

INDEX.

	PAGE
Notice of Appeal	1
Amended Petition of Appeal	2
Decree	5
Bill of Complaint	7
Answer	13
Notice	15
Supplemental Counterclaim	16
Order Permitting Defendant to File Supplemental Counterclaim	20
Replication and Answer to Counterclaim	21
Testimony on Final Hearing	23
Opinion	4A

TESTIMONY.

Complainant's Witnesses:

Bessie Grobart—

Direct	24
Cross	29
Redirect	64
Recross	65

Recalled:

Direct	225
Cross	237

Dr. Morris S. Joelson—

Direct	79
Cross	80
Redirect	87

Dr. Adolph Granet—

Direct	88
Cross	91
Redirect	101

Dr. Theodore Bender—

Direct	107
Cross	110

	PAGE
Violet Fineman—	
Direct	184
Bernard Berwick—	
Direct	219, 221
Cross	220, 223
Louis H. Berwick—	
Direct	224
Cross	224

Defendant's Witnesses:

Louis Grobart—	
Direct	69
Recalled:	
Direct	117
Cross	129
Redirect	208
Dr. Richard Stinson—	
Direct	103
Cross	104
Redirect	106
Recross	106
Jacob J. Greengrass—	
Direct	161
Cross	165
Bertha Grobart—	
Direct	210
Cross	212
Rose Rowitz—	
Direct	215
Cross	216
Samuel Grobart—	
Direct	218
Recalled:	
Direct	244
Cross	244

EXHIBITS.

Complainant's:

	<i>Admitted Page</i>	<i>Printed Page</i>
C- 2. Certificate signed by M. S. Joel- son, dated July 26th, 1926..	64	248
C- 6. Letter from complainant to de- fendant, dated April 8, 1926	159	248
C- 7. Postal card from complainant to defendant, dated April 6, 1926	229	249
C- 8. Letter from complainant to de- fendant, undated		250
C- 9. Postal card signed "Bess", un- dated	228	251
C-10. Letter from complainant to de- fendant, dated August 3, 1926	228	252
C-11. Letter from complainant to de- fendant, dated August 30, 1926	228	253
C-12. Letter from complainant to de- fendant, undated	174	254
C-14. Letter from complainant to de- fendant, dated March 16, 1926		255
C-16. Letter from complainant to de- fendant, dated August 24, 1926		256
C-17. Letter from complainant to de- fendant, dated August 31, 1926	229	257
C-18. Letter from complainant to de- fendant, dated August 17, 1926		258
C-57. Notice dated October 13, 1927.	243	259
Petition for Alimony Pendente Lite	243	260

	<i>Admitted Page</i>	<i>Printed Page</i>
Affidavit of Bessie Grobart, dated October 10, 1927	243	262
Affidavit of Theodore Bender, dated September 8, 1927	243	266
Affidavit of Adolph Granet, dated September 3, 1927	243	268
Affidavit of M. S. Joelson, dated September 8, 1927	243	269

Defendant's:

D- 1. Letter from complainant to de- fendant, dated Oct. 14, 1926.	62	270
D- 3. Letter to Louis Grobart, signed by George T. Vickers, dated Oct. 19, 1926	129	271
D-50. Life insurance policy issued on the life of Louis Grobart, dated September 29, 1926	209	272
D-52. Letter from complainant to de- fendant's mother, dated May 7, 1926	212	272

Notice of Appeal.

(Filed July 30th, 1930)

IN CHANCERY OF NEW JERSEY.

Between

BESSIE GROBART,
Complainant,

and

LOUIS GROBART,
Defendant.

On Bill, &c.

10

To

GEORGE T. VICKERS, Esq.,
Solicitors for Complainant:

20

Please take notice that the defendant, Louis Grobart, hereby appeals from the final decree made by the Chancellor on the advice of Vice Chancellor Vivian M. Lewis in this cause on the 22nd day of July, 1930, and from the whole and every part thereof, to the Court of Errors and Appeals in the Last Resort in All Causes.

Dated: July 25, 1930.

30

EVANS, SMITH & EVANS,
Solicitors for and of Counsel with
Defendant, Louis Grobart.

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

WILLIAM W. EVANS,
Of Counsel with Defendant, Louis Grobart. 40

Amended Petition of Appeal.

(Filed September 12th, 1930)

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10

BESSIE GROBART,
Complainant-Appellee,

vs.

LOUIS GROBART,
Defendant-Appellant.On Appeal
from the
Court of
Chancery.TO THE HONORABLE THE COURT OF ERRORS AND
APPEALS IN THE LAST RESORT IN ALL CAUSES:

20

The petition of Louis Grobar, the appellant in
the above entitled cause, respectfully shows that:

30

1. Petitioner finds himself aggrieved by a final
decree made in the Court of Chancery by his Honor,
Edwin Robert Walker, Chancellor of the State of
New Jersey, bearing date the 22nd day of July,
1930, in a certain cause in said court of Chancery
wherein the said Bessie Grobart was complainant
and the said Louis Grobart was defendant, in this
respect, to wit, that the said decree adjudged that
the defendant, without any justifiable cause, aban-
doned the complainant and separted himself from
her, and refused and neglected to maintain and pro-
vide for her; that defendant pay to complainant her
separate maintenance according to the prayer of
her bill of complaint, and in an amount and upon
terms to be fixed by order of the court when and as
the ability of defendant to pay shall be determined
according to said order, after proof shall have been

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Amended Petition of Appeal.

made to said court; that for the purpose of determining the financial ability of defendant to pay and the character of his property, it was further ordered that Charles E. Hendrickson, one of the Special Masters of the said court, was appointed to hear testimony, receive proof and make report thereon to said court of Chancery of and concerning the financial ability of defendant, Louis Grobart, to pay maintenance to complainant, Bessie Grobart, and as to the character of his property; and that either party should be at liberty to apply upon a change of circumstances of the parties for a variance or modification of said decree, concerning the support or maintenance of complainant. 10

2. Your petitioner finds himself further aggrieved by the said decree because the said Chancellor failed to decree that petitioner was entitled to a decree of absolute divorce of the bonds of matrimony, from his said wife, upon the ground of desertion, in accordance with the prayer of the supplemental counterclaim of petitioner, heretofore filed in the said court of Chancery. 20

3. Your petitioner appeals from those portions of the decree which decrees, as aforesaid, upon the ground that the same is erroneous, in that the evidence did not warrant the court in finding that your petitioner was guilty of the charge of abandoning his said wife, without any justifiable cause, and separated himself from her, and refused and neglected to maintain and provide for her. 30

4. Your petitioner further appeals from said decree because it fails to provide that petitioner was entitled to a decree of absolute divorce against his 40

Amended Petition of Appeal.

said wife on the ground of desertion in accordance with his supplemental counterclaim filed in the said court of Chancery and further because the said court of Chancery should have dismissed the petition filed by his said wife against him.

10 5. Your petitioner therefore prays that the said
decree of the said Chancellor may be in the particulars aforesaid, reversed, set aside and for nothing holden; and that the record may be remitted to the court of Chancery with direction to dismiss the bill of complaint filed by the said Bessie Grobart against your petitioner; and that your petitioner be granted a decree of absolute divorce against the said Bessie Grobart on the ground of desertion, in accordance with the prayer in his supplemental counter-
20 claim filed in said cause in said court of Chancery; and that your petitioner may have such other and further relief in the premises as to this honorable court shall seem meet.

EVANS, SMITH & EVANS,
Solicitors of Appellant.

WM. W. EVANS,
Of Counsel with Appellant.

30

Service of a copy of within amended petition of appeal is hereby acknowledged this 10th day of September, 1930, and it is hereby consented that the same be filed as within time and in place of the original petition of appeal heretofore filed.

GEORGE T. VICKERS,
Solicitor for Complainant-Appellee.

40

Opinion.

IN CHANCERY OF NEW JERSEY.

Between

BESSIE GROBART,
Complainant,

and

LOUIS GROBART,
Defendant.

10

(Syllabus)

Marriage: Marriage contracted by parties one of whom is impotent is not void but merely voidable at the instance of the disappointed party and may be ratified by such party.

20

Separate Maintenance: Unnatural sexual intercourse may constitute such cruelty as justifies the wife in leaving her husband and suing for separate maintenance.

Maintenance, Evidence: Necessary corroboration may be found in surrounding circumstances.

Maintenance: Evidence examined and held that complainant established such acts of cruelty on the part of defendant as justified her separation from him and entitled her to separate maintenance.

30

40

Opinion.

GEORGE T. VICKERS, Esq., solicitor and of counsel for complainant;

MESSRS. EVANS, SMITH & EVANS, solicitors for defendant;

SAMUEL M. LEVY, Esq., of the New York Bar,
PETER BENTLEY, Esq., of counsel for defendant.

10

LEWIS, V. C.:

20 The wife brings an action for maintenance and the husband has interposed a counterclaim for a divorce on the ground of desertion. The parties were married December 20, 1925 and lived together until October 14, 1926, when the wife left her husband and has not since returned. Therefore, unless the wife justifies her leaving by misconduct of the husband, she could not succeed in her maintenance action and the husband would be entitled to a decree for desertion.

30 The wife contends that she was forced to leave the husband on account of his cruelty. It is a conceded fact that the marriage has never been consummated. Each blames the other for this. It is established by undisputed medical testimony that the wife is normal sexually and apt for matrimony.

Defendant testified to his virility and presented medical testimony to the effect that there was no reason discovered by his physicians, who examined him, why he should be incapable of intercourse.

40 From the time of the marriage until the separation in October, 1926, the parties occupied the same room and bed together most of the time except during a period when the wife was seriously ill. Ac-

Opinion.

According to the wife's version during this ten months she was always ready and willing to submit to the consummation of the marriage but that either because of impotence or unwillingness on the part of the husband, no normal intercourse took place. She says it was the constant practice of the husband to compel her to submit to unnatural practices which aroused her passion but did not gratify it. She says that as a result she reached such a serious condition mentally and physically that she was forced to leave her husband. Her testimony would indicate that the husband is probably impotent, at least quoad hoc. There may have been a psychosis rendering him impotent as to his wife even though there be no universal impotency, or there may have been some latent genital impairment. This phase of the matter has been discussed in *Tompkins v. Tompkins*, 92 N. J. Eq., 113. 10 20

The husband's contention is that he is sexually normal, is fully capable of intercourse and that the only reason that the marriage was not consummated is that the wife from the time of the marriage constantly refused him intercourse. According to his testimony she gave many and various excuses for her failure to consummate the marriage.

The defendant contends that as a matter of law on the statement of facts of the complainant she cannot succeed, that if he be impotent the only remedy of the complainant is an action for an annulment of the marriage. The analogy is cited of the decisions in this State in which it has been held that adultery is not cruelty. But the complainant is not seeking the setting aside of the marriage and it is her option whether she shall ask an annulment or whether she shall ratify the marriage. The marriage is merely voidable at the instance of the dis- 30 40

Opinion.

appointed party. It was so held in the case of *G. v. G.*, 67 N. J. Eq., 30, at page 35. This decision was quoted with approval on this point in *Kirschbaum v. Kirschbaum*, 92 Eq. 7.

10 In the case now before the court impotence of the defendant was not conclusively proved and in fact is vigorously denied by the defendant. Complainant does not know whether defendant was impotent or whether his sexual conduct with her was merely perversion. Complainant does not show merely non-consummation of the marriage but sets up a course of conduct of the defendant consisting of unnatural practices which finally completely broke down her health. Such practices, which need not be detailed here, if persisted in would undoubtedly make it unsafe and improper for her to cohabit with him and therefore bring his conduct within 20 the definition of cruelty as laid down by our courts. Therefore I am constrained to hold that complainant is not barred from the relief she asks for, if her version of the facts be accepted.

As to the actual circumstances of the cohabitation of the parties, there is a flat and direct contradiction in their testimony. From the nature of the case the facts must be determined chiefly from their testimony alone. Deductions may be drawn 30 from other facts and circumstances which enable the court to determine the probability as to which party is to be believed. The husband testified he was perfectly normal and made constant requests for consummation, but that the wife for a period of ten months uniformly put him off on one pretext or another. The husband's story as to some of these pretexts was wholly unconvincing.

On the other hand it is conclusively shown and 40 not disputed that the wife at the time of the mar-

Opinion.

riage was under thirty years of age, in normal health and apt for matrimony. It seems to me unreasonable to believe, if the husband was normal as he contends he was, that he would have constantly lived with his wife for a greater part of ten months without consummation of the marriage had he really desired it.

Tompkins v. Tompkins, 92 N. J. Eq., 113.

10

This was for an annulment on the ground of impotency. Defendant, as here, claimed that the marriage had not been consummated because of the refusal on the part of the wife. It was held that the conflict of testimony would be resolved in favor of the wife because there was no consummation after five years of cohabitation and that under the rule of triennial cohabitation, impotency would be presumed. The court says "the husband's plea" (that he refrained from intercourse at the wife's request) "does not inspire confidence". "Common experience discredits it and if in fact he had the sexual power and refrained from sexual intercourse during the five years he occupied the same bed with his wife, purely out of sympathy for her feelings, he deserves to be doubted for not having asserted his rights, even though she balked."

20

The period in the present case was of course much shorter but I believe a similar presumption can be drawn.

30

It seems remarkable that a strong healthy man, thirty-one years of age, who as he says himself had been for several years prior to his marriage indulging in sexual intercourse with other women and who as he asserts was perfectly normal would have lived with a normal, healthy wife all these months without any consummation of the marriage simply

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Opinion.

because she did not wish it. Such condition is conceivable but not very probable.

As has been stated, from the very nature of the case direct corroboration cannot be expected, but this is not necessary since it may be furnished by surrounding circumstances adequately established. See *Bissell v. Bissell*, 93 Eq., 537, and cases therein cited.

