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AMENDED NOTICE OF APPEAL OF
DEFENDANT.

In Chancery of New Jersey

Between

ERNEST WERPUPP,
Petitioner-Respondent,

and

LULU WERPUPP,
Defendant-Appellant.

*On Petition
for Divorce.*

*Amended
Notice of
Appeal.*

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The defendant hereby appeals from so much of the decree of dismissal made in this court, in the above entitled cause on the 19th day of May, 1930, as orders that the defendant's counterclaim for maintenance and support be dismissed to the Court of Errors and Appeals in the last resort in all causes, which decree was made by the Chancellor of the State of New Jersey on the advice of Edward M. Colie, Advisory Master.

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WILLIAM F. NIES,
Solicitor of Defendant.

WILLIAM F. NIES,
Of Counsel with Defendant.

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

WILLIAM F. NIES,
Of Counsel with Defendant.

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PETITION OF APPEAL OF DEFENDANT.

New Jersey Court of Errors and Appeals

10	<p><i>Between</i></p> <p style="text-align: center;">ERNEST WERPUPP, <i>Petitioner-Respondent,</i></p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">LULU WERPUPP, <i>Defendant-Appellant.</i></p>	<p><i>On Petition for Divorce and on Counter- Claim for Main- tenance.</i></p> <p><i>On Appeal from Chancery.</i></p> <p><i>Petition of Appeal.</i></p>
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To the Honorable, the Court of Errors and Appeals, in the last resort in all causes:

The petition of Lulu Werpupp, the appellant, shows that:

1. Your petitioner finds herself aggrieved by decree final made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, in that said decree recites and adjudges that your petitioner has not sustained the allegations of her counter-claim and is not entitled to the relief prayed; and decreed that petitioner's said counter-claim be dismissed.

2. Your petitioner appeals from the said decree dismissing her said counter-claim on the ground that the same is erroneous and that the

Petition of Appeal of Defendant.

Chancellor should have found and adjudged that the several allegations of petitioner's counter-claim had been proved and that the respondent Ernest Werpupp had been guilty of wilfully abandoning said petitioner and refused to support her, and should have ordered, adjudged and decreed that the said respondent provide such suitable support and support to petitioner to be paid and provided for by him and made out of his property for the support of petitioner, for such length of time as the nature of the case and under the circumstances would be suitable and proper. 10

Your petitioner therefore prays that the said decree dismissing her counter-claim may be reversed, rescinded and for nothing holden, and that petitioner may have such further relief as shall be just. 20

WILLIAM F. NIES,
Solicitor of Appellant.

WILLIAM F. NIES,
Counsel with Appellant.

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NOTICE OF APPEAL OF PETITIONER.
IN CHANCERY OF NEW JERSEY.

10	<i>Between</i> ERNEST WERPUPP, <i>Petitioner-Appellant,</i> <i>and</i> LULU WERPUPP, <i>Defendant-Respondent.</i>	} <i>On Petition for Divorce. Notice of Appeal.</i>
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20 The petitioner hereby appeals, from so much of the decree made in this court in the above matter on the 19th day of May, 1930, as orders that the petitioner's petition for divorce be dismissed, to the Court of Errors and Appeals, the last resort in all causes.

KALISCH & KALISCH,
Solicitors for and of Counsel
with Petitioner.

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

30 SAMUEL KALISCH, JR.,
Of Counsel with Defendant.

**AMENDED NOTICE OF APPEAL OF
PETITIONER.**

IN CHANCERY OF NEW JERSEY.

Between

ERNEST WERPUPP,
Petitioner-Respondent,

and

LULU WERPUPP,
Defendant-Appellant.

On Petition, 10
etc.

*Amended
Notice of
Appeal.*

The petitioner hereby appeals from so much
of the decree of dismissal made in this court,
in the above-entitled cause on the 19th day of 20
May, 1930, as orders that the petitioner's peti-
tion for divorce be dismissed, to the Court of
Errors and Appeals in the last causes, which de-
cree was made by the Chancellor of the State
of New Jersey on the advice of Edward M. Colie,
Advisory Master.

KALISCH & KALISCH,
Solicitors for and of Counsel with Petitioner.

I conceive there is good cause of appeal in 30
the above stated cause.

SAMUEL KALISCH, JR.,
Of Counsel with Petitioner.

Consent is hereby given to the filing of the
within amended notice of appeal as of time.

WILLIAM F. NIES,
Solicitors of Defendant.

PETITION OF APPEAL OF PETITIONER.
NEW JERSEY COURT OF ERRORS AND
APPEALS.

10	<i>Between</i> <p style="text-align: center;">ERNEST WERPUPP, <i>Petitioner-Appellant,</i></p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">LULU WERPUPP, <i>Defendant-Respondent.</i></p>	<i>On Petition for Divorce.</i> <i>On Appeal from Chancery.</i> <i>Petition of Appeal.</i>
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To the Honorable, the Court of Errors and Appeals, in the last resort in all causes:

20 The petition of appellant shows that:

1. Your petitioner finds himself aggrieved by a decree final made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, on the 19th day of May, 1930, in that said decree recites and adjudges that your petitioner has not sustained the allegations of his petition, and is not entitled to the relief prayed; and decreed that petitioner's said petition be dismissed.

30 2. Your petitioner appeals from the said decree and from every part thereof on the ground that the same is erroneous, and that the Chancellor should have found and adjudged that the several allegations of petitioner's petition had been proved, and that the respondent, Lulu Werpupp, had been guilty of wilful, continued and obstinate desertion as alleged in the petitioner's petition, and should have ordered, adjudged and

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Petition of Appeal of Petitioner.

decreed that petitioner be divorced from the bonds of matrimony with the respondent for the cause aforesaid, and that petitioner should have the other relief prayed for in and by his said petition.

Your petitioner therefore prays that said decree may be reversed, rescinded and for nothing holden, and that he may have such further relief as shall be just. 10

KALISCH & KALISCH,
Solicitors for and of Counsel with Appellant.

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PETITION FOR DIVORCE.

IN CHANCERY OF NEW JERSEY.

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

10 The petition of Ernest Werpupp of the City
of East Orange, County of Essex and State of
New Jersey, respectfully shows:

1. Your petitioner was lawfully joined in the
bonds of matrimony to his present wife, Lulu
Werpupp, on the 27th day of October, 1904, by
a minister of the Gospel, at St. Charles, in the
State of Missouri.

20 2. Defendant deserted petitioner in the month
of December, 1920; ever since which time, and
for more than two years last past, said defend-
ant has wilfully, continuedly and obstinately de-
serted your petitioner.

3. Petitioner has been a bona fide resident
of the State of New Jersey continuedly ever
since the said commencement of the desertion,
residing in the City of East Orange, County of
Essex and State of New Jersey.

30 4. 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 your petitioner may have such further
relief as may be just.

And your petitioner will ever pray, &c.

KALISCH & KALISCH,
Solicitors of Petitioner.

Petition for Divorce.

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

ERNEST WERPUPP, being duly sworn according to law, upon his oath deposes and says, that he is the petitioner in the foregoing petition; and that his said petition is not made by any collusion between him and the defendant, but in truth and good faith, for the causes set forth in the petition. 10

ERNEST WERPUPP.

Sworn and subscribed to before me
 this 2nd day of December, 1929.

LILLIAN A. DELTAN,
 Notary Public of N. J.

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ANSWER AND COUNTER-CLAIM.
 IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i></p> <p style="text-align: center;">ERNEST WERPUPP, <i>Petitioner,</i></p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">LULU WERPUPP, <i>Defendant.</i></p>	<p style="font-size: 4em;">}</p> <p><i>On Petition for Divorce. Answer.</i></p>
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The answer of Lulu Werpupp, defendant to the petition of Ernest Werpupp, petitioner:

- 20 1. This defendant admits that petitioner and defendant were married as in said petition is alleged.
2. She denies that she deserted petitioner in the month of December, 1920, and denies that ever since that time and for more than two years last preceding the commencement of the action she was willfully, continually and obstinately deserted the petitioner.
- 30 3. Defendant denies that petitioner has been a bona fide resident of the State of New Jersey continuously ever since the commencement of said alleged desertion, and that he resided in the City of East Orange, Essex County, New Jersey.

Defendant prays that petitioner's petition may be dismissed with costs.

Answer and Counter-claim.

This defendant, by way of counter-claim, exhibited against the petitioner by her bill of complaint, respectfully shows that:

1. She resides at #2303A Salisbury street, St. Louis, Missouri.

2. She was lawfully married to her husband, the petitioner, the defendant in this counter-claim, as alleged in the petition filed herein. 10

3. She and the petitioner, the defendant herein, lived together from the date of their marriage until the month of October, 1921, at which time the said petitioner, the defendant herein, separated himself from her, ever since which time he has abandoned and refused to support her, excepting he contributed certain small sums of money up to and including the month of May, 1923. 20

4. She gave to the petitioner, the defendant herein, no reason or justification for his abandonment and refusal to support her.

5. On the sixth day of December, 1929, the said petitioner, the defendant herein, instituted a suit against her for divorce on the ground of desertion; that she is not guilty of the desertion charged against her and has always been ready and willing to live with the said defendant herein, as his wife. 30

6. No children were born of said marriage.

7. She has no means of support except from her own exertions.

8. She charges that the petitioner, the defendant herein, is the owner of a beauty parlor and hair dressing salon; that he is conducting said business under the name of Ernest Hair 40

Answer and Counter-claim.

Dressing Salon, at No. 598 Central avenue, East Orange, New Jersey, from which the said petitioner, the defendant herein, receives large returns, and his net income from said business is at least One Hundred (\$100) Dollars per week. The defendant owns other moneys, stocks and securities, and is also one of the residuary legatees of the estate of his late uncle, Henry Werpupp, and will be entitled to large sums of money from said estate.

9. She says that the said petitioner, the defendant herein, is abundantly able to maintain and support her.

She therefore prays that the said Ernest Werpupp, the petitioner, the defendant herein, may answer this counter-claim; that he may be ordered and decreed to provide such suitable support and maintenance to be paid and provided for by him, or made out of his property, for the support of complainant, for such length of time as the nature of the case and under the circumstances if suitable and proper.

That the defendant to this counter-claim may be compelled to give reasonable security for such support and maintenance and to pay the same from time to time under the compulsory orders of this court, as provided by statute; and that he may be compelled to pay to her a proper amount for counsel fees, and a proper amount for her disbursements and necessary expenses she may incur to appear in this jurisdiction to defend petitioner's suit, and to maintain her counter-claim, and that she may receive such further and other relief as the circumstances of her case may require.

Answer and Counter-claim.

And your complainant will ever pray, etc.

WILLIAM F. NIES,
Solicitor of Defendant and
Counter Claimant.

STATE OF MISSOURI, }
CITY OF ST. LOUIS, }^{ss.}

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LULU WERPUPP, being duly sworn on her oath according to law, deposes and says:

1. I am the defendant in this cause of action, and am the counter-claimant in the foregoing counter-claim. My said counter-claim is not made by any collusion between me and the said defendant therein, but in truth and good faith, for the causes set forth in the said counter-claim. 20

LULU WERPUPP.

Subscribed and sworn to before
me this 31st day of January,
1930.

PLEASANT V. WILSON,
Notary Public.

SEAL

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**REPLICATION TO ANSWER AND
COUNTER-CLAIM.**

IN CHANCERY OF NEW JERSEY.

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Between

ERNEST WERPUPP,

*Petitioner,**and*

LULU WERPUPP,

Defendant.

*Replication
to Answer
and
Counter-
claim.*

Petitioner joins issue in the answer of the defendant.

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As to the counter-claim contained in said answer petitioner says that:

1. He admits paragraphs 1 and 2 of the counter-claim.

2. He denies paragraphs 3, 4, 5, 8 and 9 of the counter-claim.

30

3. He has not any knowledge or information sufficient to form a belief as to the contents of paragraph 7 of the counter-claim and leaves the defendant to her proof thereof.

KALISCH & KALISCH,
Solicitors for and of Counsel
with Petitioner.

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ORDER OF REFERENCE.

IN CHANCERY OF NEW JERSEY.

<i>Between</i>	}		
ERNEST WERPUPP,		<i>Petitioner,</i>	<i>On Petition for Divorce.</i> 10
<i>and</i>			
LULU WERPUPP,		<i>Defendant.</i>	<i>Order of Reference.</i>

This matter being opened to the Court by Kalisch & Kalisch, solicitors for and of counsel with the petitioner, and William F. Nies, solicitor for and of counsel with the defendant, consenting hereto; 20

It is thereupon, on this day of February, nineteen hundred and thirty, ORDERED, that the above-stated cause be referred to the Honorable Edward M. Colie, one of the Advisory Masters of this court, to hear the same for the Chancellor and report to him what order or decree should be made therein.

E. R. WALKER,
C. 30

We hereby consent to the foregoing order.

KALISCH & KALISCH,
Solicitors for Petitioner.

WILLIAM F. NIES,
Solicitor for Defendant.

DESIGNATION.

IN CHANCERY OF NEW JERSEY.

	<hr/>		
	<i>Between</i>		
10	ERNEST WERPUPP,	<i>Petitioner,</i>	} <i>Designation.</i>
	<i>and</i>		
	LULU WERPUPP,	<i>Defendant.</i>	
	<hr/>		

Application being made to fix a time and place for the hearing of the above-stated cause, it is on this 9th day of April, 1930, ordered that Wednesday, the 30th day of April, 1930, at the hour of ten o'clock in the forenoon, at the Chambers of Honorable Edward M. Colie, be and the same is hereby designated as the time and place for the hearing of the said cause.

EDWARD M. COLIE,
Advisory Master.

I consent to making of the above designation.

30 WILLIAM F. NIES,
Solicitor of Defendant.

DECREE OF DISMISSAL.

IN CHANCERY OF NEW JERSEY.

<p><i>Between</i></p> <p style="padding-left: 40px;">ERNEST WERPUPP,</p> <p style="text-align: center; padding-left: 80px;"><i>and</i></p> <p style="padding-left: 40px;">LULU WERPUPP,</p>	<p style="font-size: 3em; line-height: 1;">}</p>	<p><i>On Petition for Divorce and on Counter- claim for Maintenance. Decree of Dismissal.</i></p>	<p>10</p>
<p style="padding-left: 100px;"><i>Petitioner,</i></p> <p style="padding-left: 100px;"><i>Defendant.</i></p>			

This cause coming on to be heard in the presence of Kalisch & Kalisch, of counsel with the petitioner, and William F. Nies, of counsel with the defendant, on the petition, answer and counter-claim for maintenance and support, and oral proofs taken in open court, whereupon, and upon duly considering the said pleadings and proofs, and hearing and considering the arguments of counsel, and it appearing to the Court that the petitioner has not sustained the truth of the allegations of the petition and is not entitled to the relief therein prayed;

And it further appearing to the Court that the defendant has not sustained the truth of the allegations of the counter-claim and is not entitled to the relief therein prayed;

It is, thereupon, on this 19th day of May, nineteen hundred and thirty, ORDERED, ADJUDGED and DECREED that the petitioner's petition be and the same is hereby dismissed;

And it is further ORDERED, ADJUDGED and DECREED that the defendant's counter-claim be and the same is hereby dismissed;

Decree of Dismissal.

And it is further ORDERED, ADJUDGED and DECREED that the petitioner pay to the defendant or her solicitor, the costs of this suit to be taxed, and also a counsel fee of Fifty (\$50.00) Dollars and that she have execution therefor according to the practice of this court.

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E. R. WALKER,

C.

Respectfully advised,

EDWARD M. COLIE,
Advisory Master.

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Ernest Werpupp, for Petitioner, direct.

TESTIMONY.

IN CHANCERY OF NEW JERSEY.

Between

ERNEST WERPUPP,

Petitioner,

and

LULU WERPUPP,

Defendant.

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Newark, N. J., May 3, 1930.

Before Hon. Edward M. Colie, Advisory
Master in Chancery.

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Appearances:

Kalisch & Kalisch, by Samuel Kalisch, Esq.,
attorneys for petitioner.

William F. Nies, Esq., attorney for defendant.

ERNEST WERPUPP, the petitioner, called as a
witness, and being first duly sworn, testified
as follows:

Direct examination by Mr. Kalisch.

30

Q Where do you reside? A 22 Nassau
Place, East Orange, New Jersey.

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

Q Where did you live before? A 110 Park-
side avenue.

Q How long have you been living in New
Jersey? A Since 1914.

Q Where have you lived here? A At 22
Nassau Place one year; 110 Parkside avenue one

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Ernest Werpupp, for Petitioner, direct.

year; two years at 18th street and Speedway avenue, Newark; from 1921 to 1925, early in the summer I lived at the Stag Hotel at 44 Bank street. From 1914, when we came from St. Louis, to 1921 we lived at 9th street.

10 Q Where—East Orange or Newark? A Newark.

Q When did you marry the defendant? A The 27th of October, 1904.

Q Where? A St. Louis, Missouri.

Q Have you got your marriage certificate? A Yes.

Q Let me see it.

Mr. Kalisch: I offer it for identification.

20 The Master: By consent.

(Received and marked P. 1 for identification.)

Q At the time you married the defendant was she a widow? A Yes.

Q She had children? A Four.

Q Where they boys or girls? A Boys.

Q Were they grown up? A They were from five to sixteen years old.

30 Q After your marriage to the defendant where did you go to live? A St. Louis.

Q What is your business? A I had a barber shop.

Q How long did you live there? A Close to eleven years.

Q During that time what did your family consist of? A My wife and four children.

Q Who took care of the four children? A Mrs. Werpupp took care of them.

40 Q Did you have any children of your own? A No, sir.

Ernest Werpupp, for Petitioner, direct.

- Q By this marriage? A No, sir.
- Q The four children lived at this home with you and the defendant, A Yes.
- Q You maintained the house? A Yes.
- Q How long did that continue? A Until 1914.
- Q Then what happened? A We moved East to Newark. 10
- Q New Jersey? A Yes.
- Q With the four children? A With the smallest boy—the youngest boy.
- Q How old was he? A He was at that time close to fifteen.
- Q What was his name? A Glenn.
- Q What became of the other children? A They stayed in St. Louis.
- Q Where did you go to live in Newark? A Ninth street. 20
- Q What kind of a place did you have there? A A five-room flat.
- Q Nicely furnished? A Yes; the same as we had in St. Louis.
- Q Your family consisted of your wife and this boy and yourself? A Yes.
- Q What did you do in Newark? A I had a barber shop on South Orange avenue.
- Q What did you earn a week there clear? A Not very much; about \$35 a week. 30
- Q What rent did you pay for the house? A \$20.
- Q How did you get along in Newark in the beginning—you and the defendant? A All right; only she didn't care for Newark very much; she was homesick for St. Louis.
- Q How long did this continue until there was some difficulty with your wife about living with you in Newark? A Two months. 40

Ernest Werpupp, for Petitioner, direct.

Q Then trouble arose? A Yes.

Q What was the trouble? A She said that I had promised my sister that I would go back to my niece's wedding. She said, "I am going back to the wedding." I said, "I don't see how we can afford that." That was in September. I
10 think it was in March that she went to St. Louis to the wedding.

Q What year? A 1915. 1914, September, we came here.

Q How long did she stay in St. Louis on that occasion? A Probably four weeks.

Q Did she come back then? A Yes, sir. Before she left she said, "I am going to the wedding and I don't think I will be back." Before she went she said, "I don't think I will be back.
20 You had better sell your shop."

Q What did you say to that? A I said, "I have come here and we are going to stay here."

Q What did you say about the shop, if anything? A She said, "You had better sell your shop." I said, "I have come here to stay and you had better come back."

Q She went to St. Louis? A Yes.

Q How long did she stay there? A Probably four weeks.

Q Did she return? A Yes.

Q At your house on Ninth street? A Yes, sir.

Q What was the next trouble you had? A There was no more trouble. She got used to being here. Her mother would visit us.

Q From where? A From St. Louis.

Q Anybody else from St. Louis would visit you? A Yes, sir.

Q Who? A Her sister, Mrs. Hecht.

Q Who else? A Mr. Hecht; and her oldest
40 brother, Harry Pollock.

Ernest Werpupp, for Petitioner, direct.

Mr. Nies: That is her son.

The Witness: Yes.

Q How old was he at that time? A He must have been about twenty-seven at that time. Her son Charlie was here at one time.

Q How did you get along after that? A Fairly well, except that she was always homesick for St. Louis. She said, "I want to go back to St. Louis to my children and my mother." 10

Q What did you say? A "I have come to stay here. I make my living here and I am going to stay here. I am not going back to St. Louis. I have done my share of supporting you in St. Louis."

Mr. Nies: Get the date.

20

Q When was this—these talks about going back to St. Louis? A From the time when we were here until the time she left me.

Q What did it end up in? A It ended up that way. The last summer when her mother was here, in 1921—

Q Do you know what month it was? A Her mother left about March. And after that I couldn't stand it any more, because she said, "My mother is getting old and I want to spend my last few years with her. I will not stay here. I am going back with my mother and with my children in St. Louis." 30

Q What happened? Go ahead, answer. A The summer went on. I got company from Pittsburgh—Mrs. Irmen, but she was here that summer and she was asking her constantly—Mrs. Irmen was asking—

Mr. Nies: I object.

40

Ernest Werpupp, for Petitioner, direct.

