[redacted] & BREWSTER

LAW OFFICES

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PHILADELPHIA

JOHN [redacted]
C. BARTON BREWSTER

TELEPHONE
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October 6, 1937

Honorable George A. Bartlett
Cheney Building
Reno, Nevada

My dear Judge Bartlett:

I thank you very much for your letter of October 2. The Penrose record has not come yet. After sending you the telegram last Friday I learned that you had represented Mrs. Penrose, and your friend Thatcher had represented Boies. I have represented Boies for some years, but was not in on this domestic situation because of my absence in Europe last fall. About a week ago Boies brought certain matters to me which made me anxious to look over the divorce record. Thanks for getting it for me. Please send along a bill. Your former client, Mrs. Penrose, will not be permitted to know that we have procured the record through you.

Now back to this other case, which I assume you accurately guessed to be the one in which I am very much interested personally. You give me a full picture as to the time element, but do not give me the balance of the picture which I am interested to have. Let's assume that this spouse, through vindictiveness or other cause, may fight to create all possible delays, difficulties and contest to prevent the granting of the divorce. Let's also assume that her testimony has no cruelty, such as we in the East understand it, and is in fact only incompatibility. Can he succeed in such a contest? Or will the contest itself confirm her testimony of incompatibility and entitle her to a decree? Stated another way I suppose my question to you, reduced to the simplest terms,is this. Has the Supreme Court of Nevada judicially determined "incompatibility" to be "extreme cruelty" under the statute? If it has then I should think that, like a bargain, it takes two to make compatibility and the very contest itself by a defendant establishes plaintiff's allegation of incompatibility. Just give me a brief statement of your views on this question.

I fear that the Dr. Patton case has gotten away from us, for I learn that Mrs. Patton's mother expects to spend this winter in Florida and she probably will go there. However, the Coward case is fast ripening and it is about ninety per cent certain of going to you. I will keep you posted on its developments.

With best regards to you and all the Bartletts of Court Street, including fair Elizabeth, and good health to Doc,

Sincerely yours,

John [redacted].

October 13, 1937.

Hon. John [redacted],
1516 Chestnut Street,
Philadelphia, Pa.

My dear John:

Replying to yours of the 6th instant, and your inquiry particularly, re: possible attitude of defendant. After the filing of the Complaint, issuance of Summons and service on defendant, defendant would have thirty days within which to take any action which he cared to take. If he wanted to delay, he could file a demurrer, ~~after~~ the last part of the period, which, upon being over-ruled, would probably give him ten or fifteen days within which to file an Answer. If it is in the nature of a cross complaint, I could reply immediately and the case would be at issue and I assume, could be disposed of within about ten days, unless delay were caused by the necessity for taking depositions and that would depend, of course, upon circumstances suggested at that time.

Incompatibility is within the contemplation of our law and practice and as a matter of fact, is mental cruelty, upon which our Courts are very liberal in granting decrees. Our divorce law was amended in 1931 by the addition of what is known as Section 30, which reads as follows: "In any action for divorce when it shall appear to the Court that both husband and wife have been guilty of a wrong or wrongs, which may constitute grounds for a d divorce, the court shall not for this reason deny a divorce, but in its discretion may grant a divorce to the party least in fault."

It may interest you to know that the passage of this act was put through largely by "yours truly", because the Supreme Court had reversed a decision of mine when I was on the Bench, in which I held as the new Section provides and our Courts, like the New England Courts and California Courts had been acting upon the theory that when both parties were shown to have committed acts which caused the other unhappiness, a Decree should be refused to either party. It is a bit different now, and our Courts are prone to exercise their discretion very freely in favor of the party shown by the evidence to be least in fault.

I hope this answers what has been worrying you, but I will be glad to enlarge, if you think it necessary.

Sincerely,

G.A.B:EHH