10

Such corroboration of the complainant's testimony seems to me to be found in the evidence of the doctors who examined her from time to time during the cohabitation of the parties. These doctors all found that she was a virgin, was perfectly normal sexually, a strong healthy woman and with no discoverable impediment to intercourse. One of the doctors testified that some months after the marriage she was in a very nervous and rundown condition, that he examined her to discover the cause of her condition and finally finding no other reason for her state questioned her and obtained from her a statement as to her marital relations. One of the other doctors testified that practices upon her by her husband such as she testified to would fully account for her condition. One of the doctors told her that she must leave her husband for the time being. Another doctor testified that on his examination he found no evidences of a mental shrinking from intercourse which sometimes brings about involuntary hysterical contractions of the parts which might prevent consummation. I consider it a fair inference, taking together all the testimony of the doctors who examined her, that she not only was capable physically of intercourse but that there was no unwillingness on her part, that the deprivation of normal intercourse was the cause of her nervous breakdown, and that it would be unsafe for

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Opinion.

her to continue to live with defendant under such conditions.

I am of the opinion that complainant was fully justified in leaving the defendant and is entitled to separate maintenance. Since the separation was justified the desertion charge in the counterclaim must be dismissed. Question of the amount to be allowed for maintenance will be referred to a special master. A decree will be advised accordingly. 10

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Decree.

(Filed August 18, 1930)

IN CHANCERY OF NEW JERSEY.

Between

BESSIE GROBART,
Complainant,

and

LOUIS GROBART,
Defendant.

On Bill, &c.

10

This cause coming on to be heard in the presence of George T. Vickers, Solicitor for the Complainant, and Evans, Smith & Evans, Solicitors for the Defendant, on bill, answer, counterclaim, answer thereto and oral proofs taken in open court, and hearing and considering the arguments of counsel, from all of which is now appears satisfactorily to the Chancellor that the complainant and defendant were lawfully married on the 20th day of December, 1925; and that the defendant, without any justifiable cause, abandons the complainant and separates himself from her, and refuses and neglects to maintain and provide for her; and that the parties have their domicile in this State; and that the defendant was personally served with process within this State;

IT IS, THEREUPON, on this 22nd day of July, 1930, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, ORDERED, ADJUDGED, and DECREED, that the defendant pay to the complainant her separate maintenance according to the prayer of her Bill of Complaint, and in an amount and upon terms to be fixed by order

40

Decree.

10 of this Court when and as the ability of the defendant to pay shall be determined according to the within order, after proof shall have been made to this Court; and for the purpose of determining the financial ability of the defendant to pay and the character of his property; it is hereby further ORDERED that Charles E. Hendrickson, one of the Special Masters of this Court be and he is hereby appointed to hear testimony and receive proof and make report thereon to this Court of and concerning the financial ability of the defendant, Louis Grobart, to pay maintenance to the complainant, Bessie Grobart, and as to the character of his property.

20 And it is hereby further ORDERED that the defendant forthwith pay to the solicitor of the complainant a counsel fee of Seven hundred and fifty (\$750.00) Dollars, which shall be in addition to the counsel fee heretofore ordered to be paid under and by virtue of an order dated November 7th, 1927.

30 And it is further ORDERED, ADJUDGED and DECREED, that either party be at liberty to apply upon a change of circumstances of the parties for a variance or modification of this Decree, concerning the support or the maintenance of the complainant, as shall be just and equitable.

Respectfully advised,

E. R. WALKER,
C.

VIVIAN M. LEWIS,
V. C.

Bill of Complaint.

(Filed March 8, 1927)

IN CHANCERY OF NEW JERSEY.

To:

His Honor EDWIN ROBERT WALKER,
Chancellor of the State of New Jersey:

Complaining, shows unto your honor, your oratrix, Bessie Grobart, of the City of Paterson, in the County of Passaic, and State of New Jersey: 10

1. On the 20th day of December, 1925, she was lawfully married to her present husband, Louis Grobart, at the City of New York, in the State of New York, by Rev. Isaac Kirschner, a Rabbi.

2. After her said marriage, your oratrix and the defendant, her said husband, went to reside in Paterson aforesaid, and there lived together until the 14th day of October, 1926, when the defendant abandoned and refused and neglected to maintain and provide for your oratrix, as hereinafter complained of. 20

3. No child or children were born of their said marriage.

4. That at the time of and ever since the marriage of your oratrix to her said husband, the defendant, he was and is physically impotent and since said marriage has never consummated the marriage relation with your oratrix. 30

5. That your oratrix lived with her said husband until the said month of October, 1926, in the hope that the said Louis Grobart would submit himself to some competent physician for examination and 40

Bill of Complaint.

treatment to cure said impotency; but despite many entreaties by your oratrix so to do, the defendant obstinately refrained from so doing, and instead persisted in abusing and maltreating your oratrix as herein further set forth.

10 6. That your oratrix is and always has been without sufficient knowledge to determine whether defendant is incurably impotent, and said defendant has refused to have your oratrix informed thereon except through his own conduct.

7. That your oratrix at all times since her said marriage has been mentally and physically normal, apt and willing to consummate the marriage relation with defendant.

20 8. That the defendant made or pretended to make many efforts at penetration, but the extent of his performance was to lie upon your oratrix, with his parts limp between her thighs and agitate your oratrix.

30 9. That the defendant throughout the time your oratrix and he were living together and occupying the same bedchamber continually evinced a desire for sexual gratification, but was seemingly content with agitating your oratrix sexually and satisfying himself by external attrition without any penetration.

40 10. That the defendant gave to your oratrix meagre support for herself and the household, but was lavish and profligate in his expenditures for his own pleasure; that soon after their marriage defendant began to treat your oratrix harshly, and

Bill of Complaint.

unjustly to accuse your oratrix of being incapable of and unwilling to consummate their marriage relation, and to chide your oratrix because your oratrix became exhausted, ill and nervous as a result of defendant's impotence, inconsiderate and harsh treatment.

11. That defendant frequently became hysterical under the influence and reaction of his said sex perversion, and by his conduct so frightened your oratrix that she kept herself awake throughout many nights for fear defendant would do her bodily harm if she permitted herself to sleep. 10

12. Your oratrix was advised by her physicians that a continuance on her part to live with her husband under the conditions herein described would, in all probability, speedily eventuate in a complete nervous breakdown with possible more serious consequences. 20

13. That your oratrix' said husband, knowing your oratrix' condition was callous and indifferent to her suffering and refused to abandon his sex perversion or make any effort to obtain for himself medical advice and assistance. 30

14. During the long course of abuse to which your oratrix was subjected by the defendant, she became nervous and ill, and was rendered unfit to properly discharge her duties as wife, yet she continued to live with him until it appeared that further cohabitation with him must be attended with grave danger to her life, and being in great fear, anguish and discomfort, she left defendant's house on the 14th day of October, 1926, and fled to 40

Bill of Complaint.

the house of her parents in the City and State of New York.

10 15. Your oratrix shows and charges that she could not remain in her husband's household without danger to her health and safety, and that her leaving him as aforesaid because of his extreme cruelty, by the true intent and meaning of the statute in such case made and provided, he has abandoned your oratrix.

16. Your oratrix shows and charges that the defendant without justifiable cause refuses and neglects to maintain and provide for her.

20 17. Your oratrix charges that defendant is possessed of a large amount of real and personal property; that he is one of the heirs at law of Bernard Grobart deceased, who died intestate in said City of Paterson leaving him surviving a widow and five children, of whom, defendant is one, and that the estate of said Bernard Grobart consisted of factory buildings and other real property in said City of Paterson and elsewhere in this State, and that defendant's income received is upwards of Seven hundred Dollars (\$700.) per month, as evidence by his
30 monthly personal expenditures, and that defendant is entitled to his full distributive share of his father's estate as your oratrix is informed and verily believes, and that defendant does not apply himself to any business but lives upon his money rather than work, and that he could earn to supplement his income for the maintenance of your oratrix in a manner suitable to her position.

Bill of Complaint.

In tender consideration whereof, and forasmuch as your oratrix can be relieved only in this Court:

To the end, therefore, that the said Louis Grobart may answer the premises (but without oath) and that he may be ordered and decreed to provide such suitable support and maintenance to be paid and provided by him, or made out of his property, for your oratrix, and for such times as the nature of the case and the circumstances of the parties render suitable and proper; and that the said defendant may be compelled to give reasonable security for such maintenance and allowance, and to pay the same from time to time under the compulsory orders of this Honorable Court, as provided by the statute; and in case the defendant 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 as shall seem fit to your Honor, and that the defendant may be required to pay to your oratrix a proper amount for counsel fees, and that she may have such further equity as to your Honor shall seem meet.

May it please your Honor, the premises considered, to grant unto your oratrix the State's writ of subpoena, issuing out of and under the seal of this Honorable Court, to be directed to the said Louis Grobart, commanding him by a certain day and under the penalty therein to be expressed, to be and appear before your Honor in this Honorable Court, then and there to answer all and singular the said premises, and to abide by and perform such order and decree therein as to your Honor shall

Bill of Complaint.

seem meet, and shall be agreeable to equity and good conscience.

And your oratrix, as in duty bound, will ever pray, etc.

GEORGE T. VICKERS,
Solicitor for and of Counsel
with Complainant.

10

A True Copy.

THOMAS BARBER,
Clerk.

20

30

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Answer.

(Filed April 4, 1927)

IN CHANCERY OF NEW JERSEY.

Between

BESSIE GROBART,
Complainant,

and

LOUIS GROBART,
Defendant.

On Bill, &c.

10

The answer of the defendant Louis Grobart.

This defendant, Louis Grobart, answering the bill of complaint, says that:

1. This defendant admits paragraphs one and three.

20

2. The defendant admits so much of paragraph two as alleges that after the marriage the complainant and defendant commenced to reside in Paterson, and lived there together until on or about the 14th day of October, 1926, but denies that this defendant abandoned and refused and neglected to maintain and provide for the complainant.

30

3. The defendant denies paragraphs four and five.

4. As to paragraphs six and seven, the defendant denies that he is incurably impotent, and this defendant alleges that the complainant, on the contrary, has refused to consummate the marital relation.

40

Answer.

5. The defendant denies paragraph eight.

6. As to paragraph nine the defendant admits that he continually evinced a desire for sexual gratification, but that the complainant refused to perform her duty in that regard.

10 7. The defendant denies paragraph ten.

8. The defendant denies paragraph eleven.

9. As to paragraph twelve the defendant has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and leaves the complainant to her proof.

20 10. The defendant denies paragraphs thirteen, fourteen, fifteen and sixteen.

30 11. As to paragraph seventeen this defendant admits that he is one of the heirs at law of Bernard Grobart deceased, who died intestate, but denies that he is possessed of a large amount of real or personal property or has an income of Seven hundred (\$700.) dollars per month. This defendant denies that he does not apply himself to any business, but on the contrary, he is engaged in the silk business.

12. This defendant says that the complainant continuously refused to consummate the marital relationship and left the defendant of her own volition and without any reasonable or justifiable cause, and prays that the bill of complaint be dismissed.

Notice.

(Filed February 21, 1928)

IN CHANCERY OF NEW JERSEY.

Between

BESSIE GROBART,
Complainant,
and
LOUIS GROBART,
Defendant.

On Bill, &c.

10

To: GEORGE T. VICKERS, Esq.,
Solicitor for Complainant.

TAKE NOTICE, that on Wednesday, February 15th, 1928, at the Chancery Chambers in Jersey City, at ten o'clock in the forenoon or as soon thereafter as we may be heard, we shall apply to Honorable Vivian M. Lewis to whom the above entitled cause was referred by the Chancellor to hear and determine, for an order permitting the defendant to file a supplemental counterclaim in the above entitled cause, a copy of which is hereto annexed and herewith served upon you. 20

TAKE FURTHER NOTICE, that on said application an affidavit will be read in support of said motion, a copy of which affidavit is served upon you. 30

TAKE FURTHER NOTICE, that the permission of the court has been obtained to make said application on said date which is not a motion day.

Very truly yours,

EVANS, SMITH & EVANS,
Solicitors for Defendant.

Dated: February 9th, 1928.

40

Supplemental Counterclaim.

(Filed February 21, 1928)

IN CHANCERY OF NEW JERSEY.

10	Between BESSIE GROBART, Complainant, and LOUIS GROBART, Defendant.	}	On Bill, &c.
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TO HIS HONOR, EDWIN ROBERT WALKER, CHANCE-
LOR OF THE STATE OF NEW JERSEY:

20 The supplemental counterclaim of Louis Grobart,
of the City of Paterson, County of Passaic and State
of New Jersey, respectfully shows:

The defendant, by way of supplemental counter-
claim exhibited against the complainant, says:

30 1. Your petitioner was lawfully joined in the
bonds of matrimony to his present wife Bessie Gro-
bart, the complainant in this suit, on the 20th day
of December, 1925, by Reverend Isaac Kirschner,
a rabbi of the City of New York and State of New
York.

40 2. The complainant and counterclaimant lived
together from the date of said marriage up to about
the 14th day of October, 1926, when the said com-
plainant left the home of counterclaimant at Pater-
son, New Jersey, after which said time the parties
hereto have not lived together; that shortly after
the marriage aforesaid, the counterclaimant herein

Supplemental Counterclaim.

endeavored to have sexual intercourse with the said complainant and continued in his endeavor to have such sexual intercourse many times per month up to the said 14th day of October, 1926; that said counterclaimant was normal and fully able, ready and willing to consummate such marriage by having sexual intercourse with said complainant; that said complainant, so far as counterclaimant knows, was normal physically and able to have sexual intercourse with counterclaimant; that from the date of said marriage and up to the said 14th day of October, 1926, the said complainant steadfastly refused to have sexual intercourse with counterclaimant and gave as some of her excuses therefor, that she was ill, that she did not want to bear children because she feared the consequences of childbirth and because she had no love for counterclaimant; that the marriage aforesaid has never been consummated by the said complainant and counterclaimant having sexual intercourse; that the said complainant, by the true intent and meaning of the statute in such case made and provided has ever since about the 20th day of January, and for more than two years last past, wilfully, continuedly and obstinately deserted counterclaimant.