The Master: Were you present, and was your wife present?

Q Were you there when she said it? A I didn't hear when she said it.

10 The Master: Strike it out.

Q Go ahead and tell us what you heard or what your wife said to you. A In August or September it got so bad—

Mr. Nies: What year was that?

The Witness: August or September, 1921. It got so bad she wouldn't let me sleep at nights. She said, "When will you go to St. Louis?" to me. "Why don't you tell
20 the landlord we are going to leave?"

Q What did you say? A "I will not go to St. Louis. I am making my living here. I support you and I take care of you so well I don't see why you want to go to St. Louis. I married you and I didn't marry her."

Q Did this keep up often? A Daily.

30 The Master: Until when?

The Witness: That happened in September.

The Master: When did it end?

The Witness: The 1st of October when we moved.

Q What year? A 1921.

Q What happened in October, 1921? A She would not give me any rest day or night. It got
40 so far she got me by this rope and jumped on

Ernest Werpupp, for Petitioner, direct.

me and said, "When are you going to St. Louis with me?" She went to the father and said, "If I kill him no church in the country will convict me."

Mr. Nies: I object to that, because there is no cruelty charge. 10

Q Go ahead. A I wanted to get peace, and to please her I went to Pittsburgh with her.

Q Was she satisfied to go to Pittsburgh with you? A Yes.

Q Why did you go to Pittsburgh with her? A She said if we go to Pittsburgh that she had arranged with my brother-in-law, M. L. Hecht in Chicago, to sell goods for him in Pittsburgh. I consented to go to Pittsburgh with her. 20

Q What were you going to do in Pittsburgh? A She said, "If we go to Pittsburgh we are closer to St. Louis; if you can't make out in Pittsburgh we will go to St. Louis." I said, "I will try Pittsburgh but I will never go to St. Louis."

Q What did you do with your furniture? A I put my furniture in storage with Job DeCamp.

Q Did you go to Pittsburgh with your wife? A Yes. 30

Q When you got there what did you do? A We stayed in Pittsburgh together for three days and she went to St. Louis. 30

Q Why did she go to St. Louis? A She was taking in a convention of the D. A. R.—to a convention.

Mr. Nies: Did she say where this convention was?

The Witness: No; it was in Indianapolis, I think. 40

Ernest Werpupp, for Petitioner, direct.

Q Where? A She went to a convention.

Mr. Nies: Do you know where?

The Witness: I don't know exactly the place.

10 The Master: Where did you understand from her talk?

The Witness: Indianapolis.

Q Did you understand it was at Indianapolis?

A Yes.

Q Where did you go to live in Pittsburgh?

A With my cousin, Mrs. Irmes, 4118 Grisella street.

20 Q What did your wife say to you about this convention, wherever it was? A She said she was going to take in a convention and after that would go visiting to St. Louis with her mother, children and friends.

Q What did she say about you? A I agreed to that.

Q What did she say about you—what you should do? A That I should try to do business in Pittsburgh.

30 Q What were you trying to do? A Sell window fixtures for the Hecht Fixture Company in Chicago.

Q What were you earning there? A Very little, not enough to justify my staying there and keeping it up.

Q How long did you work for those people? A Four weeks.

Q Why didn't you continue to work for them? A Business was not profitable, and I couldn't do business.

40 Q During those four weeks did your wife return to you in Pittsburgh? A No, sir.

Ernest Werpupp, for Petitioner, direct.

Q What did you do at the end of four weeks?

A At the end of four weeks I came back to Newark.

Q Did you let your wife know in any way what you were doing before you came back? A Yes, sir. After two weeks were up I could see business was not what I expected and that I could not make a living out of it, and I wrote her I would try it a few weeks longer. I tried it two more weeks and I found out I was not cut out for a salesman of that kind, and I couldn't do business. I wrote her I was going back to Newark and that she should keep on visiting in St. Louis until I established myself in Newark again. 10

Q When you left Newark to go to Pittsburgh did you give up your barber shop? A I didn't have one any more. I was working for my uncle at the time. 20

The Master: You worked for your uncle in Newark and gave up your barber shop because it was no good?

The Witness: Yes. My uncle was the representative of the Kentucky Distilling Company. He was getting papers to permit—

Mr. Nies: I object to that. 30

The Master: Strike it out.

Q How much did you earn a week at that time? A Not less than \$50 a week.

Q When you left for Pittsburgh what money did you have? A I had a little over \$200.

Q When you got to Pittsburgh how much did you have? A A little over \$200 when I landed in Pittsburgh. 40

Ernest Werpupp, for Petitioner, direct.

Q After four weeks in Pittsburgh how much did you have? A I probably had \$40.

Q After you notified your wife you were going back to Newark you came back? A Yes.

Q What month was it that you came back to Newark? A November.

10 Q What year? A 1921.

Q What did you do when you got back here? A I didn't work the first few days.

Q Where did you stop? A The Stag Hotel.

Q Did your wife come to Newark? A A few days after I was here she came to Newark.

Q Did you meet her? A Yes.

Q Where did you go to meet her? A The Pennsylvania Railroad station.

20 Q Market street in Newark? A Yes, sir.

Q What year and month was it she came back to Newark? A November, 1921.

Q Where did you stay the first night with your wife? A The Lenox Hotel on Central avenue.

Q Did you have any trouble that night with your wife? A Plenty.

30 Q What was the trouble? A She considered that I was crazy for coming back to Newark—if I couldn't make out in Pittsburgh why didn't I come to St. Louis? I said "You know I wouldn't go to St. Louis. I could make a living here when I couldn't make a living in Pittsburgh. I told you I would come back here and try to establish myself here again."

Q What did she say to that? A She said "I will not listen to it. I am going back to St. Louis."

40 Q How did it wind up? A I got a few hours sleep that night.

Ernest Werpupp, for Petitioner, direct.

Q What happened the next day? A In the morning she said she was going to Mrs. Gutkelch.

Q Who is she? A A friend of ours, a friend of my uncle's family for forty years.

Q Did your wife know her well? A Yes.

Q How many years did she know her? A Since 1914.

Q Where did Mrs. Gutkelch live? A 353 North Seventh street, Newark.

Q Your wife said she was going up there to Mrs. Gutkelch? A Yes, sir.

Q What did you say? A I said it would be all right and I would come up.

Q She did go to Mrs. Gutkelch? A Yes.

Q Did you go up to Mrs. Gutkelch's? A Yes, sir.

Q What room did your wife have there at Mrs. Gutkelch's? A I didn't see the room but I understood that she slept with Mrs. Gutkelch.

Q Was there room enough for you there? A No, sir.

Q Do you know whether Mrs. Gutkelch charged her for board? A No, sir.

Q She didn't charge her for board? A No, sir.

Q Did you visit your wife at Mrs. Gutkelch's? A I went to the house once.

Q When did you go there? A The beginning of November, 1921, a few days after she had come back.

Q What trouble, if any, did you have up there at Mrs. Gutkelch's? A I went up there one night and had the same talk, just about like in the Lenox Hotel.

Q Was anybody else present at the talk? A Mrs. Gutkelch.

Ernest Werpupp, for Petitioner, direct.

Q Tell us what she said to you and what you said to her. A In a few minutes she would say "You are crazy for coming back to Newark. If you couldn't make out in Pittsburgh why didn't you come to St. Louis?" I said, "I would not go to St. Louis." She said "I am not going to stay here."

Q Did that conversation take place in front of Mrs. Gutkelch? A Yes, sir. The neighbors could hear it.

Q She hollered loud? A Yes, sir.

Q What time of the day did this take place? A Between eight and ten in the evening. I probably stayed there two hours.

Q How did it end up? A I finally left.

20 The Master: What was the last thing she said and what was the last thing you said?

The Witness: She said "You can make up your mind we are not going to stay here. It is no use looking for work. We are going back to St. Louis."

30 Q What did you say? A I would never agree to go back to St. Louis after what I had gone through out there.

The Master: Where were you sleeping while she was sleeping up there?

The Witness: At the Stag Hotel.

The Master: Did you tell her where you were?

The Witness: She knew it. I sent her a telegram.

40 The Master: How did she know it?

Ernest Werpupp, for Petitioner, direct.

The Witness: When we came from the Lenox Hotel I said I was going to the Stag Hotel and tell my wife where I am living.

The Master: Was anything said on your part as to where she would live if she stayed here?

The Witness: The understanding was we would stay with Mrs. Gutkelch. 10

The Master: Until when?

The Witness: Until I was ready to go to St. Louis with her, she said.

The Master: What did you say?

The Witness: "I will not go to St. Louis."

The Master: You had to fix a place for her. You didn't expect her to keep on living up there. 20

The Witness: Mrs. Gutkelch said she could stay.

Mr. Nies: I object to that.

The Master: Was your wife present when Mrs. Gutkelch said that?

The Witness: Yes, sir.

Q Go ahead and tell us what your arrangement about living was, after you came back from Pittsburgh. A I wanted to make arrangements to work to get money to put up a flat again, either in East Orange or Newark. 30

Q In the presence of whom did you say that?

A In the presence of Mrs. Gutkelch.

Q What did she say? A She said there was no use in doing that, she would not stay there.

Q Was your furniture in DeCamp's Storage Company at that time? A Yes.

Q What did you do? A I went to work. 40

Ernest Werpupp, for Petitioner, direct.

Q Where? A I worked some week-ends in New York.

Q Where did you stay at night? A At the Stag Hotel.

10 Q What did you do about the difficulty with your wife—did you do anything? A I did. After that scene was over—

Q No, no. What did you do? A I went to Mr. Bozza.

Q Who is he? A He is an attorney at law on Market street—as I knew she needed some money. I also had given her, when she asked me for it, \$10 at that time, at Mrs. Gutkelch's house. I said to Mr. Bozza—

The Master: Never mind.

20

A I wrote her to go to Mr. Bozza and get some money.

Q What happened then?

The Master: I understand you didn't see your wife again after the time you went up there and told her about that?

The Witness: Yes, sir.

30 Q What happened? A She kept on calling for money.

Q What happened between you and your wife? A She stayed up there and I went to work and stayed at the Stag Hotel.

Q What did you do about getting money in Newark? A I was saving money.

Q In what bank? A I didn't have so much money I had to put it in a bank.

40 Q Were you going to have a home here? A Yes.

Ernest Werpupp, for Petitioner, direct.

Q What happened? A The result was that after about three weeks she said she wanted that money.

Mr. Nies: I object.

The Master: She said to whom?

10

Q Whatever your wife said to Mr. Bozza you can't testify to, unless you were present and heard it. Did you hear it? A No, sir. I was notified by Mr. Bozza that my wife wanted \$50.

The Master: No.

Q Did you pay Mr. Bozza any money? A Yes; I paid him a small fee.

20

Q Did you give Mr. Bozza \$50? A Yes.

Q For what? A She had asked for money.

Q What did you understand you were giving Mr. Bozza \$50 for? A She had asked for money.

Mr. Nies: I object. He testified he didn't speak to her after November 5.

The Master: The question was, did he give Mr. Bozza money and for what purpose?

30

Q What did you give Mr. Bozza \$50 for?
A Mr. Bozza notified me—

The Master: Never mind that.

A I gave Mr. Bozza \$50 for money she had spent coming from St. Louis.

40

Ernest Werpupp, for Petitioner, direct.

The Master: Did you give him that money for the reason that you wanted Mr. Bozza to give it to your wife?

The Witness: I gave it to Mr. Bozza to give to her.

10 Q Do you know why it was just \$50? A It was expenses for the trip coming here.

Q From where? A From St. Louis.

Q What became of your wife? A When I was ready to send more money, \$10, I was notified it was not necessary that Mrs. Werpupp had left for St. Louis.

Q Who told you that she had left for St. Louis? A Mr. Bozza.

20 Q Did Mrs. Werpupp go to St. Louis with your consent? A Absolutely.

Q Absolutely what? A Without my consent.

Q Did you want her to go to St. Louis? A No, sir.

Q What did you do when you found out she had gone to St. Louis? A I kept sending money to her.

Q How much? A \$10 a week.

30 Q How did you send it? A The first two payments were sent to Mr. Bozza, who had given her money once a week. I told him it was not necessary that he should keep it, that I would send money direct to her.

Q How did you send the money? A By money order.

40 Q Why did you send the money? A I sent the money for two reasons: For sympathy's sake, and some day she might come to her senses and live with me in Newark.

Ernest Werpupp, for Petitioner, direct.

Q How much did you send her? A \$10 a week, and the latter part \$8.

Q How long did you continue to send her \$10 a week? A About one-half and after that \$8.

Mr. Nies: Half of what?

10

The Witness: Half of the time.

Q Covering what period of time did you send \$10 a week and \$8 a week? A About one year and eleven months.

The Master: When did you send the last money order to her?

The Witness: It was seventeen months in succession.

The Master: Tell me about the date. 20

Mr. Nies: I think we can agree on the date—May, 1923.

Q That is about correct? A That is about correct.

Q Why did you continue to send her this money? A I said for sympathy's sake and for the reason that some day she might make up her mind and come back and live with me.

Q Why did you stop sending her money? 30
A Because I didn't see any results.

Q Where were you living all the time? A At the Stag Hotel.

Q What were you doing? A I was working in the barber business.

Q A master barber or a journeyman barber?
A Journeyman.

Q About two months after your wife left for St. Louis, what happened? A I don't know what happened here then.

40

Ernest Werpupp, for Petitioner, direct.

Q About this furniture, what happened? A Three or four months after she left for St. Louis she sent for her furniture.

Q Why do you say it was her furniture? A When I got married we had a complete set of furniture.

10 Q Who had the furniture? A She had it.

The Master: It belonged to her before you were married?

The Witness: Yes, sir.

Q Did you buy anything to furnish a house? A When we were coming here she sold some of the furniture in St. Louis and I replaced some of it.

20 Q What? A I replaced a bedroom set.

Q What else? A Some minor pieces of furniture which I don't remember.

Q When the furniture was sent to St. Louis did the bedroom set go with it? A Yes; everything.

Q Did you ever write her a letter in sending this money? A No, sir; I wrote one letter.

30 Q When? A About two weeks after she had gone.

Mr. Nies: Where was she and where was he when the letter was written?

The Witness: She was in St. Louis and I was here in Newark.

Mr. Nies: In November, 1921?

The Witness: December.

Q I don't suppose you have got the letter?

40 A No, sir; not the letter I wrote.

Ernest Werpupp, for Petitioner, direct.

Mr. Kalisch: In the absence of the letter can he testify to the contents?

Mr. Nies: It is not called for.

The Master: If you have it, produce it.

Mr. Nies: I haven't got it.

The Master: When the other side says that they haven't any such letter and he testified he sent such a letter, proof of how it was addressed and whether it was deposited in the regular mail, then I will let you put in full proof of the contents. 10

Q How was this letter addressed? A To Mrs. Lulu Werpupp. I have one of the return receipts here.

Q Did you register it? A No, sir.

Q What was the address? A 2911 Gamble street, St. Louis, Missouri. 20

Q Where did you deposit the letter? A In Newark.

Q Where? A In Newark.

Q Where—in the post office? A In the letter box. I don't know whether it was the post office box in the letter box around the street. I wrote it in the Stag Hotel; that I remember.

The Master: Did you put a stamp on the envelope? 30

The Witness: Yes, sir.

The Master: What kind of an envelope was it did you put this in?

The Witness: I don't know.

The Master: Did the Stag Hotel have envelopes?

The Witness: No, sir; it was a plain envelope. 40

Ernest Werpupp, for Petitioner, direct.

Q What did you say in the letter? A I wrote a very short letter. I wrote that it was a dirty trick that she left without letting me know anything about it, and if she wanted to write me now she would have to write to Mr. Bozza, the attorney.

10

The Master: How did you find out she had gone to St. Louis if she didn't tell you?

The Witness: Mr. Bozza told me she had left for St. Louis.

The Master: When you were up there the last night and saw your wife in Newark, didn't she tell you she was going to St. Louis?

20

The Witness: Absolutely, always, but she didn't tell me when she left. I didn't believe that she would go. I said if she wanted to write me or come back she would have to write to Mr. Bozza, that I would not accept any mail from her direct, because there would not be anything but fighting back and forth by mail.

The Master: Did you hear from her?

Q What happened after that? A I never received any letter from Mr. Bozza.

30

Q Did she write you any letter? A I received one in the Stag Hotel from her.

The Master: Where is that letter?

The Witness: I didn't accept that letter because I told her to write to Mr. Bozza. I thought that was the more proper way.

Q Did you keep on sending her this money?
A I kept on sending her money to a certain time.

40

Ernest Werpupp, for Petitioner, cross.

Q When did you find out about the furniture?

A That she had sent for it?

Q Yes. A In December I was told by Mr. Lupo.

Mr. Nies: I object.

10

Q When? A In December.

Q 1921? A Yes, sir. She had gone to the—

Q When? A In December. I did go to the Terminal Building where the office of Mr. Lupo is.

The Master: Never mind.

Q Has your wife been living with you since December, 1921? A No.

Q Did you live in Newark since December, 1921, or East Orange? A Newark.

20

Mr. Kalisch: That is all.

Cross examination by Mr. Nies.

Q You were married in 1904? A Yes.

Q Then you lived in St. Louis until when? A 1914.

Q Then you moved to Newark? A Yes.

30

Q When did Mrs. Werpupp first talk to you about being homesick and wanting to go to St. Louis?

(Cross examination postponed by consent, to allow the petitioner to call corroborative witnesses for the petitioner.)

40

Mrs. Helen Irmen, for Petitioner, direct.

MRS. HELEN IRMEN, called as a witness and being duly sworn, testified as follows:

Direct examination by Mr. Kalisch.

10 Q Where do you reside? A 4118 Grisella street, Pittsburgh, Pennsylvania.

Q You are a married woman? A Yes.

Q Do you know Mr. Werpupp? A Yes.

Q How long have you know him? A I guess about twenty-seven or thirty years.

Q Do you know Mrs. Werpupp? A Yes.

Q How long have you know her? A I met her the first time in 1909.

Q Did Mr. and Mrs. Werpupp ever live at your house? A Yes.

20 Q When? A 1921, in the fall.

Q Where were you living then? A At the same address.

Q Do you know how they came to live at your house? A Yes, sir.

Q How was it? A They were leaving Newark, New Jersey.

The Master: You learned this from whom?

30 The Witness: From both of them.

Q How did they come to live at your place?
A Mrs. Werpupp was on her way to visit her children in St. Louis and Mr. Werpupp was going to stay in Pittsburgh and work there and eventually move there, but that didn't culminate.

Q Was there any argument at your house between Mr. and Mrs. Werpupp when they were living at your house in Pittsburgh? A I
40 couldn't say at my house in Pittsburgh.

Mrs. Helen Irmén, for Petitioner, direct.

Q You didn't hear any argument there? A No, sir.

Q What happened when Mr. and Mrs. Werpupp lived at your house in Pittsburgh? A Mr. Werpupp stayed there and she went on.

Q Where did she say she went to? A She was going to St. Louis and she was going to make a stop first, if I am not mistaken, at Indianapolis. 10

Q Where did Mr. Werpupp stay while she was at Indianapolis? A At my house.

Q Do you know what he did? A He was a salesman for window fixtures, store window fixtures, a company.

Q How long did he stay at your house? A I should judge it was about five weeks.

Q What happened at the end of the five weeks? A He went back to Newark. 20

The Master: He said he did.

The Witness: Yes, sir. I didn't go with him.

Mr. Nies: I suppose this testimony was in the presence of the defendant.

Q Did he leave Pittsburgh? A Yes, sir.

Q When? A Five weeks later than when he arrived. 30

Q Did you have any conversation with the defendant? A When do you mean?

Q When she left Newark. Did you ever see this defendant after she left Newark? A Just two days she spent at my house.

Q Didn't you say something about the railroad station? A You mean going back to St. Louis the next time?

Q Yes. A Yes, sir. 40

Mrs. Helen Irmen, for Petitioner, direct.

Mr. Nies: Give us the date.

The Master: When was that?

The Witness: I would say it was the beginning of—the end of November or beginning of December—it was after Thanksgiving Day sometime.

10

Q What year? A 1921.

Q Where did you meet the defendant then?

A At the Union Station in Pittsburgh.

Q How did you come to meet her? A She wrote a letter and told me she was leaving Newark and she was going back to St. Louis.

Q How did you come to meet her? A I went to the station. I didn't have my letter with me and I had to go to see the station master.

20

Q She wrote you a letter saying she was leaving Newark to go back to St. Louis? A Yes.

Q Did she say anything else in the letter? A I don't recall anything else in particular.

Mr. Nies: That letter has not been accounted for.

The Witness: No, sir.

30

Q Did you or did you not see the defendant after you got that letter? A I met her at the station.

Q Did you speak to her? A Yes.

Q What did she say to you? A She was going back to St. Louis and she was going to stay there.

Q Did she say anything about Mr. Werpupp? A I couldn't say what it was all about, but she was going back; she said she had been in Newark four weeks or whatever amount of weeks it was, and she hadn't seen much of Mr. Werpupp and she was going back.

40

Mrs. Helen Irmen, for Petitioner, direct.

Q Did she say anything else? A I don't know just what you mean. She had intentions of staying; that is all I know.

Q What do you mean? A Staying in St. Louis.

