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NEW JERSEY COURT OF ERRORS
AND APPEALS.

HARRIET BIRD CALABRESE,
Complainant-Respondent,

—vs—

JOSEPH CALABRESE,
Defendant-Appellant.

On Bill, &c.
ANSWER.

The defendant Joseph Calabrese, of the City of Newark, County of Essex, and State of New Jersey, answering the bill of complaint herein, says that:

1. He admits paragraph 1 of the bill of complaint.
2. He admits paragraph 2 of the bill of complaint.
3. He admits paragraph 3 of the bill of complaint.
4. He admits paragraph 4 of the bill of complaint.
5. The defendant denies that he treated complainant harshly, unjustly and cruelly, and that he has provided her with meagre support, or that he came home at late hours continuously, or that he has abused and ridiculed complainant and called her vile insulting names and used offensive lan-

guage toward her inconsistent with the relationship of husband and wife. The defendant further denies that he has beaten or struck the complainant, and that complainant has received black eyes at the hands of this defendant whenever she asked him for money, and he also denies having threatened her and putting her in imminent danger of permanent physical injury as is alleged in the 5th paragraph of the bill of complaint, and denies that he has accused her of marital misconduct and denies that he is or was a gambler.

6. The defendant admits paragraph 6 of the bill of complaint.

7. The defendant denies that the agreement was that he was to pay \$35. a week as her allowance and to pay for necessaries of the household and to reimburse complainant for any monies spent by her in purchasing clothing for herself and their three children, on the other hand, says that he has adequately supported the complainant and has paid for the necessaries of the household as well as for the clothing of herself and children.

8. The defendant avers that he was to have paid his wife \$25.00 a week, and to pay the running charges of the household, which amount he religiously paid, and that he has otherwise properly supported the complainant and the children of the marriage.

9. The defendant denies paragraph 9 of the bill of complaint, and avers that he has properly provided with sufficiency of funds for the purpose of clothing for the children and for the complainant.

10. The defendant denies paragraph 10 of the bill of complaint and avers that he has properly

provided with sufficiency of funds for the purpose of clothing the children and for the complainant, and further denies that he struck his son Vincent as is alleged in the 10th paragraph of the complaint.

11. Defendant denies paragraph 11 of the bill of complaint.

12. Defendant denies paragraph 12 of the bill of complaint.

13. The defendant admits paragraph 13 of the bill of complaint and says that he would have meals at home but for the fact that his wife does not prepare them.

14. The defendant denies paragraph 14 of the bill of complaint.

15. The defendant denies paragraph 15 of the bill of complaint.

16. The defendant admits that the plaintiff is forty-five years of age, but says that she is able to earn money through her own efforts although this defendant does not want her to do so.

17. The defendant denies that he is the owner of a large amount of real estate but admits owning 351 Thirteenth Avenue, Newark, N. J., wherein lives the plaintiff, defendant and children. He admits ownership of the other properties mentioned in the 17th paragraph of the complaint, but denies that he is the owner of mortgages to the extent of \$23,500.

18. Defendant admits ownership of a Cadillac car and says that the Chrysler was bought by him for his wife.

19. He admits that he is the holder of an account in the Springfield Avenue branch of the Fidelity Union Trust Company, and denies that he has savings accounts with various banking institutions as is alleged in the 19th paragraph of the bill of complaint.

20. The defendant admits that he is the holder of a small number of building and loan shares.

21. Defendant denies paragraph 21 of the bill of complaint.

22. The defendant denies paragraph 22 of the bill of complaint.

23. The defendant denies paragraph 23 of the bill of complaint, except that he admits that he contributed a small amount towards the burial of a nephew, and that he is possessed of a cemetery plot for the Calabrese family.

24. Defendant admits that he has not told his wife the amount of his weekly earnings but denies that he has been in possession of hundreds of dollars in cash at all times or that his income is nowhere near \$1000. per week.

25. Defendant denies paragraph 25 of the bill of complaint.

26. Defendant denies paragraph 26 of the bill of complaint.

Wherefore this defendant prays for a dismissal of the bill of complaint filed herein.

FAST & FAST,

Solicitors for Defendant.

NEW JERSEY COURT OF ERRORS
AND APPEALS

Between	} On Bill, &c. 10
HARRIET BIRD CALABRESE, Complainant,	
—and—	
JOSEPH CALABRESE, Defendant.	

TO THE HONORABLE JUDGES OF THE COURT
OF ERRORS AND APPEALS IN THE LAST
RESORT IN ALL CAUSES: 20

The petition of Joseph Calabrese, the appellant in the above-stated cause, respectfully shows that your petitioner find himself aggrieved by a decree made in the Court of Chancery by the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the 28th day of June, 1928, and filed in the said Court of Chancery, under said last mentioned date, in a cause wherein Harriet Bird Calabrese, was complainant, and Joseph Calabrese defendant in this respect, to wit: That the Chancellor should not have entertained jurisdiction in this cause for the reason that the complainant testified that the defendant, Joseph Calabrese was supporting her and the children, which was the relief sought for in the Bill filed by the complainant, and further that there was no testimony of any abandonment and failure to support her and the children. 30

And your petitioner humbly appeals from the decree of the Chancellor on the ground that the same is erroneous in that the complaint should have been dismissed.

10 And your petitioner further humbly appeals from that part of the decree which allows counsel fee and costs for the reason that the decree should have been in favor of the defendant.

Your petitioner therefore prays that the said decree of the said Chancellor may be reversed and set aside and for nothing holden.

And that your petitioner may have such relief as to this equitable Court shall seem meet.

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FAST & FAST,
Solicitors and Counsel with
Complainant.

LOUIS A. FAST,

Of counsel with complainant.

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NEW JERSEY COURT OF ERRORS
AND APPEALS.

HARRIET BIRD CALABRESE, Complainant-Respondent, —vs— JOSEPH CALABRESE, Defendant-Appellant.	}	ON BILL ETC. ANSWER.	10
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The answer of Harriet Bird Calabrese to the petition of appeal of Joseph Calabrese.

The respondent not acknowledging all or any of the matters which in the said petition of appeal are contained, to be true, in answer thereto nevertheless, says and admits that an order was on the 28th day of June, 1928 made and entered in the Court of Chancery in the cause for that purpose mentioned in the said petition as is therein stated; But as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced. 20

And this respondent is advised and believes that the said order is agreeable to equity, and she prays that the same may be affirmed with costs. 30

HARRY W. SHERMAN,
Solicitor for Complainant-
Respondent.

AARON LASSER,
Of counsel with Complainant-
Respondent.

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IN CHANCERY OF NEW JERSEY
TO HIS HONOR, EDWIN ROBERT WALKER,
Chancellor of the State of New Jersey.

The complainant, Harriet Bird Calabrese, of the City of Newark, County of Essex and State of New Jersey, respectfully shows and alleges:

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1. On June 20, 1917, she was lawfully married to her present husband, the defendant, Joseph Calabrese, by Rev. L. Conti, at Newark, N. J.

2. That after said marriage, complainant and defendant thereafter cohabited and lived together as husband and wife in divers places in the City of Newark, Essex County, New Jersey, for periods upwards of ten years last past.

20

3. Your complainant now resides at No. 351 13th Avenue, Newark, New Jersey, with her husband, having resided at the said address for the past two and a half years.

4. There have been born of this marriage of complainant and her said husband, the defendant, the following children:

30

Vincent, who is 11½ years old.

Wesley, who is now 8½ years old.

Harriet, who is now 5½ years old.

All of said children have lived with the complainant and defendant and are now living with them and are now in the custody of the complainant, at #351 13th Avenue, Newark, New Jersey.

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5. That immediately after said marriage defendant began to treat complainant harshly, unjustly and cruelly and has provided her with meagre support insufficient for her and their children. That the defendant immediately after this marriage came home continuously at late hours in the night time. The defendant has at all times abused and ridiculed complainant and has called her vile and insulting names and used offensive language toward her inconsistent with the relationship of husband and wife. Complainant has been beaten and struck by the defendant on many occasions and this complainant has received black eyes at the hands of the defendant whenever she asked him for money and because of defendant's physical prowess complainant was threatened with the put in imminent danger of permanent physical injury. Defendant without justification has accused complainant of acts of marital misconduct. That defendant was a gambler and gambled away his earnings.

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6. On June 6, 1927, complainant, through Harry W. Sherman, her solicitor, filed a bill of complaint for maintenance in the Court of Chancery against her husband Joseph Calabrese, the defendant in the within action. An order to show cause was issued and made returnable June 14, 1927, why an order should not be entered directing the payment of alimony and counsel fees pending the final hearing. This matter was adjourned from time to time and was finally discontinued when an amicable adjustment of the difficulties between complainant and defendant had been agreed upon. An order was subsequently entered by Harry W.

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Sherman, Solicitor for Complainant, and F. D. Masucci, Solicitor for Defendant, discontinuing the said action for maintenance.

10 7. By virtue of said agreement the defendant agreed to give complainant the sum of \$35.00 per week as her allowance and in addition to the payment of \$35.00 the defendant further agreed to pay all the bills for necessaries of the household and to reimburse complainant for any moneys spent by her in purchasing clothing for herself and their three children.

20 8. Shortly after this agreement had been agreed upon, which was on or about September 14, 1927, the defendant failed to perform the same and provided complainant with sum of moneys varying from \$20.00 to 30.00 per week. Your complainant has been compelled with these meagre allowances to pay for the meats, groceries, milk and bread provided for the household and in addition thereto had to pay for the weekly insurance premiums, which became due on the insurance for their three children and had to pay the household laundry bills and had to purchase with the balance of these meagre allowances, if any, clothes for herself and their three children.

30 9. Your complainant has not been provide with sufficient funds with which to buy clothes for the children and has no money or means whatsoever with which to buy clothes for herself, other than what defendant gives her, when he sees fit so to do.

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10. The allowances to complainant by defendant have been totally inadequate for the support of her and their children and complainant has been compelled to request defendant for extra sums of money and has been greatly humiliated by being forced to borrow money from her friends and neighbors. That on or about February 11, 1928, complainant being without funds told her son Vincent to ask his father, the defendant, for \$2.00 and upon making this request of his father was given a severe beating on the face.

10

11. That the defendant immediately after the aforesaid agreement was made resumed his brutal and cruel treatment towards your complainant and on October 11, 1927, beat her unmercifully in their home, and said beating was inflicted without any provocation on the part of your complainant. On this occasion your complainant was hit in the head many times and one of her eyes blackened.

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12. On Saturday, March 10, 1928, about noon time your complainant phoned one Mr. Nazzio, a butcher on South 16th Street, for the purpose of having him bring to complainant's and defendant's home an order of meats. Defendant said to complainant "something must be going on between you and the butcher otherwise you wouldn't be getting meat from 16th Street when you can get it round the corner." Defendant without any cause whatsoever began to hit complainant and blackened her eye and beat her about the face and immediately thereafter left the house.

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13. On or about February 15, 1928, Westley and

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Harriet, two of complainant's and defendant's children were taken ill with the measles at which time the defendant was advised by complainant to have his meals away from home in order not to be quarantined. Upon their recovery from said illness on or about March 8th, 1928, your complainant then advised the defendant to return home. Defendant returned but continues to have his meals outside of complainants home.

14. Complainant alleges that for the past number of months defendant has compelled complainant to occupy the same room and bed with one of their children while defendant occupies another room in their home.

15. Complainant alleges that defendant has been in the habit of coming home at all hours of the night time, and has taken it upon himself to stay away from her and their children for short intervals of time.

16. Complainant alleges that she is dependant for support and the support of her children upon her husband and that she is 45 years of age and unable to earn anything thru her own endeavors. Complainant alleges that she is without means to take up separate quarters apart from her husband in order to escape the constant beatings and threatened physical injuries that she is being subjected to by defendant.

17. Complainant charges that her husband is possessed of a large amount of real estate. He is the owner of the property in which complainant

and her children resides located at #351 13th Avenue, Newark, New Jersey, which consists of a one family, two story dwelling. He is also the owner of a two family dwelling house known as #481 South 16th Street and is also the owner of three tracts of land designated as #477 South 16th Street all in the City of Newark. He is also the owner of a 2½ story dwelling house located at #110 South 8th Street, Newark, New Jersey. 10

Defendant is the owner of mortgages aggregating \$23,500, all as appears from the Essex County records.

18. Complainant further charges that defendant is the owner of a Cadillac automobile and Chrysler car, the latter which is in the name of complainant, but said Chrysler car is being constantly operated by defendant or his agents. 20

19. Your complainant further alleges that defendant maintains a checking account with the Springfield Avenue branch of the Fidelity Trust Company and further alleges that defendant has savings accounts with various banking institutions the names of which are not known to her at the present time. 30

20. Complainant further alleges that defendant is the owner of building and loan shares the names of said building and loan associations she has forgotten at this time.

21. Complainant has been informed that defendant is in possession of large quantities of liquor 40

and disposes of the same and maintains an office at #44 14th Avenue, Newark, New Jersey.

10 Complainant further alleges that defendant is the owner of a night club and cabaret at #31 Arlington Street, Newark, New Jersey. Defendant on innumerable occasions has taken from his pockets large sums of money, exceeding \$5,000. in amount and told her that these were the proceeds from the night club and his bootlegging activities and oftentimes boasted to her of the large amount of cash which he had available to him at all times.

20 22. Complainant further alleges that defendant's mother has exhibited to complainant at defendant's request large sums of money which she was holding for defendant and this display of money revealed bills in \$1,000. and \$100. dollar denominations.

23. Complainant further charges that defendant has on various occasions made large contributions of money to members of his own family of recent date paid the funeral bill of his nephew in the sum of \$506. and bought and paid for a cemetery plot for the Calabrese family in the sum of \$1,007.

30 24. Complainant alleges that ever since her marriage to defendant has never told her the exact amount of his weekly earnings but his being in possession of hundreds of dollars of cash at all times leads her to believe that defendant's weekly earnings are over \$1,00. per week.

25. Complainant alleges that defendant has neglected and failed and has refused to provide her with funds to sufficiently and properly clothe her and their children, and that this failure to properly support and provide for her and their children is not due to any fault on the part of the complainant.

26. Complainant has been constantly threatened and been put in fear of permanent physical injury by defendant and such threats by defendant are not due to any fault on the part of complainant. 10

Complainant is without adequate remedy in the Courts of law, and therefore prays:

1. That defendant may answer this complaint and every allegation herein made.

2. That he may be ordered and decreed to provide such suitable support and maintenance for complainant and her children, as to this Court shall seem equitable and just. 20

3. That he may be compelled to give reasonable security for such maintenance and allowance.

4. That in case he cannot be found in this State to be served with process, that his estate, property and effects in this State may be sequestered to compel his appearance and performance of any decree that shall seem fit to this Court. 30

5. That he may be required to pay to complainant a proper amount for counsel fees and costs.

6. That a writ of supoena may issue out of this Court directed to the said defendant, commanding him to appear before this Court at a time, and under penalty therein to be specified, and then and there to answer all and singular the said premises, and to abide by and perform such order and decree as to this Court shall seem proper.

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7. That complainant may have such other and further relief in the premises as the nature of the case may require.

HARRY W. SHERMAN,
Solicitor for Complainant.

SAMUEL DANIELA,
Of Counsel.

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NEW JERSEY COURT OF ERRORS
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HARRIET BIRD CALABRESE, Complainant-Respondent, —vs— JOSEPH CALABRESE, Defendant-Appellant.	}	ON BILL ETC. ANSWER.	10 10
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The answer of Harriet Bird Calabrese to the petition of appeal of Joseph Calabrese.

