her determination not to return. In my opinion therefore, the husband was not required to make any further advances than he did and I find that her desertion was wilful, continued and obstinate within the statute.

A decree will be advised granting to petitioner a divorce on the ground of desertion.

**Exhibit P-1.****SEPARATION AGREEMENT.**

This Indenture, made this 8th day of November, Nineteen Hundred and Twenty-four; between Jerry Galoppa, of the City of Paterson, County of Passaic and State of New Jersey, party of the first part, and Antoinette Galoppa, his wife, party of the second part; whereas, divers disputes and unhappy differences have arisen between the party of the first part and his said wife, for which reason they have consented and agreed, and hereby do consent and agree to live separate and apart from each other during their natural life; therefore, this indenture witnesseth, that the said party of the first part in consideration of the premises, and in pursuance thereof, does hereby covenant, promise and agree that it shall and may be lawful for her, his said wife, at all times hereafter, to live separate and apart from him, that he shall and will allow and permit her to reside and be in such place and places, and in such family and families, and with such relatives, friends and other persons, and to carry on such trade, business or occupation as she may from time to time choose or think fit providing however, that same be lawful and honest; and that he shall not sue, molest, disturb or trouble any other person whomsoever, for receiving, entertaining or harboring her; and the said party of the second part, his said wife, does hereby covenant, promise and agree with her said husband not to sue, molest, disturb or trouble any other person whomsoever, for receiving, entertaining or harboring him; and the party of the first part further covenants and agrees that his said wife shall have the custody of their three children, to wit: Albert, Edward and Eleanor, and the party of the first part shall have the right to visit the said three chil-

*Exhibit P-1.*

dren, at the residence of his said wife, once a week, during reasonable hours of the day; nor shall or will at any time hereafter, the party of the first part, claim or demand any of her money, jewels, plate, clothing, household goods, furniture, which she now has in her power, custody or possession, or which she shall or may at any time hereafter by purchase or otherwise acquire, and she shall and may enjoy and absolutely dispose of the same as if she were a feme sole and unmarried; and the said party of the first part shall and will well and truly pay, or cause to be paid for and towards the better support and maintenance of his said wife and said three children, the sum of Thirty Dollars each and every week from the date hereof in advance, to his said wife or her legal representative; in the event that, her said son Albert, shall become employed and contributes towards the support of his mother and himself, and said sum which he shall contribute will equal the sum of Forty Dollars per month, then in that event, the party of the first part shall be obligated to pay to his said wife the sum of Twenty Dollars per week in advance, which the party of the second part does hereby agree to take in full satisfaction for her support and maintenance, and for the support and maintenance of her children, and alimony whatever.

It is expressly agreed and understood that the party of the first part must pay to his said wife the sum of Thirty Dollars each week in advance for a period of one year from the date hereof, anything to the contrary contained herein notwithstanding.

It is further mutually agreed by the parties hereto that, in the event, that the party of the first part

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*Exhibit P-1.*

shall fail to make the stipulated weekly payments in accordance with the conditions herein contained, this agreement shall become void and of no effect at the option of the party of the second part.

In Witness Whereof, the parties hereto have set their hands and seals the day and year first above written.

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JERRY GALOPPA (L.S.)  
ANTOINETTE GALOPPA, (L.S.)

Signed, sealed and delivered  
in the presence of  
S. O. Viviano.

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## Decree Nisi.

## IN CHANCERY OF NEW JERSEY.

Between

JERRY GALOPPA,  
Petitioner,

and

ANTONETTA GALOPPA,  
Defendant.On Petition  
for Divorce. 10  
Decree Nisi.

This cause coming on to be heard in the presence of Jacob Van Der Clock, of counsel with the petitioner, and Ward & McGinnis, of counsel with the defendant, on petition, answer, and oral proofs 20 taken in open court; whereupon, and upon duly considering the said pleadings and proofs, and hearing and considering the arguments of counsel; from all of which it now appear satisfactorily to the Chancellor, that the petitioner and defendant were lawfully joined in the bonds of matrimony on or about the sixteenth day of July, A. D. nineteen hundred and six, and that the defendant has been guilty of willful, continued and obstinate desertion of the petitioner for the term of two years, as alleged in the said petition, and that at the time the cause of action for divorce for the said desertion arose the petitioner and defendant were bona fide residents of this State, and that the said petitioner and defendant have continued to be down to the time of the commencement of this action, and that the petitioner and defendant have been, for the two years next preceding the commencement of this action, bona fide residents of this State, and 40

*Decree Nisi.*

it further appearing that jurisdiction herein has been acquired by personal service of process upon the defendant within this State: It is thereupon, on this 10th day of February, A. D. nineteen hundred and thirty-one, by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey,

10 ORDERED, ADJUDGED AND DECREED, and the said Chancellor, by virtue of the power and authority of this Court, and of the acts of the Legislature in such case made and provided, doth hereby order, adjudge and decree, that the said petitioner Jerry Galoppa, and the said defendant Antonetta Galoppa, be divorced from the bond of matrimony for the cause aforesaid, and the said parties, and each of them, be freed and discharged from the obligations thereof, unless sufficient cause be shown to the  
20 Court why this decree should not be made absolute, within three months from the date hereof.

E. R. WALKER,  
C.

Respectfully Advised,  
EDWARD THOMAS MOORE,  
A. M.

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## New Jersey Court of Errors and Appeals

Between

JERRY GALOPPA,  
Petitioner-Respondent,

and

ANTONETTA GALOPPA,  
Defendant-Appellant.

On  
Petition, &c.

### BRIEF OF APPELLANT.

This is an appeal from a decree nisi of divorce granted to the petitioner, Jerry Galoppa, on the 10th day of February, 1931, by the Court of Chancery, dissolving the bonds of matrimony between the parties in the above cause, on the ground of desertion.