Q Did she say that? A I am sure she did. 10

Q Before Mrs. Werpupp left Newark did you visit Mrs. Werpupp? A Yes; I spent six weeks with them on North Sixteenth street in East Orange.

Q During those six weeks did you notice any trouble between Mr. and Mrs. Werpupp? A Mrs. Werpupp was not contented in Newark. She didn't find the people as nice as she did in St. Louis. She was very anxious to go back to St. Louis. 20

Q What did she say about it? A She never felt quite at home here.

Q What did she say about it? A She would try to make it possible in the fall, but I was under the impression—

The Master: Strike it out.

Q What seemed to be the trouble between them, if there was anything? 30

Mr. Nies: I object to this as calling for a conclusion.

Q What was there between Mr. and Mrs. Werpupp during the six weeks you were staying there? A She didn't want to live in Newark. She wanted to go from Newark.

Q What did Mr. Werpupp say? A He said he can make a living here and he would stay 40

Mrs. Helen Irmen, for Petitioner, direct.

here, he had his uncle and friends here, but she didn't want to live here.

Q Did she give a reason for not wanting to live here? A I couldn't say—

The Master: No, no.

10

Q Did she give any reason? A She did like to be near her mother.

Q Did she say that? A Yes.

Q Did Mrs. Werpupp say anything to you about talking to Mr. Werpupp about going away? A Yes, sir. She said she would try to see if they would—she didn't want to live here any more.

20 Q During the six weeks while Mr. Werpupp was working—

The Master: What difference does that make?

Q I show you a letter and ask you where you got that letter? A From Mrs. Lulu Werpupp in St. Louis.

Q When? A Last May.

30 Q Whose writing is that? A That is Mrs. Werpupp's.

Q Do you know her handwriting? A Yes, sir.

Mr. Kalisch: The letter is dated May 25, 1929. I offer the letter in evidence.

Mr. Nies: No objection.

(Received in evidence and marked P. 2 and P. 3.)

40

Mr. Kalisch: That is all.

Mrs. Helen Irmen, for Petitioner, cross.

Cross examination by Mr. Nies.

Q Mr. Werpupp is related to you? A He is my full cousin.

Q He has other relatives in Pittsburgh? A We are all like brothers and sisters—cousins.

Q Does Mrs. Werpupp have any relatives in Pittsburgh? A No, sir. 10

Q How long did Mr. Werpupp and Mrs. Werpupp stay at your place? A Two days—that is, together.

Q They occupied the same room? A Yes, sir.

Q What was said about going to St. Louis, or to anybody else by Mrs. Werpupp? A There was a convention on in Indianapolis and that is why she was going and then she was going to St. Louis. 20

Q Did she state she was going to stay with her people or on a visit? A She didn't state she was going to stay for good—she was going on a visit.

Q And would return to your house? A It might have been that way.

Q Was it? Let us have the truth. A She was going back to Pittsburgh, but I couldn't say to my house. 30

Q She told you she was coming back to Pittsburgh and Mr. Werpupp? A Yes.

Q She was coming back to Mr. Werpupp? A Yes, sir.

Q You testified on your direct examination that you met her at the railroad station. A Yes.

Q Was that before or after those two days? A After.

Q You met her there? A Yes, 40

Mrs. Helen Irmén, for Petitioner, cross.

Q How long a time did you talk to her?

A Five minutes, I would say.

Q Between train time? A Yes, sir; it was just a stopover. I went to the gate. She didn't come out.

10 Q What was the conversation during that time? A She said she was going back to St. Louis.

Q Did she say she was leaving Newark for good? A She was not going to stay there any more.

Q Did she tell you why she was leaving Newark? A I couldn't say why.

Q Did she tell you? A No, sir.

Q Did you ask her? A No, sir.

20 Q You were not interested? A I was friendly with her always.

Q Did you hear anything of Mrs. Werpupp after she arrived in St. Louis? A I couldn't say that; no, sir; I don't think so; not in St. Louis.

Q Mr. Werpupp stayed at your house about four weeks? A Four or five weeks.

Q He was working during that time? A Yes, sir.

30 Q Do you know whether or not he wrote to Mrs. Werpupp during those four or five weeks? A He did write to her.

Q Do you know what was in the letters? A No, sir; I didn't read them.

Q Did he receive any letters from Mrs. Werpupp during that time? A Yes, sir.

Q How many? A I don't know.

Q About how many? A Suppose I say three.

40 Q Was it one a week? A Perhaps; yes, sir.

Mrs. Helen Irmen, for Petitioner, cross.

Q What did Mr. Werpupp do when he left and returned to Newark?

The Master: At the time he left?

Q At the time he left your house and came back to Newark. 10

Mr. Nies: I withdraw that.

Q What did Mr. Werpupp say when he left your house to go back to Newark? A He said he could not make a living in Pittsburgh at the business.

Q Did he say anything to you about what arrangement he would make with Mrs. Werpupp after he returned? A No, sir. 20

Q Did you ask him? A No, sir.

Q You visited Mr. and Mrs. Werpupp at East Orange? A Yes, sir.

Q You stayed there about six weeks? A Yes, sir.

The Master: What date are you talking about?

Q What date was that? A From about the 7th of July to the 20th of August. 30

The Master: 1921?

The Witness: 1921, in the summer time.

Q He had a very nice place in Newark at the time? A Yes, sir.

Q He was making a pretty good living? A Yes, sir.

Q Did he tell you why he went to Pittsburgh? A He didn't want to go to Pittsburgh or St. 40

Frank B. Bozza, for Petitioner, direct.

Louis. Mrs. Werpupp wanted him to go to Pittsburgh.

Mr. Kalisch: Did he say why he went to Pittsburgh?

10 The Witness: On account of Mrs. Werpupp.

Q What did he say about it? A She didn't want to live here any more.

Q She had no relatives in Pittsburgh, did she? A No, sir.

Q It was Mr. Werpupp's intention to go to Pittsburgh, was it? A No, sir; no indeed.

20 FRANK B. BOZZA, called as a witness, and being duly sworn, testified as follows:

Direct examination by Mr. Kalisch.

Q You are an attorney at law in New Jersey?

A Yes, sir.

Q How long have you been practising? A Over ten years.

30 Q Did you have occasion to see Mrs. Werpupp and Mr. Werpupp? A I did.

Q When? A I lived in the community where Mr. Werpupp had his barber shop. I have known them quite a long time.

Q Did Mr. Werpupp see you about his wife? A Yes.

Q As a result of what Mr. Werpupp told you, did you see Mrs. Werpupp? A I did; approximately in November, 1921.

40 Q What did you say to Mrs. Werpupp and what did she say to you? A I said to her that

Frank B. Bozza, for Petitioner, direct.

Mr. Werpupp had been in to see me; that he was making strenuous endeavors to get in financial condition to resume their living together in Newark.

The Master: What is the date of this?

10

Q Give us the approximate date. A November, 1921. I said that he was financially embarrassed; that he was going to work and accumulate money, take their furniture out of storage and stay at home so that they could live together; and that he had requested payment of \$10 a week by me to her and that she would get these payments at my office because when he made payments to her they quarreled with each other; she became nasty and quarreled with him; and that I would make payments at my office. She agreed to come to my office to take the payments. She came on two or three occasions for the \$10. Finally she said to me "I paid \$50 to come on from St. Louis. I think I am entitled to be paid for the fare to Newark." I said I didn't know under what circumstances she came but I will take it up with Mr. Werpupp and "let you know in a few days."

20

The Master: Where was she staying?

30

The Witness: She was in Newark. I don't know exactly where she was staying.

The Master: How did you communicate with her?

The Witness: I was given an address by Mr. Werpupp. She came to my office.

Q Go ahead. A I took the matter up with Mr. Werpupp. He brought me the money.

40

Frank B. Bozza, for Petitioner, direct.

Q How much? A \$50. I gave her the money when she came in and she folded up the money and put it in her bag, and she said, "Now, I am going back to St. Louis where I have my friends and my children. I am through with him. I don't want to have anything to do with him." She said "You can forward the \$10 to me there."

The Master: Where?

The Witness: At St. Louis, the St. Louis address, which she left with me. I said "I don't know whether you will be entitled to it or not, but I will take it up with Mr. Werpupp."

Q Did you tell her why she would not be entitled to it? A Because she was going away.

Q Did you tell her that? A Yes, sir.

Q What did she say? A She said "My life is in St. Louis with my children, where I spent many years, and I like it better than I do Pittsburgh or Newark." Mr. Werpupp came in and I told him about it. He was surprised when—

The Master: Never mind what he said. Tell us what he did.

The Witness: He offered me on three occasions after that \$10.

The Master: What about the \$50?

The Witness: I gave it to Mrs. Werpupp. She took it and put it in her bag and said she was going back to St. Louis. Mr. Werpupp came in later and I told him about it and on three different occasions after that left me \$10—\$30 in all, which I forwarded to Mrs. Werpupp at the address in St. Louis that she gave me.

Frank B. Bozza, for Petitioner, cross.

The Master: Pursuant to his directions?

The Witness: Yes, sir. Sometime after that, as I remember, not long after he came again and—

Mr. Nies: I object.

The Master: Did he give you any more money? 10

The Witness: No, sir.

Mr. Kalisch: Will you let the witness testify to what Mr. Werpupp said about sending money out there?

The Master: About the fact that he let it go.

Q Do you remember when the last money was given to you to send out there? A About three or four weeks after she left. 20

Q After that you did not send any more? A After that I didn't send any more out.

Q At any time other than when you have related has Mrs. Werpupp ever told you about the fact that she would not live in Newark or did you have any other conversation with her? A The conversation with reference to her not wanting to live in Newark was when she came to my office and received the \$50, when she said "I have lived most of my life with my children and friends in St. Louis. I will have nothing to do with him. I am through with him, and I will not live in Newark." 30

Mr. Kalisch: That is all.

Cross examination by Mr. Nies.

Q You only saw her on two or three occasions? A I saw her on four occasions. 40

Joseph V. Lupo, for Petitioner, direct.

Q Did Mrs. Werpupp ever ask you for Mr. Werpupp's address? A I don't remember whether she asked me, but if she had asked me I would have told her because I knew.

The Master: What was it?

10 The Witness: The Stag Hotel.

Q Would it surprise you if I tell you that Mr. Werpupp testified on direct examination that he gave you instructions not to give his address to her?

Mr. Kalisch: I object.

The Master: I don't think that there is any such statement in the testimony.

20 Mr. Nies: I withdraw the question.

Q As a matter of fact, he told you not to give her the address? A No, sir. I knew the address.

JOSEPH V. LUPO, called as a witness, and being duly sworn, testified as follows:

30 *Direct examination* by Mr. Kalisch.

Q What do you do? A I am connected with the Job DeCamp Storage Warehouse Company.

Q Were you so connected in 1921? A Yes.

Q Do you know Mrs. Werpupp? A Yes.

Q Do you know Mr. Werpupp? A Yes.

Q Did they have any furniture in your warehouse? A Yes; they placed it in storage.

40

Mrs. Emily Gutkelch, for Petitioner, direct.

Q Do you know when? A It came in in the fall of 1921.

Q When did it go out? A It went out about five months or so afterwards, early in 1922.

The Master: Do you know on whose order it went out? 10

The Witness: Yes, sir.

The Master: Whose?

The Witness: Mrs. Werpupp.

The Master: By letter?

The Witness: Yes, sir.

The Master: Where did it go?

The Witness: To St. Louis.

Q Who paid for it? A Mrs. Werpupp. 20

Mr. Kalisch: That is all.

Cross examination by Mr. Nies.

Q In whose name was it stored? A Mr. and Mrs. Werpupp's names.

Q Jointly? A Yes, sir.

Q She paid all the charges? A Yes, sir. 30

MRS. EMILY GUTKELCH, called as a witness and being duly sworn, testified as follows:

Direct examination by Mr. Kalisch.

Q Where do you reside? A 38 South 17th street, East Orange, New Jersey.

Mrs. Emily Gutkelch, for Petitioner, direct.

Q How long have you lived there? A Seven years.

Q Do you know Mr. and Mrs. Werpupp? A Yes, sir; very well.

Q How long have you known them? A Since 1914.

10 Q Did they ever live at your house? A They lived with me and stopped with me.

Q On how many occasions or was it a few occasions? A They visited back and forth constantly.

Q For how many years? A Since 1914.

Q Do you know of any trouble that Mr. and Mrs. Werpupp had? A None other than the present.

20 Q Did you hear about their troubles—were they talked about in your presence? A Occasionally.

Q What was the trouble? A Mrs. Werpupp wished to return to her folks in St. Louis and Mr. Werpupp didn't wish to go.

Q Did you hear Mrs. Werpupp say that she wished to? A On various occasions she made remarks that were to the same effect.

30 The Master: What effect?

Q To whom did she make the remarks? A She was talking to me in the presence of Mr. Werpupp.

Q What did she say to Mr. Werpupp? A She made the remark at times when her son left for St. Louis, also when her mother left, and she would say she should return to St. Louis where her people were.

40 Q What did Mr. Werpupp say about that? A He said no, he would never return to St.

Mrs. Emily Gutkelch, for Petitioner, direct.

Louis, that he was making his living here and he didn't want to return.

Q Did Mrs. Werpupp ever talk to you in the presence of Mr. Werpupp? A Only that remark—whenever she received a letter that she felt homesick or received a letter from her mother.

10

Q What did she say to you about this? A Sometimes she would cry, sometimes she would say that is where she belonged, that she had no one else here.

Q What did she say about going out there to live, if anything, to you? A She said she would never end her days here; she certainly would return to St. Louis.

Q Did she say whether if she would go Mr. Werpupp would go? A She said she was planning to go, but Mr. Werpupp didn't want to go.

20

Q Did she tell you Mr. Werpupp told her that? A Yes, sir.

Q And how long did this keep up? A I can recall that Mrs. Werpupp said that very shortly after she was here she never liked Newark or the surroundings—the last.

Q Did she tell you that? A Yes.

30

Q Covering what period did the wrangling keep up? A Till she left.

Q When was that? A 1921.

Q She was living with you at the time? A She was stopping with me at the time.

Q She left? A Yes.

Q Do you know whether or not at the time she left Mr. Werpupp knew it?

The Master: How can she know that?

40

Mrs. Emily Gutkelch, for Petitioner, direct.

Q Did she say anything to you at the time she was leaving for St. Louis? A About what?

Q About why she was going? A She said that she was leaving for St. Louis. She said she would stop off in Chicago.

10 The Master: Did she say anything about coming back?

The Witness: No, sir. She had no intention to come back.

The Master: Strike that out. Did she say anything to you about coming back?

The Witness: No, sir. she didn't say. I don't get what you are saying.

20 Q Did she say whether she was coming back to live with Mr. Werpupp in Newark?

The Witness: No, sir.

Mr. Nies: I think the witness is being led.

The Witness: I really don't know what you are talking about.

Mr. Kalisch: May I clear this up?

30 Q At the time Mrs. Werpupp went to St. Louis, when she left did she say to you that she was coming back? A She said to me that she was leaving for St. Louis and that she didn't want anything to do with that scamp, and that she was not coming back; and that he didn't have the name "pupp" at the end of his name for nothing.

Q When was that? A That was the evening she left for St. Louis.

40 Q Do you know the year? A 1921.

Mrs. Emily Gutkelch, for Peittioner, cross.

Q Do you remember the month? A I think it was after Thanksgiving Day, the first part of December.

Q Did you go to the station with her? A Yes.

Q At the time she told you this did she make a complaint that Mr. Werpupp didn't treat her right? A No, sir. 10

Q So far as you could see, from your observation of them during their married life, can you tell the Court whether or not he treated her with consideration and care? A He did.

Mr. Kalisch: That is all.

Cross examination by Mr. Nies.

Q During the time Mrs. Werpupp stayed at your house at the end of October, 1921, and the beginning of November, 1921, did Mr. Werpupp ever come up to see her? A He did. 20

Q How often? A He came up once that I remember, one evening.

Q She was there for what length of time? A I think it was around four weeks, something like that.

Q During the four weeks he came to see her on one occasion? A One evening. 30

Q Was that at the beginning of her stay or at the end of her stay? A The beginning of the stay.

Q How soon after she got there did Mr. Werpupp come up? A I think it was an evening or two after.

Q Did she receive any telegram from anybody during the time she was at your home? A She received one telegram, I can remember, she said it was from her sister. 40

Mrs. Emily Gutkelch, for Peittioner, cross.

Q Do you know whether she received any telegram from her husband? A None that I know of. She never remarked it.

Q Did she ever show you a telegram that she received? A One.

Q From her husband? A No, sir.

10 Q Did you read it? A No, sir; but she told me it was from her sister.

Q How many rooms do you occupy in the apartment? A Five rooms.

Q How many people were in your family? A My brother and I.

Q And your husband? A My husband was not there.

Q You are not living with your husband? A I am.

20 Q At the present time? A Yes.

Q What rooms did Mrs. Werpupp occupy during that time? A In my room, in my bed with me.

Q If Mr. Werpupp had desired to stay—

The Master: Strike that out.

30 Q Did Mr. Werpupp ask you to permit him to stay in your rooms? A Only Mrs. Werpupp asked me to stay at my home. She said that Mr. Werpupp would stay at the Stag Hotel.

Q Did Mrs. Werpupp ever talk to you about Mr. Bozza in connection with this matter? A Yes, sir; she told me she had received a letter from her husband and she was going down to see Mr. Bozza.

40 Q Did she tell you anything else in connection with the matter? A She said Mr. Bozza had stated to her that her place was with her husband. I don't recall anything in particular.

Mrs. Emily Gutkelch, for Peititioner, cross.

Q Did she ever remark to you that she was willing to continue to live with her husband? A Not in Newark. She said she would not remain East.

Q Did Mrs. Werpupp pay you for her board while she was there? A No, sir.

Q Who paid for it? A Nobody did. 10

Q How often did you see her before the time that she lived at your home or stopped with you? A Constantly; not less than five days a week.

Q There was some family trouble in which you were involved in connection with this matter.

Mr. Kalisch: I object to the question.

Q You said on your direct examination that Mrs. Werpupp was planning to go with Mr. Werpupp to Pittsburgh. A To the West; but not at that time. Mr. Werpupp didn't want to go. He went to Pittsburgh and tried Pittsburgh. He made the remark before he went. 20

Q In whose presence? A In my presence.

The Master: Was Mrs. Werpupp there?

The Witness: Yes, sir.

The Master: It was said before her? 30

The Witness: Yes, sir. He made the remark—

The Master: Go ahead.

The Witness: That he would go to Pittsburgh to please her and if he couldn't make out he would come back East, that he would not go to St. Louis.

Q Did she say she would return East with him? A I don't know what you are talking 40

Mrs. Emily Gutkelch, for Peititioner, cross.

about. She was very angry, but she didn't say whether she would or would not.

Q She left it an open matter? A When she finally went she said she never would come back. That was when she went finally.

10 Q During the time she stayed at your home do you know whether she made any effort to find her husband? A I believe she knew where he was.

The Master: Answer the question.

A No, sir.

Q You don't know? A No, sir.

Q Mr. Werpupp only came on one occasion to see Mrs. Werpupp? A Yes, sir.

20 Mr. Kalisch: What happened when he went up there—was there a fight?

The Witness: Yes, sir. They quarreled very much. She said he was crazy to come to Newark instead of to St. Louis because they couldn't make out in Pittsburgh.

Mr. Kalisch: Did she talk in a low voice or in a high voice?

The Witness: Loud; she was very angry.

30 Q Are you friendly with Mrs. Werpupp? A I have nothing against her.

Q Did you correspond with her? A No, sir.

Q When did you correspond with her last? A She kept on telling me that when she left would take care of a bundle of souvenirs and she said I had better take care of them myself and that she would write to me when she got to St. Louis, but I didn't hear from her.

40 The Master: Recess until two o'clock.

Henry A. Holtz, for Petitioner, direct.

AFTER RECESS.

HENRY A. HOLTZ, called as a witness, and being duly sworn, testified as follows:

Direct examination by Mr. Kalisch.

Q Where do you reside? A 48 Pine Grove Terrace. 10

Q How long have you lived there? A About all my life.

Q How old are you? A Forty-nine.

Q Do you know Mr. Werpupp? A Yes.

Q How long have you known him? A Since about 1914, about the time of the war.

Q Where did Mr. Werpupp live since 1914? A Irvington, East Orange and Newark. 20

Q Have you seen him here in Newark since 1914? A I seen him since February two or three times a week.

The Master: He has been continuously residing in New Jersey?

The Witness: Yes, sir.

The Master: Since 1914.

The Witness: Yes, sir.

Mr. Kalisch: Are you satisfied about his residence in New Jersey? 30

The Master: I am.

Mr. Nies: All right, I am satisfied.

Ernest Werpupp, for Petitioner, cross.

ERNEST WERPUPP, the petitioner, recalled, testified further as follows:

Cross examination (continued) by Mr. Nies.

10 Q You testified that you were married in 1904? A Yes, sir.

Q Where did you live in 1904? A St. Louis.

Q How long did you live in St. Louis? A Until 1914.

Q Where did you go then? A Newark.

Q Why did you come here? A Why?

Q Why? A To start in business here.

Q Where did you move to when you came to Newark in 1914, you and your wife? A After staying with my uncle on 6th street a few days we lived in a flat on 9th street.