The respondent not acknowledging all or any of the matters which in the said petition of appeal are contained, to be true, in answer thereto nevertheless, says and admits that an order was on the 28th day of June, 1928 made and entered in the Court of Chancery in the cause for that purpose mentioned in the said petition as is therein stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced. 20

And this respondent is advised and believes that the said order is agreeable to equity, and she prays that the same may be affirmed with costs. 30

HARRY W. SHERMAN,
Solicitor for Complainant-Respondent.

AARON LASSER,
Of Counsel with
Complainant-Respondent.

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Complainant's Witness, Mrs. Calabrese, Direct

IN CHANCERY OF NEW JERSEY.

10	Between HARRIET BIRD CALABRESE, <div style="text-align: right;">Complainant,</div> and JOSEPH CALABRESE, <div style="text-align: right;">Defendant.</div>	} June 28th, 1928, at 11 A. M. o'clock.
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20 Transcript of shorthand notes of testimony taken in the above entitled cause before his Honor, Alonzo Church, Vice-Chancellor, at the Chancery Chambers, Newark, New Jersey, in the presence of Harry W. Sherman and Aaron Lasser, for the complainant, and Louis A. Fast, for the defendant.

MR. LASSER. Mrs. Calabrese.

This is a suit for maintenance.

30 HARRIET BIRD CALABRESE, called as a witness in her own behalf, being first duly sworn, testified as follows:

DIRECT EXAMINATION by Mr. Lasser:

Q What is your name?

A Harriet Calabrese.

Q What is your husband's name?

A Joseph Calabrese.

Q When were you married to him?

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Complainant's Witness, Mrs. Calabrese, Direct

A I was married to him the thirtieth of June, 1926-1927.

Q 1917? Isn't it?

MR. FAST: If you have a certified copy of the marriage certificate I have no objection to it. 10

Q I show you certificate of marriage and ask you whether that is your certificate of marriage?

A Yes.

MR. LASSER: I offer that in evidence.

MR. FAST: No objection.

(Marked Complainant's exhibit C-1.) 20

Q After you were married where did you live?

A We lived with Mr. Calabrese's mother at 306 Morris Avenue.

Q For how long have you lived there?

A I lived there for about three years.

Q And after that where did you move to?

A From there I have to leave Mr. Calabrese and go to Boston with my family and lived there because he beat me, and I stayed there for three months and I came back to him, and from there I went to Hunton Street, 271½ Hunton Street off of Fourteenth Avenue. 30

Q How long have you lived there?

A And I lived there with Mr. Calabrese three months when he beat me and I returned to Boston and was pregnant for my little boy Wesley, and when I went to Boston I went to work in the

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Complainant's Witness, Mrs. Calabrese, Direct

Tubular Rivet Works for one year.

Q Did he ask you to come back?

A No. He came to my house with Eugene Doudy, his attorney, and Mr. Doudy came down to talk to me, and when Mr. Doudy came to me and when he heard my side of the story, he said—

10

MR. FAST: I object to what Mr. Doudy said.

THE VICE CHANCELLOR: Yes.

Q Did you then go back to live with Mr. Calabrese?

A No. Mr. Doudy advised me—

20

THE VICE CHANCELLOR: No. No.

Q After you had a talk with Mr. Doudy, did you go back to live with Mr. Calabrese?

A Yes. I did.

Q Where did you go to live?

A From there I went up to my sister-in-law's house, Mrs. Calabrese. I stayed there for three or four weeks until I got rooms on Tenth Street.

Q How long did you live on Tenth Street?

30

A I lived on Tenth Street about one month and he was dispossessed for not paying rent, and from there I moved to Sixth Street.

Q How long did you live on Sixth Street?

A I lived on Sixth Street about two and a half month, and he was also dispossessed there, and then I had him in the Domestic Relations Court.

Q Why did you have him in the Domestic Relations Court?

A Because he abused me and beat me. He was

40

Complainant's Witness, Mrs. Calabrese, Direct

mixed up with a mid-wife here in Newark, New Jersey, at the time.

MR. FAST: I object unless it can be shown when this was. I think we are going into ancient history. Unless the time is fixed I object. Your Honor, why unless they went and lived together this testimony would not be proper. 10

MR. LASSER: I am not showing that for the purpose of wrong-doing. I am merely showing that so that we get the chain of events.

Q How long did you live at Tenth Street??

A How long did I live on Tenth Street? 20

Q How long did you live at Tenth Street?

A I lived there about two months, and was dispossessed and from there went to live in Sixth Street and South Orange Avenue.

Q How long did you live on Sixth Street?

A I lived there about three months to my judgment.

Q Then where did you move?

A Mr. Calabrese—from there we moved out to 481 South Sixteenth Street. 30

Q Did you go and live there?

A Yes, I went and lived there.

Q Do you remember when it was? How long go?

A Well I will just tell you when it was now. My baby will be six years old in July and I was there just that same year. Yes.

Q And then from there where did you move to?

Complainant's' Witness, Mrs. Calabrese, Direct

A From there, we stayed there, and then he bought this property at 351 Thirteenth Avenue.

Q How long have you been living at 351 Thirteenth Avenue?

A I think about three years in all.

10 Q How many children have you got??

A Three.

Q What are their names?

A Harriet, Wesley and Vincent.

Q How old are they?

A Harriet is six in July, next month. Wesley is nine years old the 27th of May. Vincent will be twelve his next birth day.

Q What kind of a house is it that you live in?

A I live in a one-family house.

20 Q Has Mr. Calabrese been living there with you?

A He has not been living there for the last three weeks.

Q Has he been home in the last three weeks?

A No. Called for his clothes and to take a paper. That is all.

Q Before that time how often was he home?

A Well he was home every night. He was home every night previous to the last three weeks.

Q How did he treat you??

30 A Well we have not spoken for the last—we have not spoken to each other for over three months.

Q And when he did speak to you before that time, in what manner did he speak to you?

A Well, not like a gentleman, and not with any feeling of affection.

Q What did he say to you?

A Well, I have always been called very, very, very bad names.

40

Complainant's' Witness, Mrs. Calabrese, Direct

Q When was the last time that he called you these names?

A The argument when it started about—over—my children had the measles and I went to—I called up the butcher for some meat and the butcher said to me, “Mrs. Calabrese, I can’t send anybody to you, but—”

10

Q When was this?

A This was three months ago when my Wesley and Harriet had the measles.

Q What did your husband do at that time?

A Why he called me up and he said the line was busy and he asked me who I was talking to, and I said, “the butcher”, and he came in and he wanted to know what was the idea of me getting meat off of a butcher up on Sixteenth Street, and I said, “Simply because he was to the house and he asked me to do my shopping there.” So he turned around and called me the same lot of vile name and said, “There must be something going on between you and the butcher or you would not send up to Sixteenth Street for your meat.”

20

Q What did he call you?

A Do you want me to say it to the Vice Chancellor?

THE VICE CHANCELLOR: You will have to say it. 30

A (continued): He called me a lazy bastard and also a son of a bitch and a dirty whore.

Q Was anybody present at the time?

A Yes. My little Vincent was present when he called me those names.

Q How old is Vincent?

40

Complainant's' Witness, Mrs. Calabrese, Direct

A My Vincent is twelve years old.

Q And has your husband, had he called you those names at any time before that?

A Oh those have been pet names to me as long as I have been married to him.

10 Q Has he treated you kindly at all?

A No. Not at all.

Q How has he treated you?

A Very vilely. I have been a regular slave to Mr. Calabrese, a slave to him and a slave to his family.

Q What did he do?

A What did he do?

THE VICE CHANCELLOR: Did he strike you?

20

THE WITNESS: Yes.

THE VICE CHANCELLOR: Where and when?

THE WITNESS: He beat me this day when I called up the butcher, your Honor; in regard to the meat. He beat me in front of my little boy.

30 Q What did he do to you? What happened on that day when he came in and called you these names? What did he do?

A He came in and said, "What is the idea of calling up—"

THE VICE CHANCELLOR: No. What did he do? Did he hit you with his fist?

THE WITNESS: Oh, yes. With his fists. Yes.

40

Complainant's' Witness, Mrs. Calabrese, Direct

Q Where did he strike you?

A In my eye. My left eye.

Q Did he leave any mark on your eye?

A Yes. I had a great big lump on my eye and my eye was black and blue for two or three days.

Q Did Vincent see that?

A Yes. Vincent saw it.

10

Q Did he ever strike you before that when you had your eyes discolored?

A He gave me a terrible beating a year ago last Christmas when I had two of the worst eyes you ever looked at.

MR. FAST: I object to that. These people lived together after that.

THE VICE CHANCELLOR: That doesn't make any difference. She may have gone back to the house or to him after he promised to reform. If he gets his wife back on his promise to reform and then does not reform, it is material.

20

MR. FAST: I appreciate that.

Q Now what business is your husband in?

A My husband is a bootlegger.

Q What? Do you know how much he earns?

A Yes. To my knowledge, and my truthful knowledge, between the Cotton Club and business he does he earns a thousand dollars.

30

Q For how long a period?

A Well I guess I don't know. I suppose there are weeks when business is not so good.

40

Complainant's Witness, Mrs. Calabrese, Direct

THE VICE CHANCELLOR: You mean a thousand dollars a week?

10 THE WITNESS: Yes. Between his cabaret and his business, because I have taken all his orders over the phone, your Honor, and the stuff that has come into my house and the stuff that has gone out.

Q What is this Cotton Club that you speak of?

A A cabaret. A colored cabaret.

Q Where is it located?

A 31 Arlington Street.

Q When, if you know, did your husband acquire this Club or get the Club?

A I beg your pardon?

20 Q When did your husband get the interest in this Club, the Cotton Club?

A Why he has got the interest. It was incorporated and then he told me himself he bought it out-right almost all. That is he owned the Cotton Club.

Q How long ago?

A How long ago? Last August.

Q Have you ever been there?

A Yes. I was there. I was down to the Cotton Club.

30 Q For what purpose?

A To find out just to satisfy my curiosity.

Q Did you see him there?

A Oh yes, I saw him there.

Q What kind of work was he doing there?

A Just sitting around, sitting around from one table to the other, and with colored girls and at the table, going into the bar. I looked into the bar and found him drinking coffee. He was carrying on

40

Complainant's' Witness, Mrs. Calabrese, Direct

with the colored people, and they all addressed him as "Joe", not "Mr. Calabrese."

Q Do you know whether he is known there as Mr. Calabrese?

MR. FAST: I object to what he is known there as. 10

THE VICE CHANCELLOR: Objection sustained.

Q From your observation there from the way the people treated him was he treated as the boss of the place?

A Yes.

MR. FAST: I object. Just a minute. I 20
object.

THE VICE CHANCELLOR: Objection sustained.

Q Did he ever tell you what interest he had in the Cotton Club?

A That he owned it himself.

Q He told you that he owned it himself?

A Yes, that he owned it himself. 30

Q Do you know whether he owns any mortgages?

A Oh yes. He has got money standing out on mortgages.

Q Have you got any idea as to how much he has standing out on mortgages?

A Yes. From what I found out, twenty-three thousand dollars. I do not know whether he has any more now.

Complainant's Witness, Mrs. Calabrese, Direct

Q Do you know anything about the deposits that he made in the banks?

A Yes. I have seen his monthly statements. I saw his monthly statement before it was time for him to fix up his income tax.

Q How much?

10 A Oh very, very big checks. That is why my husband was trying to make me believe that he was doing no business, and I happened to run across these checks.

Q Did you ever see him when he had large sums of money in cash with him?

A Yes. Mr. Calabrese on a Saturday night has given me a big roll of bills and counted everything before he gave it to me, counted it when he took it back for fear that I might take a dollar of his
20 money. That was just for one night, so as he could deposit it on Monday morning.

Q Do you know how much money was in those rolls?

A No. I do not. It was an awfully big rolls. Great big rolls.

Q Were they small bills, do you know?

A No. Some were very big.

Q Does your husband own an automobile or any automobiles?

30 A Yes. Yes.

Q How many?

A He owns the one he has in my name, and he has a big Cadillac. A big Cadillac. And there is another big car. I really do not know who it is owned by, and I know it is in Willy Coruso's name.

Q Who is Willy Coruso?

A Mrs. Calabrese's nephew, my husband's nephew.

Complainant's Witness, Mrs. Calabrese, Direct

Q Does he work for your husband?

A Works for my husband.

Q Now you say you have got one of these automobile in your name?

A In my name, only to cover his own tracks. That is all its in my name for.

Q Do you ever drive the car?

10

A No, I do not.

Q Do you have anybody to drive the car for you?

A No. If I had a car I would not have to be home all the time and stay on my doorstep. I could get my sister-in-law's nephew who said he would drive me if I got the car. I asked him if he would.

Q The car is in your name but you do not use it?

A No.

20

Q Do you know whether these cars are all paid for?

A Yes. The Cadillac is paid for and the Chrysler is paid for.

Q Now, do you know what the age of your husband is?

A Thirty-six I think.

Q What is your age?

A I am forty-five.

Q Were you ever present when your husband struck any of your children or called them names?

30

A Yes.

Q When? Tell us of one occasion?

A Well now one day I did not have enough money and I asked Vincent to go ask his father for two dollars an Vincent said, "Papa, mother wants two dollars," and he turns around and said, "She has enough money," and he gave Vincent

40

Complainant's Witness, Mrs. Calabrese, Cross

and awful slap in the face.

Q What did you say to him?

A He had gone right out the front door, so I could not say anything to him.

Q Did you hear what he said to Vincent?

10 A No. No I did not hear what he said to Vincent. I only know he slapped him in the face.

Q Were you ever present when he ever called Vincent any names or spoke to him?

A No. Not ever.

MR. LASSER: That is all.

CROSS EXAMINATION by Mr. Fast:

Q Mrs. Calabrese, what did Mr. Calabrese say when he slapped little Vincent in the face?

20 A I did not hear, Mr. Fast. I did not hear what he said because I was in the kitchen and Vincent was at the front door and Mr. Calabrese was going out with Mr. Moterhoff.

THE VICE CHANCELLOR: Did you see anybody strike the child?

THE WITNESS: No, I did not.

30 Q This Cadillac that you speak of: Do you know whether it was bought new or second-hand?

A No. It is a new Cadillac.

Q Do you know where he bought it?

A Yes. Down on Broad Street.

Q The Castles?

A What?

Q The Castles?

A The Cadillac people on Broad Street.

Q You held all of this money over the week-
40 end?

Complainant's Witness, Mrs. Calabrese, Cross

A Yes.

Q How many times did you hold that money?

A When Mr. Calabrese gave it to me quite often to hold, he gave it to me to mind because he did not want to keep it in his clothes. He was held up and robbed of five hundred dollars once.

10

Q About how many times did he give you these amounts of money to hold?

A Oh quite often. Quite often.

Q Would you say about twenty times?

O Oh not that much.

Q Ten times?

A Not that many.

Q About how many?

A About eight times.

Q About eight time?

20

A Yes.

Q During all those times you never counted that money?

A No. Because Mr. Calabrese always counted his money before he gave it to me.

Q Did he have an elastic around his money?

A No.

Q Did he put it in an envelope?

A No. In my hand bag—

Q He just gave it to you?

30

A I took it and put it in my hand bang, I said "In case you want to get this money and I go to the store you will know where to get the money."

Q Did you ever tell him where the money was?

A Naturally I told him, because he wanted to deposit it on Monday morning.

Q In all that time you never counted that money?

40

Complainant's Witness, Mrs. Calabrese, Cross

A No.

Q And you haven't any idea whether it was one hundred dollars or a thousand dollars or how much?

A Oh yes. There was big checks. I have often had some for a thousand dollars.