3. Counterclaimant has been a bona fide resident of the State of New Jersey, continually since said marriage on the 20th day of December, 1925, residing at Paterson in the County of Passaic and State of New Jersey.

4. Complainant's maiden name was Bessie Berkowitz.

5. That no children were born of said marriage.

Supplemental Counterclaim.

6. Your counterclaimant prays that the marriage between complainant and counterclaimant may be dissolved for the cause aforesaid, according to the statute in such case made and provided and that he may have such further relief as may be just.

That your petitioner will ever pray, etc.

10

EVANS, SMITH & EVANS,
Solicitors of Defendant
and Counterclaimant.

STATE OF NEW JERSEY, }
COUNTY OF PASSAIC, } ss.:

20

LOUIS GROBART, being duly sworn according to law upon his oath, says: that he is the counterclaimant named in the foregoing counterclaim; and that his said counterclaim is not made by any collusion between him and the complainant but in truth and good faith for the causes set forth in the counterclaim.

LOUIS GROBART.

30

Sworn and subscribed to before me }
this 10th day of February, 1928. }

MARY VANDERHEID
a Notary Public of N. J.

40

Supplemental Counterclaim.

STATE OF NEW JERSEY, }
 COUNTY OF PASSAIC, } ss.:

LOUIS GROBART, being duly sworn on his oath, according to law, says: I am the defendant in the above entitled cause. I was served with a copy of the subpoena issued on the bill of complaint filed in this cause on or about the 12th day of March, 1927. I had duly filed an answer denying the facts alleged by my wife from which she contends she is entitled to a decree; that answer was filed by my solicitors on or about the 2nd day of April, 1927. 10

I have just signed an affidavit of non collusion annexed to supplemental counterclaim which I have asked my solicitors to obtain the permission of the court to file in this cause; that as set forth in my petition, I was married to the complainant on the 20th day of December, 1925; that I continued to live in the same house with my wife, with the exception of certain short periods when my wife took trips to New York City and other places as she advised me, from the date of said marriage up to October 14th about, 1926, when my wife left our home at Paterson, New Jersey, and has never since resided with me; that my claim set forth in my counterclaim did not ripen into two years wilful, continued and obstinate desertion until about the 20th day of January, 1928, which was subsequent to the time required by law for me to file my answer in said cause and the time when I actually did file my answer in said cause. 20 30

LOUIS GROBART.

Sworn and subscribed to before me }
 this 10th day of February, 1928. }

MARY VANDERHEID

Notary Public of N. J.

**Order Permitting Defendant to File
Supplemental Counterclaim.**

(Filed February 21st, 1928)

IN CHANCERY OF NEW JERSEY.

10	Between BESSIE GROBART, Complainant, and LOUIS GROBART, Defendant.	} On Petition for Divorce.
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20 This matter being opened to the court by Messrs. Evans, Smith and Evans, solicitors for the defendant, in the presence of George T. Vickers, Esq., solicitor for the complainant, upon due notice of an application for the defendant to be permitted to file a supplemental counterclaim to the bill of complaint heretofore filed in this cause, and upon reading and filing said notice and the affidavit thereto annexed and said proposed supplemental counterclaim, copies of which were duly served upon the solicitor for the complainant:

30 It is on this 15th day of February, 1928, ORDERED that the said defendant be and hereby is permitted to file the supplemental counterclaim in the above entitled cause, a copy of which was heretofore served upon the solicitor for the complainant.

And it is further ORDERED that the complainant have ten days from the date hereof in which to file her answer to said supplemental counterclaim.

E. R. WALKER,
C.

Respectfully advised:

40 VIVIAN M. LEWIS,
 V. C.

**Replication and Answer to
Counterclaim.**

(Filed February 28th, 1930)

IN CHANCERY OF NEW JERSEY.

Between BESSIE GROBART, Complainant, and LOUIS GROBART, Defendant.	}	On Bill, &c.	10
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The complainant joins issue on the answer of the defendant.

As to the counterclaim and supplemental counterclaim of defendant, the complainant says: 20

1. She admits paragraph one.

2. She admits so much of paragraph two as relates to complainant and counterclaimant living together from the date of said marriage up to October 14th, 1926, and that complainant left the home of counterclaimant at Paterson, New Jersey, after which said time the parties hereto have not lived together, and that counterclaimant after said marriage endeavored many times to have sexual intercourse with her up to about October 1926. She does not know whether counterclaimant was normal and fully able, ready and willing to consummate such marriage by having sexual intercourse with her, but she is informed and verily believes that counterclaimant was not normal and fully able to have sexual intercourse with her. She denies that 30
40

Replication and Answer to Counterclaim.

10 from the date of the marriage up to said October 14th, 1926 she steadfastly refused to have sexual intercourse with counterclaimant, and that she ever refused counterclaimant for any reason and upon any pretext whatever full, free and willing access and opportunity to her person for sexual intercourse; and complainant alleges that counterclaimant of his own volition and at the solicitation of complainant availed himself of such opportunity and that his failure to accomplish intercourse was through no fault of complainant, either in natural aptitude or desire. She denies that since the 20th day of January or any other time she wilfully, continuously and obstinately deserted the counterclaimant.

- 20 3. She admits paragraph three.
4. She admits paragraph four.
5. She admits paragraph five.

BESSIE GROBART,
Complainant.

30 GEORGE T. VICKERS,
Solicitor of Complainant.

Testimony on Final Hearing.

IN CHANCERY OF NEW JERSEY.

Between

BESSIE GROBART,
Complainant,
and
LOUIS GROBART,
Defendant.

On Bill for
Support and
Maintenance.

10

Paterson, N. J., May 7th, 1928.

Before—Honorable VIVIAN M. LEWIS,

Vice Chancellor.

APPEARANCES:

20

GEORGE T. VICKERS, Esq., for the complainant.

WILLIAM W. EVANS, Esq., appearing for

Messrs. EVANS, SMITH & EVANS, and

PETER BENTLEY, Esq., and

Mr. SAMUEL M. LEVY, of the New York

Bar, for the defendant.

30

Mr. Vickers: This action is brought on the ground that the defendant is physically impotent. The complainant and defendant lived together as man and wife for about ten months. The attempted consummation of the marriage was unsuccessful, and caused such a condition of body and mind that it caused the wife to absent herself, and she asks maintenance for herself.

The Court: Swear the witness.

40

Bessie Grobart. Called by Complainant. Direct.

Mr. Bentley: I would like to introduce Mr. Levy,
of the New York Bar.

The Court: All right.

10 BESSIE GROBART, the complainant in the above entitled cause, being first duly sworn according to law, testified as follows:

DIRECT EXAMINATION BY MR. VICKERS:

Q. Mrs. Grobart, you are the complainant in this action against Louis Grobart? A. Yes, sir.

Q. And you are his wife? A. Yes, sir.

Q. When were you married? A. December 20th,
1925.

20 Q. Where? A. New York City.

Q. By whom? A. Rabbi Kirschner.

Q. Is this the marriage certificate that you received at that time? A. Yes, sir.

Mr. Vickers: I offer it in evidence.

The Court: Let it be marked.

Marriage certificate marked Exhibit C-1, as of this date.

30 Q. Upon being married, where did you and your husband go?

BY THE COURT:

Q. You were married when? A. December 20th,
1925.

Q. Where? A. New York City.

Q. By whom? A. Rabbi Kirschner.

40

Bessie Grobart. Called by Complainant. Direct.

Q. And you lived with your husband how long?

A. Ten months.

Q. Didn't have any children? A. No, sir.

Q. When did you first have any trouble with your husband? A. What trouble—we didn't have any trouble.

BY MR. VICKERS:

10

Q. There never has been any sexual intercourse between you and your husband? A. No, sir.

BY THE COURT:

Q. No consummation of the marriage? A. No, sir.

Q. Did you sleep in the same bed? A. Yes, sir.

Q. He tried to, but couldn't? A. Yes, sir. 20

Mr. Vickers: We don't say he is impotent, but he is unwilling to find out.

Q. What did you say to him? A. I wanted him to find out things, and I said that if he didn't I would go out and find out elsewhere.

Q. What effect did it have on your health? A. I didn't know what was the matter, and two months after I was taken with a cold, and then I developed pneumonia, and the doctor wanted to know if I was pregnant. 30

BY MR. VICKERS:

Q. Who was the doctor? A. Doctor Granet.

Q. He had been your family physician? A. Yes, sir.

40

Bessie Grobart. Called by Complainant. Direct.

Q. Knew you before you were married? A. Yes, sir.

Q. How long had he known you? A. Knew the family over thirty years.

Q. Then did you come back to your husband, when you recovered? A. Yes, sir.

10 Q. Did you occupy the same bedroom? A. Yes, sir.

Q. And did you ever deny him, in any way, if he wanted to consummate the marriage? A. I never denied him.

BY THE COURT:

20 Q. Did you ask him to go to the doctor? A. I asked him—if I can explain in a different way, I will.

Q. Go on. A. We left on the train, and the first night we were on the train and then we went to the Statler, Buffalo.

BY MR. VICKERS:

30 Q. What happened there? A. The first night at the Statler Hotel, we occupied the same bed. He tried to make advances. Of course, I didn't know what he was going to do, and I didn't know what he was going to do, and I left everything to him.

Q. When nothing happened, what did he say to you? A. Within thirty minutes, or so, he said it wouldn't come near enough—he couldn't raise it.

BY THE COURT:

40 Q. This condition continued and he never did anything; did he go to a doctor? A. Give me a chance.

Bessie Grobart. Called by Complainant. Direct.

Q. I want to know if he went to a doctor? A. That night I asked him what was the matter, and he was at me for an hour.

BY MR. VICKERS:

Q. What explanation did he make; you started to say something? A. He got close to me again and he said he didn't know what was the matter; he couldn't raise it. He tried to raise it on his knees. 10

Q. In bed or out of bed? A. In bed.

Q. You were in bed? A. Of course.

Q. Undressed? A. Yes.

Q. Thereafter, when you got here to Paterson, did you have any conversation with him and ask him to go to a doctor? A. I am speaking of Chicago. 20

Q. Will you please answer my question? A. I asked him in Chicago, and I asked him if he had seen a doctor, and first he said yes, and then he said no, and he said he would rather wait until he got back to Paterson.

Q. What happened when you got back to Paterson? A. We went to the mother-in-law, and we were there a week, but we didn't sleep together, and so far as I know, he didn't go to the doctor; if he did, it didn't do any good. 30

Q. During the ten months that you lived together, how many times did you talk to him about going to the doctor? A. Every few days, and every time he would say: "Forget about it; I will," but I don't think he did.

Q. When was the last time you spoke to him? A. On October 14th I left, and about three nights before, we were together. 40

Bessie Grobart. Called by Complainant. Direct.

Q. As a result of this situation there, then, what you have said, you went to see Doctor Granet, in New York? A. Yes. He discredited Doctor Granet, and I said: "Who is a good doctor in Paterson?" and he suggested Doctor Joelson.

Q. Did you go to Doctor Joelson? A. Yes, sir.

Q. Did you tell him? A. Yes, sir.

10 Q. What did you tell your husband that Doctor Joelson had advised, if he advised anything? A. I came back, and, of course, Dr. Joelson said: "If your husband will come here and I can examine him, but I can't tell you more." He said: "I can't do anything for you; you are not living normally," and he suggested that I go away for a few weeks.

20 Q. When you told your husband what Doctor Joelson suggested, what reply did your husband make, when you told him that? A. I told him I would have to go away for a few weeks, and the Doctor asked that I keep away from any sexual indulgence whatsoever.

Q. From your husband? A. Yes, sir; and I suggested that he go with me, and he said that wouldn't help; that I must keep away for a few weeks.

Q. From each other? A. Yes.

30 Q. Did you go away shortly after this interview with Doctor Joelson? A. I left about a month later.

Q. Where did you go? A. Lake Hopatcong, New Jersey.

Q. What month did you go? A. In August.

Q. 1925? A. 1926.

Q. And, notwithstanding what Dr. Joelson told you, and what you told your husband about it, did your husband come to Lake Hopatcong? A. Yes.

40 Q. By your invitation? A. I invited him, yes, sir.

Bessie Grobart. Called by Complainant. Cross.

Q. When did you come back to Paterson? A. Just a month.

Q. And when you came back, did you go back to the house in Paterson to live, where you and your husband were living? A. Yes, sir.

Q. Occupy the same bedroom? A. Absolutely.

Q. After you came back from Lake Hopatcong, did you deny him access to your body in any way? 10
A. I didn't deny him; couldn't deny him.

Q. When you returned from Lake Hopatcong, were you physically better than before? A. I was getting worse, and he knew it.

Q. When you say he knew it—did you discuss it? A. Yes, sir.

Q. Who other than your family doctor, Doctor Granet, and after, Doctor Joelson, who else did you see? A. I told him Doctor Joelson wasn't helping 20
me much, and he said he didn't know much, and I asked for a bigger man, and he said Doctor Bender.

Q. Did you go to Doctor Bender? A. Yes, sir.

Q. Did you tell your husband you went to Doctor Bender? A. Yes, sir.

BY THE COURT:

Q. When did you separate? A. October 14th, 30
1926.

The Court: That is all; cross examine.

CROSS EXAMINATION BY MR. EVANS:

Q. When was your first visit to Doctor Granet's, after your marriage? A. I didn't go to Doctor Granet; he came to me.

Bessie Grobart. Called by Complainant. Cross.

Q. I asked when was the first you saw Doctor Granet, after your marriage? A. I took sick February 26th, and he called that night.