20 Q 395 South 9th street? A Yes.

Q How long did you live there? A Till 1917 or 1918.

Q You testified that in March, 1915, your wife went back to St. Louis for the wedding of a niece? A Yes, sir; about in March.

Q She went to St. Louis with your consent? A Yes, sir.

Q You however insisted that she come back to Newark? A Yes, sir.

30 Q She did come back? A Yes, sir.

Q There was no argument about that? A When she left she said she might not come back, and I should sell my shop and go out there; but she did come back.

Q The two of you lived together in Newark until 1921? A After we left 9th street we went to East Orange, New Jersey.

Q During the time you lived here with her you had friends visit you? A Yes.

40 Q Friends and relatives? A Relatives.

Ernest Werpupp, for Petitioner, cross.

Q Which ones came on a visit? A Her mother a long time.

Q The two of you agreed to go to Pittsburgh in 1921?

Mr. Kalisch: He said he went there to please her.

10

Q Were you working in Newark just prior to going to Pittsburgh? A Yes.

Q Working at what? A For my uncle.

Q Selling liquor certificates? A Yes, sir.

Q It was during prohibition? A Yes.

Q Did you get a job with Mr. Hecht, the brother-in-law of Mrs. Werpupp? A Yes, sir.

Q You and Mrs. Werpupp went to Pittsburgh? A Yes, sir.

Q She had no relatives in Pittsburgh? A Relatives on my side.

20

Q Your relatives? A Yes; no relatives of hers.

Q She met these people through you? A Yes.

Q All her relatives were in St. Louis? A One boy was in Kansas City.

Q Isn't it a fact that she wanted to leave Newark so you would be away from Mrs. Gutkelch? A That is ridiculous.

Q Yes or no? A No, sir.

30

Q Mrs. Gutkelch worked for you? A Part time, not a full day. She is not a well woman and can only work part of the day.

The Master: What kind of work?

The Witness: She keeps my books.

Q Upon your arrival in Pittsburgh with Mrs. Werpupp you stayed at Mrs. Irmen's house? A Yes.

40

Ernest Werpupp, for Petitioner, cross.

Q Mrs. Werpupp remained there with you two days? A Two or three days.

Q What did she say then about going to a convention? A It was arranged that she was going to a convention; I think it was in Indianapolis.

10 Q That was with your consent? A Yes.

Q After visiting Indianapolis she was supposed to go to St. Louis? A Yes.

Q With your consent? A Yes, sir.

Q You understood she would return to Pittsburgh? A Yes.

Q Did she return to Pittsburgh? A No, sir.

Q Did you write her a letter from Pittsburgh to St. Louis to the effect that you would leave Pittsburgh and return to Newark? A Yes, sir.

20 Q How did you send the letter? A I wrote her only that one letter. After I was there a few weeks I told her business was poor and I didn't think I could make a living selling goods, but I would try for a few weeks longer. I would try it a few weeks longer. After four weeks I found out I couldn't make a living, or establish a living in Pittsburgh, be able to make a living; so I wrote her I was coming back to Newark and I would try to establish my flat here again. I told her to visit in St. Louis until I was ready
30 for her. I went to Newark. I was here two days or one day when I received a telegram that she was—it was six o'clock or so—that she would arrive, and I went to the station.

Q Where were you staying at the time? A At the Stag Hotel. I went to the station to call for her.

Q Where did you go that night—to the Hotel Lenox? A Yes.

40 Q What was said at the Hotel Lenox between you and your wife? A She said I was crazy to

Ernest Werpupp, for Petitioner, cross.

come to Newark, and if I couldn't make out in Pittsburgh I should have gone to St. Louis. It kept up all night.

Q Did she ask you to go out for a newspaper and look up an advertisement and try to find an apartment? A I don't believe that I went out for a newspaper to look up ads. Nothing was said about that. 10

Q Did you look for an apartment to furnish her a home? A When?

Q Upon her return to Newark? A Not that evening; no, sir. She arrived at six o'clock.

Q What did you tell her as to furnishing a home for her? A I told her as soon as I am able I would take out my furniture and we would put up a home again. She would not listen to it; "I don't want any more home here. I want to go back to St. Louis." 20

Q What did you do the following day? A We got up at about 8 o'clock and she said she was going to Mrs. Gutkelch.

Q You knew where Mrs. Gutkelch lived? A Yes, sir. She went up there. I said I would be up there to see her. I had to go back to the hotel and change my clothes and get myself in shape because I was torn to pieces from that night. 30

Q Did you go up to see Mrs. Werpupp after that? A Yes.

Q Prior to that did you send her a telegram? A No, sir.

Q You did not? A No, sir.

Q I show you a telegram dated November 5, 1921, addressed to Mrs. Lulu Werpupp, 353 North 7th street, Newark. Did you send that telegram to her? A I didn't send such a telegram. 40

Ernest Werpupp, for Petitioner, cross.

Q Do you remember you signed an affidavit in the proceedings for alimony *pendente lite*?

A Yes, sir.

The Master: What office of the company was the telegram sent from?

10 Mr. Nies: 749 Broad street.

Q In your affidavit dated February 10, 1930, you made a statement "Regarding the telegram which the defendant said I sent, I don't remember doing so." What do you say about that? A I don't remember; neither do I remember the date I sent it.

Mr. Nies: I offer it for identification.

20 (Received and marked D. 1 for identification.)

Q You went up to Mrs. Gutkelch's house?

A Once; yes, sir.

Q That was about two days after she got there? A Yes, sir.

Q Why didn't you go up there oftener? A Because the scene up there was so terrible I would rather not go in a private home to talk with her.

30 Q You were still willing to live with your wife? A Yes.

Q Are you still willing to live with her?

Mr. Kalisch: I object.

The Master: Sustained.

Mr. Nies: Exception.

Q You were willing to resume and have her return to you during those four weeks? A Yes, sir.

40

Ernest Werpupp, for Petitioner, cross.

Q Why didn't you go up to see her during those four weeks? A Because the scene was so terrible I didn't want to have it in a private home.

Q Why didn't you write to her? A I wrote one letter to her.

Q When? A Not quite a week after she had been at Mrs. Gutkelch's. 10

Q What did you say to her in that letter?

The Master: Have you got that letter?

Mr. Nies: No such letter was sent.

The Witness: To go to Mr. Bozza and receive some money. I had to notify her, otherwise how would she know about going to Mr. Bozza?

20

Q Why didn't you write her? A Because I didn't want any scene any more.

Q If you had written to her there would not have been a scene? A I think it was more proper that way instead of writing letters back and forth.

Q You gave Mr. Bozza full authority to talk to Mrs. Werpupp about your matrimonial affairs. Did you tell Mr. Bozza not to give your address to Mrs. Werpupp? A No, sir. 30

Q After she had returned to St. Louis—she left Mrs. Gutkelch's house in November, 1921, or the beginning of December, 1921, and from that time on to and including May, 1923, you sent her a weekly allowance? A I sent her money.

Q You testified you sent it for sympathy's sake and to get her to come back to you? A She might make up her mind sometime to come back.

40

Ernest Werpupp, for Petitioner, cross.

Q Why did you stop sending her money? A I could see no results, and after she had sent her furniture to St. Louis.

Q Did you enclose in the envelope that you sent to her—money orders—did you enclose a letter to her at any time with the money order?

10 A No, sir.

The Master: Who sent them?

Mr. Nies: He did.

The Witness: Mr. Bozza sent some and then I sent them.

Q You sent them for about seventeen months? A Yes, sir.

Q By you? A Yes.

Q In an envelope without a letter? A Yes.

20 Q By registered letter? A Yes.

Q I show you an envelope dated July 30, 1922, addressed to Mr. Ernest Werpupp, 44 Bank street, Newark, Stag Hotel, return address on it, Mrs. Ernest Werpupp. Do you know whether that is her handwriting? A Yes.

Q I direct your attention to the pencil notation on the letter—"Not accepted. Ernest Werpupp." Is that in your handwriting? A Yes.

Q Did you write that? A Yes, sir.

30 Q Why did you refuse to accept that letter?

A For the reason that when I sent the money myself I wrote a separate letter, wrote her that it was a dirty trick she had done to leave me without letting me know anything about it, she should write, if she wanted to write me and wanted to return to me, she should write to Mr. Bozza, my attorney. I didn't want to accept any letter from her or by fighting by mail with her.

40 Q If you were so anxious for her to return to you, why were you afraid of fighting by mail?

Ernest Werpupp, for Petitioner, cross.

A It was for years; if she wanted to come back to write to Mr. Bozza, I would have done it, but I didn't want to go on fighting by mail. I wanted to get rested again. I never heard anything from her through him.

The Master: How did you suppose she 10
knew you wanted her to write to Mr. Bozza?

The Witness: I wrote her one letter.

The Master: What did you say about Mr.
Bozza in that letter?

The Witness: If she made up her mind
sometime to come back to Newark she should
write to Mr. Bozza as I didn't expect to
fight by mail with her.

Q What do you mean by she might return 20
some time? A She might make up her mind.

Q Did you think you could patch up your
matrimonial affairs better than an attorney
could? A I was not so successful in patching
up things with her, but I tried all the time.

Mr. Nies: I offer this envelope for identi-
fication.

(Received and marked D. 2 for identifi-
cation.) 30

Q Do you know Mrs. Rose Hecht? A Yes,
sir.

Q Before I go into that: Do you know Mr.
Emil Hoffman? A Yes.

Q How old are you? A Fifty-one.

Q How old is your wife? A Sixty-three.

Q Do you know Mrs. Rose Hecht? A Yes,
sir.

Q Who is she? A My sister-in-law. 40

Ernest Werpupp, for Petitioner, cross.

Q Mrs. Werpupp's sister? A Yes, sir.

Q Did you ever write her any letter? A Yes, sir.

Q Did you write her a letter on November 4, 1921, from Pittsburgh, relating to your wife's affairs? A I don't remember.

10 Q I show you a letter to refresh your memory, and ask you whether that is in your handwriting? A Yes.

Q Look at these pages. A Yes, sir.

Q Signed "Sincerely, Ernest"; is that your handwriting? A Yes, sir.

Q Do you say now that you sent that letter to your sister-in-law, Rose Hecht? A Yes, sir.

20 Q I direct your attention to certain parts of this letter—

Mr. Kalisch: I object to that. The whole contents should be shown.

Mr. Nies: I offer it for identification.

(Received and marked D. 3 for identification.)

Q In what business are you? A Ladies' hairdressing business.

30

Mr. Nies: I make him my witness now.

The Master: The defendant calls the petitioner as his witness on matters that relate to his case.

Mr. Nies: Before I go into the financial affairs, I will want to ask him some questions about this letter.

40 Q Tell me again as to whether or not that letter was sent to Rose Hecht by you from New-

Ernest Werpupp, for Petitioner, cross.

ark, dated November 4, 1921, which was marked for identification?

The Master: You can offer it in evidence on your own case after you have examined the witness.

Q Where is your business? A 590 Central avenue, East Orange. 10

Q Are you the sole owner of the business?

A Yes, sir.

Q How long have you been in that business?

A Since December, 1928.

Q Do you keep books? A I do.

Q If necessary, will you present those books to the Court at another hearing? A Yes, sir.

Q What is your weekly income? Do you have your income tax return? A I have a duplicate. 20

Q What was your gross income for 1929?

A My gross income—does that mean before expenses are paid?

Q Yes. A \$7,614.

Q What were your total disbursements in connection with your business? A \$5,271.

Q What was your net income for 1929? A \$2,342.

Q Does 1930 compare in the same way as 1929? 30

Mr. Kalisch: How can he tell?

A The business is a season business; so far it has not been better than last year.

Q About the same? A Yes.

Q Do you have any other income? A No, sir.

Q Do you have an automobile? A I have. 40

Ernest Werpupp, for Petitioner, re-direct.

Q What kind of a car is it? A An Overland coupe.

Q How old is it? A 1927.

Q Have you any money coming to you from any estate? A From my uncle's estate.

10 Q What is his name? A Henry Werpupp.

Q You are named in his will? A Yes.

Q Have you received any money from the estate? A No, sir.

Q Have you any idea of the amount that you will receive? A I think—

Q What is your estimate as to the amount? A \$2,200. I may be correct; I may be not. That is an estimate.

20 Mr. Nies: That is all.

Re-direct examination by Mr. Kalisch.

Q Outside of this, what expenses have you got—what board do you pay? A \$20 a week, room and board.

Q Have you any other expenses? A Clothing and so forth.

30 Q What do you estimate your clothes cost you a month? A It is hard to tell. I haven't bought any linen lately.

Q The \$20 a week includes your meals? A Yes, sir.

Q Do you pay any insurance? A Fire insurance.

Q How much fire insurance? A That is in business expenses.

40 Q Have you any other expenses except what you have enumerated? A Just living and buying clothes, keeping up an automobile which I use in my business.

Ernest Werpupp, for Defendant, direct.

The Master: Is the repairing of the automobile charged up to the business expenses?

The Witness: No, sir.

Q Do you have to pay a garage bill for your automobile? A Yes, sir.

10

The Master: Is that part of the business charge?

The Witness: No, sir.

Q What do you pay for garage rent? A Ten dollars a month.

Q What does it cost you to maintain the automobile a month? A Gas and oil—\$40 or \$45 a month.

20

Mr. Kalisch: I would like to make a motion to dismiss.

The Master: No; I will not dismiss.

ERNEST WERPUPP, the petitioner, recalled on behalf of the defendant, testified further as follows:

Direct examination by Mr. Nies.

30

Q I show you a letter dated November 4, 1921, addressed to "Dear Rose" and signed "Ernest." Did you send that letter? A Yes, sir.

Q To Rose Hecht.

Mr. Nies: I offer it in evidence.

Mr. Kalisch: I object on the ground it was not sent to the defendant.

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Ernest Werpupp, for Defendant, cross.

The Master: Mark it.

(Received in evidence and marked D. 3 in evidence.)

10 Mr. Kalisch: This letter that has been introduced in evidence and marked D. 3, I notice in the letter on page 4 "Lulu would be a grand wife for the right man, but we are getting further apart. We can't live together any more."

Examined by Mr. Kalisch.

Q What do you mean by saying you can't live together and she would make a grand wife?

A I meant it was impossible to live here because she wants to live away. Her mother and children were so dear to her it was impossible
20 for her to stay here.

Q Why did you say you couldn't live together again? A Because I wouldn't go to St. Louis and she would go to St. Louis. I insisted on staying here.

Q What do you mean by saying you were getting further apart? A Because there was no rest while living here.

Q On page 3—

30 Mr. Kalisch: I understand, Mr. Nies, that you have taken extracts from this letter. You haven't transcribed the whole letter?

The Master: The whole of it is there.

Q Can you read this letter? A Yes, sir.

Q Read it. A "Newark, November 4, 1921.

Dear Rose:

40 "I can't help writing to you and telling you how matters are standing with Lulu and me. It

Ernest Werpupp, for Defendant, cross.

was not my wish to leave Newark, but Lulu said she would not live in this town any longer, she would leave. I told her I would not leave Newark. She would not give me any rest here nights. She would not go to bed. She would not let me sleep. So I said I would go to Pittsburgh and if I could not make out I would go back to Newark. I told her this would be my last move with her. I also made her a proposition to make her trip alone and come back and she would not listen. I had to go with her just as if I were her child. I had to do just as she said. Now, we are going to do as I say. The moment I wrote I was going back east, she was ready to come back. We had a few hundred dollars left when we broke up. Now I am broke. I wrote this to her but instead of going to Kansas City and Chicago, she sent me a telegram that she will arrive Friday. Why did she leave me here in the first place? I am nearly crazy and my hair is getting white, but I don't want any sympathy or money from anybody. All I want is to be left alone. I am getting ahead again. All summer she was talking about she was going to live with her mother or children and her mother told me she was going to send for her and live with her. I want her to go back to St. Louis or Chicago. I am willing to help support her when I get any money again, but I will not live with her any longer. Nobody can compel me to. If she don't leave I will leave here. This has been going on too long. If she has not got any money I will get enough to buy her a ticket. She may as well tell her children. I don't care to write to them. Don't think that Glenn paid for this trip. That balance money was coming to me, but I don't care, I

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Mrs. Lulu Werpupp, for Defendant, direct.

would rather be broke and alone instead of having the money or starting over again with her. You know if people can't get along it is better to break up instead of dragging along and I know she will be better off living with some of her folks and having their love, instead of living
 10 with me. Lulu would be a good wife for the right man, but we have been getting further apart right along, and this is the end. I am willing to help her but we can't live together again. She can have all the furniture and I am willing to pay as much as I can, to pay whatever expenses are; later I can pay nothing. Right now I got nothing, but I will not ask my uncle for another cent.

"Sincerely,

20

"Ernest."

Q When was the letter written? A In November, before she came back from St. Louis.

Q What do you mean by saying you were getting further apart? A She was constantly talking about going to see her mother and children. I felt as if I had lost her, I was not married to her, I was nothing in her life, but just working to support her, helping to raise her children.

30

MRS. LULU WERPUPP, the defendant, called as a witness, and being duly sworn, testified as follows:

Direct examination by Mr. Nies.

Q You are the wife of the petitioner? A
 40 Yes, sir.

Mrs. Lulu Werpupp, for Defendant, direct.

Q You were married in 1904? A Yes, sir.

Q And lived in St. Louis until you moved to New Jersey? A Yes, sir.

Q During the time you lived in New Jersey, and more especially on South Ninth street, which I understand was until about 1920, did you have any arguments with your husband? A I did. 10

Q Tell us what caused those arguments? A We lived there a couple of years quietly and contentedly, and another woman came into my life.

Q Who was that? A Mrs. Gutkelch.

The Master: Strike it out.

Q Did you complain to your husband about Mrs. Gutkelch? A Yes, sir. 20

The Master: Strike it out.

Q Did you complain to your husband about his attentions to any woman? A Yes, sir.

Q Tell us about those times that you complained to him, and his answers. A There came a time when I was never alone. That party was always in our house, this woman, I couldn't get rid of her and there were arguments, I wanted to get out of it. 30

Q Did you talk to your husband about going to Pittsburgh? A Yes.

Q What was the conversation? A I thought he could do better in Pittsburgh than being a bootlegger in Newark.

The Master: Strike that answer out.

A My brother-in-law offered him a position in Pittsburgh, he would make a living there by 40

Mrs. Lulu Werpupp, for Defendant, direct.

selling fixtures, and he had relatives there, and it was a nice place to live; I was willing to live there.

Q Did you have relatives in Pittsburgh? A No, sir.

10 Q October, 1921, did Mr. Werpupp tell you that he couldn't continue housekeeping? A Yes, sir.

Mr. Kalisch: I object to that as leading.

The Master: Yes.

Q What was said in October, 1921? A He said he was broke and could not go on housekeeping.

20 Q Was anything else said? A I was willing to try anything if he would only go to housekeeping with me. I didn't want to break up the home.

Q Did he agree to go housekeeping? A No, sir. He said he had no money, he said he was through, absolutely through and he would not go to housekeeping. He said he had no money. I offered to take boarders.

30 Q How soon after that did you go to Pittsburgh with Mr. Werpupp? A We went in the latter part of September, 1921. I only stayed there two days.

Q What arrangement did you have with Mr. Werpupp concerning your staying in Pittsburgh, if anything?

Mr. Kalisch: I object to it as leading.

A I was going back to the D. A. R. Convention. We were living that winter with Mrs. Irmen, in her home; we promised to stay there for the
40 winter.

Mrs. Lulu Werpupp, for Defendant, direct.

Q From the D. A. R. Convention, where did you go after that? A To St. Louis.

Q How long did you stay in St. Louis? A About ten days.

Q During that time did you have any letter from your husband? A One letter. He said he was not very well, but he didn't say anything about going back to Newark. 10

Q Did you have any other letter from him? A Yes, sir. He said, "I am going back to Newark and you stay where you are" and I took the train and came home.

Q Did you send him word before you came back to Newark? A Yes, sir; I sent a telegram to him to meet me at the station.

Q Where did you go from the station? A From the station he wanted to send me to Chicago. I said, "I refuse to go from here as I am. All my furniture is here." We had an argument. I said I will not leave town. After that we went to the Hotel Lenox for the night. 20

Q What conversation did you have with him at the hotel? A I asked him to go out and get a paper and look for a flat. He would not listen to it. The next morning he told me to go Mrs. Gutkelch's and he said he would come up there. I went up there but never saw him or heard from him. 30

Q You heard from him? A Just money; later, I mean; but he never wrote any letters he said he wrote.

Q What date was that you went to Mrs. Gutkelch's? A The 5th of November, 1921.

Q I show you a telegram addressed to Mrs. Lulu Werpupp, 353 North Seventh street, Newark, and ask you whether you received that on November 5th? A I received it Sunday morning about eleven o'clock. 40

Mrs. Lulu Werpupp, for Defendant, direct.

Q Did you see Mr. Werpupp after receiving that telegram? A Yes, sir; he came the next night.

Q Did you speak to him about sending the telegram?

10 Mr. Kalisch: I object.

Q What took place? A The next time he came and stayed fifteen minutes. He was excited. He said he might go on a trip, he might go to China. There was no argument or scene as he said.

Mr. Nies: I offer that telegram in evidence.