10

Q There were checks in it?

A No. No. Bills. One thousand dollar bills.

Q You don't know how much money he had in any of these masses?

A No, I do not. I am not interested, since my husband did not trust me to count the money, I did not count it myself.

Q He was not around there?

A Oh yes. He was around there, when he met me there.

20

Q It was not around there the week-end?

A Oh yes. He usually gave it to me on Saturday to hold till Monday morning.

Q It was not there on Sunday?

A Oh yes.

Q And you did not count it?

A Yes. But I was not interested to count it.

Q Were those statements that you spoke of sent to the house?

30

A No. He brought those back in his overcoat pocket, and I would take them and look them over.

Q Why were you interested in them?

A Because I wanted to find out what he was making, because of the checks he got and deposited, I wanted to find out what he was making.

Q Have you any idea what his balances were?

A No, I do not.

Q You looked at the statements?

A I looked at the statements.

40

Complainant's Witness, Mrs. Calabrese, Cross

Q What did you look at them for?

A I saw some statements made out to Mr. Blozzy for twenty-seven hundred dollars and wanted to know more about this money and was wondering where it was going to.

Q I am not interested in Mr. Blozzy. Did you see the statements of Mr. Calabrese? 10

A Yes. I saw his monthly statements.

Q What appeared in these monthly statements as the balance to his account?

A I did not look at the balances. You see I did not look at the balances.

Q What did you see in the statements?

THE VICE CHANCELLOR: Why pursue this? Find out whether he abused her.

MR. FAST: Yes.

Q Now about how often in your married life did Mr. Calabrese strike you? 20

A Mr. Calabrese has beaten me quite often. I have not marked it down. I could show no record of it. But very, very much times that I will never forget.

Q Well I mean how did he strike you? What was the method that he pursued?

A He beat me with his fists.

Q Well about how often?

A How often? I can not tell you how many time he beat me. He beat me terribly in his mother's kitchen one day in front of all his people. He beat me so that I had to leave him when I was pregnant with little Wesley and I had to go to Boston. He beat me on Sixteenth Street and on Sixth Street and when I was pregnant with Harriet, that my own people had to take me, and so that he had to come over before Judge——, and when 30

Complainant's Witness, Mrs. Calabrese, Cross

I was pregnant with my little boy, and in private many times.

Q When was the last time he struck you?

A He struck me about three months ago.

Q Before that when did he strike you?

10 A He struck me before that, the day before Columbus Day.

Q This last Columbus Day?

A Yes. This last Columbus Day.

Q Why did he strike you?

A Why did he strike me?

Q Yes.

A Why did he strike me?

Q Yes.

20 THE VICE CHANCELLOR: I do not think it makes any difference. He had no business to strike her. It doesn't make any difference.

MR. FAST: This is only for the purpose of testing her veracity.

THE VICE CHANCELLOR: I do not know of any use in that. He had no business to strike her if he did.

30 MR. FAST: I think I can prove the possibility of improprieties, whether she said anything or why he did it. After all, your Honor, I suppose, must take into consideration the surrounding circumstances if there was any striking.

THE VICE CHANCELLOR: So far as that goes, if he struck her, and I say it does not

40

Complainant's Witness, Mrs. Calabrese, Cross

make any difference what reason he had if he did, a man has no business to strike his wife under any circumstances whatever.

MR. FAST: Yes.

Q Did he tell you why he struck you?

10

A Yes. I will tell you truthfully why he struck me: I had some pawn tickets and I lost them out of my bag—

THE VICE CHANCELLOR: That is a perfect waste of time.

MR. FAST: You do not want to go into that.

THE VICE CHANCELLOR: I only want to know just whether he struck you. That is enough.

20

Q Has he been supporting you?

A Yes. He has been supporting me.

Q Thought your whole married life?

A Well yes. If you call it support.

Q Well you said that he had been supporting you. What do you mean by that answer?

A Well to his judgment he does. Twenty-one dollars a week and twenty-five dollars another week; and paying bills that I have to pay out of it, insurance, laundry and everything else, and not having a cent to buy anything for myself or my children.

30

Q You do not pay any rent do you?

A No. I do not pay any rent.

Q You haven't paid any rent for how long?

A Haven't paid any rent at all.

40

Complainant's Witness, Mrs. Calabrese, Cross

Q I know. But for how many years is it you have not been paying rent?

A Not since we were on Tenth Street.

Q I don't remember about when you lived on Tenth Street. Was that months ago or years ago?

10 A No. Not months ago.

Q Was it five years ago?

A Longer than that. A rough guess, seven years.

Q And every week he has given you something for the table hasn't he?

A Yes.

Q What was the lowest he gave you during any week?

A The lowest he gave me was twenty dollars.

20 Q And what was the highest?

A The highest was twenty-five dollars.

Q He is giving you thirty dollars now?

A Yes. Thirty now. But you must find out what I am doing with the thirty.

Q Just a minute. Who pays your gas bills?

A Mr. Calabrese.

Q And your electric bills?

A Mr. Calabrese.

Q And who pays the shoemaker?

A What is that?

30 Q Who has been paying Mr. Ross, the shoemaker, for shoes?

A Mr. Calabrese.

Q Has Mr. Calabrese bought anything for the children?

A No.

Q You mean to say—

A Outside of those shoes. Outside of those shoes.

40

Complainant's Witness, Mrs. Calabrese, Cross

Q How about suits?

A Oh no. I bought those myself. I am paying that out of my thirty dollars a week.

Q He has been living in the same house with you?

A Yes, in the same house, but in separate rooms. 10

Q How do you know that he is the possessor of mortgages to the extent of twenty-three thousand dollars?

A I beg your pardon.

Q How do you know he is the possessor of mortgages to the extent of twenty-three thousand dollars?

A Well, I cannot explain that to you. Mr. Sherman can explain that.

Q Well I am asking you. You testified. I am asking you. You don't know whether he has got twenty-three thousand dollars worth of mortgages or not, do you? 20

THE VICE CHANCELLOR: Has somebody told you that he had them? Isn't that it?

THE WITNESS: Yes.

THE VICE CHANCELLOR: All right. 30

MR. FAST: I ask that that be stricken from the record.

THE VICE CHANCELLOR: No. I do not think so, because they may prove it later.

Q These houses are all in Mr. Calabrese's name, aren't they?

40

Complainant's Witness, Mrs. Calabrese, Cross

A Yes, sir.

Q Do you know what mortgages there are on the houses?

A Upon Sixteenth Street there is a five thousand dollars mortgage and I think on Thirteenth Avenue there is a four thousand dollars mortgage.

10

Q What did he pay for them?

A Well at Thirteenth Avenue he paid ten thousand dollars, for the one on Thirteenth Avenue, and I think—I am not sure—thirteen thousand dollars on Sixteenth Street. I am not positive, because Mr. Calabrese did not tell me any of his business.

Q Were you obliged to borrow any money from anybody during the last five years?

20

A Borrow any money from anybody?

Q Yes.

A Yes. I did borrow.

Q About how much have you borrowed in the last five years?

A Well I will tell you—

Q And from whom?

A I beg pardon?

Q And from whom?

30

A I will tell you, when I was having trouble with Mr. Calabrese and I went to Judge Rice, Judge Rice sent me a bill for twenty-five dollars and I asked Mr. Calabrese to please pay the twenty-five dollars. Then he said, "No," he would not. I had a ring that Mr. Calabrese gave me, and I got for—

Q Twenty-five dollars you borrowed to pay on Judge Rice's bill?

A I paid twenty-five cents a week on the pawned ring and paid that twenty-five dollars back every week.

40

Complainant's Witness, Mrs. Calabrese, Cross

Q That was how long ago?

A It was——let me see——about five years ago.

Q Have you borrowed any money since from anybody?

A Yes. I have borrowed from differencet people.

Q How much?

A Well I borrowed twenty-five cents off Mr. Coruso, and I borrowed—

10

THE VICE CHANCELLOR: This is all a waste of time.

MR. FAST: I want to prove that we are supporting her.

THE VICE CHANCELLOR: I do not see that, if she has to borrow money, it would indicate he was supporting her properly.

20

Q How much money have you been borrowing?

A I have borrowed twenty-five cents off of Mrs. Cummings, and I borrowed twenty-five cents one day from Willy Coruso.

Q You repaid that?

A No. I have not paid Willey back the twenty-five cents.

Q Is there any money that you still owe to anybody for borrowed money.

30

A No.

Q You have no other income except what Mr. Calabrese gives you?

A What Mr. Calabrese gives me. That is all.

Q You have been supporting the children on that money haven't you?

A Yes. I have.

40

Complainant's Witness, Mrs. Calabrese, Cross

Q You have been feeding them?

A Feeding them. Yes.

Q And you have been buying them clothing?

A Yes. Clothing.

10 Q And out of that money you have been buying your own clothing haven't you?

A Yes. I have.

Q How do you know that he owns the Cotton—you say he told you he owns the Cotton Club?

A Yes.

Q You said that you took orders for liquor over the wire? And that is how you know how much money he has been making?

A Yes.

Q How many orders did you take for him?

20 A I have taken orders for him every week. That is why the phone is in the house, just so I can take his orders. I do not take any more now.

Q About how many orders have you taken?

A I have taken a lot from all his customers; his private customers I don't know anything about.

Q Orders for how much money?

A I beg your pardon?

Q Orders for how much money?

A I have taken big order, Mr. Lesser. I don't know how much his liquor is a gallon.

30 Q I mean in dollars and cents or in gallons.

A Oh, gallons, and gallons and cases.

Q How many gallons and cases?

A A whole lot. I know it was in my cellar. I know what has been in my cellar and in other places.

Q Do you know about—they gave you the names over the phone, the people that called up?

A Oh yes. I know all his customers, because

40

Complainant's Witness, Mrs. Calabrese, Cross

they would give me the name and I would call down and say Mr. So and So ordered so and so and wanted such. I cannot tell how much.

Q I guess you cannot. How much . . . I want to find out how you came to the proposition that he is earning one thousand dollars a week?

A Yes. Because I know what he takes in. I know the orders I have taken in and I know how much it runs up into money. He is not giving his stuff away. He is shrewd, and he is a shrewd business man in the liquor business.

10

Q All right. How much money is represented by the orders that you got over the wire?

A Well, if I have to go into detail and tell about what they ordered and what they didn't order, you know what I am talking about . . .

Q I am asking you, and I will ask you again, Mrs. Calabrese, if you know how much money is represented by the orders that you say you took?

20

A Well, I know how much money he told me the different people owes him. One man owes him a thousand dollars and the other four thousand dollars. I know people that order their alcohol by the barrels. By the barrels.

Q Do you know how many barrels?

A Yes. Quite a few. Yes.

Q How many?

30

A There has been six or seven come into my cellar that went right away, and cans and cans, different kinds.

Q Do you know how much stuff was there in the property?

A Oh, yes. It consumed quite a lot.

Q Do you know how much?

A Well it was in the thousands of dollars.

40

Complainant's Witness, Mrs. Calabrese, Cross

Q How many thousands?

A I don't know. But way up. Because it is kept in my place and other places. He did not only occupy one place.

10 Q I am trying to find out how you arrived at Mr. Calabrese's earning of a thousand dollars a week. If you any information upon which you base that assumption?

A Yes. Because I knew from different customers. One customer would call up. Their order would amount to two or three hundred dollars. Another customer would call up for one thousand. They amounted up to two hundred, three hundred generally, some five hundred dollars.

Q Through an average week what were the orders?

20 A I got quite a lot or orders for Mr. Calabrese.

Q How much is that in dollars and cents?

A In dollars and cents I could not tell you because I don't know the price of booze.

Q Didn't they tell you how many gallons?

A Oh yes. They would tell me how many gallons they wanted.

Q In an average week how many gallons were ordered?

30 A There was one day that thirty-nine cans of alcohol went out of my house.

Q How many gallons is that?

A How many gallons: Well listen, I cannot figure it maybe as quick as you men can.

MR. LASSER: She is trying to give all the information she can. Probably the defendant would be in a better position to tell us.

THE VICE CHANCELLOR: Yes.

Complainant's Witness, Mrs. Calabrese, Cross

Q Mr. Calabrese has been having some arguments with you about the butcher?

A Yes.

Q There are many butchers between——

THE VICE CHANCELLOR: You don't mean that. There is no charge of any impropriety on this woman's part at all. 10

MR. FAST: I am not directing it to that. But this woman has testified that one of the times was after she called up the butcher.

THE VICE CHANCELLOR: She said there was a fight and that it arose on account of the butcher. It does not make any difference to me how it arose. The question is: Did he hit her? She said he beat her. I am not interested in the butcher. 20

MR. FAST: Will your Honor grant me an exception?

THE VICE CHANCELLOR: You do not have to take an exception in the Court of Chancery.

MR. FAST: I object, if your Honor please, on the ground. I will withdraw that last objection. I guess the record speaks for itself. That is all. 30

THE VICE CHANCELLOR: That is all.

Complainant's Witness, Mrs. Calabrese, Redirect

REDIRECT EXAMINATION by Mr. Lasser:

Q Mrs. Calabrese, you say that you have been able to buy the clothing for the children. Have you bought this clothing and paid the bill or on the installment plan?

10

A On the installment plan. I had to even buy underwear and stockings for myself and all of that on the installment plan, and I bought a little dress on the installment plan for \$17.50, and a dollar a week, and four dollars a week on the children's clothing. I have to have stockings and underwear. I haven't got the money to pay cash, and so I have to buy on the installment plan.

Q And that money that has been coming to you is under an agreement that you have had with him?

20

A Yes. I believe Vice Chancellor Church set it at thirty dollars while the case was pending.

Q At the time did you have an agreement with him?

A Oh yes.

Q When you started your suit?

A My case was settled out of court last year between him and me, and he promised to give me thirty-five dollars every week, and when he gave it to me two or three weeks he said, "Now listen," he said, "you buy clothes out of that . . . I do not want to say anything more about shoes," he said, "I want you to buy shoes and clothes for the children." I got the thirty-five dollars for two weeks and then he cut it down to twenty-five.

30

Q How much have you been receiving from him?

A Thirty dollars.

40

Complainant's Witness, Mrs. Calabrese, Redirect

Q And has that been enough to take care of the children and yourself. No. It has not been enough to take care of the children and myself. I had to sell a stove which we paid eighty-eight dollars in the Public Service for last week for twenty-five dollars, Vice Chancellor Church, to pay up my insurance. You know I was back in my insurance. 10

Q I show you these pictures. Do you recognize your husband in these pictures (handing photographs to witness)?

A Yes.

Q And do you remember the occasion on which they were taken?

A They were taken in Hot Spring, Arkansas.

MR. FAST: I object unless she was there when they were taken. 20

THE WITNESS: No. I was not.

MR. FAST: I will object.

THE VICE CHANCELLOR: All right. I sustain the objection.

MR. LESSER: All right. That is all.
(Witnessed excused.) 30

MR. LASSER: We have the record of the proceedings in the Domestic Relations Court.

ELIZABETH C. MOORE, called as a witness on behalf of the Complainant, being first duly sworn, testified as follows:

Complainant's Witness, Elizabeth Moore, Direct

DIRECT EXAMINATION by Mr. Lasser:

Q What is your name?

A Elizabeth C. Moore.

Q You are connected with the Domestic Relations Court?

10

A I am.

Q Did you bring here the records in the case of Calabrese against Calabrese?

A I have.

Q May I see them please?

A Yes (producing records).

MR. LASSER: I will offer these in evidence,

if the Court please.

20

MR. FAST: May I see them?

MR. LASSER: Certainly.

MR. FAST: This is the case of Vincent Calabrese in——?