#### Summary of Facts.

The petitioner in this case, Jerry Galoppa was married to the defendant, Antonetta Galoppa on July 16th, 1906, by an Alderman of the Borough of Brooklyn, and State of New York, (p. 12, l. 12). He was a plumber by trade, and immediately after his marriage, went to live with his mother-in-law at Ashley Heights, Hawthorne, (p. 12, l. 18). They next moved to East 15th Street, in the City of Paterson, Passaic County, after which they moved to 593 River Street, Paterson, Passaic County, at which place the separation hereinafter to be mentioned took place.

The marriage was by no means a happy one, (p.

16, l. 40 and all of p. 17, and p. 18, l. 18). Quarrels became so frequent, that the parties finally went to an attorney's office in the City of Paterson, where they signed the separation agreement introduced into evidence, and marked (P-1, (p. 122)). In accordance with that agreement they separated and the petitioner told his wife that she could take everything except the piano, because it wasn't paid for, (S. of C. p. 27, ll. 30-38).

There are three children living as a result of the marriage, one twenty-one years, the other eighteen years, and the youngest fourteen years.

There are three points that we desire to argue before the Court, and they are:

1. Under the testimony adduced by the petitioner, a wilful and continued desertion was proved, but not an obstinate one.
2. The decree is contrary to the clear weight of the evidence.
3. That the petitioner was himself guilty of a matrimonial offense under the Statute, and therefore barred of relief.

### POINT I.

**Under the testimony adduced by the Petitioner, a wilful and continued desertion was proved, but not an obstinate one.**

Under this point we will concede, for the purpose of arguing the same, that there was a desertion, if it was one, but that it was not obstinate, in the sense that it resisted such efforts on the part of the husband as he ought to have made under the circumstances of the case, to bring it to an end. (Baxter vs. Baxter, 101 N. J. Eq. p. 236).

As was recited in the summary above, the parties were married in July of 1906, and their cohabitation under the bonds of matrimony continued to the month of November, 1924, when they separated, not by the wilful act of the defendant, but under the testimony of both petitioner and defendant, by an agreement of separation, whereby they both mutually agreed to live under separate roofs, and not to molest, disturb or trouble the other. (See separation agreement, pp. 122-123 and 124, S. of C.). Galoppa gave as his reasoning for signing the separation agreement, that his life was an unhappy one; that there was lots of trouble (S. of C. p. 16, l. 35); that the trouble extended over a period of many years before the year of the separation; that they had frequent quarrels and fights (S. of C. top of p. 17), and that in order to end the whole thing and to rest his mind he did it (S. of C. p. 23, l. 23). Having this background in mind, and the fact that he often told people that he would never live with his wife after his mother died (S. of C. p. 20, l. 12) and that he

didn't give a darn for his wife after his mother died (S. of C. p. 20, l. 16), and the only reason he remained with his wife was because his mother was living (S. of C. p. 19, l. 22), we then have a situation where Galoppa separates with his wife, whereupon she goes to live with her mother at Hawthorne and he remains in the River Street apartment, having bought new furniture, and living there with Mrs. Kirkham (S. of C. p. 19, l. 17; bottom of p. 21 and all of p. 24). The petitioner then says that about four or five weeks after this, he went to the defendant and made an overture to her for her return to him. On page 28, ll. 8-14 of the State of Case, the Court will see that Galoppa knew where the defendant had moved to, and for five or six weeks never did a thing; never even went near the house; never telephoned her; never sent anyone or made any request. After approximately six weeks expiring he then tells the Court that he went to her, and in his own words all he said to her was "I told her that 'Won't she please come back to Riverside, if not for my sake, for the sake of the children'." That was all he said, for as he says, the petitioner chased him out. He never went back and never asked her again, (S. of C. p. 15, l. 25). On page 28 of the State of Case, he repeated (l. 24) that all he said was "I told her to come back, if not for my sake, for the sake of the children." This overture was made by the petitioner, if it was an overture, on the back stoop of the premises in which the defendant lived at the time, (S. of C. p. 28, l. 30).

His son, Albert, who testified said that he was in the alleyway at the time, and said he heard such overture, in almost precisely the same language as his father gave on direct examination. This is the only evidence pertaining to this over-

ture that was adduced in behalf of the petitioner.

The next thing that took place was when Mr. Robert Gilpen went to Mrs. Galoppa's home in Hawthorne, and said to her "I said to her that as a friend I had come to ask her to come back, because I would rather speak to both of them, and she said she could not go back; would not go back, and I said very little more to the woman." That was all that took place, and Mr. Gilpen then left.

That is the entire petitioner's case with reference to the point of obstinacy. There is no other evidence produced on the part of any person that will go further than has been excerpted above. The petitioner, on his direct testimony (S. of C. p. 15, l. 25), testified:

Q. Did you ever go back and ask her again?  
A. No, sir.

Gilpen never went back to see Mrs. Galoppa. In fact, no one ever went to see Mrs. Galoppa, except on the two occasions mentioned above.

Therefore, having this in mind as the entire petitioner's case, with reference to the point of obstinacy, we now go on to argue the lack of evidence to support the decree.

Galoppa, under his direct testimony, testified that they separated by mutual consent, after having signed the separation agreement, (S. of C. p. 12, l. 32; p. 23, l. 23). He testified further on his direct examination (S. of C. bottom of p. 16, and top of p. 17) that his married life was one of many quarrels, and much trouble. In fact (S. of C. p. 18) he answered "Continuously." Further on, on his direct case, he gave the big reason why he left his wife, which was not because of the arguments, and which will indicate to this Court, the fact that he never wanted his wife to come back. On page 20 of the state of case, he was asked whether he

ever said that he would leave his wife the moment his mother died, to which he answered:

A. "Yes. I said I would never live with her after my mother died. I always obeyed my mother."

Q. "When your mother was dead, you didn't think it was necessary to obey her any more, did you?"

A. "I didn't give a darn. I was over twenty-one."

(L. 27).

Q. "You remember telling Mr. Schroeder that as soon as your mother died you would leave Mrs. Galoppa?"

A. "Perhaps I did."

(P.22).