20 Mr. Kalisch: I object.

The Master: I can't let it in on her testimony in the face of his denial.

Q Did you know the address of Mr. Werpupp? A No, sir.

Q Did you ask him where he was going when he left Mrs. Gutkelch's home? A No, sir. I thought he was going back when he came down.

30 Q When did you next hear from him? A The next week, a letter from Mr. Bozza. He said I could have \$10 a week.

Q Did you go down and get it? A Yes; once.

Q Did you have any money of your own at that time? A No, sir.

Q Did you ever make any statement to Mrs. Gutkelch or your husband that you were homesick and wanted to return to St. Louis? A No, sir.

40 Q That your home was in St. Louis and you thought you wanted to end your days with your

Mrs. Lulu Werpupp, for Defendant, direct.

mother and children in St. Louis? A No, sir.
My home was with my husband.

The Master: Yes or no.

The Witness: No, sir.

Q Did you ever receive any letters from your husband outside of those enclosed in the money orders? A No, sir. 10

The Master: Nothing else?

The Witness: No, sir.

Q Mr. Werpupp stated today that he sent you letters. Did you receive them? A He never sent me one letter.

Q If he sent them you never received them? A No, sir. 20

Q I show you a letter and envelope marked for identification D. 2, bearing the post mark July 30, 1922, and containing a letter addressed Ernest Werpupp, sent from St. Louis, July 29, 1922, and ask you whether you sent that letter to your husband? A Yes, sir.

Q You wrote that letter? A Yes, sir.

The Master: He said he received it. 30

Q You received the letter returned unopened? A Yes, sir.

Mr. Nies: I offer the letter in evidence.

The Master: It is admitted for the purpose of showing that the wife sent a letter to the petitioner and he refused to receive any letters from her.

(Received and marked D. 2.)

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Mrs. Lulu Werpupp, for Defendant, direct.

Q After Mr. Werpupp failed to send you the weekly money orders, and at or about May, 1923, did you make any attempt to locate Mr. Werpupp? A Yes.

Q What attempt? A I had different friends inquire where he was living. I also wrote his attorney, but nobody could locate him.

The Master: Did you write to his lawyer?

The Witness: No, sir.

The Master: Why not?

The Witness: I don't know. I wrote to a friend. I thought I would get letters that way, but I didn't.

Q When did you first hear that Mr. Werpupp was located in East Orange? A In September.

Q Immediately? A In September, 1929.

Q Then you immediately— A I wrote to my attorney to start—

Q To start proceedings? A Yes, sir.

Q What is your age? A I was sixty-three on the 9th of April.

Q Do you have any income except that earned by your own exertions? A No, sir.

Q Have you any bank account? A No, sir.

Q Have you been working? A I was working until Christmas Eve; then it was a dull season and I was laid off.

Q At what? A Sales lady in a store.

Q At what amount per week? A Fourteen dollars a week.

Q That was sufficient for you to get along on? A By doing extra fancy work at night.

Q What is the condition of your health at the present time? A Varicose veins; I can hardly stand on my feet.

Mrs. Lulu Werpupp, for Defendant, cross.

Q With whom were you living at the time?

A When I came here I was living with my married son in St. Louis.

Q After you return to St. Louis will you again live with your married son? A. I don't want to. I would rather be by myself. It would not be very pleasant.

10

Q Do you have your own room with your son? A Yes; my own bedroom.

Q Have you been consulting any physician regarding your health during the last few months? A Yes.

Q Has he been treating you? A Yes, sir; for nervousness. I had a very bad case of pneumonia last year and it left me in a weakened condition.

20

Mr. Nies: That is all.

Cross examination by Mr. Kalisch.

Q At the time Mr. Werpupp married you, you were a widow? A Yes, sir.

Q These three or four children live in St. Louis? A Two in St. Louis and two in Kansas City.

Q Are two in St. Louis now? A Yes, sir.

30

Q Do you see them often? A Yes, sir.

Q They are sons and daughters? A Sons.

Q Are they both married? A Yes.

Q You went back to St. Louis in 1921? A Yes.

Q When you left you lived at Mrs. Gutkelch's house, did you? A Yes.

Q At the time you left, you did not tell your husband you were going? A My husband sent me—

40

Mrs. Lulu Werpupp, for Defendant, cross.

Q At the time you left, you didn't tell your husband you were going? A I didn't know where he was; no, sir.

The Master: Yes or no.

The Witness: No, sir.

10

Q You told Mrs. Gutkelch that you were going back to St. Louis with your children and you were not going to live in Newark? A It was like everything else Mrs. Gutkelch said.

The Master: Yes or no.

The Witness: No, sir.

Q Mrs. Gutkelch was a friend of yours? A I thought so.

20 Q How long have you known her? A All the time I have lived in Newark.

Q How long have you known Mrs. Gutkelch? A Ten or twelve years.

Q When you lived at Mrs. Gutkelch's, she didn't charge you any board? A No, sir.

Q You were quite friendly? A Yes, sir.

30 Q Did you tell Mrs. Gutkelch on one occasion you would not live in Newark, you didn't like the society here, and you were going back to St. Louis? A No, sir.

Q Did you tell Mr. Lupo the same thing? A No, sir.

Q Did you send for your furniture and send Mr. Lupo the money for the furniture? A No, sir.

40 Q Who sent the money for the furniture to be shipped to St. Louis? A I wrote for the furniture when I found out my husband didn't want me, and my mother paid \$250 for me to get my furniture there.

Mrs. Lulu Werpupp, for Defendant, cross.

Q He had Mr. Lupo send it to you? A Because Ernest promised that he would pay for it.

Q Mr. Werpupp bought a bedstead? A Yes, sir.

Q Wasn't there constant wrangling between you and your husband over the fact that you didn't want to live in Newark? A No, sir; it was not because of my fault; I deny that. If he told the truth he would know it. 10

Q You never had any quarrel? A Not about living in Newark.

Q Didn't you have a nice home on Ninth street in Newark? A Yes, sir.

Q You had five rooms? A Yes.

Q You lived very comfortably? A Yes.

Q You lived alone in your house? A Yes.

Q Why did you want to go to Pittsburgh to live? A Am I allowed to speak right out? I first moved to East Orange to get away from this woman. She followed me there and spent every evening there. That is why I wanted to leave the city. 20

Q You testified you knew Mrs. Gutkelch ten years and she was a good friend of yours? A Yes, sir; because I found out the last year that she was not.

Q Before that you lived on Ninth street in five rooms and yet you wanted to go to Pittsburgh? A Because I wanted to get rid of that woman. 30

Q You said the last year— A I said the first five years we were happy, until we knew that woman, and when she came nobody was happy.

Q When did you leave for Pittsburgh? A 1921.

The Master: Where did you move from when you moved to Pittsburgh? 40

Mrs. Lulu Werpupp, for Defendant, cross.

The Witness: We lived in a flat in East Orange.

Q Why did you want to go to Pittsburgh?

A He was a bootlegger, he had no regular business and my brother-in-law wanted him to
10 go to Pittsburgh.

Q You wanted him to give up his business?

A That was not his business.

Q In order to please you, he went to Pittsburgh? A Yes.

Q You went to Mrs. Irmen's house in Pittsburgh? A Yes.

Q Two days after you got there you went to the D. A. R. convention in Indianapolis? A
Yes.

20 Q Your husband found a position in Pittsburgh? A Yes.

Q He told you then that if he couldn't make good he would go back to Newark? A Yes.

Q At the end of two weeks he wrote a letter and said business was bad, he would give it two weeks more trial and he would go back to Newark? A Yes.

30 Q He wrote you another letter and said business was not good and he would go back to Newark and he gave you the address where he would go to in Newark? A Yes; and I came here to be with him.

Q How long were you in St. Louis? A Just a month.

The Master: When did the woman come into your life?

The Witness: When we lived on Ninth
40 street.

Mrs. Lulu Werpupp, for Defendant, cross.

The Master: You mean to say you went to Pittsburgh with your husband to get him some work?

The Witness: Yes, sir.

The Master: And then you went to St. Louis and then your husband wrote you he was making only a nominal success in Pittsburgh business, and he was going to Newark, and you tell me you came back on a train where this woman was?

10

The Witness: I came back to be with my husband. He put me there. I had no relatives here.

The Master: Why did you come back where this woman was?

The Witness: Because I had my furniture here and I was married to him, because my husband was here and my furniture.

20

Q You knew it would be the same thing over again if you came back to Newark—with this woman Mrs. Gutkelch? A I hoped it would not be that way.

Q You had an experience here. You knew if you returned, it would be done over again? A I came back to be with my husband. I begged him to go housekeeping.

30

Q You say you asked him in the Hotel Lenox to go and look for rooms? A Yes, sir.

The Master: Did I understand you to say you broke up living together in the premises in Newark?

The Witness: East Orange.

The Master: Because of this woman?

The Witness: Partly.

40

Mrs. Lulu Werpupp, for Defendant, cross.

The Master: You said before because of the woman.

The Witness: I said two things—the business and this woman together.

10 The Master: Then you went to live where?

The Witness: When I went back to St. Louis?

The Master: You came back and lived in Newark.

The Witness: Yes, sir.

The Master: Where?

The Witness: With Mrs. Gutkelch.

20 The Master: Didn't you live in Newark with your husband prior to 1921?

The Witness: Yes, sir.

The Master: Where?

The Witness: In East Orange.

The Master: I am asking you about Newark.

The Witness: Yes, sir; on Ninth street.

The Master: Did you have an apartment there?

30 The Witness: Yes, sir.

The Master: At that time you knew this woman?

The Witness: Yes, sir.

The Master: If you knew the woman at that time, how did you come to get your husband to go to East Orange where she still lived?

The Witness: No, sir; she left her husband and came up there.

40

Mrs. Lulu Werpupp, for Defendant, cross.

The Master: Didn't you go up to East Orange from Newark? What do you mean by the woman came up there? She went to East Orange?

The Witness: Yes, sir.

The Master: She visited at your house?

The Witness: Yes, sir. 10

The Master: Your husband was not there?

The Witness: No, sir; when he was there.

Q She went to North Sixth street, Newark?

A That is Roseville.

Q That is not East Orange? A It is within walking distance of East Orange.

Q She went to live on North Sixth street? 20

A I call that East Orange because we walk there in ten minutes.

Q Did you ever say anything to Mrs. Gutkelch that she was coming around too often?

A It wasn't necessary.

The Master: Yes or no.

The Witness: No, sir.

Q Did you ever say anything to your husband that she was coming around too often? A Yes, sir. 30

Q As a matter of fact, when you went to St. Louis in 1921, you went with the determination of staying there and you didn't care anything about Mr. Werpupp, isn't that a fact? A No, sir.

Q Isn't it a fact, also, that you were glad to be back with your children and you didn't want anything from him but money? A No, sir. 40

Mrs. Lulu Werpupp, for Defendant, cross.

Q Do you know a woman named Helen? A Yes, sir.

Q Helen Irmen? A Yes, sir.

Q 4118 Grisella street, Pittsburgh, Pennsylvania? A Yes, sir.

10 Q I show you an envelope and a letter. Is that your handwriting? A Yes, sir.

Q You have been living in St. Louis ever since? A Yes.

Q You knew that Mr. Werpupp was here in Newark? A Yes.

Q Mr. Werpupp sent you money every week for about a year and a half? A Yes.

Q When did it end?

20 The Master: That is in evidence.

A In May, 1923.

Q After that you didn't get any money at all? A No, sir.

Q Did you make any endeavor to get any money after that? A No, sir. But I tried to locate him.

Q How did you try? A I wrote Mr. Nies at one time and I tried to get a friend to locate him.

30 Q Do you know Mr. Bozza? A Yes, sir.

Q Did you ever write Mr. Bozza? A No, sir; because I knew he was on his side. Mr. Bozza said I would have expenses of \$50.

Q Did you expect \$50 from Mr. Bozza? A Yes.

Q Paying you because you spent that money to go to St. Louis? A No, sir; to go back.

40 Q Did you tell Mr. Bozza you were going back to St. Louis and would not live here any more? A No, sir. Mr. Bozza sent me a letter.

Mrs. Lulu Werpupp, for Defendant, cross.

Q You had not cohabited with your husband since October, 1921? A No, sir.

Q You lived all that time in St. Louis? A Yes, sir.

Q Read this letter. I can't read your handwriting. A "St. Louis, Missouri, May 25, 1929. Dear Helen:

10

Just received your very welcome letter the other day because you had the wrong address. When I wrote we lived at 1905A Wagoner Place, but you wrote 6905. There is no such address. So it took a while to trace me. In the meantime we moved. So please overlook my seeming neglect. It will not happen again. I can't figure why we stopped writing each other. No, indeed, I never for a moment thought you took Ernest's part because I know you and Matt were both too broad-minded to side with him. You are right. He sure got the worst of that deal for he is all alone. Here I am enjoying a good time, having a lovely home with one of my boys and nothing to worry about. Everybody who sees me says I look years younger but please don't think I am satisfied. I just want you to know I am not worrying for account of a worthless husband. How I would love to see Emma. Has she spoken about me? But better than anything is the thought that you and Matt are planning to take a trip here in the near future but please be sure to let me know a few days ahead of time so I will be here. Glenn has a new car. It is a De Soto Six and I often take little trips with him."

20

30

Q What do you mean by Ernest got the worst part of the deal? A He was all alone. His aunt was angry with him when he came to her house while this was going on. Unfortunately both these people are dead and they can't speak

40

Mrs. Lulu Werpupp, for Defendant, cross.

for me. I spoke to his uncle when I was here. His uncle said he didn't want to know where he was and he couldn't go to his house.

Q Did Mr. Werpupp at your request go as far as Pittsburgh with you to please you? A Yes.

10 Q It was a fact that he couldn't make out in the business? A That I couldn't say, because I thought it was a good business.

Q He said so? A Yes, sir.

Q Isn't it a fact that when he came back to Newark he did pretty good? A I don't know anything about it.

Q When you left here he was doing pretty good, was he? A Yes, sir.

20 Q He had a nice home? A Yes, sir; and his business.

Q He was frankly contented to say here? A Yes, sir.

Q That telegram that Mr. Werpupp sent you, he sent you a telegram and you got it in the morning? A In St. Louis.

Q Here? A Yes, sir.

Q And the next day Mr. Werpupp was at the house to see you? A The next morning.

30 Q You say he stayed up there about fifteen minutes? A Yes, sir.

Q What did he say then? A He said he had no money, he was broke. He said he would rather go to jail than to housekeep with me.

Q Then he left? A Yes; and I never heard from him again.

Mr. Kalisch: That is all.

Ernest Werpupp, in Rebuttal; direct.

Re-direct examination by Mr. Nies.

Q At the time you were at Mrs. Gutkelch's house for four or five weeks, did you have the address of Mr. Werpupp? A No, sir.

Q Did you attempt to get that address? A I did.

10

Q How did you try to get it? A I called up Mr. Bozza on the telephone. He said there was no use trying, that Mr. Werpupp didn't want to see me, and he wouldn't give me the address. I thought if I could talk to him once I could smooth matters, but he said—

Mr. Kalisch: I move to strike out what Mr. Bozza said.

The Master: Yes.

Q Did you get the address from Mr. Bozza? A No, sir.

20

Q Did Mr. Werpupp ever make any advances to you after your return? A No, sir.

Q Nothing except what is in evidence today? A No, sir.

Q Since 1921? A No, sir.

Mr. Nies: That is our case.

30

ERNEST WERPUPP, the petitioner, recalled, testified in rebuttal as follows:

Direct examination by Mr. Kalisch.

Q Did you tell your wife that you did not want to live with her in Newark or any other place? A No, sir; but I wanted to live with her in Newark.

40

Ernest Werpupp, in Rebuttal, direct.

Q Did you go to Mrs. Gutkelch's on the day your wife said you were there and stayed there fifteen minutes and said you would not live with her again, and that she could do as she pleased?

A No, sir. I stayed longer than fifteen minutes.

10 Q How long did you stay? A Probably an hour and a half.

Q Did you ever tell Mr. Bozza to tell her that you didn't want to have anything to do with her? A No, sir. I wanted Mr. Bozza to adjust the matter.

Q Were there any more than friendly relations between you and Mrs. Gutkelch while you were living on North Ninth street? A Friendly relations; no, sir.

20 Q Were you paying too much attention to Mrs. Gutkelch?

Mr. Nies: I object.

The Master: That is an expert question.

Q Did your wife make any complaint to you that you were paying attentions to any other woman? A No, sir.

Q Did she ever say anything to you about the subject? A No, sir; we were only good friends.

30 Q You say you were great friends? A Yes.

Q Where did Mrs. Gutkelch live when you lived on Ninth street? A Two houses away from us.

Q How often would she call when you were there? A Daily.

Q Did she come with her husband? A Two or three times, but during the day she would come to see my wife.

40 The Master: Did you dine with them?

Herman Gutkelch, in Rebuttal, direct.

The Witness: Occasionally they dined with us and we dined with them.

Q You visited them also? A Yes, sir; just as often as they visited us.

Q That continued all the time on Ninth street? A From 1914 to 1921, until the day my wife went away. 10

Cross examination by Mr. Nies.

Q Did you have any argument with Mrs. Werpupp about Mrs. Gutkelch? A No, sir.

Q Did you ever talk to her about it? A No, sir.

20

HERMAN GUTKELCH, called as a witness on behalf of the petitioner, testified in rebuttal as follows:

Direct examination by Mr. Kalisch.

Q You were subpoenaed to come here? A Yes, sir.

Q You are the husband of Emily Gutkelch? A Yes. 30

Q Where do you live? A 38 South 17th street, Orange.

Q When Mr. Werpupp and his wife lived on Ninth street, did you live near there? A About two houses away from them.

Q Were you friendly with Mr. Werpupp and Mrs. Werpupp? A Yes.

Q Did you visit their home? A Yes, sir; and they visited our home.

Q You and your wife? A Yes. 40

Herman Gutkelch, in Rebuttal, direct.

Q Did Mrs. Werpupp ever complain to you that her husband was paying too much attention to your wife? A No, sir.

Q Or that your wife was paying too much attention to her husband? A No, sir.

10 Q Do you know where Mr. Werpupp lived—

The Master: They lived in Newark.

The Witness: Yes, sir.

The Master: Then they moved to East Orange.

The Witness: Yes, sir.

The Master: When they moved to Orange were you still living—or did you move to Orange?

20 The Witness: We stayed there until 1921.

Q Where? A Newark.

Q Did you follow Mr. and Mrs. Werpupp up there when you moved up there? A No, sir.

Q You stayed where you were when Mr. and Mrs. Werpupp moved? A 1921.

The Master: You lived two doors away from them?

30 The Witness: Yes, sir.

The Master: They lived in the City of Newark?

The Witness: Yes, sir.

The Master: Then they moved to East Orange?

The Witness: Yes, sir.

The Master: Did you move from where you were up to where they moved to?

40 The Witness: No, sir; not at that time.

Herman Gutkelch, in Rebuttal, cross.

Cross examination by Mr. Nies.

Q When did you move from Ninth street? A 1921.

Q Did you move away from there with your wife? A That is a quite personal question.

Q Answer the question. A We separated in 1921. 10

Q Where were you living then? A I lived with my brother-in-law and sister-in-law at 38 South 17th street, East Orange.

Q When did you leave Ninth street? A July, 1921.

Q Where did Mrs. Gutkelch go? A My wife moved with her brother.

Q Where to? A To Seventh street.

Q Near the address of Mr. and Mrs. Werpupp? A Yes. 20

Q How far away? A They lived on Tenth street and they lived on Seventh street, so that it was not nearby.

Q About how long would it take to walk there? A About twenty minutes, I should think.

Q So that you were mistaken before when you said you were staying with your wife until Mr. and Mrs. Werpupp moved away? A I didn't say that. I said I stayed in my house with my wife in Newark up to July, 1921, and Mr. and Mrs. Werpupp moved to East Orange long before that time. 30

Q Then you moved to what address? A I personally moved in 1921 to 38 South 17th street.

Q How long did you live there? A That is where we are living now.

Q Where did your wife live from July, 1921, until the end of the year? A From 1921 until 40

Herman Gutkelch, in Rebuttal, cross.

1930 with her brother on Seventh street in Newark.

Q About twenty minutes' walk from Mrs. Werpupp? A Yes, sir.

Q Did you see Mrs. Werpupp during the month of November, 1921, at your address? A
10 Mrs. Werpupp came to say goodbye.

Q What else did she say? A She told us she is going to St. Louis alone and that her husband would not come along.

Q Did she ask you whether you knew where Mr. Werpupp was? A No, sir.

Q Did you ask her why she was leaving Newark? A I don't remember that, but I know that Mrs. Werpupp was anxious to go back to St. Louis.

20 Q At the time she called to see you did she ask you for a bank book? A No, sir.

Q Didn't you have a bank book belonging to Mrs. Werpupp? A I never had.

Mr. Nies: That is all.

Mr. Kalisch: The petitioner rests.

Mr. Nies: The defendant rests.

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Frank B. Bozza, for Petitioner, direct.

IN CHANCERY OF NEW JERSEY.

Between

ERNEST WERPUPP,

Petitioner,

and

LULU WERPUPP,

Defendant.