THE WITNESS: Yes. The father is there, Joseph Calabrese.

MR. FAST: Well I have no objection to the record going in, but I certainly do object to the statements of an investigator going in, Lucile B. Frederick, which are conclusions.

30

THE VICE CHANCELLOR: Of course I won't pay any attention to them.

MR. LASSER: It is to show that those complaints had actually been made for non-support.

THE VICE CHANCELLOR: All right.

40

Complainant's Witness, Elizabeth Moore, Direct

MR. FAST: If you want to read that into the record I have no objection to that. There is a lot of stuff in here that I do not think ought to go in.

MR. LASSER: It will be stipulated that this will go in only for the purpose of— 10

MR. FAST: This is what you want: that a complaint was made against Joseph Calabrese on the 6th of March, 1925, which complaint by the way is signed but not sworn to, charging non-support.

MR. LASSER: That is right.

MR. FAST: And then there is another complaint made on the 6th day of March, 1925. 20

THE VICE CHANCELLOR: What happened to him? What happened to him?

MR. LASSER: There was an order entered on one compelling him to pay fifty-five dollars a week—

MR. FAST. No, no. 30

MR. LASSER: Twenty-five dollars.

MR. FAST: No. Five dollars aweek for one year. And the other complaint was made on the sixth day of March, 1925, by Harriet Calabrese, and apparently nothing was done.

40

Complainant's Witness, Vincent Calabrese, Direct

MR. LASSER: But this one was only for Vincent the five dollars.

THE VICE CHANCELLOR: All right. Give them back to the young lady and let her go.

10

(Witness excused.)

(No cross examination.)

MR. LASSER: Now Vincent.

VINCENT CALABRESE, called as a witness in behalf of the complainant, being first duly sworn, testified as follows:

20 DIRECT EXAMINATION by Mr. Lasser.

Q What is your name?

A Vincent Calabrese.

Q How old are you Vincent?

A Twelve.

Q Do you go to school?

A Yes.

Q To what school?

A Fourteenth Avenue school.

30 Q And the lady that was on the stand is your mother?

A Yes.

Q And this man at the end of the table, is your father?

A Yes.

Q Where do you live?

A 315 West Thirteenth Avenue.

Q Did you at any time hear your father and mother have any arguments?

40

Complainant's Witness, Vincent Calabrese, Direct

A Yes.

Q Do you remember when the last time was when you heard such an argument?

A Yes. Three months ago.

Q Were you in the house?

A I was in the house at the same time.

10

Q Just talk a little slower and louder?

A Yes.

MR. FAST: I do not hear the witness.

THE VICE CHANCELLOR: He said he was in the house at the same time.

Q What did your father say to your mother and what did your mother say to your father if you remember?

20

A He said, "What right have you got to go up—send me up to this here butcher and get meat?" So I said— so my mother said, "Because I have no car to go down to the market to get my stuff off the butcher."

Q Who did your mother send?

A Me.

Q You?

A Yes.

Q And you came back?

A Yes.

30

Q And what did your father then say to your mother?

A When I came home my father was in the kitchen and I am in the dining room and he said, "What right have you to send him up to the store to get the meat?"

Q What did your mother say to that?

A She said, "I don't have no car to go down to the market."

40

Complainant's Witness, Vincent Calabrese, Direct

Q Then what did your father do?

A Then he started hollering and cursing mother and then started punching her.

10 THE VICE CHANCELLOR: He did what?
Punched her?

THE WITNESS: Yes.

THE VICE CHANCELLOR: Where did he punch her?

THE WITNESS: In the eye.

THE VICE CHANCELLOR: Did you see him do that?

20 THE WITNESS: Yes.
THE VICE CHANCELLOR: Any questions?

MR. FAST: No.

MR. LASSER: Let me ask another.

Q Let me ask you, Vincent: Did your father ever call you any names?

A No.

30 Q Didn't you ever hear him call your mother any names?

A Yes.

Q At other times than this?

A Yes.

MR. LASSER: All right. That is all.

THE VICE CHANCELLOR: That is all.

(Witness excused.)

40

Complainant's iWitness, Marie Costellano, Direct

MARIE COSTELLANO, called as a witness on behalf of the complainant, being first duly sworn, testified as follows:

DIRECT EXAMINATION by Mr. Lasser:

Q What is your name? 10

A Marie Costellano.

Q Are you married?

A Yes, sir.

Q Where do you live?

A I live on North Sixth Street.

Q Near the Calabreses?

A No sir.

Q Do you know Mrs. Calabrese?

A Yes. 20

Q Do you know Mr. Calabrese?

A No. I don't.

Q Did you ever see Mrs. Calabrese when she had her eyes black?

A I tell you I see Mrs. Calabrese come to the doctor and I see her with two pair of black eyes of such a sight I never seen in my life. It was a year ago last Christmas, and then this year during the holiday I saw her with one black eye, and I asked just come how all these black eyes—

30

MR. FAST: I object.

THE WITNESS: That is all I know.

MR. LASSER: That is all.

40

Complainant's Witness, Marie Costellano, Cross

CROSS EXAMINATION by Mr. Fast:

Q Where was Mrs. Calabrese with these black eyes?

A Where was Mrs. Calabrese with these black eyes?

10

Q Yes.

A Well I seen her going to the doctor, but I was going off to my business.

Q What street did you see her on?

A Well I see the friend Miss Mandino.

Q Where is that? What street?

A It was on Fourteenth Avenue and some other street. I could not remember. I could not just tell you.

Q You live on Nassau Street?

20

A I live on Sixth Street.

Q You live on Sixth Street?

A Yes. I was going off to do my business. I was in a different section.

Q You were going on your business and was in some friends' house when you saw Mrs. Calabrese?

A No. I was not in some friend's house. I was going on the street and saw her.

Q Didn't you say you saw her in Mrs. Mandino's?

30

A No.

THE VICE CHANCELLOR: No, no. Near the house, by the house.

Q What time of the day did you see her?

A I don't remember what.

Q Was it morning, afternoon or night?

40

Complainant's Witness, Samuel S. Sternbach, Direct

A It was in the afternoon some time. I don't remember.

Q In what business are you?

A What business? I am married.

MR. FAST: I withdraw that. That is all.

10

REDIRECT EXAMINATION by Mr. Lasser:

Q Are you related to Mrs. Calabrese?

A ~~No~~ sir. Not related at all. I just met her through meeting.

(Witness excused.)

SAMUEL S. STERNBACH, called as a witness on behalf of the complainant, being first duly sworn, testified as follows:

20

DIRECT EXAMINATION by Mr. Lasser:

Q What is your name?

A Samuel S. Sternbach.

Q Mr. Sternbach, you are connected with the American branch of the Fidelity Union Bank?

A Yes sir.

Q Have you got in your records an account of Joe Calabrese?

30

A I have.

Q And have you got the records from the ledger showing that account?

A I have.

Q Is that the record there?

A It is.

MR. LASSER: I will offer it in evidence

40

Complainant's Witness, Samuel S. Sternbach, Direct

MR. FAST: Let me see it.

(Book handed to Mr. Fast.)

MR. FAST: No objection.

(Marked exhibit C-2.)

10 THE VICE CHANCELLOR: Is that the original?

THE WITNESS: That is a true copy.

THE VICE CHANCELLOR: This is a copy?

THE WITNESS: Here is the list of the notes if you want it.

20 MR. LASSER: I will ask you for those in second.

Q This record shows that the balances were overpaid up to that time, three thousand dollars, four thousand dollars prior to March 17th, 1928, is that right, and then dropped down to four hundred or five hundred dollars after that time (handing paper to the witness)?

A Yes. That is right.

30 THE VICE CHANCELLOR: Four hundred or five hundred dollar a week?

MR. FAST: No.

MR. LASSER: The balances.

THE VICE CHANCELLOR: Oh, the balances.

40

Complainant's Witness, Samuel S. Sternbach, Direct

THE WITNESS: Average.

Q Now the statements in the last column, that is the daily balance?

A That is the daily balance.

Q What is the highest balance made for there?

A Five thousand eight hundred, \$5,824.95 on February 21, of this year. 10

Q Now he has some notes with your bank?

A Yes sir.

Q How much does he owe on those?

A The total indebtedness is \$3,400 consisting of one note of his own of seventeen, endorsed by A. Blozzy, and one thousand dollars in his own name, and this note of Gianni Magdalone for three hundred dollars, which was discounted, and also note of four hundred dollars made by John Seylaz which was discounted by Joseph Calabrese. 20

Q What are the dates that those notes were given?

A Why the date of the seventeen hundred dollar note was May 3rd, and is due September the 9th, 1928. September 4th, rather. And this thousand dollar note is dated June 4th of this year, and due July 5th. Three hundred dollar note discounted dated April thirteenth and due June 29th of this year. There is one for four hundred dollars. That is May 25th of this year, and due July the thirteenth of this year. 30

MR. LASSER: That is all.

MR. FAST: May I see that statement?

THE WITNESS: Surely.

THE VICE CHANCELLOR: Is that all?

MR. FAST: I think I may examine him

40

Complainant's Witness, Harry W. Sherman, Direct

with just one question. No. No further questions. That is all. Is this in evidence?

MR. LASSER: Yes. That is in evidence.

THE VICE CHANCELLOR: That is all, sir.

10

(Witness excused.)

HARRY W. SHERMAN, called as a witness on behalf of the complainant, being first duly sworn, testified as follows:

DIRECT EXAMINATION by Mr. Lasser:

Q What is your name?

A Harry W. Sherman.

Q You are an attorney-at-law in the State of New Jersey?

20

A I am.

Q You have made a search of the records with reference to the mortgages held by Joe. Calabrese?

A I did.

Q And when did you make that examination?

A Yesterday.

THE VICE CHANCELLOR: What is the total?

30

THE WITNESS: I found the following amounts open of record, the following mortgages open of record—

THE VICE CHANCELLOR: I mean, what was the total of the mortgages?

THE WITNESS: I found \$21,500 worth of mortgages open of record, and one of these mortgages is held jointly by Joe Calabrese and

40

Complainant's Witness, Harry W. Sherman, Cross

one Nick Gambo.

Q What is the amount of that?

A Five thousand dollars, and that has been included in that amount.

THE VICE CHANCELLOR: All right.

MR. LASSER: Now that is all.

10

CROSS EXAMINATION by Mr. Fast:

Q Mr. Sherman, you are the attorney or solicitor for Mrs. Calabrese, are you?

A I am the attorney of record.

Q You don't know whether these mortgages have been paid?

A I don't know. They are open of record.

Q That you examined?

20

A As to whether the last installment was paid or not I don't know.

Q You don't know whether it is or not?

A I don't

MR. FAST: That is all.

MR. LASSER: That is all. That is complainant's case.

MR. FAST: Mr. Calabrese, take the stand.

30

JOSEPH CALABRESE, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION by Mr. Fast:

Q What is your name?

A Joseph Calabrese.

40

Defendant's Witness, Joseph Calabrese, Direct

Q You are the defendant in this case?

A Yes, sir.

Q Where do you live?

A 351 Thirteenth Avenue.

Q Does your wife live there with you?

A Yes.

10

Q And children live there?

A Yes, sir.

Q Mrs. Calabrese has testified that you used to treat her cruelly and unjustly, you used to hit her. Did you ever strike Mrs. Calabrese?

A No sir.

Q The little boy testified that you struck your wife?

A We might have been in argument.

Q After you disagreed?

20

A Might have been in argument, talked to her, but I never struck her.

Q Did you ever see her with big blue eyes?

A I never did.

Q You are sure you never struck her?

A No sir.

THE VICE CHANCELLOR: She has blue eyes now.

30

MR. FAST: I mean eyes indicating that she had been hit?

THE WITNESS: No.

Q Have you been providing for your wife and children and supporting them?

A Yes sir.

Q She says that you used to call her, you heard

40

Defendant's Witness, Joseph Calabrese, Direct

these names. Did you call her them?

A I never said that language to her. She used to use that language, but I never did.

Q You say she used to say it to you?

A Yes sir.

Q In the presence of the children?

A Yes sir. Right in front of the children. I would say, "Don't talk that before them," and she sad, "I don't care."

10

THE VICE CHANCELLOR: Have you and she lived together as man and wife?

THE WITNESS: Yes sir.

THE VICE CHANCELLOR: Sleeping in the same bed with her?

20

THE WITNESS: Since she had been calling me to the court house, three months.

THE VICE CHANCELLOR: You have been sleeping apart from her for three months have you?

THE WITNESS: Three months. Yes sir.

Q That is, since the suit started?

30

A Yes.

Q After you were served with papers?

A That we were living together?

Q You were living together as man and wife?

A Yes. Since I have been served with papers we have never lived together.

Q Since you have been served with papers you have never lived together?

40

Defendant's Witness, Joseph Calabrese, Direct

A Since I have been served with papers we have never lived together.

Q By that you mean that you did not live as husband and wife but you live in the same house?

A Sure.

10 Q Did you sleep in the same bed with her up until the time this suit was started by your wife?

A Sure.

Q How much have you been giving your wife for her support and the children's support weekly for the last few years?

A I used to give her twenty-five dollars, twenty-seven dollars, twenty-eight dollars, according. When she ran short she used to ask for one dollar, two dollars, three dollars. I never refused it.

Q How much did you give to her?

20 A Twenty-seven, twenty-eight dollars. According. If she need a few dollars more I never refused it. She always got it.

Q Did you pay for the bills of the shoes or the children?

A Yes sir.

Q And clothing?

A Everything.

A Electricity, gas?

A Yes sir.

30 Q And were you paying them up until the time this suit was started?

A Yes sir.

Q It has been testified to that you are the owner of the Cotton Club?

A Never.

Q Are you the owner?

A Never owned the place.

Q Did you have any interest in the place in

40

Defendant's Witness, Joseph Calabrese, Direct

fact?

A I went in there once in a while.

Q What real estate do you own?

A 41 South Sixteenth Street.

Q I mean what kind of a house is that?

A Two family house.

Q What is the rental from that? 10

A For approximately about ninety-five dollars.

Q A month?

A Yes.

Q What are your expenses on that?

A Expenses a year?

Q Yes.

A Well it is between about seven hundred dollars.

Q What other house do you own? This the one in which you live? 20

A Yes.

Q There are now tenants in that outside of your family?

A Only by myself.

Q What are the expenses of that house?

A It is approximately about six hundred dollars a year.

Q What other house do you own, if any?

A One on 110 South Eighth Street.

Q What kind of a house is that? 30

A Two family house.

Q What is your rental on that?

A Ninety dollars.

Q Ninety dollars a month?

A Yes.

Q What are your expenses per year?

A That house sir is about eight hundred dollars a year. It is in bad condition, that house.

Defendant's Witness, Joseph Calabrese, Direct
There is always trouble every month.

Q What mortgages do you own?

A I have two. I have got fourteen thousand dollars mortgage.

Q Fourteen thousand dollars entirely?

A Yes.

10 Q Mr. Sherman says the records show that there is \$21,500 mortgages of record?

THE VICE CHANCELLOR: No. There is five thousand dollars open of the mortgage.

Q How much do you own yourself and how much do you own with anybody else?

A I own fourteen thousand dollars mortgage and I owe thirty-four—

20 Q No. No. How much do people owe you on mortgages?

A How much do they owe me? Fourteen thousand dollars.

Q Fourteen thousand dollars. Then you have got a mortgage, haven't you, with a man named Nick Gambo?

A We had it together but we have been paid for it, and with the same money we have been lending it out again.

30 Q Well what is due on the mortgage that you own with Mr. Gambo?

A We got paid for, and I got my share of it, and we still work with that same money and lend it out again.