Q. "Now, after your mother died, you were still determined that you wouldn't live with your wife, that's so?"

A. "Yes."

Now let us go to page 19, l. 20 of the State of Case, and find when his mother died:

Q. "When did your mother die?"

A. "May, 1924."

Q. "May, 1924?"

A. "Yes."

Q. "Your mother had done much to keep you and your wife together?"

A. "Very much."

Q. "And that was the reason why you remained with your wife?"

A. "Yes, sir."

Q. "Because of your mother?"

A. "Yes."

For the next reason, let us go to page 103, l. 11 of the State of Case, where the defendant testified as follows:

A. "He (the petitioner) treated me very

mean. He told me right to my face that he had another woman in his life, and he said just as soon as his mother died, he would get rid of me."

Q. "How many times did he tell you that?"

A. "Many times."

Now let us see if he carried out this threat. In May of 1924, his mother dies. In November of 1924, he is successful in having his wife sign the separation agreement, which expressly sets forth that she shall not bother him. Within one month after that he has already bought a new house of furniture for the woman that was in his life, Mrs. Kirkham, for on page 24 of the State of Case, after bickering back and forth with counsel on cross-examination, the petitioner wasn't sure whether he bought the furniture in the last part of 1924, or the beginning of 1925, but finally at page 24, l. 30 of the State of Case, there came:

Q. "Don't you know it was before the first of the year 1925 that you bought the furniture from Rosenberg?"

A. "Well, if I did, I didn't pay for them."

On page 19, on his cross-examination, the petitioner testified:

Q. "When did you go to live with Mrs. Kirkham?"

A. "The first of the year 1925."

The big question that presents itself to the Court now is, did Galoppa make a bona fide sincere overture, if at all, to his wife for his return to her, after they mutually agreed to separate? Did Galoppa want her back? First, we have that the only reason he lived with her was because of his mother. Secondly, after his mother died, he actually did leave the defendant; that within a month after

leaving the defendant, and in all probability before he made the overture, he bought a complete new house of furniture for the woman that was in his life, Mrs. Kirkham. Next, on the first of the year 1925, still within two months after he left his wife, he was living with this other woman, Mrs. Kirkham. Of course, Galoppa gave his excuse, that Mrs. Kirkham was his housekeeper (S. of C. top of p. 22), but on page 24 of the State of Case, he testified that he bought all of the furniture, and moved into Mrs. Kirkham's home. On the bottom of page 30, he incurred her hospital bill when she was in St. Joseph's Hospital (S. of C. top of p. 31). He testified he gave Mrs. Kirkham a diamond ring, and at the bottom of page 32 and top of p. 33 of the State of Case, he testified that she got two rings from him, and in answer to a question by the Court, he said one was a simple stone, and one was a dinner ring, (S. of C. p. 31, l. 24). He bought the very bed in which Mrs. Kirkham slept, but finally the truth was extracted from the petitioner on page 30, l. 15. He was asked:

Q. You were in love with her?

A. No.

Q. Don't you remember you came up to my office in reference to a bill that her son had against you, and said that the light had gone out of your life when she died?

(No answer).

Q. Didn't you say that?

A. Well, she had taken darn good care of me, more than my wife did in 18 years.

Q. Well then, you say you didn't love her?

A. I didn't love her. I liked her.

On page 31, l. 20 of the State of Case, he testified that he slept with Mrs. Kirkham's son in the same bed, and with reference to this last excerpt,

we submit to the Court, that it is very seldom found where a man sleeps with his housekeeper's son. The situation that existed in the petitioner's house at the time he was living with Mrs. Kirkham, certainly was not one of the relationship of housekeeper and master.

We desire the Court to bear in mind that we are not trying to prove adultery by the testimony quoted above, but simply to bring the circumstances and environment that the petitioner was in, and of which the defendant had complete knowledge. In other words, it is to show after the petitioner had this woman, his mother having died, happy as he was with Mrs. Kirkham, would he go to his wife, with whom, as he said for eighteen years, he quarreled, and ask her to come back? That is our reason for quoting the above testimony.

Holding then, all of the above in mind, would Galoppa shortly before Christmas of 1924, and in all probability, after he had purchased Mrs. Kirkham furniture, and was moving it into her new house, go to the home of the defendant, and there make such efforts as he ought to have made, to bring the separation to an end, under the circumstances of his case? Would this man, after he testified that he had a continuous miserable married life, and who finally succeeded in obtaining a separation agreement, and as he said in his own words, finally rested his own mind (S. of C. p. 23, l. 23) and then finding himself, as he would believe, free and to be unmolested by his wife, his mother having died, having the woman of his life with him in the same home that he was living in, want his wife back? Would he make such overtures or such efforts as this Court has demanded of a husband to bring about the termination of an alleged desertion, under the circumstances testified to by the petitioner?

It may not be amiss at this point to cite the case of *Baxter vs. Baxter*, 101 N. J. Eq. 236, which is practically on all fours with the case at bar. They separated by mutual agreement in the *Baxter* case supra, and his overtures to her were through letters and telephones. There is one part of the opinion that we desire to excerpt here, which applies squarely to the petitioner's case, (p. 239) :

“The rule in cases of this kind has been settled in a number of our decisions, a leading authority being *Hall v. Hall*, 60 N. J. Eq., 469, where it was said:

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

In the excerpt above, it has as part of it, a desertion on the part of the wife. We are in a stronger position in the case at bar, because there was no desertion on her part at that time. It was a mutual agreement to separate on the part of both. Then the question propounds itself, did Galoppa when he went to the defendant and asked her one question “evidence that willingness by making such advance or concessions to his wife as might be reasonably expected to induce her to return to him?” Why the petitioner in this case did not even make one concession to her; did not even say to her that he would not treat her as he had theretofore. In fact, no advances or no concessions at all.

The next case we desire to cite is that of *Gold-*

berg vs. Goldberg, 101 N. J. Eq. p. 284 (Court of Errors & Appeals). The syllabus in that case reads:

“In a suit for divorce by the husband against the wife on the ground of desertion he must show, even though the original desertion was not justified on the part of the wife, that he sought by proper steps to bring about her return. The burden of proving this effort on his part is upon the petitioner, and doubt as to his own efforts is resolved against him.”