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Continuation of proceedings in the above-entitled cause before Edward M. Colie, Esq., Advisory Master, at his office, Prudential Building, Newark, New Jersey, on Saturday, May 10, 1930, at 10:30 A. M.

20

Appearances:

Messrs. Kalisch & Kalisch, Samuel Kalisch, Esq., present, solicitors for petitioner.

William F. Nies, Esq., solicitor for defendant.

FRANK B. BOZZA, a witness called in behalf of the petitioner, being first duly sworn according to law, on his oath says:

Direct examination by Mr. Kalisch.

30

Q Mr. Bozza, Mrs. Werpupp, the defendant, says that she came to your office and wanted to know the address of Mr. Werpupp, the petitioner, and that you refused to give it to her, is that so? A My best recollection is that she did not ask me for the address at any time, but if she had I would have given her the address of Mr. Werpupp, which was the Stag Hotel.

40

Frank B. Bozza, for Petitioner, cross.

Q Did you have any instructions from Mr. Werpupp to the effect that you should not give her that address? A None whatever.

Q Now, Mr. Bozza, the day that Mrs. Werpupp came down to see you, what did she say to you with reference to going away?
10

Mr. Nies: That was testified to.

A I gave her the \$50 which she had requested Mr. Werpupp to pay to defray her expenses for coming from St. Louis to Newark. I remember distinctly she folded up the money and put it in her bag, looked up at me and says, "Now with this money I am going back to St. Louis where my friends and my children are and where I
20 have been accustomed to live most of my life. I am through with him and I will have nothing whatsoever to do with him. Send me \$10 a week at this address," and she gave me an address. I said, "But you are leaving him; I don't think you are entitled to it. However, I will take it up with Mr. Werpupp and I will see what he has to say about it."

Q Did she at that time or at any other time complain to you that Mr. Werpupp did not treat
30 her all right? A No.

Q Did she at any time make any complaint to you of Mr. Werpupp's conduct toward her?
A No.

Cross examination by Mr. Nies.

Q How often have you seen her, Mr. Bozza?

A I saw Mrs. Werpupp four times, three times when I gave her \$10 a week once a week and the
40 fourth time when I gave her the \$50.

Frank B. Bozza, for Petitioner, cross.

Advisory Master: Well, she must have been on here four or five weeks.

The Witness: Over a period of four or five weeks she came four times.

Q This happened nine years ago? A This happened in 1921, around the latter part of the year, I think November. 10

Q Have you any records from which to refresh your recollection or are you testifying from memory? A I am testifying entirely from memory.

Q Well, you might be mistaken as to some of the things you say she said? A No.

Q That was made several years ago? A I am not mistaken about anything she told me because I knew all parties exceptionally well and it is the only case of that kind I had involving friends, one of whom went to St. Louis. 20

Q You knew she remained in Newark for four or five weeks? A If she did I did not see her.

Q You say you gave her money each week, \$10 a week? A The payment of the \$50 was at the last interview.

Q Didn't you give her a weekly allowance? A I gave her \$10 a week for three weeks, then she told me she should be defrayed for her expenses from St. Louis and the fourth week we paid it to her. 30

Q You knew she was in Newark two or three weeks because she received a check from you?

A That she was in Newark for at least four or five weeks to my knowledge, but after I gave her the \$50 I never saw her any more.

Q Before you gave her the \$50 you knew she was in Newark? A Yes, sir. 40

Frank B. Bozza, for Petitioner, cross.

Q You knew where she was? A No, I did not know where she was except she gave me an address and I sent the money to that address.

Q It never was returned to you, was it? A No.

10 Q Then after you stopped sending her the weekly allowance, did Mr. Werpupp take it up, take up that duty?

Mr. Kalisch: I object to that.

Mr. Nies: He testified at the last hearing that Mr. Werpupp then took it out of his hands.

20 A Mr. Werpupp came to me three weeks after Mrs. Werpupp received the \$50 and said to me, "Now there is nothing more you can do, Mr. Bozza; you have sent her about three payments since she left. Now I will take this matter over and send her the money myself."

Q And he did and you did not do anything further? A I don't know whether he did or not.

Advisory Master: Did you forward the \$10 to St. Louis or to Newark?

30 The Witness: I sent the \$10 a week for three weeks after I gave her the \$50, to St. Louis.

Advisory Master: I misunderstood you; I thought you paid three weeks, the first \$10 here in Newark and then paid \$50 when she said "I think I ought to have my expenses from St. Louis and back."

The Witness: That is also correct; I gave her \$10.

40 Advisory Master: Then your testimony, so far as the money relation is concerned be-

Frank B. Bozza, for Petitioner, cross.

tween these parties, is that for at least six weeks or more you were handling the money that went to Mrs. Werpupp.

The Witness: That is right, three weeks I handed it to her in person when she called at the office.

Advisory Master: Did she call for the first three payments herself? 10

The Witness: Yes, every week.

Advisory Master: Then she said she wanted \$50 and then you gave her \$50 and then she went to St. Louis, and when she went to St. Louis you forwarded to her St. Louis address three ten-dollar payments, one each week, is that right?

The Witness: That is right. 20

Q Now you say you gave her \$50; what was that \$50 given to her for, for what purpose? A About the third payment she had received in person she said to me, "It cost me \$50 to come from St. Louis to Newark; I think that I should be paid that money." I said to her, "I don't know under what circumstances you came to Newark, but I will take it up with Mr. Werpupp." I told it to Mr. Werpupp and he said, "Give me a few days' time," and he brought in the money. When she came in to ascertain the result of my interview with Mr. Werpupp I gave her the \$50. 30

Q Wasn't that for the transportation from St. Louis to Newark, wasn't that it? A Yes, she predicated it on that basis, that it was money she paid out to come from St. Louis.

Q Do you know whether or not Mr. Werpupp went to see Mrs. Werpupp during the four or 40

Frank B. Bozza, for Petitioner, cross.

five weeks that she was in Newark and staying at Mrs. Gutkelch's house?

Mr. Kalisch: What difference does that make?

- 10 A Only from what Mr. Werpupp told me I can conclude that he had been up there and paid her money and that she became nasty—

Mr. Nies: I object to what he concludes—

Advisory Master: Strike it out.

The Witness: I never accompanied him to the house of Mrs. Werpupp.

Mr. Nies: That is all.

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Exhibits.

EXHIBIT D. 2.

Mrs. E. Werpupp,
3756 Lindell Bl.,
Saint Louis, Mo.

SPECIAL DELIVERY

Not exceptet

10

E. W.

Mr. Ernest Werpupp
44 Bank St.,
Newark, N. J.

c/a Stag Hotel.

EXHIBIT D. 3.

Nov 4. 1921

20

Dear Rose.

I can't help writing to you and tell you how matters are standing with Lulu and me, it was not my wish to leave Newark, but Lulu said she would not live in this town any longer she would leave, I told her that I would not leave Newark, but she made me she would not give me rest day or night, she would not go to bed, she would not let me sleep till I would give in. I said I would go to Pittsburg and if I would not like it or could not make out I would go back to Newark. I told her this would be my last move with her. I also made her the proposition to make her trip alone and come back, she would not listen;—I had to go with her just as if I was her child, I had to do just as she said. Now we are going to do as I say. The moment I wrote I was going back East she was ready to come back. We had a few hundred dollars left when we broke up, now I am broke. I wrote this to her,

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Exhibits.

10 but instead going to K. C., and Ch., she sent me a telegram, that she will arrive Friday, why did she leave me here in the first place, I am nearly crazy and my hair is getting white, but I do not want any sympathy or money from anybody, all I want is to be left alone, and I will get ahead again. All Summer she talked about that she was going to live with her Mother or children and her Mother told me that she was going to send for her to live with her. I want her to go back to St. L. or Ch. I will help supporting her when I get money again but will not live with her any longer, no one can compel me to, if she don't leave I will leave Newark, this has been going on to long.

20 If she has not go any money, I will get enough to buy her a ticket, you may as well tell her children, I do not care to write to them.

Don't think that Glenn paid for this trip, the bonus money was coming to me, but I don't care, I rather be broke and alone, instead have money and start over again with her. You know if people can not get along its better to brake up instead dragging along and I know she will be better off living with some of her folks and have their love instead living with me.

30 Lulu would be a good wife for the right man but we been getting further apart right along, and this is the end. If I work I am willing to help her, and we can not live to gether any loner, she can have all her furniture, and I am willing to paid as much as I can, to pay whatever expenses there are, that is later, right now I have nothing and I will not ask my uncle for another cent.

Sincerely,

ERNEST.

40 Stag Hotel, cor. Bank & Halsey St.

Conclusions of Advisory Master.

Louis, where she remained until about the date of the hearing of this cause. During the weeks she was here her husband gave her \$10 a week through his counsel, Frank B. Bozza, together with \$50 to reimburse her for the expense to and from St. Louis. After she reached St. Louis he
10 (Bozza) continued to send her \$10 for several weeks, \$30 in all. After that her husband continued to send her \$10 weekly up to May, 1923, by registered mail without a letter.

In the fall of 1921 she put in storage the furniture of the flat which she and her husband had occupied prior to going to Pittsburgh. In the early part of the year 1922, the furniture, by her order, was shipped to St. Louis. Since May, 1923, there has been no communication between the husband and wife, oral or written. They
20 have lived wholly apart without any communication between them. The husband during this time lived at the Stag Hotel in Newark. His testimony clearly discloses that the separation was entirely satisfactory to him and had his acquiescence. Under these circumstances the husband's petition for divorce cannot be sustained.

The wife's counter-claim raises the question of veracity between the parties. The wife's testimony is alone relied on to establish her claim. She insists that she was always ready and willing and desirous of having her home with her husband in Newark. The testimony on behalf of the husband is that she insisted that he should
30 move to St. Louis, where she could be with her mother and her family, and that she absolutely refused to make her home in Newark with her husband. The weight of the testimony in corroboration of the husband's testimony is such

Conclusions of Advisory Master.

that it leaves no doubt in my mind as to her mental attitude as stated above. What I think is her true attitude is expressed in Mr. Bozza's testimony as to what she said to him, which is as follows: "I gave her the money when she came in and she folded up the money and put it in her bag and she said: 'Now I am going back to St. Louis where I have my friends and my children. I am through with him. I don't want to have anything to do with him.' She said, 'You can forward the \$10 to me there.'" Further, this attitude is confirmed by a letter that she admits writing, dated St. Louis, Missouri, May 26, 1929. Her manner in testifying was very unsatisfactory. 10

I am convinced that she refused to make her home with her husband and the separation, so far as she was concerned, was in accordance with her wish and with her acquiescence. It cannot be construed as a desertion on his part. Under these circumstances the wife's counter-claim cannot be sustained. 20

I therefore advise a decree dismissing both the petition and counter-claim.

EDWARD M. COLIE,
Advisory Master.

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65 OCT. 1 1930
87 OCT. T. 1930

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

Between

ERNEST WERPUPP,
Petitioner-Respondent,

and

LULU WERPUPP,
Defendant-Appellant.

BRIEF OF PETITIONER.

Facts.

This is an appeal by the petitioner from a decree of dismissal of his petition for divorce, and also an appeal by the defendant from a decree of dismissal of her cross-petition for maintenance and support under the statute.

Petitioner and defendant were married on October 27, 1904, at St. Louis, Missouri. At the time of the marriage defendant was a widow and had four children, all boys, ranging from five to sixteen years of age (p. 20, ll. 10 to 30). They made their home in St. Louis, Mo., and the petitioner maintained the four children of the defendant by a previous marriage at said home (top of p. 21). This arrangement continued until 1914 when petitioner and defendant moved to Newark, N. J., taking with them the smallest boy, who was at that time nearly fifteen years of age. They went to live at 9th street, in Newark and had a nicely furnished five-room flat. At that time petitioner had a barber shop at South Orange avenue, and earned about \$35 a week and paid \$20 a month for the house (p. 21, ll. 29 to 31).

Petitioner says that almost immediately upon their arriving in Newark the defendant complained of being homesick for St. Louis (bottom of p. 21); and told petitioner upon leaving to attend a wedding in St. Louis in 1915, that she did not think she would be back and asked the petitioner to sell his shop (middle of p. 22). After a sojourn of four weeks defendant returned and told the petitioner that she wanted to go back to St. Louis to her children and her mother (p. 23, ll. 10 to 15), and petitioner told defendant that as he was making his living in Newark he was going to stay there and also that he had done his share in supporting her in St. Louis, and also that he would not go back to St. Louis and neither would he support her mother as he had been doing, saying that he married her and not her mother.

These quarrels continued up until October, 1921 when petitioner says defendant did not give him rest day or night always demanding that he move back to St. Louis going so far as to say that she threatened to kill him if he did not go back to St. Louis (bottom of p. 24, top of p. 25). Petitioner further testified that for peace sake he went to Pittsburgh with defendant (p. 25, l. 12), saying he did it to please the defendant because she said that she would get him a job in Pittsburgh (p. 25, ll. 15 to 20). That they put their furniture in storage and left for Pittsburgh where they stayed for three days and then defendant went on to St. Louis. Petitioner further testified that he told defendant that if he could not make out in Pittsburgh he would return to Newark, and after staying in Pittsburgh about four weeks petitioner realizing that he could not earn a living decided to return

to Newark and so notified his wife, who had gone on to St. Louis (bottom of p. 26, top of p. 27).

Petitioner came back to Newark in November, 1921 and a few days later defendant came back to Newark, petitioner meeting her at the Pennsylvania Station in Newark. They occupied one room together at the Lenox Hotel in Newark the first night and the next day defendant told petitioner that she was going to visit a Mrs. Gutkelch, who was a friend of both defendant and petitioner and lived in Newark. Defendant accordingly visited Mrs. Gutkelch, but as she did not have room for petitioner, petitioner did not stay with defendant at that place (middle of p. 29). Petitioner visited defendant at Mrs. Gutkelch's home on one occasion and defendant made such trouble for him in demanding that he go back to St. Louis, that he would not visit her anymore. As he was about to leave petitioner says defendant told him he could make up his mind that that she was not going to stay here and there was no use for him to look for work, she was going back to St. Louis (p. 30, ll. 20 to 30.) He further testified that defendant agreed with him to stay at Mrs. Gutkelch's home until he could get money to put up a flat again, either in East Orange or Newark (p. 31, ll. 29 to 35).

Petitioner continued to stay at the Stag Hotel in Newark and in order to avoid further argument went to an attorney, Mr. Frank B. Bozza, and gave him \$10 for him to give to his wife; in the meanwhile he says he was saving money to get a home in Newark (bottom of p. 32). Unbeknown to petitioner, defendant left for St. Louis again against petitioner's will and consent (p. 34, l. 20). Nevertheless petitioner kept sending defendant \$10 a week and says the reason he sent the money was because he felt sorry for

her and that some day she might come to her senses and live with him in Newark (bottom of p. 34). He continued sending money to St. Louis for about a year and eleven months and he testified that he stopped sending her money after that because he did not see any results (p. 35, l. 30). He continued to reside at the Stag Hotel, where he was a master barber. The defendant has not lived with the petitioner since December, 1921 (p. 39, l. 19).

ARGUMENT.

In addition to the testimony of petitioner as to the desire of the defendant to live in St. Louis and of her attitude toward the petitioner, he is amply corroborated by the testimony of Helen Irmen, Frank B. Bozza, Mrs. Emily Gutkelch.

Mrs. Irmen testified that in the Fall of 1921 the petitioner lived at her house in Pittsburgh and that the defendant came there and from there went to St. Louis (top of p. 41). That the petitioner was a salesman for store window fixtures and that he stayed at her house about five weeks (p. 41, l. 20), and at the end of five weeks he went back to Newark. That she had a conversation with the defendant in the beginning of December, 1921 at the Union Station in Pittsburgh, in which the defendant told her that she was going back to St. Louis and that she was going to stay there (p.42, ll. 8 to 33). She further testified that the defendant told her that she had been in Newark four weeks and that she had not seen much of Mr. Werpupp and that she was going back and that she intended to stay in St. Louis (bottom of p. 42, top of p. 43). She further testified that she had spent six weeks with the petitioner and defendant at North 16th street,

East Orange, N. J., and that Mrs. Werpupp was always complaining that she was not content in Newark; she did not find the people as nice as she did in St. Louis and that she was very anxious to go back to St. Louis and that she never felt quite at home here (p. 43, ll. 12 to 22). That she did not want to live in Newark (p. 43, ll. 35 and 36). That the petitioner told her that he was making a living here and that he would stay here (bottom p. 43, top of 44). The reason the defendant gave for not wanting to live in Newark was that she wished to be near her mother (p. 44, l. 11). This witness further testified on cross examination that during the four or five weeks that petitioner stayed with her in Pittsburgh, petitioner wrote to defendant at St. Louis and he received letters in return (bottom of p. 46). This witness also testified that the only reason petitioner went to Pittsburgh was on account of the defendant (top of p. 48).

Frank B. Bozza, a witness sworn on behalf of the petitioner testified that he was an attorney and practising lawyer of New Jersey for ten years. That the defendant called at his office about the month of November, 1921; that he told the defendant that the petitioner had been to see him and that he was making strenuous endeavors to get in financial condition to resume their living together in Newark (top of p. 49). That the defendant stated to him that she had paid \$50 to come on from St. Louis and that she was entitled to be paid for the fare to Newark, and this witness thereupon told defendant he would take it up with the petitioner and let her know in a few days. Witness further says that he took the matter up with the petitioner and the petitioner paid him the \$50. The witness further testified that he gave the \$50 to

the defendant whereupon she stated, "Now I am going back to St. Louis where I have my friends and my children. I am through with him. I don't want to have anything to do with him" and then she said, "You can forward the \$10 to me there" (top of p. 50).

This witness further testified that he told her he did not know whether she would be entitled to the \$10 or not, but he would take it up with Mr. Werpupp, and he further told her that the reason she would not be entitled to it was because she was going away. Whereupon defendant said, "My life is in St. Louis with my children, where I spent many years, and I like it better than I do Pittsburgh or Newark (p. 50, ll. 20 to 28).

Joseph V. Lupo, another witness sworn on behalf of the petitioner testified that he was connected with the Job DeCamp Storage Warehouse Company in 1921. That the petitioner and defendant had placed furniture in storage in the fall of 1921 (top of p. 53). That the furniture went out about five months after, early in 1922 (top of p. 53). The Master asked the following question.

The Master: Do you know on whose order it went out?

The Witness: Yes, sir.

The Master: Whose?

The Witness: Mrs. Werpupp.

The Master: By letter.

The Witness: Yes, sir.

The Master: Where did it go?

The Witness: St. Louis.

Then the question was asked:

Q Who paid for it. A Mrs. Werpupp.
(P. 53, ll. 10 to 21.)

Mrs. Emily Gutkelch, another witness sworn on behalf of the petitioner testified that she knows the petitioner and defendant since 1914. That they lived and stopped with her in Newark; that they were in the habit of visiting back and forth since 1914 (p. 54, ll. 1 to 15). She further testified that the trouble between the petitioner and defendant was that defendant wished to return to her folks in St. Louis and that the petitioner did not wish to go (p. 54, ll. 23 to 25). That she frequently heard the defendant make remarks to the same effect that she wished to go back to St. Louis where her people were (p. 54, ll. 30 to 39). That the petitioner said he would never return to St. Louis, that he was making his living here and he didn't want to return (bottom of p. 54, top of p. 55). That the defendant told this witness that she would never end her days here that she certainly would return to St. Louis. That the defendant's complaints about living in Newark kept up until defendant left in 1921, when she was living with the witness. That at the time defendant left she was leaving for St. Louis and that she would stop off in Chicago, and further that she did not want anything to do with that scamp, and that she was not coming back; and that he didn't have the name "pupp" at the end of his name for nothing (p. 56, ll. 30 to 40). This conversation was had on the evening defendant left for St. Louis, which was after Thanksgiving Day, the first part of December.

At that time this witness testified that the defendant did not make any complaint that petitioner did not treat her right (p. 57, ll. 10 to 12), and that as far as this witness could see the petitioner always treated the petitioner with consideration and care.

This witnesses' husband, Herman Gutkelch, testified that during the month of November, 1921, defendant told him that she was going to St. Louis alone and that her husband would not come along (p. 98, ll. 10 to 13).

So that from all the evidence adduced by the petitioner in this case there does not seem to be any doubt that the defendant deliberately left petitioner toward the end of November, or December, 1921, going back to her family in St. Louis.

The defendant has mentioned in her testimony that at the time she lived in Newark at South 9th street, she had arguments with her husband over his attention to a woman by the name of Mrs. Gutkelch and that that was the reason she wanted to leave Newark and go to Pittsburgh (p. 77, ll. 10 to bottom; also p. 87, l. 32 to bottom). To show her dislike and abhorrence of the petitioner she called him a bootlegger and that was an additional reason why she wanted to leave Newark (p. 77, ll. 31 to 33). Nevertheless when petitioner told her that he was not making a decent living in Pittsburgh she testified when asked the following question by the Master.

The Master: And then you went to St. Louis and then your husband wrote you he was making only a nominal success in Pittsburgh business, and he was going to Newark, and you tell me you came back on a train where this woman was?

The Witness: I came back to be with my husband. He put me there. I had no relatives here.

The Master: Why did you come back where this woman was?

The Witness: Because I had my furniture here and I was married to him, because my husband was here and my furniture.