Q Then you have no interest in that mortgage any longer?

A No.

Q How much do you make a month, day or week?

40

Defendant's Witness, Joseph Calabrese, Direct

A How much do I make a month, day or week?
If I make fifty dollars a week I am satisfied.

Q How much are you making a week?

A At the present time I am not doing anything now.

Q What were you earning a week

A When I was doing that business, a couple of weeks I could earn about one hundred and fifty or seventy-five dollars.

A A week?

A Two weeks.

Q What was your weekly net income?

A Between seventy-five and one hundred dollars.

Q A week?

A Yes.

Q Have you lost any money in any business that you went into?

A I never lost in that line of business. But I took chances at different things where I lost money.

Q Now about how much have you lost in the last few years?

A Possibly may be around four thousand dollars or five thousand dollars.

Q Tell us if you will whether your wife, what clothing your wife has?

A She has more clothes than I have.

Q That doesn't mean anything. Has she many dresses?

A Plenty.

Q Well how many is that?

A She has got about—

THE VICE CHANCELLOR: Don't you think that this is opinion enough and of very far-

Defendant's Witness, Joseph Calabrese, Cross

fetched character? What does this man know about women's clothes?

Q About how many dresses now?

A She has got about twelve or thirteen dresses in the house.

10 Q About how many pairs of shoes?

A She has got about four or five pair of shoes. She looks them up every time—she buys a couple of pair at a time.

MR. FAST: That is all. Take the witness.

CROSS EXAMINATION by Mr. Lasser:

Q You say you never struck your wife at all?

20 A No sir.

Q Never raised a hand to her?

A No sir.

Q You left the house the day before Columbus Day didn't you?

A Yes sir.

Q You left your wife crying?

A Crying?

Q Yes.

A She never cried in front of me.

Q You went out right after you struck her?

30 A No sir. I never struck her.

Q You had an argument with her?

A An argument? But I never struck her.

Q Was that the day before Columbus Day that you had the argument?

A I cannot think just whether it was the day before Columbus Day. I cannot remember.

Q Before you left did you have an argument with her?

40

Defendant's Witness, Joseph Calabrese, Cross

- A She was talking.
- Q And you talked to her?
- A She talked to me. That is all.
- Q And you raised your fist didn't you?
- A No.
- Q You just talked to her nicely? 10
- A Yes.
- Q Quietly?
- A Yes.
- Q There was no argument at all about the butcher on Sixteenth Street?
- A No argument. I only said to her, I said, "What is the idea of going to buy meat five or six blocks away? What am I to furnish so many automobiles so you buy meat four blocks away with anybody else?" She said, "I like to buy meat up there." 20
- Q So you were angry?
- A No.
- Q That is all the better for you?
- A Yes.
- Q Did you not go in the kitchen and hit her in the eye?
- A No.
- Q You did not see her eye swell up after that?
- A Never seen. Never.
- Q You were not in the kitchen at that time? 30
- A No.
- Q Where was it?
- A I did not see her. I didn't what?
- Q It was not there at all where you were attacking your wife?
- A No. No.
- Q Wasn't it because Vincent came back from the butcher on Sixteenth Street—
- A No. 40

Defendant's Witness, Joseph Calabrese, Cross

- Q You ask him where he had been
 A I called up. I called up.
 Q Did you strike your wife before that time,
 around Christmas?
 A No.
 10 Q And give her two black eyes?
 A No.
 Q Did you have any argument with her at that
 time?
 A No.
 Q Did she have an argument with you?
 A No.
 Q Did she hit you?
 A No.
 Q Did you ever see her with those black eyes?
 A No.
 20 Q And you never called her any of those names?
 A No.
 Q You never told her that she was going out
 with some other man?
 A No.
 Q Now when do you say you stopped occupying
 the same bed with your wife?
 A About three months.
 Q Hadn't you been away frequently before that
 time?
 30 A Never been away. I always been home.
 Q Hadn't you been away for a couple of weeks
 at a time before then?
 A When was that?
 Q I am asking you?
 A No. Not as I remember.
 Q Never been away before that time?
 A No.
 Q You never left her alone for three or four
 weeks at a time?

Defendant's Witness, Joseph Calabrese, Cross

A Only the time I was—I got papers to come to court. I didn't live at home. That was last year.

Q Didn't you got out West a month?

A No.

Q You never were away out West?

A No.

Q Isn't that your picture (showing photograph)? 10

A That is me.

Q Where was that picture taken?

A Taken right here.

Q Where here?

A Out in the country .

Q What country?

A Way out in the mountain.

Q What is the name of the mountain where it was taken? 20

A I don't know.

Q You are sure that was not taken in Hot Springs?

A No.

Q Wasn't this a fact, that you went out to Hot Spring—

A What years?

Q The year it was taken?

A Yes(up in the country. Sure.

Q How long were you in Hot Springs? 30

A Out in the country.

Q How long did you stay in the country?

A Didn't stay long. Stayed about a couple of days.

Q Wasn't it more than two weeks?

A No.

Q When was this taken?

A At the same place.

Defendant's Witness, Joseph Calabrese, Cross

Q How long ago?

A The same time that this one was.

Q What is the name of that country do you know?

A I don't know the country where it was.

10 Q Did you send any of these pictures home to anybody?

A I did send some around. Yes.

Q And these two were taken at the same place?

A Yes.

Q And was that country——?

A I think it was the same place. I don't know.

Q Let me look at them. Was that country in New Jersey or New York or Pennsylvania?

A I don't remember when was it. I don't remember.

20 Q You remember when you were out in this party having a good time don't you?

A Yes. I remember that. But I don't remember the date.

Q You remember whether it was in New Jersey or New York?

A I don't remember where it was.

Q Who went with you?

A A bunch of fellows; they took me along. I don't know.

30 MR. FAST: I object. I don't see how that is material.

MR. LASSER: He said he was never away from—

THE WITNESS: I was never further than New York.

MR. FAST: The man was on a vacation.

THE VICE CHANCELLOR: I suppose it is to test his veracity.

Defendant's Witness, Joseph Calabrese, Cross

Q You have never been out west?

A A bunch of boys took me along. I don't know where they took me. I don't know nothing about it or where I was.

Q How many days did it take you to get to the place where you finally stopped?

A How long it takes? 10

Q Yes.

A Oh it took me about a day.

Q Did you go there by automobile?

A No. By train.

Q Were you ever in Indianapolis?

A I don't know that place. I don't know where they took me. The bunch of boys, they took me. I don't know where they took me.

Q Did you have an office, a store at 11 Charlton Street, Newark? 20

A Me?

Q Yes?

A No.

Q Do you know Willy Coruso, don't you?

A Sure.

Q And Willy Coruso worked for you didn't he?

A Yes sir.

Q And he has worked for you for three or four years hasn't he?

A That is right. 30

Q And do you know whether or not Willy Coruso lived at 11 Charlton Street, Newark, or had a store there?

A Well, he had the store, but I did not have any store, and he was working for somebody else too.

Q Did you send Willy Coruse a telegram from Indianapolis on your way back from the trip?

A I cannot write and I cannot read, so how can I send it? 40

Defendant's Witness, Joseph Calabrese, Cross

Q Did somebody send the telegram for you?

A I don't know. I don't know who sent it. I don't know how to read and write.

10 Q Were you living somewhere else than at your house with your wife when you send this telegram to Willy Coruso?

MR. FAST: Now if your Honor please, that implies——

THE WITNESS: I don't know how to read and write, so I don't know——

20 MR. FAST: Just a minute. I know that Mr. Lasser does not mean to put a trick into the question, but by saying, "Where did you live outside of with your wife at the time you sent this telegram," to my mind calls for a legal conclusion.

THE VICE CHANCELLOR: No. I don't think that amounts to anything. I understand perfectly what Mr. Lasser is trying to do, and I will permit it. Denied.

MR. FAST: I ask for an exception.

30

Q Now you wrote this telegram to Willy Coruso, 11 Charlton Street, Newark, New Jersey: "Meet me nine thirty Sunday morning Hudson Tubes. Bring new spring coat. Joe. It was marked in Indianapolis, Indiana. Now were you ever in Indiana?"

A Well if I was I don't know. The bunch of boys took me. I don't know where I was going.

40

Defendant's Witness, Joseph Calabrese, Cross

Q Is it possible that you were in Indianapolis?

A I could not say.

Q You wouldn't say that you were not in Indianapolis?

A I could not say.

MR. LASSER: I will offer this telegram
in evidence. 10

MR. FAST: I do not think it can be offered.

MR. LASSER: I will mark it for identification.

(Telegram marked exhibit C-3 for identification.) 20

Q What business have you been in for the last three or four years?

A I have been in the liquor business.

Q In the liquor business?

A Yes sir.

Q You have been making large sum of money weekly?

A No.

MR. FAST: I object on the ground that "large" is a relative word, and calls for a conclusion. 30

THE VICE CHANCELLOR: Yes. How much money have you been making?

Q How much money have you been making from that business?

A I used to make seventy-five dollars to one

40

Defendant's Witness, Joseph Calabrese, Cross

hundred dollars a week.

Q Is that only for the last year or for the entire four years?

A The whole four years.

Q Now did you make any money from any other business?

10

A No.

Q When did you buy these houses?

A With that money there. I have been saving my money and I bought them houses.

Q And when did you get the money to pay out on these mortgages?

A I worked with the same money all the time.

Q With the same money?

A I never spent that money.

20 Q In the last four or five years you have made enough money to pay your living expenses and invest twenty thousand dollars in mortgages and to buy these three properties?

A It is not twenty thousand dollars mortgages. It is fourteen thousand dollars.

Q Fourteen thousand plus a half interest in it?

MR. FAST: No. That is objected to.

30

THE VICE CHANCELLOR: He reinvested it.

MR. LASSER: This money has been reinvested.

Q You go to the Cotton Club don't you?

A A couple of times I was there.

Q You were only there, you say, a couple of times?

40

Defendant's Witness, Joseph Calabrese, Cross

A That is all. A couple of times.

Q Who runs the Cotton Club?

MR. FAST: I object—

A (Interrupting): I don't know who runs it.

Q Do you pay the man who runs the Cotton Club?

A I don't pay nobody. I don't know nothing about the place.

10

Q Were you there when Mrs. Calabrese saw you there?

A I was there a few minutes.

Q A few minutes?

A Yes sir.

Q Now you have not been home in the last three weeks have you?

A About two weeks.

Q About two weeks?

20

A Yes sir.

Q You have not been home at all?

A I go home every day or every other day and I go home to have my clothes and coat and see the children.

Q Now about what time did you go home?

A Every night.

Q Every night?

A Yes sir.

Q Three o'clock in the morning?

30

A No sir. Eleven o'clock every night I was in bed.

Q Never later than eleven o'clock?

A Once in a while twelve o'clock. Eleven o'clock I used to be home every night.

Q How many suits of clothes have you got?

A About six or seven. I have got them seven or eight years. I do not throw them away. I keep them.

40

Defendant's Witness, Joseph Calabrese, Cross

- Q And you have got these three automobiles?
 A Three?
 Q Yes.
 A I never owned three.
 Q You have got a Cadillac?
 A That is the only one I got, and she owns
 10 the Chrysler.
 Q You bought that Chrysler for her?
 A Yes sir.
 Q And who runs that Chrysler?
 A I asked her to learn for herself to drive the
 car, and she said, "If I have to go out in that car
 there I will kill everybody in the street."
 Q When did you ask her that?
 A Several times.
 Q Doesn't Willy Coruso run that car?
 20 A Yes sir.
 Q Doesn't he run that in your business?
 A No sir.
 Q Doesn't he run that car for you?
 A No sir. He runs it of his own—
 Q How many times have you seen your wife in
 that Chrysler car?
 A How many times?
 Q Yes.
 A Whenever she wants it she gets hold of her
 30 nephew and they go out.
 Q How many times have you seen her in that
 car?
 A Quite often.
 Q You know Mrs. Cummings don't you?
 A Yes sir.
 Q You wrote her a post-card from Hot Springs
 didn't you?
 A I don't know. I tell you . . . I told you be-

Defendant's Witness, Joseph Calabrese, Cross

fore I didn't know how to read or write. This post-card was wrote for me. I don't know how it happened.

Q Can you write your name for me here?

A Yes sir.

(Witness writes name in ink upon piece of paper.) 10

Q Now did you send that post-card to Mrs. Cummings?

A I did not send that.

Q Did anybody send it for you?

A Well if they did I don't know. I am telling you there is a bunch of boys that took me away, and I don't know whether I was in New York or in Maine. I don't know where I was going.

20

MR. LASSER: I will mark that for identification.

(Paper with handwriting marked exhibit C-4 for identification.)

Q Where is your store or office now?

A I haven't got any office.

Q Did you have an office with Coruso?

A No.

Q Where do you work now?

A I don't do anything now.

30

Q Have you been withdrawing any money from the bank within the last couple of months?

A Well a little. I put in and some I take it out.

Q Where did you get the money to put in the bank?

A Where I get it?

Q Yes.

40

Defendant's Witness, Joseph Calabrese, Cross

A Now I make the dollar legitimate because I do it now.

Q What did you make the last dollar on?

A What I made the last dollar on?

Q Yes.

10 A I got my friend Blozzy there. Any time I can do anything with him, I help him along.

Q Did you ever have an office at 44 Fourteenth Avenue?

A My nephew has got the office.

Q Willy Coruso?

A Yes.

Q What do you do there?

A Me?

Q Yes.

A What I do?

20 Q Yes.

A Just hang around.

Q And Willy does all the business?

A Yes.

Q And you pay Willy a salary?

A No. He is not working for me.

Q Don't you pay Willy anything?

A No. He is not working for me. How can I pay him?

Q Do you give him a share of the profits?

30 A What profits?

Q Profits that you make in the business?

A No.

Q Do you know what the number is, the phone number of Willy's place?

A Yes sir. Mitchell 5024.

Q Isn't that the same number that you use?

A I use the same number in case anybody wants, that I give some times in business, they can get me at the same place.

40

Complainant's Witness, Elizabeth Moore, Redirect

Q Do you give anybody your home phone number when they want to do any business with you?

A No.

Q And that is the only number you have got is the one you have at Willy's store?

A Yes.

10

THE VICE CHANCELLOR: Is that all?

MR. LASSER: Now that is all.

MR. FAST: Just one question.

REDIRECT EXAMINATION by Mr. Fast:

Q Where did you live in Newark when you took that trip that Mr. Lasser has been asking you about?

A I lived at 351 Thirteenth Avenue.

Q That is where your wife has been living?

A Yes sir.

20

MR. FAST: That is all.

THE VICE CHANCELLOR: That is all?

MR. FAST: I have no other witness.

MR. LASSER: No. I only have got Mrs. Calabrese in rebuttal for a moment.

30

THE VICE CHANCELLOR: All right. Go ahead.

HARRIET BIRD CALABRESE, previously sworn, recalled in her own behalf, as a witness in rebuttal, testified as follows:

40

Complainant's Witness, Mrs. Calabrese, Direct

DIRECT EXAMINATION by Mr. Lasser:

Q Mrs. Calabrese what part of the house does your husband occupy?

A The front room.

10 Q And where do you sleep?

A In the back with Harriet.

Q And how long has that been going on?

A For three months now.

Q And up to that time had you lived with your husband?

A Yes. We lived as man and wife.

MR. LASSER: That is all.

20 MR. FAST: One minute.

THE VICE CHANCELLOR: Is that all you want, Mr. Lasser?

MR. LASSER: Just one other question I want to ask.

Q Is it true that you had twelve or thirteen dresses and six or seven pairs of shoes?