This Goldberg case is not on all fours, but practically so. We say this for the reason that the defendant was alleged to be insane for a certain period of time, which is not so in the present case, but the cruelty part and the desertion part contributed to by the petitioning husband, and his overtures, are on the same style as in the present case.

We are not strenuously briefing the attempted overture on the part of Mr. Gilpen, who testified for the petitioner, for the reason that Mr. Gilpen only said the following, (p. 41):

“I said to her that as a friend I had come to ask her to come back because I'd rather speak to both of them, and she said she could not go back, would not go back and I said very little more to the woman. She said she would not go back.”

But on cross-examination, Mr. Gilpin testified (S. of C. p. 42):

Q. And you remember that she said “No, that she would not come back the way things are,” that was right?

A. Yes.

Q. And then she gave you several reasons

why she could not go back the way things were, is that right?

A. Yes.

Q. And you told her you were sorry?

A. Yes, that's right.

Q. And that you had only come as a friend and didn't know about the trouble between her and her husband?

A. Yes.

Q. You told her that?

A. Yes.

Q. She gave you several reasons that time?

A. Yes.

Our contention is that Mr. Gilpin was telling the truth, and that Mrs. Galoppa, the defendant, did give him the reasons and cause for the separation, and the reason why she wouldn't go back under the circumstances existing at that time, holding in mind also, the following testimony on the part of the defendant, (S. of C. p. 106, l. 18) :

Q. Mr. Gilpin came to see you?

A. Yes.

Q. Well, you tell the court what he said to you?

A. He said my husband sent him down to ask me if I would come back to him and I said if he really wanted me he would ask me himself.

Q. Did you tell Mr. Gilpin that you would refuse to live with Mr. Galoppa?

A. No.

Q. Who was present?

A. My both children were there.

Q. You had some further talk with Mr. Gilpin, I believe.

A. No much.

Q. Then Mr. Gilpin left?

A. Yes.

And on page 107 of the state of case:

Q. After you finished telling him the rea-

sons how did you end it up, did you tell him a lot of reasons why you wouldn't go back or did you give him a lot of reasons why you would go back?

A. I told him the reasons I didn't go back was because he treated me mean, that if he wanted me back he would come himself.

In reference to the last visit made by Gilpin, in behalf of the petitioner, we cite the case of Segal vs. Segal, 104 N. J. Eq. p. 457 (Court of Errors & Appeals, wherein practically all of the same facts were before this Court, under the same circumstances. The petitioner there, sent his brother to see his wife to see if he could have her come back. The brother went to the home of the wife, and talked to her. She was at the top of the stairs in her residence, and the husband's brother in the lower hall. The brother said that the husband wanted her to come back, and live with him in Atlantic City, to which she responded, still remaining where she was: "Joe can go to hell."

In the case at bar, Mrs. Galoppa made no such answer, but as any reasonably hurt woman would say, when asked a similar question: "Why didn't my husband come to me himself, and ask me to come back?" Wouldn't that be a natural answer on the part of a woman injured as Mrs. Galoppa was, and living under the circumstances existing at that time, knowing that her husband was living with another woman. But yet, in the Segal case, the Court said:

"This was perhaps not a very refined expression, but her husband's conduct in leaving her and in never making a proper effort to persuade her to resume the marital relations and in failing to provide her with money for her support and maintenance, then sending his brother to her with a message

instead of going himself, we think justified her in refusing to return to her husband upon such an invitation or request."

The Court, in the Segal case reversed Chancery under circumstances similar to those in the case at bar.

In another case in this Court, a decree of the Court of Chancery was reversed under facts similar to those in the Segal case, and the case at bar, and the contention of the wife was there upheld. *Pica vs. Pica*, 106 N. J. Eq. p. 233 (Court of Errors and Appeals).

In concluding this point, we contend that the finding of the Court of Chancery, that the husband had made such efforts as he should have under the circumstances, and that he no longer had to make any other overture because of the reception he received at the time, is against the clear weight of the evidence, especially after reading the testimony of Maria Summa, on page 100 of the State of Case, who spoke to the petitioner before he went to the defendant's home to make his own and only overture. Her home is but a block and a half away from where the defendant lived at the time, and at the bottom of page 100 she says:

Q. What did he say to you then?

A. He came to see me before going to Mohawk Avenue and he said he was going to blow her brains out.

Q. Whose brains did he say he was going to blow out?

A. His wife's Antonette.

This woman made a very good impression when on the stand. She was 82 years of age, (S. of C. p. 101, l. 1) and she was telling the Court what the petitioner said to her, before he went up there.

The Court will also find in the testimony of an

entirely disinterested witness, Mrs. Lucy Bregleman, on page 64 and top of p. 65, absolute corroboration for the story of the defendant and her witnesses.

One big element in the chain of evidence in a desertion case of this type, was overlooked by the lower Court. It was brought to the lower Court's attention that the desertion, if any, in this cause, did not begin until the overture made on the part of the petitioner. It is our contention in this case, based upon the cases hereinafter to be cited, that where there is a mutual separation between the parties, in order for a husband to turn such separation into a desertion, he must make a sincere request to resume the matrimonial cohabitation. The moment he is refused in that request, then a desertion begins. The desertion then beginning, it would be the duty on the part of the husband to make sincere overtures, to get his wife to return to him.

In the case of *Hague vs. Hague*, 85 N. J. Eq. p. 536, this Court held, syllabus 1 and 2:

1. To turn separation by consent into a desertion, the complaining party, whether husband or wife, must put an end to the agreement by requesting a resumption of matrimonial cohabitation.

2. Where the separation is shown or may be inferred to have originated with the wife's consent, it will become desertion from the time the complaining party makes sincere overtures to terminate it.

The only difference in the *Hague* case is that the wife was the petitioner, instead of the husband, as in the case at bar.

Another case in this Court, which propounded the same rule, is that of *Jones vs. Read-Jones*, 84 N. J. Eq. p. 479, wherein the Court held:

“Where husband and wife have been living apart by mutual consent, there must be satisfactory proof that the consent thereto was withdrawn and the marital duty was demanded, to turn such separate living into willful desertion.”