So that notwithstanding the fact that the husband was coming back to Newark where Mrs. Gutkelch lived the defendant again consented to come back to him. Again on p. 89, l. 21, the following question was asked of the defendant on cross examination.

Q Did you ever say anything to Mrs. Gutkelch that she was coming around too often?

and the witness reluctantly answered, "No, and when asked whether she complained to Mr. Gutkelch about his wife's conduct, defendant answered "Yes," although the husband Herman Gutkelch (p. 96, ll. 10 to 12), denied that the defendant ever made any complaint whatever concerning his wife's attention to the petitioner.

Defendant wrote a letter (p. 9, ll. 10 to 29) to "Dear Helen" meaning Mrs. Helen Irmen, who is a full cousin of the petitioner, wherein she says among other things:

"You are right. He sure got the worst of that deal for he is all alone. Here I am enjoying a good time, having a lovely home with one of my boys and nothing to worry about. Everybody who sees me says I look years younger but please don't think I am satisfied. I just want you to know I am not worrying for account of a worthless husband."

There is not an iota of evidence through the whole case which shows that the petitioner did not treat the defendant with consideration and care, nor is there an iota of evidence which shows that the defendant ever complained to anyone about the treatment she was receiving from the petitioner. The defendant's story has no corroboration whatever and as was held in the case of *Garrett v. Garrett*, 86 N. J. Equity p. 293.

"It is an inflexible rule in this state that a divorce will not be granted upon the un-

corroborated testimony or admission of a party to the suit. Not only does this apply to the cause but to every element in the proofs necessary to sustain it."

The testimony of the petitioner is amply corroborated by the witnesses we have above cited, and we think that the testimony clearly indicates that the defendant was desirous of living in St. Louis with her children and that no amount of persuasion on the part of the petitioner would change her mind, and from the posture of the case we think the rule as announced in *Stirling v. Stirling*, 71 N. J. Equity, p. 59,

"Where the conduct of a wife on leaving her husband is not sufficient to make out desertion, but only separation, it is ordinarily the husband's duty to seek a reconciliation and a renewal of the matrimonial status before such separation can constitute wilful and obstinate desertion; but a demand for the return of the wife is not essential, where the circumstances be wholly ineffective." Citing also *Marsh v. Marsh*, 86 N. J. Eq. p. 419.

We respectfully submit that the appeal of the petitioner from the decree dismissing the petition should be ~~affirmed~~^{reversed} and the dismissal of the cross-appeal by the defendant be affirmed.

Respectfully submitted,

KALISCH & KALISCH,
Solicitors of Petitioner-Respondent.-
and appellant.

*justify the inference that
such a demand would*

655 OCT. T. 1930
87 OCT. T. 1930

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

Between

ERNEST WERPUPP,
Petitioner-Respondent,

and

LULU WERPUPP,
Defendant-Appellant.

*On Appeal
from
Chancery.*

ERNEST WERPUPP,
Petitioner-Appellant,

and

LULU WERPUPP,
Defendant-Respondent.

BRIEF FOR DEFENDANT-APPELLANT. AND DEFENDANT-RESPONDENT.

Facts.

The husband filed a petition for divorce on the grounds of desertion; the wife has counter-claimed for maintenance. The parties had been living together in Newark for seven years, until the month of October, 1921. At that time they moved to Pittsburgh upon mutual agreement and remained there with his relations. After being in Pittsburgh a few days, the wife, with the husband's consent went to Kansas City to attend a convention of the Daughters of the American Revolution, and from there to St. Louis to visit her mother, it being agreed that she would return to Pittsburgh after the visit. While there, the husband wrote his wife that he was returning to Newark, and did so. The wife immediately telegraphed him that she was also returning,

and she joined her husband in Newark on or about the first day of November, 1921.

The husband met the wife at the station in Newark, and they stayed that night at the Hotel Lenox. An argument took place that evening concerning which both parties tell conflicting stories.

The next day at the husband's request, the wife went to the home of Mrs. Gutkelch, a mutual friend, the husband saying (page 29), "It would be all right and I would come up," this was during the first few days of November, 1921.

On November 4, the husband wrote a letter to Mrs. Rose Hecht, a sister of the wife, which has an important bearing on the case, and in it he says, "All I want is to be left alone; I want her to go back to St. Louis or Chicago; I will not live with her any longer; if she has not got any money I will get enough to buy her a ticket; this is the end."

On the next day, November 5, the wife received a telegram from the husband which stated, "Cannot come up Leaving town Do what you want." On the evening of November 6, the husband called to see the wife at Mrs. Gutkelch's, for the first time, and apparently another argument ensued, although the evidence as to what actually took place is also contradicted. Thereafter, the husband did not call to see his wife again, and she next heard from him through his attorney who communicated with her to pay her support of \$10 per week. She remained with Mrs. Gutkelch for four weeks during which time he made no attempt to see her or communicate with her and she had no knowledge of where he was.

At the end of this time she returned to St. Louis, and the husband continued to send her support through his attorney for seventeen months, after which he discontinued entirely. He admittedly has never written any letters to her or made any attempt to see her. It is also admitted that he refused to accept a letter written by her to him, and returned it without opening it.

The wife is sixty-three years of age and without any means of support. The husband is fifty-one years of age and is the proprietor of a beauty shop in East Orange, New Jersey.

I.

The Court of Chancery erred in finding that the defendant has not sustained the burden of proving her counter-claim for maintenance.

It is our first contention that the evidence establishes clearly an abandonment of the wife by the husband and a refusal on his part to support her. We submit that the wife has sustained the burden of proving these elements by a clear preponderance of the proof, and that she is therefore entitled to a decree of separate maintenance as prayed for in her counter-claim.

Let us first examine the evidence on the question of abandonment.

The evidence leading up to the separation commences with the journey to Pittsburgh in October, 1921. It is uncontroverted that this trip was made by mutual consent of both parties. The husband on page 25 testifies as follows:

“A I consented to go to Pittsburgh with her.

A She said she was going to take in a convention and after that would go visit-

ing to St. Louis with her mother, children and friends.

Q What did she say about you? A I agreed to that."

While petitioner would lead us to believe that he went to Pittsburgh only at the behest of his wife, and in order that she be nearer to her people, it is significant that Mrs. Werpupp had no relations in Pittsburgh, while Mr. Werpupp did have relations there, and it was to obtain a position in Pittsburgh that he went there (page 63).

After staying in Pittsburgh for three days, the wife, with the husband's consent, proceeded to the convention of the Daughters of the American Revolution, and after that, went to St. Louis to visit her people, it being agreed that she would return to her husband in Pittsburgh. The testimony pertaining to this is as follows (page 64):

"Q What did she say about going to a convention? A It was arranged that she was going to a convention; I think it was in Indianapolis.

Q That was with your consent? A Yes.

Q After visiting Indianapolis, she was supposed to go to St. Louis? A Yes.

Q With your consent? A Yes, sir.

Q You understood she would return to Pittsburgh? A Yes."

While the wife was in St. Louis, the husband wrote to her telling her that he was returning to Newark and that she should stay in St. Louis "until he was ready for her" (page 27). His reasons for returning were that he could not secure lucrative employment in Pittsburgh. Accordingly, the husband returned to Newark on or about November 1, 1921.

Immediately upon receipt of her husband's letter, the wife left for Newark to join him, telegraphing him to meet her at the station

upon her arrival. He did so, and they went to the Hotel Lenox for the evening. What transpired that night is sharply contradictory.

The husband states that his wife upbraided him for coming back to Newark and insisted upon his returning to St. Louis with her, and that she said she would not live here with him.

The wife, however, states that upon meeting her at the station, the husband insisted that she return at once to Chicago. She refused, telling him that she would not leave. When they had left for the Hotel, she asked him to get a paper and look for a flat so that they could establish a home in Newark, but he refused. At any event, on the next day, at his direction, she went to the home of Mrs. Gutkelch, a mutual friend, to stay there until he should provide a home for her.

Although these stories are in direct conflict, the wife's version is strongly corroborated by the letter which the husband wrote to Mrs. Hecht on November fourth, the day following. This letter, which was received in evidence as Exhibit D. 3, shows clearly the true state of the husband's mind, and evidences his intention to abandon his wife and have nothing further to do with her. We call the Court's attention, in particular to the following extracts from this letter:

"All I want is to be left alone.

I want her to go back to St. Louis or Chicago; I will not live with her any longer; if she don't leave, I will leave Newark.

If she has not got any money I will get her enough to buy her a ticket; this is the end."

Petitioner's entire attitude is reflected by his statements in his letter. We submit that these statements show clearly his intention to abandon

his wife. On the following day, after writing this letter, he sent a telegram to his wife in which he says, "Cannot come up Leaving town Do what you want."

On the next day, November sixth, he called upon his wife for the first time since the evening at the Hotel Lenox. The wife testifies that on this occasion he told her he was through, that he was going away, and wanted nothing further to do with her. Although he denies these statements, they are forcefully borne out in the light of his previous letter and telegram, and the truth of the wife's story is undeniably clinched by his later conduct.

For after that date, *there is no dispute* that the husband made no attempt to see or communicate with his wife, except through his attorney, and she has not seen him since. Although she waited for four weeks after this time to hear from him and attempted to locate him, she was unsuccessful. At the end of four weeks, and after he had carried out his intention to abandon her, she returned to St. Louis, to the only home which she had.

He continued to send her support for seventeen months through his attorney. It is admitted by the petitioner that from 1921, down through all these years, he has never written to her, nor has he ever made any overtures to seek her return. His attitude has remained consistent with that expressed in his letter of November fourth.

But not only has the husband failed or neglected to seek his wife's return—he has deliberately repulsed any advances which his wife might have made.

On July 30, 1922, the wife wrote a letter from St. Louis to her husband in Newark. Upon re-

ceiving this letter, the petitioner wrote upon the envelope, "Not excepted, E. W." and returned the letter unopened to the wife. This is admitted by the husband, and no valid excuse is offered for his refusing to accept the letter. This letter was offered in evidence by counsel for the defendant but was objected to by the husband. We may reasonably infer since its admission was strenuously objected to, that its contents were not favorable to the petitioner.

These then, are the salient facts relating to the husband's abandonment. Followed in their logical sequence, they point to a clear intention, evidenced by the husband's own statements, to abandon the wife, which intention the husband has deliberately executed, together with a persistent refusal on his part to make any attempt at reconciliation.

Much stress has been placed upon the wife's repeated statements that would prefer to live in St. Louis. We submit that these statements alone do not constitute an acquiescence on her part to the separation. On the other hand, the evidence clearly indicates that the husband's abandonment was against the will of the wife.

If, as is alleged, the wife was more content to live in St. Louis, apart from her husband, than to remain with him in Newark, what reason was there for her returning to him in November, 1921? She was already in St. Louis. Her husband had written to her to *stay there*; that he was returning to Newark. If there was any intention on her part to separate herself from him, if there was any desire on her part to remain away from her husband, she could have stayed in St. Louis indefinitely, in strict obedience to her husband's wishes. But, she left St. Louis and immediately

returned home to her husband and asked him to establish a home for her in Newark. Is this the act of a woman, whom it is claimed, loved St. Louis more than she did her husband? Or was it not rather the act of a woman, who, although she undeniably would have preferred to make her home nearer to her people, yet returned to Newark because she knew her place to be with her husband. We do not deny that the wife endeavored to have her husband establish himself in the city of her own choice, but there is not one scintilla of evidence in the entire case which indicates any desire on her part to remain in St. Louis without her husband.

If, as the Master found, the wife acquiesced in the separation, what reason was there for her waiting in Newark for four weeks after her husband had told her he was through and wanted nothing more to do with her; four weeks—during which she received no word from her husband, during which he made no attempt to see her, speak to her, or write to her, and during which she received only the meagre support sent to her through an attorney. Does this conduct on her part spell out acquiescence?

It is further established that after leaving Newark, she left her furniture in storage in Newark until July, 1922, paying the storage charges herself. Surely, if she had acquiesced in the abandonment, would she not have removed this furniture to St. Louis at once, rather than leave it here at her own expense in a vain hope that their marital difficulties might some day be adjusted, and that she might some day hear from her husband.

The Master, in concluding that the separation was entirely in accord with the wife's wishes

seems to lay unusual emphasis on the wife's statements to Mr. Bozza, the attorney. Mr. Bozza testifies on page 50:

"I gave her the money when she came in and she folded up the money and put it in her bag, and she said, 'Now I am going back to St. Louis where I have my friends and my children. I am through with him. I do not want to have anything to do with him.'"

The Master undoubtedly overlooks the fact that at the time these statements were made, the husband's abandonment was complete, and her attitude as expressed on this occasion was not one of acquiescence in the original separation, but rather of righteous indignation over her husband's conduct towards her. It must be remembered that before this date, the wife had left St. Louis and had come all the way to Newark to join her husband and take her place with him. She had asked him to furnish a home here, and was ready to stay with him. In the face of this she was met at the station with her husband's insistence that she return to Chicago at once. She was confronted by his statements that he wanted nothing more to do with her. He made no attempt to secure a home for her, although she waited for four weeks to hear from him. He saw her only once, and on that occasion told her he was through. In spite of all this, she remained in Newark for four weeks in a vain hope that he would yet return to her.

Surely, by that time, her patience was sufficiently exhausted for her to say, "I am through with him! I will go back to St. Louis." Certainly, by that time she was justified in saying that she was done with him and would return to the only home which she had.

Whatever her attitude might have been at the end of these four weeks was wholly immaterial

for the reason that the act of abandonment had already been completed against her will. Her conduct and her possible acquiescence must be judged as of the time of the abandonment, which in this case was on or about November 4th, 5th and 6th. Whatever she said after that period can have no effect on the question.

The Master further mentions in his report that the wife's acquiescence was confirmed by a letter which she wrote to Mrs. Irmen, a friend, on May 26, 1929. The contents of this letter were not read into the testimony, and have not been included in the state of the case. Aside from this, we respectfully submit that no matter what was contained in this letter, it could have no effect on the question of abandonment or of the wife's acquiescence in the abandonment. It must be pointed out that this letter was written in 1929, eight years after the husband had abandoned the wife. It should also be remembered that during all of these eight years, the wife has had no communication whatsoever from her husband. Regardless of what her attitude might have been in 1921, it surely cannot be measured by her statements made in 1929, and we respectfully urge that the Master erred in considering this letter as having any effect on the question of abandonment.

But, even if these facts were insufficient to establish a willful and obstinate abandonment on the part of the husband, we would go still further. For even assuming the original desertion in this case to be the fault of the wife alone, yet the husband, in continuing the desertion, in refusing to make any attempt at reconciliation, and in repulsing the advances of his wife, has made the desertion his own, and a bill will still lie against him.

In the case of *Cory v. Cory*, 11 Equity, page 400, the Court held that although the original separation was the fault of the wife alone, yet, if thereafter the husband refused to take back the wife and persisted in continuing the separation, he was guilty of an abandonment, and the Court in that case so decreed.

In the case of *Norcross v. Norcross*, 82 Equity, page 195, Vice-Chancellor Backes held as follows:

“Although a wife may without cause or justification abandon her husband, yet the law imposes upon him a duty to use active efforts to terminate the separation by making such advances or concessions as might reasonably be expected to induce her to return to him.”

In the case of *Oertel v. Oertel*, 83 Equity, page 41, the Court held as follows:

“If her act was desertion in the first instance, then her husband did not use any proper effort to terminate it by making those advances and concessions, which, in the language of the case might reasonably have been expected of him with a view to induce her to return.”

In the case of *Cornish v. Cornish*, 23 Equity, page 208, the wife in that case left her husband, and the Court found that although he did much to provoke her going away, his conduct did not altogether justify the separation. He has done nothing since to induce her to overlook or forgive his conduct, nor has he made any attempt to induce her to return, but has acted as a husband would act who wished his wife to stay away for three years so that he might obtain a divorce. The Court further said:

“Her temper may be too quick and to violent, but it was his duty to go to her after leaving under these circumstances and see if

some contrition, some compensation on his part could not do away with the effect of his harsh conduct on that night. He has not made the advances or compensation which a just man should have made to put an end to this desertion."

In the case at bar, the husband admits that he never wrote any letters to his wife, nor made any attempt to secure her return, and it is further admitted that he refused to accept any communication from his wife, returning her letter unopened and discouraging any efforts she might have made toward a reconciliation.

His excuse for these acts is that he did not want to get into any argument with his wife. We do not think it necessary to comment upon the absurdity of this contention. If he had any thought at any time to discontinue the state of separation, at least he would have honored her letters. We fail to see how, in any event, a correspondence between the parties could result in "argument."

Furthermore, when he discontinued sending his wife the weekly payments, he clearly indicated his desire to be forever rid of her, and his acquiescence in the state of separation existing between them. Although we cannot construe the abandonment in this case as anyone's but the husband, still, no matter which party may have been the cause of the original desertion, by the husband's acts and conduct he has since been guilty of an abandonment of the wife within the meaning of the cases above cited.

Leaving the question of abandonment, we come to the second element to be proven by the wife, the refusal to support.

The facts concerning this are not in dispute. After the husband had left the wife in November, 1921, and while she was still at Mrs. Gutkelch's, she received weekly support from her husband's attorney, Mr. Bozza, in the amount of \$10.00, per week. This amount was of course, insufficient for her to establish any sort of home here, and it was for this reason that she was compelled to leave for St. Louis, the only place to which she could go in view of her husband's refusal to establish a home for her here.

After her return to St. Louis, she continued to receive these weekly payments, first of \$10.00, and later \$8.00, until May, 1923, when he stopped making these payments altogether.

He testifies on page 35 that he sent this money for two reasons, first for "sympathy's sake" and second, that some day she might make up her mind to come back to live with him. We agree that there was sufficient reason for him to have sympathy with his wife, but his second reason was most inconsistent, considering that he never made any attempts to get her to come back and discouraged attempts on her part to communicate with him. He stopped supporting his wife because he "didn't see any results." Exactly what results he expected in view of his previous conduct is not clear. The fact remains and it is admitted that since May, 1923, he has not contributed to his wife's support. The wife, not knowing his whereabouts, was unable to communicate with him to demand support. We think that the evidence clearly establishes a refusal on the part of the husband to support the wife.

The husband was at all times fully able to support and maintain his wife in a suitable man-

ner, had he chosen to do so. He testifies on page 71 that he is the sole owner of a beauty shop at No. 590 Central avenue, East Orange, New Jersey, and that his income for 1929 was approximately \$50.00, per week. In addition, he owns an automobile and has money coming to him from his uncle's estate in the amount of \$2,200.00, as he testifies. We think the husband's means are sufficiently ample for him to pay suitable maintenance and support to his wife.

Summary.

Summarizing the successive steps, we find that both parties went to Pittsburgh by mutual consent. While there the wife visited in St. Louis and Indianapolis with her husband's consent. While she was in St. Louis, the husband formulated his plans to separate himself from his wife. He wrote to her telling her to stay in St. Louis while he returned to Newark. This she was unwilling to do and she immediately joined him in Newark.

This was obviously not how he had planned things, for he met her at the station with a demand that she return immediately to Chicago and leave him. When this did not avail, he took her to a hotel for the night, and on the next day sent her to a friend's house. In the meantime, and before visiting his wife, he wrote the all important letter to Mrs. Hecht, wherein he lays bare the workings of his mind, and shows clearly his intention and desire to be rid of his wife forever. On the next day he visited his wife to tell her that he was through with her, and this done, he stepped out of her life forever. Although she waited in vain for four weeks to

receive some word from him, the next communication she had was from his attorney.

During all the years since this time, she has received no letter or other communication from him. Her letter to him was returned to her unopened. The support which he had been sending to her for "sympathy's sake" is stopped without explanation to her. She has no means of locating him and did not know his whereabouts until the present action.

We respectfully submit that the defendant has established her counter-claim by a clear preponderance of the evidence, and that the proofs clearly show a willful abandonment and a willful refusal to support on the part of the husband. For these reasons, we respectfully urge that the Advisory Master was in error, and that the decree dismissing defendant's counter-claim should be reversed.

II.

There was no error in dismissing the petition for divorce filed by the husband.

The burden of proof was on the petitioner to prove a willful, obstinate and continuous desertion on the part of the wife for a period of two years. It is our contention that the evidence wholly fails to substantiate the allegations of the petition for divorce, and that the decree of dismissal as to this cause should be affirmed.

In the first instance, we maintain that the proofs failed utterly to show any desertion on the part of the wife, but on the contrary clearly establish an abandonment on the part of the husband. Our reasons for this contention are sufficiently dwelled upon in the arguments on the

first point of this brief, and we will not repeat them here at length.

But even if we proceed upon the assumption that the desertion was the fault of the wife, which we do not, however, admit, the petitioner has still failed to prove that the desertion was either willful or obstinate.

We again call to the attention of this Honorable Court the letter written by the petitioner on November 4th, at the time of the separation. The statements of the petitioner made at this time indicate a complete acquiescence on his part to the separation and clearly show his desire to be rid of his wife. Furthermore, during the four weeks that she remained in Newark, he came to see his wife only once, and then to tell her that he was through. He retained an attorney to communicate with his wife because he wanted nothing more to do with her. Since that time, it is admitted that he has never made any attempt at reconciliation or any overtures to seek her return.