30 A No. I have not. The black eye that Mr. Calabrese gave me the day before Columbus Day I told Mr. Calabrese that I was going to make him pay for that black eye——

THE VICE CHANCELLOR: Now we are not talking about black eyes. We are talking about dresses.

Q How many dresses——

A Well I am trying to say that with the money

40

Complainant's Witness, Mrs. Calabrese, Cross

I got from that eye I bought the dress with that money, and I have got this dress that I paid seventeen dollars and fifty cents, a dollar down and I am paying a dollar a week on, and a dress for sports for my best dress, and I only have one dress he bought and two dresses that are a bit smart. I have two dresses.

10

Q How many suits of clothes has he got?

A Mr. Calabrese has twenty-one suits of clothes—I mean twenty-one shirts and ten suits of clothes.

Q How many hats, do you know?

A He has six hats.

MR. LASSER: That is all.

CROSS EXAMINATION by Mr. Fast:

Q You told us about some money. How much money did you get for your black eye?

20

A I got one hundred dollars for that black eye.

Q From whom?

A From one of his customers.

Q Why did one of his customers give you one hundred dollars?

A If, Vice Chancellor, you don't want me to talk about it, tell me. Do you want me to tell you?

Q Yes.

30

A I told Mr. Calabrese the next time he gave me a black eye he would pay for it, and I just got over one when he gave me another, and I said, "You will pay for it." He said, "No. The only thing you will do is to take my stuff and let it lay there as you have always done." I said, "No. I won't." And as soon as he went out I went around to one of his customers—and I will truthfully say

40

Complainant's Witness, Mrs. Calabrese, Cross

I told a lie where the truth I could not risk—I said to this customer, “I have that stuff, come to my house and which they left me have for five hundred dollars and it came to six hundred dollars,” and he said, “Are you certain Mrs. Calabrese that you want no more?” I said, “No. Just to pay the bill.” I turned around and went to New York the next day and I bought a hat and coat and dress and spent all the money.

10

Q Why are you folks sleeping in different rooms?

A Why are we sleeping in different rooms?

Q Yes.

A Simply because we cannot get along.

Q Why can't you?

20

A I hope you do not think that I am going to sleep with a man that beats me and accuses me of being intimate with a man, simply because I won't have something to do——

Q How long has it been that you have not been sleeping with him?

A Over three months.

Q How long has it been that you have not been sleeping with him continuously?

A After my Wesley and Harriet had the measles.

30

Q How long ago?

A About three months ago.

Q You are apart from him because you do not want to be in the same room?

A Oh no. It is not me. Mr. Calabrese told me to stay out of the room and he wants to sleep alone. Just leave him——

Q He said just sleep with him?

A No. He said he wants to sleep alone and

40

Complainant's' Witness, Mrs. Calabrese, Direct

wants me to get out of the room.

THE VICE CHANCELLOR: All right.
That is all.

MR. FAST: That is our cross.

MR. LASSER: Mr. Coruso.

WILLY CORUSO, called as a witness on behalf of the complainant in rebuttal, being first duly sworn, testified as follows:

10

DIRECT EXAMINATION by Mr. Lasser:

Q What is your name?

A Willy Coruso.

Q What is your business?

MR. FAST: I object.

A I do a little bit of everything. I do a little junking.

20

Q You know Joe. Calabrese, don't you?

A Yes sir. I know him, and everybody does.

Q You have got office with him?

A No offices. Club room.

Q Club room?

A Yes.

Q What is the name of that club?

A There is no name to the club there.

Q Where is the club?

A Fourteenth Avenue and Drew Street.

30

Q That is the same number that Joe. Calabrese has on this card? That is his number?

A Yes.

Q Do you work for Joe?

A No sir.

Q Does he pay you any salary?

A No sir.

Q Do you get any commission on what you sell for him?

40

Complainant's' Witness, Mrs. Calabrese, Direct

A No sir.

Q Have you got the license for his cars?

A I have a driver's license for Mrs. Calabrese's car.

Q Have you got the owner's license?

10 A No sir. I have not.

Q Where are they?

MR. FAST: I object. I do not see where that is material.

THE VICE CHANCELLOR: I do not see either.

MR. LASSER: I want to see who owns that car.

MR. FAST: I answered that.

20

MR. LASSER: Of Calabreses.

MR. FAST: Your car.

THE VICE CHANCELLOR: He says she does.

MR. LASSER: All right. That is all.

THE VICE CHANCELLOR: Do you want to identify this telegram and pictures?

30 Q You are the Willy Coruso to him that telegram was sent?

A Yes. I don't remember getting this telegram. I don't remember.

Q Did you have a place at 11 Charlton Street?

A I had a club down there too.

Q And you were in control of that club?

A Yes.

Q Do you remember one day you brought the spring coat to the Tube Station to Joe?

40

Complainant's' Witness, Mrs. Calabrese, Direct

A When I what?

MR. FAST: Did you ever bring it to the Tube Station?

THE WITNESS: No sir.

Q Didn't you give that telegram to Mrs. Calabrese? 10

A No sir.

Q Didn't you tell her that you knew her Joe was out West?

A No sir.

Q Did you ever see these pictures before?

A No sir.

Q Do you know whether at that time Joe was out at Hot Springs?

A No sir. I don't know any of his business what he does. 20

Q Do you remember when he was away for some time out at Hot Springs?

A No sir.

Q You don't know anything?

A No sir.

MR. LASSER: That is all. I will identify this with Mrs. Calabrese.

(No cross examination. Witness excused.) 30

HARRIET BIRD CALABRESE, complainant, previously sworn, recalled and further testified in rebuttal:

REDIRECT EXAMINATION by Mr. Lasser:

MR. FAST: Do you want to identify that that is he on there?

40

Complainant's Witness, Mrs. Calabrese, Redirect

THE VICE CHANCELLOR: Well he admits that he is on there.

MR. FAST: That that is his picture?

10 THE VICE CHANCELLOR: I don't know. What is it that you want with Mrs. Calabrese?

MR. LASSER: I just want to show how she got this telegram and these pictures with Joe on them.

Q Do you know how you got this telegram?

A Willy brought me this telegram and wanted me to give him Joe's overcoat, and Willy said, "I will meet Joe at the Hudson Tubes with the overcoat," because it was cold.

20 Q Where was Joe coming from?

A From Hot Spring, Arkansas.

Q Did you ever see these pictures?

O Oh yes. Yes. I have seen these pictures, because me sister was visiting me at the time and he sent these pictures to my sister.

Q Who sent them?

A Joe. Mr. Calabrese.

Q From where?

A Hot Springs, Arkansas.

30 Q And then you were there at the time they came?

A Yes. I was there when they came.

MR. LASSER: All right. You may examine.

CROSS EXAMINATION by Mr. Fast:

Q How do you know your husband sent them?

40

Complainant's Witness, Mrs. Calabrese, Cross

A Why he sent them to my sister, Mrs. Turner.

Q How do you know?

A How do I know? I can read and then he called my sister up on the long distance phone from Hot Springs.

MR. FAST: Do you make that offer?

10

MR. LASSER: Yes.

MR. FAST: I object to it on the ground that I cannot see that it is material. This is a suit for maintenance and support, and if its purpose is to show absence or abandonment, I never knew that when a man went on a vacation with a bunch of men that it constituted abandonment.

20

THE VICE CHANCELLOR: The mere fact of the vacation would not admit it in evidence. But it was not introduced for that purpose. It was introduced to contradict his testimony. He said he never went to Hot Springs, Arkansas, or whatever the place is.

MR. FAST: He said he did not know the place.

30

THE VICE CHANCELLOR: Yes, and then when Mr. Lasser pinned him down he admitted that he had been somewhere. I will admit it.

And he said he did not know or never sent that telegram, and she says that Willy, who, of course, is an unfriendly witness, said he

40

Complainant's Witness, Mrs. Calabrese, Cross

never got it. Now she says that Willy gave it to her.

I will admit them all. That is all.

10

MR. FAST: I make a specific objection to the telegram.

THE VICE CHANCELLOR: You want to do what?

MR. FAST: I want to object to the telegram.

THE VICE CHANCELLOR: Same ruling.

20

MR. FAST: The same ruling?

THE VICE CHANCELLOR: Yes.

MR. LASSER: That is our case.

(Counsel sum up to the Court.)

30

THE VICE CHANCELLOR: I will allow sixty dollars a week to the complainant, and counsel fees of two hundred dollars for the complainant's counsel.

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New Jersey Court of Errors and Appeals

HARRIET BIRD CALABRESE,
Complainant-Respondent,

vs.

JOSEPH CALABRESE,
Defendant-Appellant.

BRIEF FOR DEFENDANT-APPELLANT.

The Facts.

The complainant, Harriet Bird Calabrese, and defendant, Joseph Calabrese, were married in 1917. Three children were born as a result of their marriage. The complainant contends that the defendant, while living under the same roof with the complainant, did, nevertheless, not cohabit with her. That the defendant, Joseph Calabrese, supported the complainant and that, notwithstanding this arrangement, the complainant alleges that she is entitled to a decree from the Court of Chancery, requiring the defendant to support her.

THE LAW.

POINT ONE.

A wife is not entitled to a decree in the Court of Chancery requiring a husband to support his wife and children, unless it is proved that the husband abandoned his wife or separated from her and refuses or neglects to maintain and provide for her.

It appears manifestly to be an error for a decree to have been advised by the Honorable Vice-

Chancellor. This suit is based on Section 26 of the Divorce Act. That part of the section of the Act which we think is important in the determination of this appeal, reads as follows: "In case a husband, without any justifiable cause, shall abandon his wife or separate himself from her, and refuse or neglect to maintain and provide for her, it shall be lawful for the Court of Chancery to decree and order such suitable support and maintenance, to be paid and provided by the said husband for the wife and her children, or any of them, by that marriage, or to be made out of his property, and for such time as the nature of the case and circumstances of the parties render suitable and proper in the opinion of the court."

Granting, for the purpose of the argument, that there was an abandonment, which we contend from the testimony was not the case, nevertheless, an important element in deciding the case, would be whether or not Calabrese, the defendant and the appellant in this appeal, did refuse or neglect to maintain and provide for her.

Referring to the testimony, page 31 of the State of the Case, we find these questions, and answers by Mrs. Calabrese:

"Q Has he been supporting you? A Yes. He has been supporting me.

Q Throughout your whole married life?

A Well, yes. If you call it support.

Q Well, you said that he had been supporting you. What do you mean by that answer? A Well, to his judgment he does. Twenty-one dollars a week and twenty-five dollars another week; and paying bills that I have to pay out of it, insurance, laundry and everything else, and not having a cent to buy anything for myself or my children.

Q You do not pay any rent, do you? A No, I do not pay any rent.

Q You haven't paid any rent for how long? A Haven't paid any rent at all."

Again, on page 32 of the State of the Case:

"Q And every week he has given you something for the table, hasn't he? A Yes.

Q What was the lowest he gave you during any week? A The lowest he gave me was twenty dollars.

Q And what was the highest? A The highest was twenty-five dollars.

Q He is giving you thirty dollars now? A Yes, thirty now. But you must find out what I am doing with the thirty.

Q Who pays your gas bills? A Mr. Calabrese.

Q Your electric bills? A Mr. Calabrese.

Q And who pays the shoemaker? A What is that?

Q Who has been paying Mr. Ross, the shoemaker, for shoes? A Mr. Calabrese."

Again, on page 34 of the State of the Case:

"Q Were you obliged to borrow any money from anybody during the last five years? A Borrow any money from anybody?

Q Yes. A Yes, I did borrow.

Q About how much have you borrowed in the last five years? A Well, I will tell you—

Q From whom? A I beg pardon?

Q And from whom? A I will tell you, when I was having trouble with Mr. Calabrese and I went to Judge Rice, Judge Rice sent me a bill for twenty-five dollars and I asked Mr. Calabrese to please pay the twenty-five dollars. Then he said, 'No,' he would not. I had a ring that Mr. Calabrese gave me, and I got—

Q Twenty-five dollars you borrowed to pay on Judge Rice's bill? A I paid twenty-five cents a week on the pawned ring and paid that twenty-five dollars back every week.

Q That was how long ago? A It was—let me see—about five years ago.

Q Have you borrowed any money since from anybody? A Yes. I have borrowed from different people.

Q How much? A Well, I borrowed twenty-five cents off Mr. Coruso, and I borrowed—

Q How much money have you been borrowing? A I have borrowed twenty-five cents off of Mrs. Cummings, and I borrowed twenty-five cents one day from Willy Coruso.

Q You repaid that? A No, I have not paid Willy back the twenty-five cents.

Q Is there any money that you still owe to anybody for borrowed money? A No.

Q You have no other income except what Mr. Calabrese gives you? A What Mr. Calabrese gives me. That is all.

Q You have been supporting the children on that money, haven't you? A Yes, I have.

Q You have been feeding them? A Feeding them, yes.

Q And you have been buying them clothing? A Yes, clothing.

Q And out of that money you have been buying your own clothing, haven't you? A Yes, I have."

So that your Honors can readily see that Calabrese has been supporting his wife, and that as a natural deduction, the complainant's case should have fallen, and the Vice-Chancellor have ordered a dismissal of the proceedings because the element of failure or neglect to support was clearly missing from the case. Your Honors will undoubtedly appreciate these facts, that there is no complaint of inadequacy of support, and further, that the complainant is not indebted to anyone for the necessaries of life, as befits her station, as well as that of the children of the marriage.

A very leading case on this question is that of *Margarum v. Margarum*, 57 N. J. Equity, p. 249. Vice-Chancellor Grey wrote that opinion, and he held in that case that it is necessary to allege and prove that the husband abandoned or separ-

ated himself from the wife, and secondly, that he refused or neglected to support her. As the learned Vice-Chancellor said in that case, both of these conditions must exist under Section 20 of the Divorce Act (WHICH ALONE VESTS THIS COURT WITH JURISDICTION IN CASES OF THIS CHARACTER) to justify an application to compel the husband to pay an allowance for the support of the wife.

This point was also litigated in the case of *Parker v. Parker*, cited in 57 N. J. Equity, page 578. In that case we find this quotation, "The relief sought is under Section 20 of the Divorce Act. By virtue of this act, support may be decreed when it appears that the husband has both abandoned the wife and refused to support her."

In the case at issue, it appears not only has the husband not refused or neglected to support his wife, and children, but that the wife herself shows in the testimony, as apparently is the fact, that Calabrese has been supporting her.

POINT TWO.

There should be a reversal of the Decree of the Court of Chancery.

We respectfully submit that the Court was in error in advising a decree and that the decree should have been dismissed.

We reiterate the argument on the first point in making our point that the decree should be reversed.

Respectfully submitted,

FAST & FAST,
Solicitors of Defendant-Appellant.

LOUIS A. FAST,
Of Counsel.

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NEW JERSEY COURT OF ERRORS AND APPEALS

Between: HARRIET BIRD CALABRESE, <i>Complainant-Respondent,</i> and JOSEPH CALABRESE, <i>Defendant-Appellant.</i>	}	On Appeal from Court of Chancery.
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BRIEF FOR COMPLAINANT-RESPONDENT HARRIET BIRD CALABRESE.

The complainant-respondent answering the brief of the defendant-appellant respectfully sets forth the following additional facts and law.

This is a suit for maintenance and support brought by complainant-respondent under Section 26 (formerly Section 20) of the Divorce Act.

The statement of facts as contained in the brief for the defendant-appellant is entirely too meagre to portray the intolerable conduct that complainant-respondent had been subjected to and it would not be amiss to supplement what has been stated by counsel for defendant-appellant.