Q. When did you first see Dr. Granet, after your marriage? A. I didn't see him until I was sick.

Q. When was that? A. February 26th, I went to New York.

10 Q. February 26th? A. Yes, sir.

Q. Was the first time you saw Doctor Granet, after your marriage? A. Doctor Granet called at my home many times, but I never called on him, or he didn't see me for any reason of my own.

Q. Did you see Doctor Granet just before your marriage? A. A few months before.

Q. A few months before? A. Yes, sir.

Q. Did you discuss marital relations with him?

20 A. No, sir.

Q. Did you ever discuss marital relations with him before? A. No, sir.

Q. You never discussed your marital relations then with Doctor Grant? A. No, sir.

Q. You didn't go to Doctor Granet either just before or just immediately after your marriage, for the purpose of getting a prescription? A. No, sir.

Q. For the purpose of preventing pregnancy? A. No, sir.

30 Q. You are very certain of that? A. Positive.

Q. Did you, at any time, get any pills from Doctor Granet? A. No, sir. Pills for a cough—yes, sir. That was later; that was August 26th.

Q. Where did you put those pills? A. I have some of them home; they were pills that you couldn't repeat, never.

Q. Did you consult anybody else to prevent pregnancy? A. No, sir, I didn't have to.

40 Q. Why not? A. You ought to know why.

Bessie Grobart. Called by Complainant. Cross.

Q. Did you know about it? A. What?

Q. How to prevent pregnancy? A. No, sir.

Q. You didn't talk with any of your family? A. No, sir.

Q. You were absolutely ignorant then? A. I learned a great deal since I was married.

Q. I say before? A. No, sir.

10

BY THE COURT:

Q. You were never married before, were you? A. No, sir.

BY MR. EVANS:

Q. Now, immediately after Doctor Granet had attended you, how long was it that you continued in a state of sickness, due to the pneumonia? A. I was sick at home for about three and a half weeks, and I went to Atlantic City for ten days, and then came back to Paterson.

20

Q. Just recite to the Court how many spells of sickness you had, and how many times you went on vacations? A. I was never sick, and never went on vacation before; I sometimes had headache.

Q. I say, after you were married? A. I had pneumonia.

30

Q. How long were you sick? A. Three and a half weeks, in bed.

Q. Then, following that, where did you go? A. To Atlantic City.

Q. How long did you stay there? A. Nine or ten days.

Q. Your next period of sickness, where were you? A. I wasn't sick.

Q. Didn't you have pyorrhea, or anything else? A. No, sir.

40

Bessie Grobart. Called by Complainant. Cross.

Q. Did you have any ailment of your teeth? A. I had to remove a tooth; I wouldn't call that an ailment.

Q. Was there trouble with your teeth, or only one tooth? A. One a year later.

Q. Did it drop out? A. No, it was in bad condition, and I had it removed, and a jacket put on it.

10 Q. Now when you did doctor—how many times did you call upon Doctor Granet, with respect to your ailment? A. I didn't call on Doctor Granet; Doctor Granet called on me two or three times a day, but I didn't call upon him until two or three days later.

Q. Why did you call on him then? A. It was in July, and I had a cough, and I went to Doctor Joelson, and he said I was run down, and I had to go away for a while, and I thought it was a care-
20 less answer, and I went to Doctor Granet, and he told me the same thing and he said: "Leave your husband here; you are not living right; there is something wrong somewhere," and he told me I would have to go away, too.

Q. How many times did you go to Doctor Granet? A. I only called on him this once.

Q. When was this time you called on him? A. In August.

30 Q. You are sure of that? A. Positively. I came in from Lake Hopatcong, and I was coughing very badly, and my husband knew about it.

Q. You came in from Lake Hopatcong, and you had a bad cold? A. Not a cold—a cough.

Q. And that was in the month of August? A. Positively.

Q. Did you have any intervening trips to Doctor Granet? A. No; I was visiting Doctor Joelson and didn't have to go to Doctor Granet any more.
40

Bessie Grobart. Called by Complainant. Cross.

Q. Now, when you came from Lake Hopatcong to Doctor Granet, what did you tell him? A. I didn't tell him anything, except that I had a cough, and he knew I done so for a long time, and I said I had a cough and I was going to a doctor in Paterson, and he said to go back and rest up, and he gave me some white pills.

Q. Is your memory very clear about that? A. 10
Take my word, it is.

Q. Did you see Doctor Granet, after you came back from your trip from Greenwood—after the August trip, did you see Doctor Granet after that—just when was that? A. I can't remember; I have been going to Doctor Joelson and Doctor Bender.

Q. Did you visit Doctor Granet after August?
A. After August? 20

Q. Yes. A. No, sir.

Q. Or did he visit you? A. No, sir.

Q. So that was the only visit you had? A. It might have been during the time I was sick—I seen him many times, but after that I had no occasion to see Doctor Granet whatever.

Q. What was he doctoring you for? A. It started with tonsillitis and developed into bronchial pneumonia; nothing else besides that.

Q. Did you have any discussion about that bronchial pneumonia? He asked me many questions; he thought I was pregnant. 30

Q. That was the first part of your illness? A. Yes, sir.

Q. What conversation was there about that? A. I developed a high fever and I had a day and night nurse, and I was very low; he told my Dad certain things what my case was, and I didn't know what they were, or what he told him. 40

Bessie Grobart. Called by Complainant. Cross.

Q. What did you tell him. A. He asked me if I was pregnant when I knew that should have happened, hadn't happened, and he says, "That sounds funny."

Q. Is that what you said to him? A. Yes, sir.

10 Q. Just repeat that. A. Oh, he said he couldn't rely upon what I said, and he said he would have to examine me, and he examined me, and he said: "Of course, you are not pregnant" and they told the nurses to be careful how they handled me, and then he talked to my Dad.

BY THE COURT:

20 Q. Why did he examine you for pregnancy? A. I came in from Paterson that day, and I developed a very high fever, and he asked me a great many questions about where it hurts.

BY MR. EVANS:

Q. Will you tell us what the doctor asked you, and what you told him? A. He asked me if I could possibly be pregnant and I not know it, and that may bring the fever up.

30 Q. What did you say to him? A. I asked him if I could be pregnant, and then he asked me some more personal questions.

Q. What did he ask you? A. When I last menstruated, and I gave him the last date.

Q. And then what did he ask you? A. He figured up between that date and then, and he said: "You can be pregnant," and he said: "I will have to examine you," and he examined me.

Q. What did he do? A. He examined me.

40 Q. What did he next ask you? A. He didn't ask me any more and the following day Mr. Grobart called, and I couldn't speak any more.

Bessie Grobart. Called by Complainant. Cross.

Q. That was the end of the conversation between you and Doctor Granet at that time? A. Yes, sir.

Q. You are positive of that? A. I couldn't talk any more; I was very, very ill.

Q. And that recollection is very clear? A. Yes, sir.

Q. And what other conversation did you have with Doctor Granet after that, and during the course of your illness, with Doctor Granet? A. I was in very high fever for eighteen days, and I didn't talk to him at all. 10

Q. After you were getting better, did you have any conversation with the doctor? A. He wanted to know why he never saw my husband; he said he was there two or three times a day, and he never saw him, and the nurse said the same thing, and he was told that the doctor wanted to see me, but he wouldn't stay. I suggested that he go with me to see Doctor Granet, and he came to see me and I told him that the doctor wanted to see him. 20

Q. Will you explain and answer the question: what did you explain to your husband that Doctor Granet wanted to see him for? A. That we weren't living right, and if he would see Doctor Granet he would explain things and ask questions.

Q. Had Doctor Granet asked you to see him. A. Yes, sir. 30

Q. And he told you to tell your husband that he, Doctor Granet, wanted to see him? A. Yes, sir.

Q. Did you convey that message to your husband? A. Yes, sir.

Q. When did you tell him that? A. When he was calling on me, while I was sick at home.

Q. And what did you tell him? A. I told him that he had examined me and discovered my condition; I didn't have to tell him that. 40

Bessie Grobart. Called by Complainant. Cross.

Q. Just repeat that. A. I don't remember the exact words, but he knew it.

Q. You have some recollection. A. Yes.

Q. Repeat it to the Court. A. I asked him to go to Doctor Granet with me, and I said there were some things we didn't know, and he could explain it to us, and he would just laugh that blank—I could mention it fifty times, and he would never reply either way.

Q. So those—did you have any further conversation with Doctor Granet, after that? A. No; he said: "I have listened to your story and I want to see him," and he said: "I don't know what is wrong with you, or wrong with him".

Q. When was that? A. In the month of March.

Q. In the month of March, you told him that.

A. Yes, sir.

Q. Now, who was the next doctor you saw, after Doctor Granet? A. Every time I mentioned Doctor Granet, he said: "You always run to the old man".

Q. Did you answer my question? A. My husband suggested that I go to Doctor Joelson; I didn't know any doctor in Paterson; I never lived here.

Q. When did you see him? A. June and July.

Q. How many visits did you make, at which you saw him? A. I saw Doctor Joelson every bit of three—five times.

Q. Three to five times? A. Five times.

Q. Which times did you see him. A. I only remember three calls.

Q. When were they? A. Three calls in July, and two I paid him cash.

Q. When did you go to him? A. June and July.

Bessie Grobart. Called by Complainant. Cross.

BY THE COURT:

Q. Did you ever see any other Doctor, besides Doctor Joelson? A. Not while I was in Paterson.

BY MR. EVANS:

Q. How did you come to go to Doctor Joel- 10
son? A. Mr. Grobart suggested him.

Q. Why did you go to Doctor Joelson? A. My husband suggested it, and no normal way of living.

Q. What conversation did you have with Doctor Joelson? A. Doctor Joelson said he couldn't listen to what was the trouble with my husband.

BY THE COURT:

Q. What did you tell Doctor Joelson, when you 20
went to him? What did you say to him. A. I complained to him that I was feeling sick, and I didn't know what was wrong with me.

Q. Did you tell him about your private relations with your husband? A. Yes, sir.

Q. At your first visit? A. Yes, sir.

BY MR. EVANS:

Q. What did you tell him, just in your own 30
words? A. I went to ask him what could be done.

BY THE COURT:

Q. What did you tell him; did you tell him you hadn't had sexual intercourse? A. You can't tell the doctor that; he started off to ask questions.

Q. Did you? A. Yes; he examined me.

Bessie Grobart. Called by Complainant. Cross.

BY MR. EVANS:

Q. What did he say? A. We weren't living right, and there was all kinds of trouble, and Doctor Joelson asked me many questions, and he asked me if I was pregnant, and I said: "No," and he said: "Many women were and didn't know it", and
10 he said: "I will have to examine you to find out if it is true".

BY THE COURT:

Q. Did he examine you? A. Yes, sir.

Q. Did he say after he had examined you that you hadn't been penetrated, and couldn't be pregnant?
A. Yes, sir.

20 BY MR. EVANS:

Q. When was this he examined you? A. In July.

Q. I thought you said you had been going to him in June? A. Just a moment; he couldn't examine me the first time, because he didn't have a woman there, or a nurse, and he said: "If you want to bring your own witness, you can".

Q. You hadn't had any intercourse with your husband? A. Not the way I understand.
30

Q. There had been no penetration of your private parts? A. No, sir.

Q. What he did was to lie limp on you and no penetration at all? A. Nothing at all.

Q. And you knew you weren't pregnant?

Mr. Vickers: I object to it.

A. No.

40

Bessie Grobart. Called by Complainant. Cross.

Q. You knew at that time you weren't pregnant?
A. I didn't know.

Q. You had your periods—flow, and none of your periods had passed? A. That has nothing to do with it, either.

Q. I am asking you that question; why don't you answer my question; why do you evade me? A. I am not evading you. 10

BY THE COURT:

Q. The question is very simple; he asked you if there had been any sexual intercourse? A. There had been attempts. Doctor Joelson said: "I can't listen to women; I have to examine you".

BY THE COURT:

Q. Have you been to any other doctor? A. Yes, your Honor. 20

Q. What other Doctor? A. Doctor Bender.

Q. What did he report to you you? A. The same condition.

Q. He said you hadn't been penetrated? A. Yes, sir.

Q. Did you go to any other doctor? A. No, sir.

Q. You went to three doctors? A. Yes, sir. 30

Q. And they all told you you had had no sexual intercourse? A. Yes, sir.

BY MR. EVANS:

Q. What did you go to Doctor Bender for? A. Doctor Joelson told me to keep away from my husband, and if you stay away from four to five weeks, and pick up a little—you are a nervous breakdown—and if you will get your husband here and 40

Bessie Grobart. Called by Complainant. Cross.

I can examine him, I perhaps can tell you, but I can't tell you by examining you alone. He told me to go away and leave my husband away, and I went away for four weeks, but I did invite my husband to come and see me, and I went away, but I didn't get any better, and Mr. Grobart knew it, and I said I wasn't getting any better, and he said Doctor Joelson was any lion, and I said: "Who is your bigger man", and he said: "Doctor Bender", and I went to him, and he said: "Now, don't you say anything, but answer my questions", and he asked me many, many questions, and when he got through with me he said: "You can't live with your husband, under these conditions, and you don't want a doctor, you want a lawyer".

10 Q. And it was on the suggestions of Mr. Grobart that you went to Doctor Joelson and Doctor Bender? A. Yes, sir.

20 Q. And he was the one who should go to the doctor? A. I think so, from the way he acted.

Q. Now, what did you tell Doctor Bender, on your visits to him? A. I went to Doctor Bender and told him I couldn't sleep nights, and was losing weight, and I told him what I told the other doctors. He wanted to know if I had children.

30 Q. What did you tell him? A. I told him I was losing weight, and couldn't sleep, despite the fact that I was away for four weeks. He wanted to know if I was living with my husband, and he said he would have to examine me, and he did, with his nurse, and he made out a chart, and he said: "I can't disclose anything to you at all".

