

wherein it appears that money was paid to the plaintiff, George Dedes, weekly, as well as to other employees, including two of the bookkeepers whose handwritings were identified by the decedent's daughter and wherein deductions and withholdings for Social Security also appear.

Exceptions to argument. Reference to plaintiff as "slaving," "faithful servant," etc. were proper. The argument was supported by evidence and had a tendency to sustain the plaintiff's position that he performed his part of the contract. Argument that plaintiff had no bank account was withdrawn and the jury instructed by the Presiding Justice to disregard it. It is to be assumed the jury followed the instructions. *Wright v. Woodward*, 79 N. H. 474, 477, 478; *Lemire v. Haley*, ante, 206. Argument about "investing of funds" for plaintiff by decedent, though apparently explained when objection was made, is so obscure and meaningless that it amounts to nothing. It is difficult to see what the jury could have understood plaintiff's attorney undertook to convey thereby. The argument, to say the least, was quite harmless. The above exceptions are therefore overruled.

Defendant's exception to the denial of her motion to set the verdict aside as being against the law and the evidence, as being excessive, has not been briefed nor argued and is deemed to be waived.

Plaintiff's exception to the Court's granting a nonsuit for that part of the claim covering the period from December 5, 1908 to May 4, 1934, has not been transferred and is not before us.

Judgment on the verdict.

All concurred.

Strafford, }
June 26, 1944. } No. 3490.

AURORE M. LIBERATO *v.* ALBERT J. LIBERATO.

Leonard C. Hardwick, by brief, for the libelant.

JOHNSTON, J. The trial Court does not have jurisdiction of the cause for divorce unless it wholly arose or accrued while the plaintiff was domiciled in this State. R. L., c. 339, s. 5. In *Greenlaw v. Greenlaw*, 12 N. H. 200, the Court was of the opinion that a divorce could not be decreed under a statute that was not retrospective, for conviction and imprisonment that occurred prior to the enactment of the statute although the imprisonment continued beyond such passage. "At the time of its passage the libelee could not recall the one, nor avoid the continuance of the other; and a construction of the statute which should convert this existent matter into a cause of divorce, when its origin furnished no ground for a dissolution of the marriage, and its continuance was without the volition of the party, would be, in effect, to give the statute a retrospective operation." *Ib.*, 203, 204. The cause under consideration does not continue for any prescribed length of time. Under the reasoning in the *Greenlaw* case it cannot be said that the conviction of Albert J. Liberato continued until the libelant gained her domicile in this State and that the imprisonment which after the acquisition of such domicile went on regardless of fault on the libelee's part thereafter, satisfies the statutory requirement for jurisdiction. The cause alleged did not wholly arise nor accrue while the libelant was domiciled here.

However, it is well settled in this State that divorce may be granted for constructive desertion as desertion is defined in either

paragraph ix or x of section 6 of chapter 339 of the Revised Laws. *Rand v. Rand*, 58 N. H. 536; *James v. James*, 58 N. H. 266. A spouse who by his or her misconduct and the natural consequences thereof brings cohabitation to an end is deemed guilty of desertion. If such desertion as above defined continues for the statutory period after the libelant has gained a domicile in this State, the libelant is entitled to a decree. In the present action, if the libelant moves for an amendment and it is allowed by the trial Court, no reason is apparent why she is not entitled to a divorce on the ground of abandonment and refusal to cohabit for three years. Misconduct that would be cause for divorce under the laws of this State is of course sufficient for the application of the above-stated principle. The libelee cannot protest that the conviction and the imprisonment are involuntary on his part, for they are the natural consequences of misconduct of his that was voluntary. "Judged by his acts and their natural result, the libelee intended to produce the separation of his wife from himself." *James v. James*, *supra*, 268.

Case discharged.

All concurred.

Hillsborough, }
 Sept. 20, 1944. } No. 3502.

THOMAS F. O'BRIEN *v.* ENOCH D. FULLER, *Secretary of State & a.*