The case of *Currier vs. Currier*, 68 N. J. Eq. p. 7 (aff. by this Court per curiam 68 N. J. Eq. p. 797), propounded the same rule to the following effect:

“Where a husband and wife had been living apart by mutual consent, there must be satisfactory proof that the consent thereto was withdrawn and the marital duty was demanded, to turn such separate living into willful desertion.”

Prior cases, based upon the same ruling are those of:

*McAllister vs. McAllister*, 71 N. J. Eq. p. 13;

*Hankinson vs. Hankinson*, 33 N. J. Eq. p. 66;

*McGean vs. McGean*, 63 N. J. Eq. p. 285 (Court of Errors & Appeals).

Applying this law to the situation, then we do not have a period of desertion beginning until Galoppa, if he did, made his overture shortly before Christmas of 1924. The desertion then having begun, it became the duty of this petitioning husband to make sincere bona fide overtures or efforts to induce his wife to return, or to resume marital cohabitation. There is evidence to the effect that he never went back to his wife after the period of desertion began, but only had his friend, Mr. Gilpin go there, and make the short request hereinabove excerpted. We submit to this Court, that the petitioning husband in this case has not

complied with the rules laid down by this Court, and that having failed to do so, he is not entitled to a decree upon the evidence adduced by him.

The next point we desire to bring to the attention of this Court, under Point I is that if there is any doubt in this case, it should be resolved against the petitioner, for our Court of Errors & Appeals has held that the burden of proving his efforts to resume martial cohabitation is on the part of the petitioner, and any doubt as to such evidence on his part, may be resolved against him.

Goldberg vs. Goldberg, 101 N. J. Eq. p. 284, p. 286;

Wood vs. Wood, 63 N. J. Eq. p. 688.

In conclusion, the defendant contends that the decree of the Court of Chancery should be reversed for the reason that the desertion, if it was one, was not one of obstinacy under the Statute. Holst vs. Holst, 101 N. J. Eq. p. 682, more particularly p. 686, 687, and 691.

**POINT II.****The Finding of the Court of Chancery upon which the Decree Nisi for divorce is based, is contrary to the clear weight of the evidence.**

Under this point, the defendant desires to repeat all that was said under Point I and in addition thereto, to merely cite the testimony of the different witnesses, to show to this Court, that the finding upon which the decree below was based, was so contrary to the clear weight of the evidence as to warrant a reversal. On the petitioner's case, it was conceded that the desertion was by mutual consent of the parties.

The one time that the petitioner went there to ask his wife to come back, is corroborated somewhat by his son, Albert, but upon his cross-examination on page 56, l. 18, the Court will find that he testified he just happened to be there at the time his father came, but from the cross-examination at the bottom of page 61, p. 62 and top of p. 63, the Court will find that the boy was somewhat doubtful whether he was there after all. He tried to do his best to stick to his testimony, even though he was working all of the day that his father came there. On page 62, l. 17, he testified that he was positive it was in the afternoon that his father came there.

As against this, we have the testimony of a disinterested witness, Lucy Bregleman, (S. of C. p. 64 and 65) who testified on p. 64, l. 30 that Galoppa positively came there in the morning, and on page 65, l. 12, that the boy, Albert was not even there at the time. We must bear in mind that the testimony given by Mrs. Bregleman is one of a dis-

interested person, who has no interest in the case whatsoever.

The testimony of Mr. Schroeder at p. 65 of the State of Case, has to do with the conduct of Galoppa, with Mrs. Kirkham and his wife.

On page 71 of the State of Case, Margaret Strazullo, a sister of the defendant began her testimony. At the bottom of page 74, the Court will find that the petitioner attempted to persuade this witness to sign an affidavit at his attorney's office, where he said that: "He wouldn't live with his wife. He had no love for her and never did." (S. of C. p. 75, l. 3). He testified, on cross-examination (S. of C. p. 77, l. 8):

"I told him (Galoppa) I heard that he came in the morning. My sister and the children were in the house. He came with a revolver here and said to her to come back because he didn't want to live that way any more. She (Mrs. Galoppa) said to him that if you come back like a man, alright."

The defendant gives her version of the leaving by mutual consent, and on page 105, l. 12:

Q. Do you remember his coming up to see you in Hawthorne about four or five or six weeks after the separation?

A. Yes. He came one Saturday morning about a quarter to twelve, he put the money on the table, and said he wanted his children. I told him he could not have the children. He then quarreled and took out a gun and threatened to kill me. My little girl went out for help.

Q. Who came in?

A. Mrs. Bregleman.

Q. Then he went away?

A. Yes.

Q. Albert, where was he?

A. Working.

And at l. 32:

Q. And where was Albert working at that time?

A. George A. Meyer.

Q. You are sure that was in the morning?

A. Yes.

Q. Did this man say to you at the time, "won't you please come back to live with me, if not for my sake for the sake of the children?"

A. No.

Q. Nothing of the kind?

A. No.

And on page 106 of the State of Case:

Q. Did you refuse to come back to live with him?

A. No.

Q. Did he make any suggestion at all?

A. No, just wanted his children.

In her version of what took place, she is corroborated by Maria Summa, a grandmother. Her testimony is very short, on pages 100 and 101. We desire to bring to the attention of the Court at this point, that this particular witness is 82 years of age, and her story had to be told to the Court through an interpreter, and should carry the greatest amount of weight. She took the stand in behalf of her granddaughter to tell what little she knew of their life, and her testimony was unequivocal, unchanged, and no one even attempted to cross-examine her seriously. The defendant is also corroborated by the petitioner's daughter, Eleanor, and by their son, Edward, and of course, by Mrs. Bregleman, the disinterested witness on page 64.

Therefore, the defendant's position under this point is that the great weight of the evidence is with her in her contention that the facts adduced

at the trial, bear out her contention, and that for this reason, the decree of the Court of Chancery should be reversed.

Pica vs. Pica, 106 N. J. Eq. p. 233;  
Segal vs. Segal, 104 N. J. Eq. p. 457.