It must be remembered that the statements contained in this letter are not denied, nor is any attempt made to qualify or neutralize the effect of the letter. By his own statements therefore, and by his acts and conduct thereafter, we think it sufficient proof that if there was any desertion on the part of the wife, it was with the husband's acquiescence and entirely in accord with his wishes. We submit then that the petitioner has wholly failed to prove the willfulness of the wife's desertion, if any.

Neither can it be claimed that a desertion on the wife's part was, in view of the evidence adduced, an obstinate desertion.

It is the duty of a deserted husband to endeavor in good faith to induce his wife to return, and until this duty is performed or good cause shown for its non-performance, the desertion is not obstinate. And if circumstances exist which would render any overtures futile, then the burden of proving such futility is upon the husband, for it will not be presumed that the wife will persist in continuing her desertion against the honest attempt of the husband to bring it to a conclusion.

Petitioner has sought to charge that by reason of the acts of the wife, any overtures on the husband's part would have been futile, and for that reason the husband was under no duty to make any overtures.

Upon reading all the cases bearing on this subject, we contend that there are no circumstances in the present case to justify the husband's failure to make overtures or to attempt a reconciliation, and in support of this contention we recite the following cases:

Hall v. Hall, 60 New Jersey Equity, page 469, at page 470, the Court says:

"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.

"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 hus-

band 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 and 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 desertion to an end, would be so only temporarily, the duty of making it does not exist.

"The burden rests upon the husband of showing the futility of making the effort which the law ordinarily requires of him; for it will not be presumed, in the absence of proof, that the wife will persist in continuing her desertion against the honest attempt of the husband to bring it to a conclusion."

In the case of *Smith v. Smith*, 95 N. J. Equity, page 657, the husband filed a petition for divorce setting forth that his wife deserted him, and the Special Master refused to recommend a decree in favor of the petitioner, on the grounds that there was an absence of proof, that the wife's desertion was obstinate in that it was not made to appear that the husband made reasonable advances to his wife after her desertion, to return to him. The testimony in that case showed that the wife deserted the husband without any cause or provocation on his part; that she went to live with Mr. Mike McCullough; that the petitioner learned that she went with McCullough to Philadelphia; that he saw them walking together; that he knew that his wife and McCullough were living together, because he knew where they lived and saw them go in and out of the house; that he got his information that they were living together from Mr. Dougherty; that

he never requested his wife to return to him. The testimony also showed that the wife made a statement that she was living with McCullough, and the Court said, in the light of this testimony, which revealed the relations existing between petitioner's wife and McCullough, though such testimony might have been inadequate to establish adultery as a ground for divorce, nevertheless, the circumstance was sufficient to furnish a reasonable ground for belief in the mind of a husband that his wife was unchaste, and being so he was relieved from making any effort to induce her to return to him. The spirit of the law is not so unreasonable and cruel as to compel a husband to forfeit all his self-respect and to debase himself by requiring him to make overtures to a wife for her to return to his hearth in a case where she had deserted him for another man, and the Court granted the petition of the husband.

In the case of *Rogers v. Rogers*, 81 Equity, page 479, the petition was filed by the husband, and the facts show that the parties were living in a house owned by the husband, and that in 1908, the defendant went for a visit to her parents in New York City, the petitioner accompanying her. Before starting and on the way they quarreled about money matters. They had various disputes about money, and the petitioner was shown to have been a miserly man. Subsequently, the wife testified that her reason for deserting the petitioner was because he refused to give her money with which to run the house and his general unkind treatment. At an interview with her husband, at her father's house in New York, she agreed to return to him only upon condition that she should have \$30 a month to run the house with, and that they were to

occupy separate rooms. She asserted that from the time she made those conditions to the time of giving her testimony her mind on that subject had not changed. She only paid one visit to her husband's home after she went to her father in 1908, and that was not to live with her husband but to take her belongings away. On the occasion of her husband being at the wife's father's house her father told the husband that if his wife returned to him they would have to occupy separate rooms, and the wife in her testimony said that that was the first that was said about separate rooms.

The wife testified that her husband would not agree to the conditions, and that her father then asked her to state her decision, and she asked the petitioner if she had changed his idea as to how she should run the house and he said, "No." She then asked him if he would continue to carry the money for the running of the house and he said, "Yes," and she asked if she was not to have any if she went back, and if he was to continue to buy the things and pay the bills, and he said, "Yes," he thought he could do it more economically than she could, and she said she would not return under those conditions, and she added that if he changed and she went back still they would occupy separate rooms.

It was understood that the wife's refusal to occupy the same room with her husband was because she suspected him of having some disease, although she admits she did not accuse him of it while living with him. Subsequently, in September, 1908, the wife went to her former home and removed her things in the absence of her husband. The petitioner also continued to occupy his house from the time of their separa-

tion until the filing of his petition in the cause. His wife never returned and he made no overtures for a reconciliation. The Court then said:

“The learned vice-chancellor in the court below lays considerable stress upon the want of proper approaches by the husband to the wife and the absence of sincere effort on his part to induce a reconciliation and her return. We, however, think that this cause falls within that class of adjudicated cases which excuse the husband from making an effort in the direction just mentioned, because it is apparent to us from the wife’s conduct—her actual desertion of her husband, the imposition of unlawful and unreasonable conditions before she would return, her removing her furniture and belongings from his house in his absence, bringing a suit for alimony shortly after the separation—that any overtures or efforts made by her husband to induce her to return would have been entirely futile.”

In the case of *Norcross v. Norcross*, 82 Equity, page 195, Vice-Chancellor Backes said:

“The parties to this suit lived in Bergen County and were married in 1901. They have one child. In 1910 they separated. The petitioner charges that at that time the defendant deserted him, and that her desertion was continued, willful and obstinate for a period of two years. The cause was uncontested. The master to whom it was referred reported adversely to the prayer of the petitioner, assigning the reason that it was not shown that the desertion was obstinate—against the will of the petitioner. The petitioner’s testimony is to the effect that his wife was fond of the gay and forbidden life, and because of frequent reproofs she expressed her determination of leaving him, and quickly put this into action, notwithstanding his pleas and protests. All during the two years of the supposed desertion the petitioner made absolutely no advances to

induce his wife to return to him. Had he done so; had he been solicitous of a reconciliation, I am satisfied that the defendant would have yielded. By the testimony of a witness who crated some of the furniture preparatory to her departure it appears that the defendant requested him to collect for his services from the petitioner, which the latter paid. During her absence the defendant kept up a correspondence with her husband, and it seems that he, at least upon one occasion, wrote to her. It may fairly be gathered from the wife's letters that her separation was in a measure assented to and acquiesced in by the petitioner. Her letters to him indicate that the petitioner was not unwilling that his wife should live apart from him, and the impression they make upon me is that if he had made reasonable overtures to her she would have ended the separation. There is nothing in the conduct of the defendant which leads to the belief that had the petitioner solicited her, he would not have been successful in inducing his wife to rejoin him. The statement made by her to his solicitor, that she didn't see how she could live with her husband again, does not manifest obduracy. The insinuation that the defendant found marital solace in the society of one Ackerman, and that from this it may be assumed that the petitioner's efforts would have been unsuccessful, finds no support in the record.

Although a wife may, without cause or justification, abandon her husband, yet the law imposes upon him a duty to use active efforts to terminate the separation, by making such advances or concessions as might reasonably be expected to induce her to return to him. *Bowlby v. Bowlby*, 25 N. J. Eq. (10 C. E. Gr.) 406. And he is excused from discharging this obligation only when it is manifest from the facts in the case that to do so would be unavailing. *Hall v. Hall*, 65 N. J. Eq. (20 Dick.) 709.

The denial of a decree of divorce is further sustainable because the charge of willfulness of the supposed desertion is supported only by the petitioner's evidence.

There is corroborating testimony that the defendant separated from her husband, but none that she deserted him. The expressman and another who helped to move the furniture simply tell of her going. Her letters speak only that she left her husband, but what persuaded her to go, or that it was a willful abandonment on her part, does not appear other than from the lips of the petitioner.

The master's report is confirmed and the exceptions are overruled."

In the case of *Hyre v. Hyre*, 91 N. J. Equity, page 147, in a cause where the husband was the petitioner, the Court said that it was conceded that the wife was the deserting party, and that the desertion was willful and continued was not denied; but the proofs will not justify the conclusion that the desertion was obstinate within the meaning of the statute. The case failed to show the making of any advances or concessions by the husband to the wife subsequent to September, 1913, when they resumed marital relations. On the contrary, a reading of the evidence makes it reasonably clear, not only that he was derelict in the performance of this obligation, but that he was content to have the separation continue. This being so the Court of Chancery properly refused to grant him a divorce.

In the case of *Sterling v. Sterling*, 71 N. J. Equity, page 59, the Court said:

"But the exceptions are supported here by the argument that the testimony discloses that no duty devolved upon the husband to seek to induce her to return. It is the result of our cases that while a demand for the return of the wife is, in general, required

to be made, it is not essential where the circumstances proved justify the inference that such a demand would be wholly ineffective.

Two circumstances are claimed to show that a demand in this cause would have been ineffective:

(a) It is urged that what the defendant said to the complainant, when she returned to the house to obtain her property indicated that she had deserted him for another person. Under such circumstances a demand would seem to be absurd and unlikely to be ineffective. But this evidence comes from the plaintiff alone, and lacks any corroboration.

(b) The possession by the complainant of a key which he found would open the door of a house in which he says a man lived whom he suspected of being intimate with his wife.

There is corroboration that the key which complainant had would open the front door of a certain house, but there is no corroboration of complainant's testimony that the key came from the possession of the defendant, nor that the house was one in which the man in question lived, nor that there had ever been any undue familiarity between the defendant and that man.

The result is that the master's report must be confirmed."

In the case of *Jatman v. Jatman*, N. J. Miscellaneous, page 1101, the Court said:

"It is not doubted that the last desertion, like the previous four, was willful, nor that it was obstinate, against the will of the petitioner. What more could the petitioner do to detain her against her will to go or called upon to do to have her return? For some unaccountable reason she sent him a Jewish New Year greeting in September. He wrote asking that she return. She refused. He wrote again, with the same reply. He visited her in a hospital, Hamilton, Can-

ada, in 1927; brought her flowers, candy and jewelry—she says, and cajoled her not to return because it would interrupt the continuity of her desertion. His later letters to her and hers to him stand refutation. All her letters disclose her determination not to return because of his alleged ill-treatment. The futility of any further effort the petitioner might have pursued is obvious. When it appears that effort would be unavailing none need be made. *Hall v. Hall*, 65 N. J. Eq. 709; *Rogers v. Rogers*, 81 N. J. Eq. 479. Statutory desertion is established, unless the separation was justified on the ground of extreme cruelty.”

In the case of *Oertel v. Oertel*, 83 N. J. Equity, page 41, the wife refused to cohabit with her husband unless he gave her a larger weekly allowance. Her refusal to cohabit was not, she says, final, and the Court said:

“It was expressly grounded on his failure of duty in the matter of support. It is true there are witnesses who swear that she told them she would not cohabit with him any longer. But her expressions, supposing them to have stated with entire accuracy, casually uttered in moments of resentment, are not entitled to much weight as evidence of a fixed resolve. They may well have been used in reference to the then situation.

If her act was desertion, in the first instance, then her husband did not use any proper effort to terminate it by making those advances and concessions which, in the language of the cases, might reasonably have been expected of him with a view to inducing her to return. *Hall v. Hall*, 65 N. J. Equity, page 710. The appropriate concession in this case was a more adequate support. I think the petitioner has failed to establish a case.”

In the case of *McCauley v. McCauley*, 88 N. J. Equity, page 392, at page 396, the Court said:

“The master reports that there is no doubt that after the separation in November, 1914, and up to January, 1915, a period of over one month, the petitioner repeatedly asked the defendant to go back and live with him, but that she refused. The expressions and conduct of the defendant toward the petitioner at and before the time of her leaving him, excused him, in my opinion, from making further efforts to induce her to return, as it appeared that they would be unavailing. *Hall v. Hall*, 65 N. J. Eq. 709. And her conduct and expressions corroborate the petitioner's case in this regard. *Foote v. Foote*, 71 N. J. Eq. 273, 280.

The defendant told the witness Ruth Houston that she would never live with her husband again. The witness Emil Manitz testified that the defendant told him not to call her Mrs. McCauley, to call her Hilda, that she went under the name of Hilda Thomas; that she did not live with her husband and would not; that she told him at least half a dozen times that she would not live with him. She twice made similar statements to the witness Agnes Smith.

The defendant, under subpoena, testified that she left her husband on November 22d, 1914, and had refused to live with him since; that he had asked her to go back, but she said that under no conditions would she take him back. Her sister, Stella Schofield, said she did all she could asking her sister to go back and live with her husband and that she refused. It is true that she said that the defendant stated that her husband had threatened to kill her and treated her badly; but there is no proof in the case that the petitioner drove his wife from him by extreme cruelty, and guilt of a matrimonial offence on his part alone would justify her in leaving him.

Upon the whole case, I am constrained to the conclusion that the defendant willfully, continually and obstinately deserted the petitioner for the statutory period, and he is entitled to a divorce. A *decree nisi* will be entered."

In the case of *Cornish v. Cornish*, 23 New Jersey Equity, page 208, the wife in that case left her husband, and the Court found that he did much to provoke her going away, though his conduct altogether did not justify it. He has done nothing since to induce her to overlook or forgive his conduct, which provoked her to leave, or made any attempt to induce her to return, but has acted as a husband would act who wished his wife to stay away for three years so that he might obtain a divorce.

The Court also found that the husband sent his wife away to her father's home, and since that time he never sought a reconciliation or asked her to return. He met her a number of times and never spoke to her, and the Court further said:

"Her temper may be too quick and too violent, but it was his duty to go to her after leaving under these circumstances, and see if some contrition, some concession on his part, could not do away with the effect of his harsh conduct on that night."

The Court further said:

"He has not made the advances or concessions which a just man ought to have made, to put an end to this desertion. For want of this, a desertion which was willful and continued, cannot be adjudged obstinate.

The divorce must be refused."

Referring to New Jersey Divorce Practice by Francis Child, on page 122, Mr. Child in his book says:

“The law of this State as construed by the courts has imposed upon a deserted husband the duty to endeavor in good faith to induce his wife to return, and until this duty is performed, or a good cause shown for its non-performance, the desertion is not obstinate. Our law has not laid down any set rule in regard to the duty imposed upon a husband of inviting the return of a wife, who has separated herself from him, where she is to blame for the separation. When this question comes before the court, it is said that the only test of any practical value in a large number of cases, is taking all the conditions and circumstances into consideration—‘Has the man acted like a just man?’

Ordinarily, this doctrine imposes upon the husband the duty of offering a suitable home, adequate support suitable to the situation in life of the parties, kindly treatment, forgiveness and full resumption of marital relations.

The husband is not permitted to limit the time within which the wife may return.

Nothing short of a matrimonial offense, in itself sufficient to warrant a divorce, will justify the husband in refusing to take his wife back at any time prior to the expiration of two years from the date of his first effort to secure her return; nor can the husband impose any condition, as a condition precedent, to the return of the wife.

Where, however, it is impossible by reason of the lack of knowledge of the whereabouts of the wife to make any effort to induce her to return, if it can be shown that the husband has made a bona fide inquiry, but without success, to get into communication with his wife, he has done all that he is required to do.

Also, if it appears from the facts that if the husband made such effort that it would be unavailing or if successful in bringing the desertion to an end, it would be only temporary, the duty to make such effort does not exist. The burden is upon the husband of showing the futility of such an effort; and it will not be presumed, in the absence of proof, that the wife will persist in continuing her desertion against the honest effort of the husband to terminate it.

Where there have been repeated desertions by the wife, followed by her return at the husband's request, it would appear from the decisions that the husband is under no duty to make further advances to induce his wife to return and that her return should be with the bona fide intention of living with the petitioner.

The husband is also relieved of the duty of making advances for the return of the wife, where it appears that the deserting wife went to live with another man under circumstances that justify the inference that she is living with him as his mistress."

There is absolutely no proof in the present case from the circumstances under which the desertion took place, or from the temper or disposition of the wife, or from any statements made by her that an honest effort on the part of the husband to terminate the separation would be unavailing. On the contrary, we think it clear that it was the husband's duty under the circumstances to make some attempt at reconciliation, and to make reasonable advances to seek his wife's return. The husband having failed in this duty, it cannot be said that the wife's desertion, if any, was obstinate.

Much emphasis is placed by petitioner on the fact that the defendant repeatedly expressed her dislike of Newark, and endeavored to get her

husband to go to St. Louis, but it must be pointed out that at no stage of the case did the wife prior to the husband's desertion, ever state or infer that she would leave her husband rather than live in Newark. The mere fact that she would have preferred to live in St. Louis is not sufficient to excuse the husband from his duty to make reasonable overtures.

We again reiterate that the only logical conclusion to be drawn from the acts is that the desertion in this case was the act of the husband. But even assuming the desertion to be the fault of the wife, we submit that the evidence falls far short of proving that a desertion on the wife's part was either willful or obstinate.

CONCLUSION.

For the reasons and arguments presented, we therefore most respectfully submit that the decree of the Court of Chancery dismissing the petition for divorce, be in all respects affirmed; and that the decree dismissing defendant's counter-claim for separate maintenance be reversed, and for nothing holden; and that a decree be entered granting to the defendant the relief prayed for in her counter-claim; and that a suitable amount be fixed for her proper support and maintenance, and reasonable counsel fee allowed.

Respectfully submitted,

WILLIAM F. NIES,
Attorney for Defendant-Appellant
and Defendant-Respondent.

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OCT. T. 1930

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

Between

ERNEST WERPUPP,
Petitioner-Respondent,

and

LULU WERPUPP,
Defendant-Appellant.

*On Appeal
from Chan-
cery.*

ERNEST WERPUPP,
Petitioner-Appellant,

and

LULU WERPUPP,
Defendant-Respondent.

REPLY BRIEF OF PETITIONER-RESPOND- ENT, and PETITIONER-APPELLANT.

The defendant attaches great importance to a letter written by the petitioner to Mrs. Rose Hecht, defendant's sister, bearing date November 4, 1921, and introduced in evidence as "Exhibit D. 3," as indicative of the petitioner's intent to desert the defendant.

A careful study of the letter in question leads to the unmistakable conclusion that the entire contents of that letter in question, except for a small short paragraph, which ordinarily may be considered as a damaging admission, deals with a long and detailed explanation of the irreconcilable nature and restless disposition of the defendant, who endeavored to foster her will upon the petitioner, and denied to him his legal right to fix the situs of the legal domicile. This is clearly evidenced by that portion of the letter

which states, "It was not my wish to leave Newark, but Lulu said she would not live in this town any longer. She would leave. I told her that I would not leave Newark, but she made me. She would not give me rest day or night. She would not go to bed. She would not let me sleep, till I would give in. * * * I had to go with her just as if I was her child. I had to do just as she said."

This dissatisfaction with her abode in Newark drove the petitioner to such distraction that he plaintively states in his letter, "I am nearly crazy and my hair is getting white, but I do not want any sympathy or money from anybody. All I want is to be left alone and I will get ahead. All summer she talked about that she was going to live with her mother and children, and her mother told me that she was going to send for her to live with her." It appears that the petitioner not only had to contend with a restless and dissatisfied wife, but also had to suffer the intervention of an indulgent mother-in-law, who begins to complicate this matrimonial issue.

The short statement that follows that he wanted her to go back to St. Louis or Chicago immediately followed by the statement, "I will help supporting her when I get money again, etc," is uttered to a third person—not to the defendant herself, and follows merely as a climax of passion after relating all the pain and trouble that had been visited upon the petitioner. That this was not the true intent or the permanent mind of the petitioner is most forcibly evidenced by the fact that he engaged an attorney, in the person of Mr. Bozza, to pay his wife \$10.00 a week and *instructed the said attorney to tell his wife that he was making strenuous*

endeavors to get in financial condition to resume their living together in Newark (top of page 49), and as a further positive departure from that sudden expression, the petitioner not only continued to pay his wife through his attorney, \$10.00 per week, but even gave her the \$50.00 which was the cost of transportation from St. Louis to Newark, and thereby placed his sanction and endorsement and approval upon the presence of his wife in Newark, only to have her tell him through the said attorney, "Now, I am going back to St. Louis where I have my friends and children. I am through with him. I don't want to have anything to do with him. You can forward the \$10.00 to me there" (p. 50). This conciliatory attitude toward and this maintenance provided the defendant by the petitioner was after the writing of that letter in question, because it will be recalled from the testimony that the defendant continued to live in Newark at the home of her friend, Mrs. Emily Gutkelch, for approximately four weeks since her arrival from St. Louis.

Counsel for the defendant contends on page 9 of his brief that the defendant's patience was sufficiently exhausted for her to say, "I am through with him. I will go back to St. Louis," and he further observes that "By that time she was justified in saying that she was done with him and return to the only home which she had." What less justification can be found for your petitioner, who had to submit to the changeable and obdurate will of the defendant so as to bring about the conclusion in the petitioner's mind that he had to go with her just as if he was her child. He had to do just as she said, all because she would not accept the legal domicile created for her by the petitioner in Newark,

New Jersey, as was his undisputed right to
create for her.

KALISCH & KALISCH,
Attorneys for and of Counsel
with Appellant.