Q. Did he ask you if you were pregnant? A. And I said I didn't know.

Bessie Grobart. Called by Complainant. Cross.

BY THE COURT:

Q. Didn't you know that you couldn't be pregnant without penetration? A. I didn't know that.

BY MR. EVANS:

Q. Now, then, as a result of the visits then, or during the course of the visits to Doctor Bender, he also examined you as to whether or not you were still a virgin? A. Yes, sir; Doctor Bender examined me. 10

Q. What did he tell you; what was the advice he gave you? A. He said: "Women cannot live the way you live; I have no cure, no help for you, only to stay with your husband and turn insane, go on, and he said: "Leave him, and if he cures himself, that was up to him". 20

Q. Did you tell him he wasn't examined by a doctor? A. I said he dodged that.

Q. When did he bring in the advice about a lawyer? A. I said I didn't want to leave my husband and break up my home and happiness, and I said: "Isn't there anything else I can do?" He said there was no medicine for me; all I needed was an attorney.

Q. Did you speak to your husband about it? A. Yes, sir. 30

Q. What did you say? A. I said: "Lou, I cannot live this way; I am getting sicker and sicker all the time", and he was still about it again, and I left the following week; I was very, very low.

Q. Did you follow the doctor's advice, about seeing a lawyer? A. I did.

Q. Was it following the doctor's advice that you got in touch with a lawyer? 40

Bessie Grobart. Called by Complainant. Cross.

Mr. Vickers: How is that relevant?

The Court: I will allow it.

Q. When did you get in touch with the lawyer; how quickly after you separated from your husband?

10 Mr. Vickers: I was her adviser before she separated.

Q. When did you first get in touch with Mr. Vickers? A. Month of July.

Q. Month of July? A. Yes, sir; 1926.

Q. And were those visits to the doctor a result of your conversation with the lawyer? A. No, opposite.

20 BY THE COURT:

Q. Did Mr. Vickers advise you to go to the doctor? A. He said: "Unless you bring me a doctor's certificate, I can't listen to you."

BY MR. EVANS:

Q. Then all the visits to the doctor were the result of the advise given to you by Mr. Vickers? A. No.

Q. What doctor did you go to before you went to Mr. Vickers? What doctors did you visit as a result of the advise of Mr. Vickers? A. Doctors Joelson and Doctor Bender.

Q. Those two doctors? A. Yes, sir.

Q. Now, then, Mrs. Grobart, do you say that the very first night of your married life, you became aware that he was impotent? A. Not the first night; I didn't know anything.

40

Bessie Grobart. Called by Complainant. Cross.

Q. When did you become acquainted? A. The first night at the Statler.

Q. Did he make any overtures on the train? A. We occupied the lower berth and we had a minor argument.

Q. What was that? A. Because I gave three of his cigars to the porter that lowered the berth.

Q. Did he make any overtures that night? A. 10
He just kissed me; no other demands.

BY THE COURT:

Q. Didn't get on top of you or anything? A. No, sir.

BY MR. EVANS:

Q. Now, the next night was spent at the Statler? 20
A. We reached the hotel in the morning and occupied the bed in the day time and at night.

Q. Now, in hiring the rooms, did you specify what you wanted? A. Mr. Grobart went and got a room and bath.

Q. What did you get? A. It was a large room and two beds in the room and bath.

Q. Who asked for the twin beds, he or you? A. 30
We couldn't get anything else; there was nothing else there; it was the holiday season.

Q. What happened that night? A. He approached me and tried to come near, and was on his knees for close to an hour, and I said: "what is happening, Lou"? and he said: "Nothing"; he said he couldn't raise it, and I didn't know what that meant, but he insisted on staying around.

Q. You didn't want him to stay around? A. I 40
never said that; I said; "Don't you know what to do?"

Bessie Grobart. Called by Complainant. Cross.

Q. You asked him that? A. I asked him that, after a long time.

Q. What did he say to that? A. He said: "I don't know what to do; I can't raise it", and I said: "You ought to go to a doctor, if you don't know what to do", and he said he would do what his friends told him what to do—to drink raw eggs.

10 Q. Did he penetrate your part? A. He didn't; he stayed on his knees.

Q. Did he do anything? A. He didn't do anything; only he said he couldn't raise it.

Q. No touching of his body to yours? A. No, sir.

Q. And he stayed up in the air, on his knees, for an hour? A. Not up in the air; on his knees, in the bed.

20 Q. Wasn't any part of his body in contact with yours? A. No.

Q. How long did that continue that night? A. Every bit of a hour.

Q. Was he doing anything to himself, during that time? A. Yes; he was handling himself with his own hands—the room was dark.

Q. Could you see it? A. Yes; the bath room door was open, and there was a light in the bath room—a reflection in the room.

30 Q. Did you have a desire to have intercourse that night? A. Yes.

Q. And there was no effort on his part that night to make any penetration? A. He was on his knees. He didn't get close to me.

Q. Was there any penetration? A. No, sir.

Q. Now, after the one hour elapsed, what took place? A. Turned around and fell asleep.

Q. He turned around and fell asleep? A. He said he would go to a doctor.

Bessie Grobart. Called by Complainant. Cross.

Q. Did he go to the other bed? A. He stayed in my bed.

Q. Did he go to a doctor? A. He said he saw a Doctor Simon around the corner.

Q. Did he say he had been to the doctor? A. Once he said yes, and once he said no.

Q. When did he next try to have intercourse. A. The very next night. 10

Q. And what took place that night? A. The very same condition as the first.

Q. Did he ask you for any assistance? A. No, sir.

Q. He was on his knees and there was the same performance? A. Yes, sir.

Q. Was there any kissing or hugging? A. Not while he was on his knees, but before.

Q. For how long? A. Quite a while, because I was tired for being in that position. 20

Q. What did you say? A. I said: "What does it mean?" I didn't know anything about it; it was the first experience. I said: "Does it take you so long?" and he said: "I can't raise it", but I didn't know what it meant at that time.

Q. How long was it before you knew what that meant? A. A few weeks—after he was telling me things. I was asking him to explain.

Q. Well, not knowing what it meant, you advised him to see a doctor? A. To ask him to see what was to be done; I thought he knew. 30

BY THE COURT:

Q. How old is your husband? A. Thirty-one when we were married, he said.

Q. How old are you? A. Thirty-one now.

Bessie Grobart. Called by Complainant. Cross.

BY MR. EVANS:

Q. After that second night episode, he finally gave up and went to sleep? A. Yes, sir.

Q. And the next night? A. He didn't attempt anything more. He said he loved me so, and I thought there would be a great deal more loving.

10 Q. Did you advise him again that night to see a doctor? A. I asked him, and he said yes; he was going to see a Paterson doctor.

Q. That second night in the Statler? A. He said he would rather see a Paterson doctor, and not bother with strangers.

20 Q. The third night, where were you? A. After we spent two nights at the Statler, we left early in the afternoon for Chicago, and we arrived there three o'clock in the morning, and was received by my brother, and we celebrated until about six o'clock in the morning.

Q. Where did you stay in Chicago? A. The Chelsea, and stayed there for seven or eight days.

Q. How many rooms did you occupy in the Chelsea? A. One room and one bed.

BY THE COURT:

30 Q. Did he try to have sexual intercourse that night? A. He insisted on playing.

Q. What do you mean by that? A. He put his hand on.

Q. On him or you? A. On me.

BY MR. EVANS:

Q. Did you resent that? A. I did not.

40 Q. Did anything else happen that night? A. That was in the day time.

Bessie Grobart. Called by Complainant. Cross.

Q. What happened at night? A. Before night he came back and said he had seen a doctor, and he had some white pills, and he said if he could get a bottle of whiskey, it would be all right; I saw him take one and swallow it.

Q. What happened then? A. He tried again, but nothing happened.

Q. What took place then? A. That night? 10

Q. Yes. A. Nothing took place.

Q. What took place; he was there in bed with you, wasn't he? The same condition—the same attempt as he done before.

Q. You mean to say he was on his two knees? A. Yes.

Q. Over you? A. Yes, sir; playing with himself.

Q. His body over you? A. Yes, sir.

Q. And playing with himself? A. Yes, sir. 20

Q. For an hour? A. I didn't say an hour.

Q. For how long? A. I don't know; I was getting tired of being in that one position.

Q. About how long was it? A. I don't know; I guess it takes you thirty minutes to get tired.

Q. That was the first night in the Chelsea? A. He said that night he wouldn't bother me until he got back to Paterson.

Q. Did you have any further conversation with him about it? A. No, sir. 30

Q. And he got in bed? A. Yes, sir.

Q. After he took the pill? A. Yes, sir.

Q. But there was no penetration? A. No, sir.

Q. Now, that was—the third night in the Chelsea, what took place? A. Nothing.

Q. The same thing? A. No; playing with his hands.

Q. No advances toward you? A. No, sir.

Q. No attempt to connect with you? A. No, sir. 40

Bessie Grobart. Called by Complainant. Cross.

Q. How about the next day? A. The day time—
playing with his hands, but nothing took place.

Q. And that night? A. The same condition.

Q. And that condition existed all the while you
were in Chicago? A. Yes, sir.

Q. Where did you go from Chicago? A. Came
back to Paterson, and my home furniture was there,
10 but it wasn't fixed up, and my—Mr. Grobart's
mother suggested that we spend a week's time there,
until our home was fixed up, and we stayed there
about eight days and eight nights, but Mr. Gro-
bart didn't make any advances during the time I
was there, during the day or night.

Q. Who put you in that room? A. Mrs. Grobart.

Q. Did you say anything about being in that
room? A. I didn't say anything, but I thought we
20 would have some other arrangement, because she
had three other rooms.

Q. But you stayed there by yourself? A. Not by
myself; my mother-in-law was right there by me.

Q. Did you say anything to Louis' mother, about
Louis not being able to consummate the marriage?
A. No, sir.

Q. Did you say anything to your husband about
going to a doctor and taking care of this? A. When
we got to our own apartment.

30 Q. You didn't say anything to him about seeing
a doctor when you got back to Paterson? A. I
did.

Q. When was that? A. The first week when we
were alone, in our own apartment.

Q. But the eight days you were at Mrs. Gro-
bart's you didn't? A. No, sir.

Q. When was the first you broached the subject of
seeing a doctor, after you got to Paterson? A. The
40 first week in my own home.

Bessie Grobart. Called by Complainant. Cross.

Q. What took place the first week in your own home? A. The same condition.

Q. Repeat it, and tell us what took place. A. Always on his knees, trying, trying, keeping me waiting.

Q. Just going through the same operation? A. He had no desire to come to me; I said: "If you aggravate me, either do it or don't do it. I invited him. I asked him not to play with me, and if he did he has got to do his duty, or either to keep away playing; that I couldn't stand playing with me. 10

Q. This was getting on your nerve? A. Yes, sir.

Q. And you were pretty well agitated about it? A. Yes, sir.

Q. And you were wrought up? A. Yes, sir.

Q. And you were in a state of high excitement all the time? A. You couldn't understand it. 20

Q. I am asking you a question. A. Yes, sir.

Q. Why did you let him do it every time? A. He can't say I didn't.

Q. Why did you submit yourself each time to this future operation when you knew it was of no consequence? A. I didn't know what was going to come, or didn't come, but I told him I couldn't stand that playing all the time.

Q. This was the first week you were home? A. Yes, sir; and that playing kept right on all the time. 30

Q. How long did that keep up? A. Every few days I would ask him to go to the doctor, and he wouldn't answer anything.

Q. And he didn't go? A. He didn't go, and he didn't answer anything.

Q. How long were you in the Paterson apartment? A. I lived there ten months.

Q. And during that time the same thing transpired every night? A. Yes; and in the daytime, too. 40

Bessie Grobart. Called by Complainant. Cross.

Q. And you were asking him every day or two days to go and see a doctor, and he wouldn't go?

A. Not until I spoke to his mother.

Q. You spoke to his mother? A. Yes, as a result of a bitter fight one night.

Q. What was that? A. He kept at me for over an hour, and I said I couldn't stand it, and I said
 10 the doctors said I couldn't stand what he did, and he said: "You are stupid and dumb", and I said: "Louis, leave my bed", and I said: "This is your last chance", and I said: "We go to the doctor together", and I left the bed and went to the guest bed, and the next morning he saw I was sorry, and he came to me, and he said: "Forget it", and he said he would buy me some silk, and I said: "Never mind the silk", and I thought he was going to urge it, and
 20 I went to his mother, and he was still for three or four days, and he came in and he said: "Bessie, you squealed on me", and I said: "What do you mean?", and he said: "You told my mother", and I said: "I didn't squeal; it was for the best of both of us, and we couldn't live that way, and there was no use of killing both of us".

Q. You made arrangements to go to the doctor?

A. We didn't make arrangements; I said that was his last chance; we would both go.

30 Q. When was that? A. In May.

Q. You didn't take him? A. Could I take him by force?

Q. Did you go? A. No, sir; and he knew about it; his mother told me.

Q. After that, did he try again? A. Of course, we did.

Q. And this was after you urged him to see a doctor, you still kept on the same experiments? A. Yes, sir.
 40

Bessie Grobart. Called by Complainant. Cross.

Q. Every night, was this? A. And day time. He had that one habit of playing, and I said: "You can't play". He didn't work, and he was home for hours.

Q. And did you threaten to leave him? A. I didn't threaten to leave him, and didn't intend to leave him, until I saw Doctor Bender.

Q. And you were very anxious to consummate the marriage? A. Of course, I knew I got married for some purpose. 10

Q. Did you speak to him after that ultimatum? A. Yes, sir; and he said: "Doctor's don't know anything", and I said: "They won't kill you", and I said: "Let's both go", but he wouldn't.