### POINT III.

**The petitioner is barred from relief in the Court of Chancery, having under the Statute himself committed a matrimonial offense, to wit: extreme cruelty.**

The answer in the present case was amended in accordance with an agreement between counsel, long before the trial date was set. The amended answer and consent is set up at pp. 115, 116 and 117, and sets forth various acts of cruelty which will hereinafter be argued. The defendant realizes in this brief that she has the burden of proof, in proving this matrimonial offense of extreme cruelty, under the cases.

Celenti vs. Celenti, 104 N. J. Eq. p. 605;  
Young vs. Young, 94 N. J. Eq. p. 155;  
Letts vs. Letts, 79 N. J. Eq. p. 630.

The defendant testified to various acts of cruelty, beginning with the time they moved to East 15th St., on page 103, l. 30 of the State of Case. She testified:

Q. "What did he do to you then?"

A. "He struck me in the face, kicked me and threw me down. I ran out and the people next door took me in."

Q. "Were your children present?"

A. "Yes, the four were."

Concerning this incident, we have corroboration even from the mouth of the petitioner, where, on cross-examination he testified (p. 17, l. 16) :

- Q. In 1921 you came to blows, did you?  
 A. Yes, sir.  
 Q. And that was because you say you had separated?  
 A. No. We didn't talk about any separation then.  
 Q. You said that was because she left you?  
 A. No. We had this here fight before she left me.  
 Q. You had a fight with her before she left you, is that right?  
 A. Yes.  
 Q. And on that occasion you came to blows, didn't you?  
 A. Well—(interrupted).  
 Q. Yes or no?  
 A. Yes.  
 Q. Where was it that that happened?  
 A. At 21 E. 15th Street.

We have corroboration from Edward Galoppa, one of the children of the parties to this cause, (S. of C. p. 78, l. 18) :

- Q. Well, tell us what he did?  
 A. It was one night he came home and started to fight about my grandmother, who was his mother. She happened to have a quarrel but he blamed it on my mother who was sick. He started to fight with my mother and put her out of the house.  
 Q. Did he beat her?  
 A. Yes.  
 Q. How did he beat her?  
 A. He struck her with his hands.  
 Q. When was this?  
 A. About eight years ago.  
 Q. Where were you living at the time?  
 A. E. 15th Street.  
 Q. How did he get your mother out of the house?

A. He just kicked her out.

Q. How long was your mother gone?

A. A few hours that night. When we wanted to go out he held the door. He threw a knife on the table and said, "Anyone of you that wants to go on out of the door will get the same dose of medicine."

Mrs. Galoppa testified (p. 103) that he struck her and beat her about five or six times. There is corroboration from Edward Galoppa (p. 79, l. 18). The defendant in her defense, relates to the court how he called her vile and abusive names, as son-of-a-bitch, bastard, bum, and good-for-nothing and is corroborated by her son, Edward (p. 80, l. 16).

Corroboration comes from the mouth of Margaret Strazzullo, to the incident of 1921 on East 15th St., when as she says (p. 72, l. 3):

Q. Do you remember any occasion in 1921 when your sister left her husband?

A. Yes, she left him because he beat her up.

Q. Did you see any marks of that?

A. Yes, she had black and blue marks.

Q. Where?

A. On her legs.

Corroboration also comes from the mouth of this witness concerning the vile epithets thrown by the petitioner at his wife (S. of C. p. 73, l. 12).

In November of 1924, and shortly before the separation, the petitioner, according to the defendant (S. of C. p. 104, l. 14) came home early Sunday morning, and wanted to go right out. His suit was filthy, and he wanted the defendant to press his suit, but because of the fact that it was so dirty, she said it wouldn't be right to press it; that it would have to be sent to the cleaner. They quarreled and the defendant struck her in the face and beat her (S. of C. p. 104, l. 24) and told her he

wanted to get rid of her. The following Saturday, the whole marital life culminated in the signing of the separation agreement, which is in evidence, P-1. He told her she could take everything except the piano, because that wasn't paid for. In this incident, she is corroborated by their daughter, Eleanor, at the bottom of p. 90 and top of p. 91, where she gives the same story, and tells the Court how her father beat her mother. Corroboration comes further from the mouth of their son, Edward, on page 79, l. 20 to 40. The petitioner himself, at the bottom of p. 29, testifies:

Q. "You get excited very quickly?"

A. "Very quickly, and it blows over quickly."

We have excerpted only the above incidents to show what the defendant evidently went through in her married life. She was compelled to do away with an unborn child, because of the acts of petitioner, and we think all these acts of cruelty could be well culminated by excerpting a few questions propounded by the Court, (S. of C. p. 108, l. 10):

Q. Before the separation agreement was signed was it safe for you to live with him under the circumstances?

A. No.

Q. In what way was it unsafe?

A. He always had a loaded gun in his pocket. I was afraid to go to sleep.

Q. Were your nerves affected by this?

A. They were affected when I lost my boy six years ago.

Q. Would you have stayed with him?

A. If he had treated me right.

Q. Under the former treatment that you were then receiving would you be willing to remain?

A. No, I could not stand it any longer so I had to break.

Q. In view of the circumstances was it all right for you to stay with him, in view of the former treatment?

A. It wasn't perfectly safe to live with him the ways things were.

Q. You thought there was danger?

A. Yes.

Yet, after all this treatment, we desire to bring the Court's attention to the last question on page 112 of the State of Case. Counsel for the petitioner took a long chance to ask her (l. 32):

"Willing to live with your husband *now*, Mrs. Galoppa?

to which he received the answer:

"If he treated me right."

When it came time for the petitioner to resume the stand to deny the acts of cruelty testified to, he merely has his counsel stipulate that the acts of cruelty testified to are categorically denied. No substantiation of his defense whatever.

We contend therefore, under the circumstances of this case, the defendant has made out a case of extreme cruelty, and has sustained the burden of proof, imposed upon her by the law, and had she been asking for affirmative relief would have been entitled to a decree for divorce. This being so, and the petitioner having committed a matrimonial offense under the Statute, he is under the cases, barred from relief.