The respondent is 45 years of age and her husband, the appellant, is 36 years of age and were married in 1917. Three children were borne by respondent to appellant, namely:

- Vincent, now 11 years of age,
- Westley, now 8 years of age,
- Harriet, now 6 years of age.

It appears from the testimony that in addition to being excluded from the bed of her husband (State of Case, p. 33, line 7; p. 74, lines 1 to 16, incl.; from p. 76, line 14 to p. 77, line 5, incl.) the respondent had for a considerable period of time been subjected to unmerciful beatings (State of Case, from p. 20, line 18 to p. 21, line 24, incl.; from p. 29, line 17 to p. 31, line 37, incl.) and had been called vile and offensive names by the appellant (State of Case, p. 19, line 33). With it all was carried the import of the commission of improprieties and unfaithfulness on her part (State of Case, p. 19, line 21 to line 38, incl.) which was indicative of appellant's utter contempt for his wife and which portrayed an entire absence of feeling of love or kindly regard on his part.

The exclusion of respondent from his bed is corroborated to by the appellant (State of Case, p. 55, line 25 and p. 62, line 25). The acts of cruelty are corroborated by Vincent Calabrese, the eldest son of the parties to the suit, as are also the invectives and vile language used by his father to his mother (State of Case, from p. 44, line 38 to p. 46, line 34, incl.).

The respondent urges that although she and her three children were given an allowance by the appellant it was wholly inadequate and unreasonable for their proper maintenance (State of Case, from p. 40 to p. 41, line 12, incl.; from p. 35, line 7 to line 28, incl.), as the nature of the case and the circumstances of the parties rendered suitable and just.

The Law.

So much of Section 26 of the Divorce Act under which this action was instituted, as is necessary to determine this appeal, appears as follows:

“In case a husband, without any justifiable cause, shall abandon his wife or separate himself from her, and refuse or neglect to maintain and provide for her, it shall be lawful for the Court of Chancery to decree and order such suitable support and maintenance, to be paid and provided by the said husband for the wife and her children, or any of them, by that marriage, or to be made out of his property, and for such time as the nature of the case and the circumstances of the parties render suitable and proper in the opinion of the Court.”

Therefore, in order for the wife to prevail in a suit of this character, the Court of Chancery has made it necessary for her to show:

1. That her husband abandoned or separated himself from her without justifiable cause, and
2. That he had refused or neglected to maintain and provide for her.

Since the statute requires the aggrieved party to prove both elements it is entirely proper to treat them separately.

I.

As to abandonment or separation on the part of the husband from his wife, without justifiable cause.

Pinkinson v. Pinkinson, 92 N. J. Equity 669, which affirmed the decree advised for complainant, was a case where there was a cessation of marital relations between the parties and an unexplained absence of defendant for about 10 days. Vice-Chancellor FIELDLER in advising the decree, said in part:

“In my opinion he abandoned or separated himself from her within the meaning of the

statute, though living in the same house when he refused to converse with her or to go anywhere with her and refused to have sexual intercourse with her and excluded her from his bed."

Citing: *Anshutz v. Anshutz*, 16 N. J. Equity 202;

Weigand v. Weigand, 41 N. J. Equity 202;

Margarum v. Margarum, 57 N. J. Equity 249;

Rector v. Rector, 78 N. J. Equity 386, 407.

Justice KATZENBACH in speaking for the Court of Errors and Appeals, added the following to Vice-Chancellor FIELDLER's opinion:

"It is the duty of the wife to live with her husband at his home and to give him her services and society. From these obligations she is only relieved if she can show that the conduct of her husband has been such as will reasonably convince the Court that her life or health was in danger or her life rendered one of such extreme discomfort and wretchedness as to incapacitate her to discharge the duties of a wife or that the conduct of the husband, if continued, would have brought about these conditions (*Taylor v. Taylor*, 73 N. J. Equity 748). * * * The cessation of intercourse is but one element or factor to be taken into consideration in reaching a conclusion upon the question involved."

See also *Walsh v. Walsh*, 88 N. J. Equity 368.

In the case of *Cavileer v. Cavileer*, 94 N. J. Equity 160, Justice TRENCHARD speaking for the Court of Errors and Appeals decided what was "justifiable cause" for the husband in separating himself from the wife:

"In *White v. White*, 87 N. J. Equity 354, it was said, by the Court of Errors and Appeals

that a justifiable cause which will relieve the husband from his legal obligation to maintain and provide for his wife *is a cause which he has not helped to create* such as adultery of the wife free from legal guilt or connivance on his part."

Continuing, the Court cited *Bradbury v. Bradbury*, 74 Atlantic Reporter 150:

"That the conduct of the wife which would render abandonment of her by her husband justifiable under the statute must be such a matrimonial offense on her part as would entitle the husband to a divorce."

The case of *Karl v. Karl*, 95 N. J. Equity 140, was one for maintenance brought by the wife against her husband and it appeared that the husband quarreled frequently with his wife. On numerous occasions the wife was assaulted without any showing of provocation by her, for such assaults. Vice-Chancellor CHURCH in advising a decree for the wife said:

"A husband's obligation to his wife does not end with mere support. It is his duty to avoid quarrels, not to provoke them. * * * The treatment of complainant by defendant is such as to justify her in asking this Court for a separation on the ground of extreme cruelty."

Opposing counsel has called your attention to the case of *Margarum v. Margarum*, 57 N. J. Equity 249, and it would be apropos to state minutely the facts and circumstances of that case. It appears that the husband in resisting the application brought under the then Section 20 of the Divorce Act, showed that he was financially incapable and never had much earning power. "He was accepted by this woman for better, for worse. It happens to have been for worse and he is unable to support her and the wife *forced him to live elsewhere.*"

Vice-Chancellor GREY who wrote the opinion said:

"The condition of abandonment must necessarily be the husband's act. The wife cannot abandon the husband and then invoke the aid of the statute to secure support from him. If his conduct is so violent to endanger her life and he thus compels her to go away, that is, in law, an abandonment by him."

Citing: *Maas v. Maas*, 34 N. J. Equity 113.

"It is his own separation and his conduct is such that it is clear that he had a mental purpose or willingness to separate, or he would not have driven her away * * * notwithstanding the husband did not go away from the place of residence. *So, abandonment may be effected even if the parties lived in the same house where the husband excluded the wife from his room and persistently refused her access to him.*"

Citing: *Anshutz v. Anshutz*, 16 N. J. Equity 164.

"A wife is entitled to share her husband's bed and room and if he refuses to allow her to come to his bed and room or treats her with such cruelty that she reasonably fears to go there, that is abandonment on his part, because he is the creator of the condition of the separation. * * * But the husband had a right to live with her even if he did not support her, where he did not separate himself from her by his voluntary act or circumstances equivalent thereto. * * * The statute which this woman invoked contemplates a mental condition of the husband of willingness to separate from the wife, resulting in some act on his part of abandonment or separation from his wife."

Vice-Chancellor GREY in accordance with these expressions advised a decree dismissing the bill

because there was no act of abandonment on the part of the husband *for he had separated himself from his wife unwillingly and by her direction* and because of her act the Court had no jurisdiction to compel him to support his wife either under Section 20 of the Divorce Act, or under its general equity powers.

The only other case cited by counsel is that of *Parker v. Parker*, 57 N. J. Equity, page 577, in which a husband unjustifiably accused his wife of marital misconduct and at one time struck her a blow impairing her eyesight. Vice-Chancellor GREY also heard and wrote the opinion and in this case he said that the wife was justified in separating herself from her husband as this was an abandonment by him under the statute.

“Their difference and separation was occasioned by the husband’s cruel conduct. There is no proof whatever that he afterward sought to regain his wife’s confidence save his unsupported assertions which do not accord with his admitted actions.”

Illustrative portions of the intolerable conduct towards respondent which could not under any circumstances be countenanced are as follows (State of Case, from p. 18, line 18, to p. 21, line 24, incl.) :

Q. What kind of a house is it that you live in?

A. I live in a one-family house.

Q. Has Mr. Calabrese been living there with you?

A. He has not been living there for the last three weeks.

Q. Has he been home in the last three weeks?

A. No, called for his clothes and to take a paper. That is all.

Q. Before that time how often was he home?

A. Well he was home every night. He was

home every night previous to the last three weeks.

Q. How did he treat you?

A. Well we have not spoken for the last—we have not spoken to each other for over three months.

Q. And when he did speak to you before that time, in what manner did he speak to you?

A. Well, not like a gentleman, and not with any feeling of affection.

Q. What did he say to you?

A. Well, I have always been called very, very, very bad names.

Q. When was the last time that he called you these names?

A. The argument when it started about—over my children had the measles and I went to—I called up the butcher for some meat and the butcher said to me, “Mrs. Calabrese, I can’t send anybody to you, but—”

Q. When was this?

A. This was three months ago when my Wesley and Harriet had the measles.

Q. What did your husband do at that time?

A. Why he called me up and he said the line was busy and he asked me who I was talking to, and I said, “the butcher,” and he came in and he wanted to know what was the idea of me getting meat off of a butcher up on Sixteenth Street, and I said, “Simply because he was to the house and he asked me to do my shopping there.” So he turned around and called me the same lot of vile names and said, “*There must be something going on between you and the butcher or you would not send up to Sixteenth Street for your meat.*”

Q. What did he call you?

A. *Do you want me to say it to the Vice-Chancellor?*

The Vice-Chancellor: *You will have to say it.*

A. *(Continued.) He called me a lazy bas-*

tard and also a son of a bitch and a dirty whore.

Q. Was anybody present at the time?

A. Yes. My little Vincent was present when he called me those names.

Q. How old is Vincent?

A. My Vincent is twelve years old.

Q. And has your husband, had he called you those names at any time before that?

A. Oh those have been pet names to me as long as I have been married to him.

Q. Has he treated you kindly at all?

A. No. Not at all.

Q. How has he treated you?

A. Very vilely. I have been a regular slave to Mr. Calabrese, a slave to him and a slave to his family.

Q. What did he do?

A. What did he do?

The Vice-Chancellor: Did he strike you?

The Witness: Yes.

The Vice-Chancellor: Where and when?

The Witness: He beat me this day when I called up the butcher, your Honor; in regard to the meat. He beat me in front of my little boy.

Q. What did he do to you? What happened on that day when he came in and called you these names? What did he do?

A. He came in and said, "What is the idea of calling up—"

The Vice-Chancellor: No. What did he do? Did he hit you with his fist?

The Witness: Oh, yes. With his fists. Yes.

Q. Where did he strike you?

A. In my eye. My left eye.

Q. Did he leave any mark on your eye?

A. Yes. I had a great big lump on my eye and my eye was black and blue for two or three days.

Q. Did Vincent see that?

A. Yes. Vincent saw it.

Q. *Did he ever strike you before that when you had your eyes discolored?*

A. *He gave me a terrible beating a year ago last Christmas when I had two of the worst eyes you ever looked at.*

Mr. Fast: *I object to that. These people lived together after that.*

The Vice-Chancellor: *That doesn't make any difference. She may have gone back to the house or to him after he promised to reform and then does not reform, it is material.*

Mr. Fast: *I appreciate that.*

On cross examination of the complainant-respondent, the following took place (State of Case, from p. 29, line 17 to p. 31, line 7, incl.):

The Vice-Chancellor: *Why pursue this? Find out whether he abused her.*

Mr. Fast: *Yes.*

Q. *Now about how often in your married life did Mr. Calabrese strike you?*

A. *Mr. Calabrese has beaten me quite often. I have not marked it down. I could show no record of it. But very, very much times that I will never forget.*

Q. *Well I mean how did he strike you? What was the method that he pursued?*

A. *He beat me with his fists.*

Q. *Well about how often?*

A. *How often? I can not tell you how many times he beat me. He beat me terribly in his mother's kitchen one day in front of all his people. He beat me so that I had to leave him when I was pregnant with little Wesley and I had to go to Boston. He beat me on Sixteenth Street and on Sixth Street and when I was pregnant with Harriet that my own people had to take me, and so that he had to come over before Judge—, and when I was pregnant with my little boy, and in private many times.*

Q. When was the last time he struck you?

A. He struck me about three months ago.

Q. Before that when did he strike you?

A. He struck me before that, the day before Columbus Day.

Q. This was last Columbus Day.

A. Yes. This last Columbus Day.

Q. Why did he strike you?

A. Why did he strike me?

Q. Yes.

A. Why did he strike me?

Q. Yes.

The Vice-Chancellor: I do not think it makes any difference. He had no business to strike her. It doesn't make any difference.

Mr. Fast: This is only for the purpose of testing her veracity.

The Vice-Chancellor: I do not know of any use in that. He had no business to strike her if he did.

Mr. Fast: I think I can prove the possibility of improprieties, whether she said anything or why he did it. After all, your Honor, I suppose must take into consideration the surrounding circumstances if there was any striking.

The Vice-Chancellor: So far as that goes, if he struck her, and I say it does not make any difference what reason he had if he did, a man has no business to strike his wife under any circumstances whatever.

Mr. Fast: Yes.

Q. Did he tell you why he struck you?

A. Yes. I will tell you truthfully why he struck me; I had some pawn tickets and I lost them out of my bag—

The Vice-Chancellor: That is a perfect waste of time.

Mr. Fast: You do not want to go into that.

The Vice-Chancellor: I only want to know just whether he struck you. That is enough.

The corroborative testimony of Vincent Calabrese, the eldest son of appellant and respondent, was as follows (State of Case, from p. 44, line 38 to p. 46, line 34, incl.):

Q. Did you at any time hear your father and mother have any arguments?

A. Yes.

Q. Do you remember when the last time was when you heard such an argument?

A. Yes. Three months ago.

Q. Were you in the house?

A. I was in the house at the same time.

Q. Just talk a little slower and louder?

A. Yes.

Mr. Fast: I do not hear the witness.

The Vice-Chancellor: He said he was in the house at the same time.

Q. What did your father say to your mother and what did your mother say to your father if you remember?

A. He said, "What right have you got to go up—send me up to this here butcher and get meat?" So I said—so my mother said, "Because I have no car to go down to the market to get my stuff off the butcher."

Q. Who did your mother send?

A. Me.

Q. You?

A. Yes.

Q. And you came back?

A. Yes.

Q. And what did your father then say to your mother?

A. When I came home my father was in the kitchen and I am in the dining room and he said, "What right have you to send him up to the store to get the meat?"

Q. What did your mother say to that?

A. She said, "I don't have no car to go down to the market."

Q. Then what did your father do?

A. Then he started hollering and cursing mother and then started punching her.

The Vice-Chancellor: He did what?
Punched her?

The Witness: Yes.

The Vice-Chancellor: Where did he
punch her?

The Witness: In the eye.

The Vice-Chancellor: Did you see him
do that?

The Witness: Yes.

The Vice-Chancellor: Any questions?

Mr. Fast: No.

Mr. Lasser: Let me ask another.

Q. Let me ask you, Vincent: Did your
father ever call you any names?

A. No.

Q. Didn't you ever hear him call your
mother any names?

A. Yes.

Q. At other times than this?

A. Yes.

Marie Castellano, a witness who is not related to either of the parties, testified that she had seen the respondent's eyes discolored. It is significant to note that she saw the respondent in a battered condition at the times that respondent spoke of as having received beatings from her husband (State of Case, from p. 47, line 22 to p. 47, line 29, incl.):

Q. Do you know Mr. Calabrese?

A. No. I don't.

Q. Did you ever see Mrs. Calabrese when
she had her eyes black?

A. I tell you I see Mrs. Calabrese come to the doctor and I see her with two pair of black eyes of such a sight I never seen in my life. It was a year ago last Christmas, and then this year during the holiday I saw her with one black eye, and I asked just come how all these black eyes—

Mr. Fast: I object.