Q. Still, he was recommending you to go? A. He did.

Q. Did this same thing occur every night? A. Yes, sir. 20

Q. Just what operation would he go through every time? A. He stopped going through operations, and he suggested that I help.

Q. When did he make the suggestions that you help; how soon after the marriage? A. It started in January; he didn't ask me; I was forced to it.

Q. What do you mean by you were forced to it? A. I was normal, and you know what that would be. 30

BY THE COURT:

Q. You were forced in what? A. Practice self-abuse.

Q. On him? A. Yes, sir.

BY MR. EVANS:

Q. When did this start? A. In January. 40

Bessie Grobart. Called by Complainant. Cross.

Q. Did you notice that he had an erection at any time during the self-abuse? A. I don't know what it is; that was explained to me.

BY THE COURT:

Q. Did he get erections during this self-abuse?
10 A. No, sir.

BY MR. EVANS:

Q. Was there any emission of any fluid? A. Twice I know of, and he would run to the bath room, but I don't know what he was doing, and I used to say: "Now, while you play with me, don't run away; either keep in bed or stay with me".

Q. How long did this period of self-abuse continue?
20 A. Continued all the time.

Q. All the time from January, on? A. Yes, sir.

Q. Did he conduct this by being over you, on his knees, for half an hour? A. Yes, sir; he tried to come closer and closer.

Q. Did he ever attempt to abuse you or assault you? A. No, sir.

Q. At the time you were in bed, sick with the pneumonia, did Mr. Grobart supply the nurses and the doctors?
30 A. He didn't do anything at all; I had to call him five times before he came.

Q. You had a day and night nurse? A. Yes, sir.

Q. And the doctor? A. Yes, sir.

Q. And Doctor Oppenheim? A. Yes, sir.

Q. Who paid for them? A. Mr. Grobart, after a long time.

Q. Who paid for them? A. He did.

Q. And for your mother? A. He paid for me; not my mother.
40

Bessie Grobart. Called by Complainant. Cross.

Q. Did he send you to Lake Hopatcong, too?

A. He wanted me to go to Hunter, and he wanted to come with me, and I told him what Doctor Joel-son said, that I must stay away from my husband and exercise in secret things that you do to your-
self, and you must do that for four weeks, and see
what effect it would have on me, and I went to
Lake Hopatcong, and he visited me there regularly
against the doctor's advice, but I invited him. 10

Q. And did it take place up there? A. It did,
and to such an extent that I hurt myself one time.

Q. To what extent? A. On Saturday night and
Sunday, and up there, during the day time.

Q. No improvement at all? A. No, sir; I made
a mistake by calling him up there, because some-
thing happened twice in one month which should
only happen once. 20

Q. And you continued to live with your husband?

A. I liked him, but I didn't think he was treating
me right, and I went to his mother, thinking that
he would listen to her, and I told her the exact
thing, and how he had run to the bath room, and
wouldn't listen to me, but she took it wrong, and
didn't believe me, and I said: "You must listen"—

Q. When was this? A. Just before we went to
Lake Carnesic. 30

Q. She wouldn't help? A. She told him about it.

Q. What did she say? A. He came back and said
I squealed, and I said I couldn't stand it, and he
wouldn't go to the doctor, and I said: "Go alone,
if you don't want to go with me".

Q. How many times did you say that to him? A.
I couldn't count them; it was the main trouble of
our married life; every day it was the same thing.

Q. You were married ten months? A. Yes, sir. 40

Bessie Grobart. Called by Complainant. Cross.

Q. How often did you say that? A. Every few days it was the same thing: "Louie, you are just ignoring the same thing again".

Q. You spoke to him kindly? A. Every time, except once, when he called me stupid and dumb, and I said: "That was you last chance".

10 Q. You were sick? A. He knew it I was sick and ill, and he knew the cause, and the doctor said: "Living the way you are living you will never be well".

Q. And that brought on the pneumonia? A. That came on within six weeks, and it couldn't come on so quick in six weeks.

Q. Did you ever tell your husband that you didn't want any children? A. The conversation of children never came up.

20 Q. Didn't you have a relative that died in child-birth? A. No, sir.

Q. You didn't? A. A relative.

Q. A cousin, or someone very close? A. Some relation, but that has nothing to do with me.

Q. I am asking you a question: some relative died in child-birth? A. Not that I know of, but what was spoken in the family, perhaps, when she died.

30 Q. Didn't you tell Mr. Grobart, that because one of the members of your family died in child-birth, you didn't want to have any children? A. No, sir.

Q. Did you tell Mrs. Tittlebaum that you didn't want to have any children? A. No. He said: "Nothing doing yet", and I said: "No", and he said: "What is the matter; don't you like children?" and I said: "After a while we will have ten".

Bessie Grobart. Called by Complainant. Cross.

Mr. Vickers: Was that Mr. Tittlebaum, or Mrs.?

The Witness: Mister; not Mrs.

Q. Now, what did you know about Mr. Grobart's financial condition, at the time you married him?

A. Nothing, but what he told me.

Q. What did he tell you? A. He said: "Bessie, 10
come out to Paterson, and I will show you our mills".

Q. Is that all he told you? A. That is what he did.

Q. Then what did he do after that? A. Nothing; they unveiled the Barnert Statue—that was in October, or September, and he asked me out to see the celebration, in Paterson, and he had taken me through the mills, and showed me this and 20
that, and then we visited Mrs. Grobart.

Q. How did you come to meet Mr. Grobart? A. I knew Mr. Grobart, by name, for two years.

Q. What is that? A. I knew Mr. Grobart, by name, for two years, and then some one that we knew—I didn't have much friendship with her, but I knew her by sight, suggested that I meet this man.

Q. Who was this woman? A. Mrs. Brody. 30

Q. She was a marriage broker, wasn't she? A. I don't know whether she was a marriage broker.

Q. You know she was a marriage broker? A. Not exactly. She knows a few people here and there, and Mr. Grobart was the only man she—

Q. What payment was made for the introduction? A. Mr. Grobart had known her well, and he agreed to pay one hundred and seventy-five dollars.

Bessie Grobart. Called by Complainant. Cross.

Q. Didn't your father pay something towards that? A. He did.

Q. How much? A. \$87.50.

Q. You mean eighty-five dollars and fifty cents, don't you? A. Yes, sir.

Q. That was your agreement with your father?
A. Mr. Grobart agreed to pay it, and he went to
10 the Hebrew court of arbitration, and she came to us and made our life miserable, and I said we would pay our share, and she refused to accept it until Mr. Grobart paid his, and finally she accepted it.

Q. In your communications with Mrs. Brody, what kind of a man did you tell her you wanted?
A. I didn't tell her anything, but she came over and said: "I got a very nice man in Paterson", and she said he would call on me, and he called
20 and said he was Louis Grobart, and I said: "I don't know who you are", and he said: "I have had your name in my pocket for two years", and he said: "Mrs. Brody sent me", and I said I would let him know in a few days, and Mrs. Brody came and said he was a very religious man, and he is a man who can take care of a wife.

Q. And didn't she tell you he was in the silk business? A. She didn't tell me anything.

Q. Didn't your father investigate? A. After he
30 called three or four times. Mr. Grobart insisted, after he had visited three or four times, my father and mother were invited to the Grobart family.

Q. Did they investigate the situation? A. No situation—only my father wanted me to get in a religious family.

Q. What did your father tell you? A. He was a fine young man; he prays every morning and comes from a nice family.

Bessie Grobart. Called by Complainant. Cross.

Q. Is that all he reported to you? A. That is all.

Q. Didn't he report that he had silk mills? A. No, sir; he didn't tell me that; he said he was a nice young fellow and was religious.

Q. How did you come to make these plans? A. We visited his mother, and she insisted that Louis should show me the town, and there was a parade, and I think it was down to the City Hall, but there was nothing to amaze me. 10

Q. Did he show you any buildings? A. He showed me one building, and then he said he would show me where his looms were, and he was insisting on proposing, and I said not to be in a hurry, to give him a chance and give me a chance.

Q. What did he say? A. Nothing much; just that this one manufactured one thing, and one another. 20

Q. And were the mills operating at that time? A. I didn't see mills; only this one floor where he had his looms.

Q. Did he point out any mills at all? A. We went through one floor that had "Grobart" on.

Q. Did he say it was his mill? A. No, he said it belonged to the family.

Q. Is your own father a man of means? 30

Mr. Vickers: I object to the question.

The Court: I will allow it.

A. He was and he is. I cost him enough money when I got married.

Q. Where did you live? A. I lived with my parents at 851 Seventh Avenue, New York.

Q. And do you own the building you lived in? A. No, sir. 40

Bessie Grobart. Called by Complainant. Cross.

Q. What do you do, rent it? A. Yes, sir.

Q. How much is the rental? A. One hundred and twenty-five dollars.

Q. And who resides there with your father? A. Father and mother and my sister and myself, and the brother, who travels occasionally, is home.

10 Mr. Vickers: I object to all of this.

The Court: I will allow it.

Q. Do your brothers and sisters work? A. Yes, my brothers do.

Q. Your brothers? A. Yes, sir.

Q. How about your sister? A. My sister is engaged to be married, and she is home at present.

Q. How many brothers have you? A. Three.

20 Q. Do they contribute anything toward the family support? A. No, sir; don't have to.

Q. What is your father's business? A. Interior decorating.

Q. Does he own any real estate? A. No, sir.

Q. What does his business consist of?

Mr. Vickers: I think I am entitled to an objection. I think the station of life is the station of life to which the parties lived.

30 The Court: I will allow it.

Q. What sort of a store did your father conduct?

A. We supply public places; that is, hotels and residential places and residences, and individual sales.

Q. And you say your father is a man of means? A. Well, he is. He takes care of all his responsibilities. We have no real estate. Can't you have means without real estate? We have no real estate.

40

Bessie Grobart. Called by Complainant. Cross.

Q. At the time Mr. Grobart married you, was there any agreement with respect to dower? A. No, sir.

Q. No agreement with respect to that? A. No, sir.

Q. No agreement as to your father furnishing the house, as a dower? A. No, sir.

Q. Now, Mrs. Grobart, after you had left your husband, you and your father cleaned out the house, did you not? A. We didn't clean it out at all. 10

Q. What did you do? A. Three months later—I left October 14th, and within two weeks Mr. Grobart came with a marshal and put on a poster "Apartment to Let," and he gave me all kinds of notice to come back at once, and I said: "You go to a doctor before I come back," and that was the way; fights were on our seeing a doctor and living like decent people. 20

Q. Tell us about cleaning up the furniture? A. During October, November and December, Mr. Grobart was sending me ten dollars a week; I didn't ask him for it; he sent it—money didn't mean a thing to me.

Q. Money didn't mean a thing to you? A. No, because I would rather be penniless and happy, than have money and be unhappy, and he was telling all kinds of stories about me, and I got a letter from his attorney, saying to take away my things; that he was going to give it up, and he said he was going to put them in the bottom of some mill, and I got it out and put it in storage. I called up my attorney and asked him if Mr. Grobart wouldn't take care of it, because I was ailing, and I was having trouble with a tooth, and he gave notice that it had to be moved by the first, and we packed up, but we didn't clean up. 30 40

Bessie Grobart. Called by Complainant. Cross.

Q. Let's see the notice you have? A. You wrote, I believe, or Mr. Grobart's attorney wrote, that the apartment had been given up and the furniture could not rot away there; we had to move it.

Q. Didn't Colonel Vickers turn over to you the letters sent to him relating to the furniture? A. Mr. Grobart would say one thing and do something else.

Q. Do you recall any letter that was written to you during which this paragraph here appeared?

Mr. Vickers: I object to that or for any reason she took the furniture.

The Court: I will allow it.

A. I asked him to take the furniture.

Q. You asked him to? A. Yes, and I paid for it.

Q. In the course of one of the letters, do you recall this paragraph being sent to you: "During one of the conversations, Mr. Grobart's wife said she didn't care for the furniture, but wanted it stored for her?" A. Yes, sir.

Q. Mr. Grobart stated that he would give up the furniture, but very reluctantly, because he thought—he will, therefore, store the furniture at his own expense. It was after that letter that you broke in the apartment and took the furniture? A. What is the date of the letter?

Q. December 16th? A. What is the date of the notice? There was a notice that we must move the furniture out. I didn't want the expense of keeping the furniture; I didn't want to break up the home; I wanted him to go to the doctor. I didn't want to break up my home.

Q. You didn't want the support? A. I didn't ask him for it.

Bessie Grobart. Called by Complainant. Cross.

Q. You have no interest in it at all? A. What do you mean not getting no support?

Q. That you are not entitled to support? A. If the Court says I am not entitled to support—I am not a cripple; I will look out for myself.

Q. Did you go to the home of your parents every week-end during your married life? A. We went together, mostly. 10

Q. Every week-end? A. Not every week-end, but generally with him, and sometimes occasionally I went alone, but it was always with his consent.

Q. When you went there, where did you sleep? A. We didn't have a large apartment; it was generally in the parlor, and sometimes we couldn't sleep together, and sometimes I had to arrange it that way.

Q. From the very beginning of your married life you visited your parents on the weekend? A. Yes, sir. 20

Q. How many times did you miss? A. During the ten months?

Q. How many week-ends did you miss? A. I didn't count them; I didn't put that down.

Q. How many did you miss? A. Perhaps five, or six or eight; I can't specifically state them; I didn't put them down anywheres; I don't recall them. 30

Q. Just a few week-ends you missed, then? A. Yes, sir.

Q. Did you send a letter to your husband? A. I sent him many letters.

BY THE COURT:

Q. When do you mean? A. The day I left.

Bessie Grobart. Called by Complainant. Cross.

BY MR. EVANS:

Q. Is that the letter that you left, at the time that you left? A. Yes, sir.

Mr. Evans: I offer the letter in evidence.

The Court: You can mark it for identification.

Mr. Vickers: I have no objection to its going in now.