Young vs. Young, 94 N. J. Eq. p. 155;

Rapp vs. Rapp, 67 N. J. Eq. p. 236;

Rogers vs. Rogers, 81 N. J. Eq. p. 479;

Letts vs. Letts, 79 N. J. Eq. p. 630.

Respectfully submitted,

Ward Mc Ginnis

Solicitors of Defendant.

Peter Mc Ginnis  
of Counsel.

Oct. term 1931

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## New Jersey Court of Errors and Appeals

Between JERRY GALOPPA, Petitioner-Respondent, and ANTONETTA GALOPPA, Defendant-Appellant.	}	On Petition, &c.
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### BRIEF OF RESPONDENT.

#### Facts.

The appellant (wife) was the defendant in a divorce action instituted by respondent (husband) on the ground of her desertion. The appellant appeals from the decree nisi on three grounds:

- (1) That the desertion was not obstinate;
- (2) That the decree is contrary to the weight of the evidence; and
- (3) That respondent is guilty of a marital offense.

The parties were married in 1906 and lived together for eighteen years during which time quarrels between them were continuous, frequent and abusive, (entirely the fault of the wife); and their married life, one of discord. (S. C. pp. 16 and 17). The proof is that the wife was anxious to rid herself

of her husband but was anxious to obtain the benefits of maintenance and for that reason she requested her husband to enter into a separation agreement and pay her \$30.00 per week for the first year and various amounts thereafter as is set forth in the separation agreement (S. C. p. 122). Testimony uncontradicted disclosed that it was the wife who was desirous of being separated from her husband and didn't wish to live with him. The evidence discloses that after continual arguments and nagging on the part of the wife, the husband reluctantly consented to a separation to please her and rest his mind (S. C. p. 23). Thereafter the respondent was called out of town for two days on a business matter and upon his return to his home found that all of his furniture had been removed and his home stripped of all of its furnishings, his wife gone, and nothing left in his home, except a cot, and a piano. (S. C. p. 13). The effect of the desertion by the wife upon the husband was that he was downhearted (S. C. p. 40) and a few weeks later he went to the new home of his wife and pleaded with her to come back home, if not for his own sake, to do it at least for the sake of the children (S. C. p. 14). She refused to return and instead threatened him with arrest and used vile and abusive language towards him (S. C. p. 14). She also stated that she would *never* live with him as long as she lived (S. C. p. 14). In his next effort to have her return to him, the respondent requested a Mr. Gilpin, their mutual friend to intercede for him with his wife to have her return to him (S. C. p. 15). Mr. Gilpin went to the wife (S. C. p. 106) also (S. C. p. 15) and was advised by her that she would not go back to live with her husband, giving as her only reason that the respondent had been mean. (S. C. p. 107). The older

son of the parties testified that he overheard the conversation at the time his father went to his mother and asked her to return to him. This son also testified that he lived with his mother for several years until 1929 and that during that time, he frequently heard his mother say she would never live with the respondent. (S. C. pp. 45 and 46).

It is contended by the appellant that in spite of this, the desertion on her part was not obstinate. The case was based on a simple petition for desertion and a simple answer denying the desertion, but during the course of the proceedings the appellant filed an amended answer by way of recrimination charging respondent with various acts of cruelty seeking thereby to bar respondent from the relief prayed for. The Advisory Master carefully considered all of the evidence and after argument and deliberation wrote his opinion (S. C. pp. 118, 119, 120 and 121) and advised a decree for respondent.

### POINT ONE.

#### **The desertion by defendant-appellant was obstinate.**

At page 3 of appellant's brief in bold type under point one, appellant makes point one as follows:

“Under the testimony adduced by the Petitioner, a wilful and continued desertion was proved, but not an obstinate one.”

Therefore respondent is only called upon to argue whether or not appellant *obstinately* deserted respondent. There was ample testimony of her ob-

stinancy, as follows: He requested her to return to him and she obstinately refused.

“Q. What did you say to her? A. I told her that ‘won’t she please come back to Riverside, if not for my sake, for the sake of the children,’ and she began to holler and she cursed and swore at me, which was one of her habits, and she said, ‘If I didn’t get out quick she would call for the police.’”

Respondent then visited a mutual friend and told him that appellant refused to return to him. Mr. Gilpin (the mutual friend) went to appellant’s home. He, (S. C. p. 15) Mr. Gilpin, told her that as a friend he had come to ask her to come back and she said she would not go back (S. C. p. 41). Albert Galoppa, the oldest son of this marriage, who resided with his mother until 1929 also testified as to the obstinancy of appellant, in that, he testified that after appellant deserted respondent he was home with his mother about five weeks after the desertion, when, the respondent came to talk to the appellant and requested her to return to him for the sake of the children and that he heard his mother tell respondent to get away otherwise she would send for the police (S. C. p. 46). At this point in the testimony the court took up the examination as follows:

“By the Court:

Q. What was the first thing he said when he was there? A. ‘I came here to ask you if you would come back to live at the house again, if not for my sake for the sake of the children.’

Q. Did your mother do anything at the time or say anything to your father? A. Well, yes.

Q. Besides speaking about the police? A. No.

Q. Hear her do or say anything? A. Yes, she did, she hollered for police.

Q. What was the nature of the language used by your mother? A. Pretty bad.

Q. Well, tell us to the best of your recollection. A. Well, I don't know, get out of here you son of a bitch, bastard.

Q. Did you ever hear these same expressions used by your mother to your father before the articles of separation? A. Yes, often.

Q. Now that was in December, 1924 was it not? A. Yes.

Q. And you lived with your mother up and until 1929? A. Yes.

Q. Did you ever hear your mother ever express an opinion about your father between this period of time? A. She often said she would *never* live with him.

Q. Did she tell him that more than once? A. Many times." (S. C. pgs. 46 and 47).

Appellant admitted that Mr. Gilpin (the mutual friend) came to her at the request of respondent, as follows:

"Q. Mr. Gilpin came to see you? A. Yes.

Q. Well, you tell the court what he said to you? A. He said my husband sent him down to ask me if I would come back to him and I said if he really wanted me he would ask me himself." (S. C. p. 106).