The Witness: That is all I know.

The respondent testified that for some period of time she had been excluded from her husband's bed and room (State of Case, p. 74 to line 13, incl.):

Q. Mrs. Calabrese, what part of the house does your husband occupy?

A. The front room.

Q. And where do you sleep?

A. In the back with Harriet.

Q. And how long has that been going on?

A. For three months now.

Q. And up to that time had you lived with your husband?

A. Yes. We lived as man and wife.

And the fact of exclusion is not denied, but admitted by appellant (State of Case, p. 62, line 25):

Q. Now when do you say you stopped occupying the same bed with your wife?

A. About three months.

His unqualified admission confirms the cessation of marital relations testified to by the respondent (State of Case, from p. 76, line 14, to p. 77, line 5, incl.), which is as follows:

Q. Why are you folks sleeping in different rooms?

A. Why are we sleeping in different rooms?

Q. Yes.

A. Simply because we cannot get along.

Q. Why can't you?

A. I hope you do not think that I am going to sleep with a man that beats me and accuses me of being intimate with a man, simply because I won't have something to do—

Q. How long has it been that you have not been sleeping with him?

A. Over three months.

Q. How long has it been that you have not been sleeping with him continuously?

A. After my Wesley and Harriet had the measles.

Q. How long ago?

A. About three months ago.

Q. You are apart from him because you do not want to be in the same room?

A. Oh, no. It is not me. Mr. Calabrese told me to stay out of the room and he wants to sleep alone. Just leave him—

Q. He said just sleep with him?

A. No. He said he wants to sleep alone and wants me to get out of the room.

The defendant admits that he quarreled and argued with his wife and in face of the testimony of his son makes a flat denial as to ever having struck his wife or was other than kind and gentle to her. The acts of cruelty being corroborated, the Court should accept them as true notwithstanding the appellant's sole and uncorroborated denial thereof.

There is not the slightest iota of evidence before this Court to show that this respondent was anything other than of normal temperament and that the assaults committed on her and the ebullition of appellant's temper were not due to any act of provocation on her part.

His harsh words and accusation of unfaithful conduct accompanied by acts of violence were unwarranted in view of the fact that this respondent was a true and faithful wife at all times to her husband and the three children she bore.

It is to be acknowledged that there are disturbing elements in married life, but that its serenity can be maintained is not to be doubted where there are proper expressions and sincere manifestations of repentance or promises of reformation by the wrongdoer. A reasonable amount of affection for one's spouse surely is not exacting too great a demand. Where there has been a total absence of this regard there can be no justification for a husband becoming irritable and inflict-

ing such physical blows on his wife as to imperil her life and health.

The testimony further discloses that the respondent continued to remain under the same roof with her husband in total disregard of these dangers which was an indication that she was disposed to effect an understanding with him. It was an implied invitation for him to make sincere overtures that he would turn over a new leaf, and as Justice TRENCHARD said in *Cavileer v. Cavileer*, 94 N. J. Equity 160 (Court of Errors and Appeals):

“In such a proceeding as the present one it is always proper for the Court to look at the attitude and conduct of the husband towards his wife since the commencement of the suit, for the purpose of giving character to the act of the husband in separating himself from his wife.”

Citing: *Cook v. Cook*, 11 N. J. Equity 195.

The evidence adduced clearly demonstrates the character of the appellant and that he was guilty of extreme cruelty and from the posture of the record his separation from his wife was without justifiable cause.

II.

As to a husband's refusal or neglect to maintain and provide for his wife.

In *Mackay v. Mackay*, 83 N. J. Equity 650, so much of that case which was appealed to the Court of Errors and Appeals and which is material in determining the issue at bar is referred to.

It appeared that a bill was filed by the wife against her husband charging him with having, without justifiable cause, separated himself from, and with neglecting to support her in a suitable

and proper manner. An appeal was taken from the Advisory Master's report advising a decree under Section 26 of the Divorce Act. A ground urged by counsel for the appellant was that the Court of Chancery was without jurisdiction to render a decree in favor of the wife because the evidence adduced did not support a finding that there had been a neglect or refusal on the husband's part to maintain his wife, *in that defendant was paying his wife part of his earnings for the support of herself and her children.*

Justice KALISCH speaking for the Court of Errors and Appeals which affirmed the Advisory Master's suggestion of a decree said:

"We think the evidence warranted a finding that the husband was guilty of refusing and neglecting to maintain and provide for his wife in the sense in which the words are used in the statute upon which her bill is founded, *because it appeared that the husband did not according to the income he was receiving, suitably and properly provide for her, under the circumstances.*"

The Court of Errors and Appeals in reaching its conclusion in the *Mackay* case (*supra*) undoubtedly approved the opinion of that erudite, without referring to it in reaching its conclusion, the Vice-Chancellor PITNEY, who decided the differences in the case of *O'Brien v. O'Brien*, 49 N. J. Equity 436.

Concisely, the facts in the *O'Brien* case (*supra*) were as follows: After the husband's separation without justifiable cause, the wife continued to remain in the house which the husband owned, without paying rent. The wife prior to such separation was using the rentals amounting to \$60 which she had collected from other properties that her husband owned, for the supply of the table and the payment of ordinary household expenses.

Vice-Chancellor PITNEY said:

“It was argued by the counsel of the defendant that if there was such a provision made by the husband as would enable the wife to live in decency, this Court would not examine into the question of its sufficiency in the same manner and upon the same basis that it would if no provision whatever had been made by the husband. I cannot adopt this view. *The sense in which the legislature used the words refuse or neglect to maintain and provide for her is shown by what immediately follows, where this Court is given power to order such suitable support and maintenance as the nature of the case and the circumstances of the party render suitable and proper, in the opinion of the Court.* It seems clear enough that it is the duty of the Court under circumstances like the present, to determine whether the amount already provided by the husband for the wife is such as the nature of the case and the circumstances of the parties render suitable and proper.”

In *Irwin v. Irwin*, 88 N. J. Equity 596, the Court of Errors and Appeals affirmed the opinion filed by Vice-Chancellor LEWIS reported for the Chancery Court in 88 N. J. Equity 139. It appeared that where a man and his wife were always quarreling it did not relieve him of his obligation to support her.

“Although he has the privilege of living apart from his wife, if he sees fit, it still remains his duty to support her for such as the nature of the case and the circumstances of the parties render suitable and proper in the opinion of the Court.”

Also see *Dudley v. Dudley*, 86 N. J. Equity 245.

Counsel for appellant urges to your Honors that there is no complaint of inadequacy of support

made on the part of respondent (Brief for Defendant-Appellant, p. 4, line 32).

The bill of complaint filed on behalf on complainant (respondent) in the Court of Chancery sets forth that the sums of money varying from \$20. to \$30. given to complainant by defendant (appellant) were totally inadequate for the support of her and their three children (State of Case, p. 16, line 30 to p. 7, line 12; p. 11, line 3) which reflected his neglect to support them in a suitable and proper manner. These very proceedings were instituted because of the appellant's meagre contributions to his family. From these allowances the respondent was obliged to support herself and their three children "and provide for the table and for the insurance, laundry and everything else not having a cent to buy anything for myself or any children" (State of Case, p. 31, line 28).

The appellant admitted he was in the liquor business and had been in such business for about four years (State of Case, p. 67, line 22). His wife termed him a bootlegger.

Prior to these proceedings several complaints had been made to the Domestic Relations Court by respondent on behalf of herself and children against her husband, charging him with non-support (State of Case, p. 43, line 34 to p. 43, line 37, inclusive) and that a previous bill of complaint for maintenance filed in the Court of Chancery was subsequently settled out of court (State of Case, p. 40, line 23). This agreement reached between the parties was not carried out by the husband according to the testimony of respondent (State of Case, p. 40, line 25).

The testimony discloses that the defendant was the owner of three parcels of real estate (State of Case, p. 57, lines 7 to 40, inclusive), that he was the owner of and still open of record of

\$21,500 in mortgages in his own name (State of Case, p. 52, line 37). That he maintained a balance as high as \$5,824.95 in the American Branch of the Fidelity Union Trust Company of Newark, New Jersey (State of Case, p. 51, line 9) and had borrowed from said bank, on notes, as high as \$3,400 (State of Case, p. 51, line 15). In addition thereto he was the owner of two pleasure automobiles, one a Cadillac and the other a Chrysler.

The contributions by the appellant to his wife were so unreasonable that it became necessary for her to buy clothing for herself and her three children on the installment plan and that to indicate a further lack of support on his part she was obliged to sell an \$85 stove in order to realize some money thereon (State of Case, p. 40, to p. 41, line 12):

Q. Mrs. Calabrese, you say that you have been able to buy the clothing for the children. Have you bought this clothing and paid the bill or on the installment plan?

A. On the installment plan. I had to even buy underwear and stockings for myself and all of that on the installment plan, and I bought a little dress on the installment plan for \$17.50, and a dollar a week, and four dollars a week on the children's clothing. I have to have stockings and underwear. I haven't got the money to pay cash, and so I have to buy on the installment plan.

Q. And that money that has been coming to you is under an agreement that you have had with him?

A. Yes. I believe Vice-Chancellor Church set it at thirty dollars while the case was pending.

Q. At the time did you have an agreement with him?

A. My case was settled out of court last year between him and me, and he promised to give me thirty-five dollars every week, and

when he gave it to me two or three weeks he said, "Now listen," he said, "You buy clothes out of that. * * * I do not want to say anything more about shoes," he said, "I want you to buy shoes and clothes for the children." I got the thirty-five dollars for two weeks and then he cut it down to twenty-five.

Q. How much have you been receiving from him?

A. Thirty dollars.

Q. *And has that been enough to take care of the children and yourself.*

A. *No. It has not been enough to take care of the children and myself. I had to sell a stove which we paid eighty-eight dollars in the Public Service for last week for twenty-five dollars, Vice-Chancellor Church, to pay up my insurance. You know I was back in my insurance.*

In addition thereto, being without means of her own, it became necessary for respondent to borrow small sums of money from Mr. Coruso, a nephew of the appellant, and from a Mrs. Cummings (State of Case, p. 35, line 7 to line 28, incl.).

Q. Have you borrowed any money since from anybody?

A. Yes I have borrowed from different people.

Q. How much?

A. Well I borrowed twenty-five cents off Mr. Coruso, and I borrowed—

The Vice-Chancellor: This is all a waste of time.

Mr. Fast: I want to prove that we are supporting her.

The Vice-Chancellor: I do not see that if she has to borrow money, it would indicate he was supporting her properly.

Q. How much money have you been borrowing?

A. I have borrowed twenty-five cents off of

Mrs. Cummings, and I borrowed twenty-five cents one day from Willy Coruso.

Q. You repaid that?

A. No. I have not paid Willy back the twenty-five cents.

It is difficult to comprehend how opposing counsel can vigorously urge that a husband can support his wife as he sees fit where it unequivocally appears that a wife whose husband is possessed of an income and real property and automobiles, was obliged to purchase the necessary clothing for herself and children on the installment plan. As previously indicated by Justice KALISCH and the late Vice-Chancellor PITNEY:

“* * * it is the duty of the Court * * * to determine whether the amount already provided by the husband is such as the nature of the case and the circumstances of the parties render suitable and proper.”

(All italics ours.)

CONCLUSION.

Opposing counsel has cited the *Margarum* and *Parker* cases (*supra*), for the proposition that in order for the wife to succeed under Section 26 (formerly Section 20) of the Divorce Act she must allege and prove both:

1. That her husband abandoned or separated himself from his wife without justifiable cause, and
2. That he refused or neglected to support her.

It appearing from the testimony that the appellant has abandoned and separated himself from respondent without justifiable cause and that he has refused and neglected to support and provide for respondent and their three children in the sense

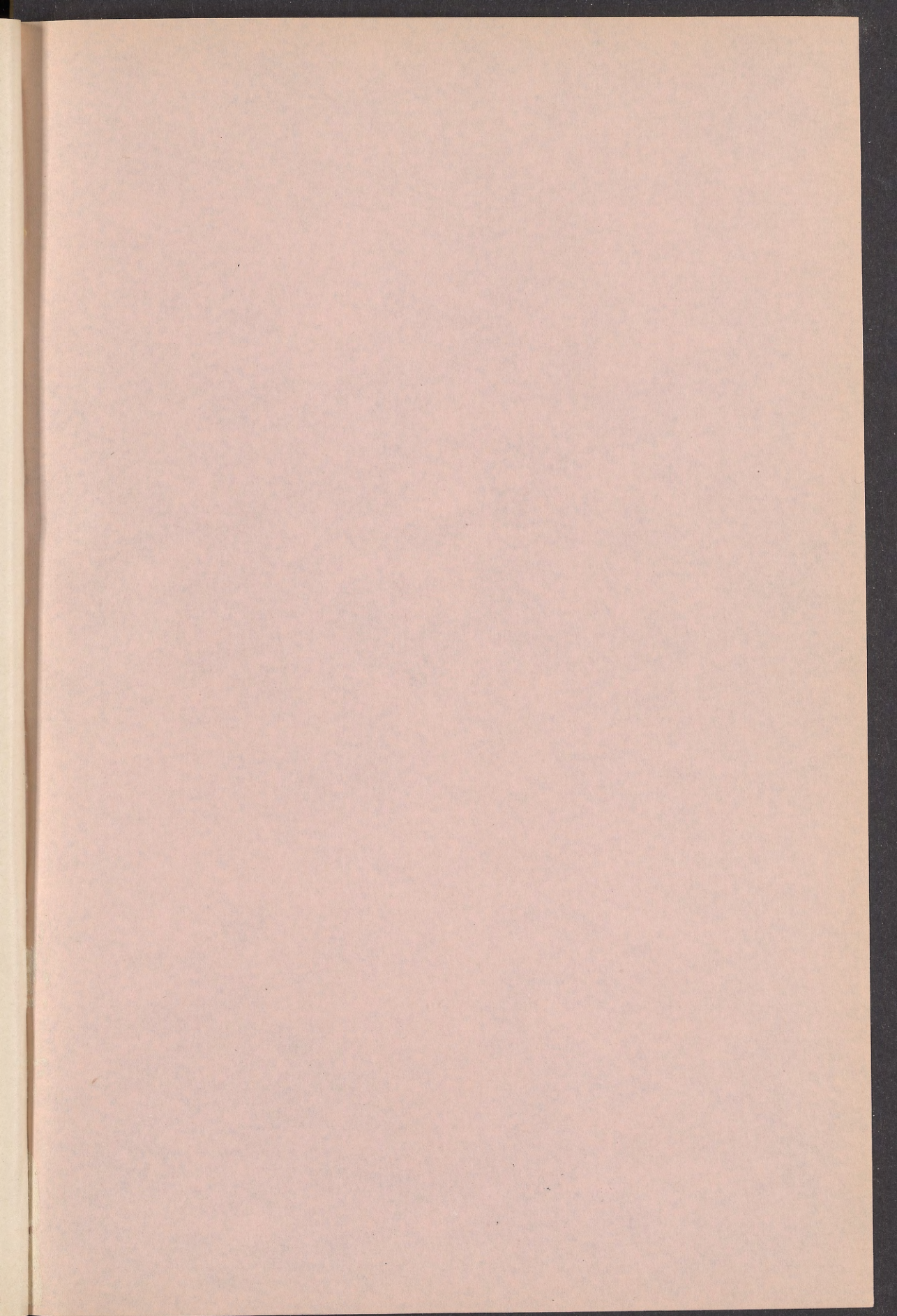
in which the words are used in the statute it is for the reasons herein set forth respectfully submitted the decree as entered by the Court of Chancery shall in all things be affirmed.

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