The Court: All right.

Letter marked Exhibit D-1, as of this date.

Q. How many times before you left your husband in July, did you consult with Colonel Vickers? A. I saw him once.

Q. When was that? A. In July.

Q. In July, you saw Colonel Vickers? A. Yes, sir.

Q. Did you have any telephone conversations with him? A. I called about ten times before I could reach him.

Q. When was that? A. That was in July.

Q. Then you only saw the Colonel once, prior to the time you left? A. July; yes, sir.

Q. That is the only time? A. Yes, sir; then he wanted me to come back, and if I didn't bring a doctor's certificate, not to come there.

Q. So the first time you saw him was in July? A. Yes, sir.

Q. When was the next time you saw him, before you left? A. It must have been in September; I was away in August.

Q. Whose certificate did you have then? A. Doctor Joelson.

Q. You didn't have Doctor Joelson's certificate then? A. No, I went to Bender in October.

Bessie Grobart. Called by Complainant. Cross.

Q. You went to Bender in October, and it was after you left your husband that you submitted the affidavit of Doctor Bender to Colonel Vickers?

Mr. Vickers: She didn't say anything about an affidavit of Doctor Bender.

Q. Did you have an affidavit from Doctor Bender? A. No, sir. 10

Q. What conversation did you have with Colonel Vickers? A. In September, I produced a certificate but no telephone communications; I produced a doctor's certificate.

Q. You mean to tell us then, that you only had two conversations with Colonel Vickers— A. Colonel Vickers told me to bring a doctor's certificate—that he wouldn't take my word—that I might lie, and I didn't want to leave Mr. Grobart; I wanted him to see a doctor, and it was always— 20

Q. Answer my question. From July until October, the day you left— A. September. I didn't consult the Colonel when I left. He had nothing to do with that. I took Doctor Bender's advice. He said he wouldn't have anything to do with me.

Q. Do you know my question? A. Yes, whether I had anything to do with Colonel Vickers the day I left. 30

Q. Yes. A. No.

Q. Were you in touch with him during the week before you left, by telephone, or otherwise? A. No, sir.

Q. Did you have any telephone conversations with the Colonel at any time, from the time you first got in touch with him, in July, until you left? A. I was sick July and August, and I didn't have anything on my mind. 40

Bessie Grobart. Called by Complainant. Redirect.

Q. Did you hear my question? A. I said I didn't.

Q. Who composed this letter? A. I will have any one to write a letter.

Q. That is your own composition? A. Absolutely.

Mr. Evans: That is all.

10 REDIRECT EXAMINATION BY MR. VICKERS:

Q. I show you what purports to be a certificate, under date of July 26th, 1926, on the stationery of Doctor M. S. Joelson, and ask you if that is the certificate that you brought me, that I insisted upon having, before I would talk to you? A. Yes, sir.

Q. Does that refresh your memory as to when you came—shortly before that you came to see me?
20 A. A little before my certificate.

Mr. Vickers: The certificate is offered in evidence.

Certificate marked Exhibit C-2, as of this date.

Q. You have been asked regarding the different visits that you paid to Doctor Granet, after you were discharged from your pneumonia sickness, and
30 after you returned from Atlantic City, and then you went to Doctor Joelson. Were you physically examined, as to whether or not you were pregnant, or a virgin, by Doctor Granet? A. Yes.

Q. Can you fix that time, about? A. I am not sure whether it was May or June.

Q. May or June? A. Yes, sir.

Q. Was there any objection, on the part of your husband, to any of these week-end visits to your
40 folks? A. No, sir, we agreed on that.

Bessie Grobart. Called by Complainant. Recross.

Q. You said something about being insulted, about your being stupid or dumb; what acts of his brought that about? A. We had a miserable night then.

Q. About what; effort at sexual intercourse—tell us? A. Yes.

Q. When you have spoken of these occurrences—efforts at sexual intercourse—playing with you, 10
being every night, was there any time that you exclude by that, by reason of natural indisposition, or sickness on your part? A. No, sir; nothing.

Q. When you were unwell, he didn't try? A. He did things then he shouldn't, either.

Q. All right, but you don't include those nights? A. No, sir.

Q. And this person, Mrs. Brody, was that brought about by you or Mr. Grobart? A. Mr. 20
Grobart.

Q. Did you or your family have anything to do with it, originally? A. No, sir.

Q. You say you never spoke about your sexual relations to Doctor Granet; didn't he examine you in May or June? A. Yes, sir.

Q. Did he ask you if you had any sexual relations with your husband, before he examined you? A. Of course he did; he corroborated me.

Q. Was that furniture your furniture? A. Yes, 30
sir.

Q. You put it in the house, did you? A. Yes, sir.

Mr. Vickers: That is all.

RECROSS EXAMINATION BY MR. EVANS:

Q. Did he ever accuse you of not being in a position to consummate the sexual act? A. No. 40

Bessie Grobart. Called by Complainant. Recross.

Q. Did he ever say to you that you was not able? A. No.

Q. To afford him relief? A. No.

Q. Or do your wifely duty, by the formation of your parts? A. No, sir.

Q. What do you mean, when you say in your bill of complaint "and unjustly accusing your petitioner of doing her family—" A. Because, you wrote so many letter accusing me of so many things. We both know the truth. Nobody else knows it.

Q. That is your explanation? A. I felt pretty hurt, and instead of his coming around and offering to go to the doctor, but he came to my attorney's office, and putting up a big story, and I said: "No; this will not do; I am telling the truth, and he knows it".

Q. You still felt very fond of your husband at the time you left him? A. I certainly was.

Q. And it was because he wouldn't go to the doctor? A. I was getting sick, and I told him if a husband couldn't be honest with his wife, and he was telling the strangest things to his neighbors, and I told him if he was sick there was no use of his dragging me down with him; he could perhaps get the relief.

Q. What did you take away? A. Only a few little things; Mr. Gobart was in the habit of leaving doors and things open.

Q. Did you take his cancelled checks? A. Yes, sir; mighty happy I got them.

Q. For what reason? A. He told his mother that I was taking all his money, and he didn't have anything.

Q. You took those checks? A. I didn't take them; I found them by accident. I went to get

Bessie Grobart. Called by Complainant. Recross.

something for myself, and there were all the checks and statements, and I didn't know they were there.

Q. You knew what they were? A. When I got them in my hands.

Q. When you went out of your apartment, you took those checks especially? A. Not especially; for the good luck I had I can prove that I didn't get that money. 10

Q. It was a mere chance? A. Absolutely; I never dreamed they were there.

Q. It wasn't your design to take these checks in the first place? A. No, sir; I looked through them.

Q. When you told the Court that you took those checks for the purpose of reviewing— A. Not reviewing, no.

Q. When you say you took up those checks in the first instance for the purpose of demonstrating 20 for his mother that he was lying isn't the fact?

Mr. Vickers: I object to that.

The Court: Strike it out.

Q. What was your explanation of the original taking of the checks? A. I was always accused of taking all the money away from him; I was spending it all, and when those checks turned up, and endorsed by different people, and I said so I took them all so I prove that I don't get the money; at that time I had no bad intentions; I had no idea of coming to court. 30

Q. You say the first you took just a few personal belongings; was it with these personal belongings you got these checks? A. No, sir.

Q. Just when was it you got those checks? A. I didn't take it, but I knew they were there about a week before. 40

Bessie Grobart. Called by Complainant. Recross.

Q. With reference to your leaving? A. When I left we moved the furniture.

Q. When you left the house you took with you a few personal belongings? A. Yes, sir.

Q. Was it then that you took the checks with you? A. Yes, sir.

10 Q. Just what did you take in the way of personal belongings? A. Whatever I could take, I took, and the rest was locked in the furniture.

Q. How did you take them? A. My brother called with the automobile, and I took my personal things with me in that car.

Q. What do you mean: "Your personal things"? A. Toilet articles what I couldn't lock up; linen, wedding presents and valuable books, and that is all.

20 Q. Where were those checks? A. Where the checks were when I found them?

Q. Yes. A. In a closet where he had his clothes. I had a box with my toilet things put away, and there was a new hat box there; that was Mr. Grobart's derby hat box, and I am not very tall, and I moved the little box and the top one tumbled over and they all fell out.

30 Q. Then you put these checks in your own care; gathered them up and took them back to New York with you; is that the story? A. Yes, sir.

Q. When was the last time you tried to have sexual intercourse? A. Three days before I left.

Mr. Evans: That is all.

The Court: We will now take a recess until two o'clock.

Louis Grobart. Called by Defendant. Direct.

(AFTER RECESS.)

Mr. Vickers: We are expecting the doctors, but they are not here yet, and I suggest that the defense go on, and we can call the doctors when they come.

The Court: All right.

10

LOUIS GROBART, the defendant in the above entitled cause, being first duly sworn according to law, testified as follows:

DIRECT EXAMINATION BY MR. BENTLEY:

Q. Mr. Grobart, your full name is what? A. Louis Grobart.

20

Q. And you are the defendant in this suit? A. Yes, sir.

Q. How old are you? A. Thirty-three.

Q. Where were you born? A. I was born in Austria.

Q. How old were you when you came to this country? A. I was eight or nine years old.

Q. Where did you go to live? A. Paterson, New Jersey.

30

Q. How long have you lived in Paterson, New Jersey? A. All the time I was over I lived in Paterson, New Jersey.

Q. Have you ever had any venereal disease? A. No, sir.

Q. Have you ever had any serious illness? A. Yes, sir.

Q. What year was that? A. It was during the war.

40

Louis Grobart. Called by Defendant. Direct.

Q. And what illness did you have? A. I had pneumonia, and Doctor Spickers operated on me.

Q. And you were operated on? A. Yes, sir.

Q. What did they do? A. They operated on my lung.

Q. What did they do? They drained the fluid from my lung.

10 Q. Did you ever have sexual intercourse before you met Mrs. Grobart? A. Yes, sir.

Q. How old were you when you first had intercourse? A. About twenty-two.

Q. And did you continue to have sexual intercourse up until the time you met Mrs. Grobart? A. Yes, sir.

20 Q. And about how far from the time you were twenty-one, up until you met Mrs. Grobart, how often did you have sexual intercourse? A. As often as I had desire.

Q. How often? A. Sometimes twice a week, and some times three times, and some times less.

Q. And your age is what? A. Thirty-three.

Q. And you are a strong and healthy man? A. Yes, sir.

Q. You were never married before you met Mrs. Grobart? A. No, sir.

30 Q. When did you meet your wife? A. I met my wife—it was sometime in 1925, in July—July, the latter part of July.

Q. And how did you come to meet your wife? A. I met her through Mrs. Brody.

Q. What was Mrs. Brody's business? A. Mrs. Brody was a matchmaker.

Q. And by a matchmaker, what do you mean? A. She brought couples together for marriage.

Q. Where does she live? A. New York City.

Louis Grobart. Called by Defendant. Direct.

Q. Did you pay her for her services? A. Yes, sir.

BY THE COURT:

Q. If you are a good healthy man, what did you need a matchmaker for? A. I was with a young man at that time, and in the Jewish custom, they usually meet that way. 10

Q. Not always? A. Not always, but they generally have a party to bring them together.

Q. Did you tell her that you wanted to get one? A. I told her that I was looking for a nice young lady.

BY MR. BENTLEY:

Q. Had you ever heard of your wife before you talked to Mrs. Brody? A. No, sir. 20

Q. As a result of your talk with Mrs. Brody, did you meet your wife? A. Yes, sir.

Q. When did you meet her; what month, what year? A. 1925, sometime in July; I can't remember the date, but it was sometime in July.

Q. And where did you meet her? A. At her folks' home.

Q. In New York City? A. In New York City. 30

Q. Did anybody go with you? A. No; myself.

Q. How did you know where to go? A. Mrs. Brody gave me a card with her name on, and I went up to the house—I called up on the 'phone to see if I could call, and they said I could call, and I did.

Q. And when you called, you met your wife? A. Yes, sir.

Louis Grobart. Called by Defendant. Direct.

Q. Any other members of the family? A. Her mother was there, and her father.

Q. How long did you continue calling on your wife after that? A. I continued calling on her afterwards, until we got married.

Q. And how often did you call on her? A. On Wednesday night and Sundays.

10 Q. Up until what time did you continue to call on her, up until you became engaged to her? A. I continued to call up until the early part of September, I believe.

Q. When you became engaged? A. And we became engaged around September.

Q. From the time you began to visit your wife, and you became engaged, were you and your wife alone at times? A. Yes, sir.

20 Q. What took place when you were alone? A. Well, we used to love up a little.

Q. Used to what? A. Love up one another.

Q. Did you kiss her? A. Yes, sir.

Q. And she kiss you? A. Yes, sir.

Q. And hug each other? A. Yes, sir.

Q. And during those times, can you say whether or not you had an erection? A. Yes, sir.

30 Q. Do you know whether or not your wife must have felt that erection, from the position you were in? A. I personally believe she must have felt it.

Q. When you proposed to her, what did you say? A. Well, I told her that I liked her very much, and I loved her, and I wanted to get married.

Q. What did she say? A. She said she would like to get married, and she said if a man didn't do business very good, it was natural for a wife to help him along a little bit, and gave me more feeling towards her.

Louis Grobart. Called by Defendant. Direct.

Q. Had you discussed your financial condition with your wife? A. Yes; I told her I was making a living, and Mrs. Brody had told her—

Mr. Vickers: I object.

The Court: Objection sustained.