At this point may we point out to your Honors that appellant is unworthy of belief because of her version of what occurred on the date when respondent claims he pleaded with her to return to him, her story being that he came and asked for the children and quarreled and took out a gun and threatened to kill her (S. C. p. 105). Her sister, Margaret Strazzullo, who testified in her behalf directly contradicted her statement. She heard

that respondent said to her (appellant) to come back "because he didn't want to live that way anymore." (S. C. p. 77).

It must be borne in mind that obstinacy in a desertion case is provable like any other fact by testimony, surrounding circumstances and other similar evidence, particularly, by the testimony of witnesses in order to properly determine obstinacy, the witnesses who testified must be credible and their testimony must be credible.

The Advisory Master in his opinion says, as follows:

"Careful consideration has been given to the testimony and I am satisfied that the petitioner has established the material allegations in his petition. His testimony was corroborated by witnesses to whose testimony *I attached a high degree of credence*. On the other hand the testimony adduced by the defendant was not convincing and *I was not much impressed by her testimony*. There was *considerable contradiction* on material points *among the witnesses for the defendant*."

The Advisory Master observed the witnesses on the stand and it is respectfully submitted that he was in a better position than your Honors to judge whether appellant's witnesses were worthy of belief. The Advisory Master further in his opinion states that he finds as follows:

"The petitioner's testimony is to the effect that in December, 1924, he went to the house where defendant was living and asked her to come back to live with him, if not for his sake, for the sake of the children. She refused to return to him, ordered him out, called him vile names and threatened to call the police to put him out. According to his tes-

timony he did not return because of the reception he received from her. A week or two later he sent a friend as his emissary to again ask her to return and she again flatly refused to do so. The older son of the parties overheard the conversation at the time of petitioner's visit and fully corroborates his father. The son continued to live with the mother for several years and until the year 1929. Up to that time he testified he heard his mother frequently say that she would never live with petitioner."

"It is contended on behalf of the defendant that these facts failed to make out the continued, wilful and obstinate desertion for two years required by the statute. I am of the opinion however that the requirements of the statute have been met. The desertion took place in November of 1924 when defendant refused to return to live with petitioner. It was established that she never did live with him thereafter and that her attitude of mind in refusing to live with him persisted until at least as late as 1929."

The law is well settled in this State that a husband need seek his wife's return only when there are reasonable chances of success; *Fry vs. Fry*, 100 Atl. 839. What chance of success did the respondent in this case have in view of the fact that he had gone to his wife and pleaded with her to return to him, if not for his sake, then for the sake of their children, and she had repulsed him with vile and indecent language (S. C. p. 14) and threatened to call the police? In *Klein vs. Klein*, reported in 91 N. J. Eq. 393, it was held that a deserted husband was excused from making further efforts to induce his wife to return after having been repulsed with profanity. Can it be said that the respondent did not sufficiently seek the return of his wife, when he went there personally and re-

quested her to return to him and was repulsed by her with vile and indecent language and threats to call the police, and when the respondent further sent a mutual friend, a Mr. Gilpin, to ask her to return to him? What else can it be said was the duty of the husband in this case? What other additional efforts should he, or could he, have made? Was it reasonable to expect him to continue to seek out his wife, to plead with her to return to him, in view of the fact that his plea had been met with profanity and threats of arrest? Wasn't it sufficient that he made a further effort to have her return to him by sending a mutual friend to intervene in his behalf?

**It is respectfully submitted that the desertion on her part was obstinate and that therefore since the other two elements requisite in a desertion case, namely, wilful and continued desertion, is conceded by the appellant, the decree nisi should be affirmed.**

#### POINT TWO.

**The finding of the Court of Chancery, upon which the decree nisi for divorce is based, is sustained by the evidence.**

In respect to this point it must be borne in mind that there is ample testimony on behalf of the respondent concerning the wilful, continued and obstinate desertion by appellant and in view of the fact that the Advisory Master in the Court below had an opportunity to observe the witnesses on the stand when they testified and was therefore in a better position to judge whether these witnesses

were worthy of belief. It must also be borne in mind that the case should not be decided by the quantity of the testimony but rather by the quality.

**It is respectfully submitted that a reading of the State of the Case will disclose the decree nisi is more than sufficiently sustained by the evidence and should therefore be affirmed.**

### POINT THREE.

**The respondent is not guilty of any matrimonial offense and is therefore not barred from the relief prayed for.**

The appellant as an after thought filed an amended answer (S. C. p. 115). Why was it that the defendant first filed a simple answer denying the desertion and did not set up at that time any allegation of cruelty? She certainly must have disclosed the facts of her married life to her attorneys when she consulted them upon being served with a certified copy of the divorce petition charging her with having deserted respondent. It stands to reason that her attorneys were either not convinced concerning her story of cruelty or else were extremely doubtful of their chances of success of charging respondent with cruelty, otherwise, I am sure the original answer would have contained the allegations of cruelty that were later set forth in the amended answer. And aside from this the Advisory Master in his opinion states:

“As to the recrimination the charges of cruelty were not sufficiently made out and did not constitute a defense since under the well established rule the facts set up by way

of recrimination must amount to a matrimonial offense."

Cilente vs. Cilente, 146 Atl. 469.

Again I wish to stress the point urged previously that the Advisory Master had an opportunity to observe the witnesses on the stand when they testified before him, and he was not favorably impressed with their testimony because in his opinion, he says:

"On the other hand, the testimony adduced by the defendant was not convincing and I was not much impressed by her testimony. There was considerable contradiction on material points among the witnesses for the defendant." (S. C. p. 118).

**It is respectfully submitted that the finding of the Advisory Master that the charges of cruelty by way of recrimination were not sustained, was proper, and therefore the decree nisi should be affirmed.**

**For the foregoing reasons it is respectfully submitted that the decree nisi entered by the Court of Chancery should be in all things affirmed.**

JACOB VAN DER CLOCK,  
Solicitor for Petitioner-Respondent.

SAMUEL ROSENFELD,  
Of Counsel.

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