Q. Did you tell your wife about any property you had, or any interest in property you had? A. I told her I had an interest in the estate. 10

BY THE COURT:

Q. Did you tell her, or did she ask you? A. She asked me and I told her I had an interest in an estate.

BY MR. BENTLEY:

20

Q. Did you have her out at Paterson? A. Yes, sir.

Q. Did you show her the property? A. Yes, sir.

Q. What property? A. Most all the property owned by the estate.

Q. What estate? A. The Grobart Estate.

Q. What share did you have; how many children? A. There is five.

Q. A one-fifth share? A. Yes, sir; my mother had one-third, and balance, five children. 30

Q. Did you ask her father for her hand in marriage? A. Yes, sir.

Q. And you left after you had asked her hand in marriage? A. Yes, sir.

Q. What did he say to you? A. He said: "I suppose Mrs. Brody told you I was going to give my daughter ten thousand dollars"; he said: "I can't give her ten thousand dollars; I will furnish your 40

Louis Grobart. Called by Defendant. Direct.

home for you", and he said: "Are you satisfied?", and I said: "Yes; I love her and I don't care anything about the ten thousand dollars, and if he didn't give me anything, it didn't matter."

Q. Did you fix the date of the marriage? A. Yes, sir.

10 Q. What was the date of marriage to be? A. December 20th, 1925.

Q. Did you discuss about where you would go on your wedding trip? A. Yes, sir.

Q. What did you say about that? A. We figured on Bermuda; we thought being it was the winter time.

Q. Who picked out Bermuda? A. I did, because it was the winter time.

20 Q. Why did you pick Bermuda? A. I thought it was winter time.

Q. Was there any change made? A. Yes, sir.

Q. Who made it? A. My wife.

Q. What did she say? A. She said she was afraid to go on the water, and she would rather go to Washington, or someplace, and she was afraid to go on water, and I told her I had to make reservation.

Q. Then you decided not to go to Bermuda? A. No.

30 Q. And where did you decide to go? A. Decided to go to Niagara Falls.

Q. Before you were married, did you buy your tickets for Niagara Falls? A. Yes, sir.

Q. And what did you get? A. A compartment.

Q. And what did the compartment consist of? A. Chairs and three beds and the lavatory alongside of it.

40 Q. And you were married on December 20th, 1925, to Mrs. Grobart? A. Yes, sir.

Louis Grobart. Called by Defendant. Direct.

Q. By whom? A. Rabbi Kirschner.

Q. Where? A. At her father's house.

Q. What time of day? A. It was eight o'clock at night.

Q. How long after you were married did you leave? A. We left on the train leaving for Buffalo at twelve o'clock. Her brother took us down in the car to the station. 10

Q. And you got in the drawing room with your wife? A. Yes, sir.

Q. How long had you been in that room before anything happened with respect to your retiring? A. I rang for a porter after we pulled out of the One Hundred and Twenty-fifth street station; I called in a porter and we got ready to retire.

Q. What did the porter do? A. I rang the bell, and I told the porter to make the bed for us. 20

Q. What bed did he make up? A. He made up the bed at the window; the lower birth.

Q. Just the one bed? A. Yes, sir.

Q. Then what did you and your wife do? A. We undressed out of each others appearance.

Q. What did you put on? A. I put pajamas on and she put a night dress on, and she started crying, and I said: "What are you crying about?", and she said: "You aren't going to bother me tonight", and I said: "No; I will take it easy", and she said: 30 "Give me your word that you won't bother me tonight", and I said: "All right".

Q. Then what did you two do; did you get in bed? A. Yes, sir.

Q. What did you do, and what did she do? A. I started to love her up, and she started to cry, and she said: "Don't do anything on the train"; "there were a lot of people there, and to wait until we got in the hotel in Buffalo". 40

Louis Grobart. Called by Defendant. Direct.

Q. Did you have an erection that night? A. Yes, sir.

Q. And did you desist that night? A. I tried, and she cried, and I said: "All right", I would wait until we got in the hotel.

Q. The next day you arrived in Buffalo and went to the Statler Hotel? A. Yes, sir.

10 Q. When you arrived at the Statler Hotel, who made the reservation for your room, or who engaged your room? A. We were together, and I ordered a room, and she said to get a room with twin beds.

Q. Did you? A. She said to get a room with twin beds, and I said: "All right".

Q. Was there a room with twin beds assigned to you? A. Yes, sir.

20 Q. What time did you get up to your room? A. We had breakfast.

Q. Did you go right up to your room? A. We had our baggage taken up, and had breakfast, and we were tired, riding all night.

Q. What did you do? A. I started to take part of my clothes off, and I started loving her up, and I said: "We are in the hotel now".

Q. Where was she? A. She was in her bed.

Q. Had she taken off her clothes? A. Yes.

30 Q. How many of them? A. All she had.

Q. Had her nightgown on? A. Yes, sir.

Q. And did you get in bed with her? A. Yes; I walked over to her bed.

Q. From that moment on, when you got in bed—did you? A. Yes, sir.

Q. Just tell the Court, minutely, what happened, after you got in bed, and what she said; was there talk, or what? A. When I got in bed I got an erection. I loved her up, and I got an erection, and I

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Louis Grobart. Called by Defendant. Direct.

wanted to do something, and she repulsed me, and she said she wouldn't let me do anything without a rubber, and I said: "I have no rubber", and I said: "Why do you want a rubber?" and she said she didn't want any children the first year, and I said that was up to her, and she said I couldn't do anything with her, and she said I had to get fishskins.

Q. Had you ever heard the terms "Fishskins" before? A. No, sir. 10

Q. What did you say to your wife? A. She told me that a lady and Doctor Granet told her they were the best kind to use.

Q. What happened while you were in this room that morning? A. She said she wouldn't let me do anything until I got them. We went downstairs and had our supper, and I told her I was going out and try to get them, and I went to a drug store, but I couldn't get the fishskins, so I got the other kind, and they were rubber. 20

Q. Did you go to bed that night? A. Yes, sir.

Q. Did you get undressed? A. Yes, sir.

Q. Tell us what happened. A. She said, "Let me see" and I showed her the kind and she said the color came off these, and I said I couldn't get the fishskins, and that was the only kind he had, and she wouldn't let me use them, but I fooled around and I got an erection. She made me put one on, and she said "Wait a minute," and I said, "What is that?" and she took out a box with Doctor Granet's name on, and she had a white pill, and I said, "What is that for?" and she said, "So I can't get in the family way," and I said, "I have a rubber on," and she said, "It busts sometimes," and she said the pill took fifteen minutes, and standing around my erection went down, and I said, "Are you ready now?" and she said, "No, I am going to 30 40

Louis Grobart. Called by Defendant. Direct.

use another pill, and she said it was dissolved already, and in the meantime I had an emission.

Q. You had an emission in the rubber? A. Yes, sir.

Q. What happened after that? A. She said I was a brute, and she was luck she had money, and she showed me fifty dollars, and I said, "Bess, I married you; you are my wife and I have a right to have intercourse with you," and she said, "You will accomplish more if you take it easy," and she started crying, and I figured that I was only married the second day, and I figured I would take it easy with her.

Q. Did you have intercourse with her the night of the twenty-first? A. No, after I discharged I went to bed.

Q. In your own bed? A. Yes, sir.

Q. And slept until the morning? A. Yes, sir.

Q. In the morning, did you try to have intercourse with your wife again? A. I went to her in the morning and she repulsed me, and she said she was sick and she had a cold, and I said I would take her to the house doctor, and they had a doctor there, and I took her to the doctor and he painted her throat, and he said she had a slight cold, but she would be all right.

Q. Did you try to have intercourse with her that night? A. Yes, sir.

Q. What happened that night? A. The same thing. She always told me if I took it easy I would accomplish more than going at it so rough.

Mr. Vickers: Dr. Joelson is here now, and I wonder if we can interrupt and put him on at this time?

The Court: Yes.

Dr. M. S. Joelson. Called by Complainant. Direct.

DR. MORRIS S. JOELSON, a witness produced on behalf of the complainant, being first duly sworn according to law, testified as follows:

DIRECT EXAMINATION BY MR. VICKERS:

Q. Doctor Joelson, you are a physician and surgeon, licensed to practice in New Jersey? A. Yes, sir. 10

Q. For how long? A. Twenty-one years.

Q. Graduated from where? A. College of physicians and Surgeons.

Q. And connected with any hospitals? A. With the Barnert Memorial Hospital.

Q. For how many years? A. Since its existence—a good many years.

Q. Do you know Mrs. Bessie Grobart? A. Yes, sir. 20

Q. Sometime in 1926, did you examine her physically? A. Yes, sir.

Q. Then, or shortly thereafter, did you give this certificate to her? A. Yes, sir.

Q. Referring to Exhibit C-2. What did you find? A. I found her to be a virgin.

Q. And for that reason could not make a complete vaginal examination, is that what that means? A. Yes, sir. 30

Q. And have you seen her since then, several times? A. Yes; I think three visits.

Q. At that time did you learn anything subjectively from her, as to her matrimonial situation? A. She told me that intercourse was impossible, and she complained of being ailing—nervous, and I advised her to go away for a little while—separate herself from her husband a little while and see if that would do anything for her. 40

Dr. M. S. Joelson. Called by Complainant. Cross.

Q. What objective symptoms did you see—did you see about the subjective symptoms and history?

A. The subjective symptoms were the only thing in that certificate.

Q. Being a virgin? A. Yes, sir, and that was the reason she gave me, and I told her to separate herself from her husband.

10

BY THE COURT:

Q. Did you see her before? A. I had seen her before.

Q. Never treated her? A. Never treated her.

Q. You don't know whether she had changed physically? A. I couldn't tell that.

BY MR. VICKER:

20

Q. At that time, could you tell that she was run down? A. You can tell a person is run down, yes.

Q. And at the time of this vaginal examination, can you tell us where the members were normal or abnormal? A. Normal.

Q. From your examination of this patient, and from your experience and knowledge as a physician and surgeon, can you tell whether or not she was capable of sexual intercourse? A. Yes, sir, she was.

30

Q. Could she? A. Yes, sir.

Mr. Vickers: That is all.

CROSS EXAMINATION BY MR. LEVY:

Q. Doctor Joelson, you specialize in this community, do you not, in obstetrics? A. Yes, sir.

40

Dr. M. S. Joelson. Called by Complainant. Cross.

Q. Will you please tell us all the conversation that took place between you and Mrs. Grobart, on her first visit? A. Why, she came to my office complaining of sterility—as to why she didn't become pregnant, and I said I would have to examine her, and I said she was a virgin.

Q. Who spoke about pregnancy first? A. She did. 10

Q. What, she spoke to you first? A. Up to that time she hadn't mentioned it.

Q. So the first one that mentioned pregnancy was Mrs. Grobart. Was the word "pregnancy" mentioned? A. I don't know; I know she came for that purpose—why she was sterile.

Q. And upon that statement you made this physical examination? A. Yes, sir.

Q. And I understood the word "limited" means that you were limited in your examination? A. Yes, sir. 20

Q. Did she tell you that she came to you on the advice of her lawyer? A. No, sir.

Q. Did she make any reference at all to a certificate to give to her lawyer? A. No.

Q. Did she ask you for a certificate? A. Not until quite a while after.

Q. The certificate bears date July 26th, I believe? A. Right. 30

Q. Was that the date of the examination? A. No, sir.

Q. Can you tell us what she said to you when she asked for a certificate? A. She came to me and told me she had consulted a doctor in New York, and they had talked over the intimacy in New York, and from the information she received from the doctor, she wasn't getting the proper intercourse from her husband, and I questioned her along that line and she told me different things. 40

Dr. M. S. Joelson. Called by Complainant. Cross.

Q. On the first call, did she tell you anything about the relationship with her husband? A. I don't know whether it was the first, second or third call.

10 Q. Tell us, if you will, what she told you about her husband, when that conversation was had? A. She told me that Mr. Grobart would attempt intercourse, but he was unable to have intercourse with her.

Q. Did she describe what happened? A. Well, I don't recall exactly what she described.

Q. Have you any recollection at all as to what she described? A. That is what she said—that he was unable to have intercourse with her.

20 Q. She testified this morning that night after night her husband, in a natural position, with her lying before him, agitated himself with his hands, and this performance that I have described was repeatedly done; did she tell you anything about that?

Mr. Vickers: I object to the question, because it does not contain all that was said.

The Court: You must quote the testimony correctly and at length.

30 Q. Doctor, did Mrs. Grobart ever tell you that her husband's body never came in contact with hers?

Mr. Vickers: I object to the question.

The Court: The objection is sustained.

40 Q. Did Mrs. Grobart tell you that Mr. Grobart, for a half an hour, or possibly up to an hour, was in bed, on his knees, attempting to get an erection? A. I don't recall that he was on his knees, or in

Dr. M. S. Joelson. Called by Complainant. Cross.

bed, but she told me he would agitate himself a lot and try.

Q. Would she say anything about what she did in that connection? A. I don't recall that.

Q. Can you search your mind and see if you can recall anything she said she did? A. No, I don't.

BY THE COURT:

10

Q. Did she tell you that she had invited him to have sexual intercourse? A. I don't remember.

Q. Did she say anything at all about fearing pregnancy? A. No.

Q. Did she say anything at all on the subject of having children? A. Not until she came for that purpose.

BY MR. VICKERS:

20

Q. Did she say anything on that subject? A. No, she didn't.

Q. Why did you advise her to keep away from her husband? A. She seemed to be highly neurotic.

Q. By being highly neurotic, you don't mean she had a neurosis, do you? A. No.

Q. Mrs. Grobart didn't have a neurosis? A. No.

Q. Will you mind to give us the difference? A. The mind is upset generally, and a neurosis is an organic condition in the nervous system.

30

Q. You examined Mr. Grobart, did you not? A. Yes.

Q. When? A. Quite a while ago.

Mr. Vickers: I object, unless he is your witness.

Mr. Bentley: Yes.

40

Dr. M. S. Joelson. Called by Complainant. Cross.

Q. Do you recall when—how long after? A. When he knew the case was coming on. He was sent down by his lawyer.

BY THE COURT:

10 Q. What did he say? A. He simply complained of his wife.

BY MR. BENTLEY:

Q. You made a physical examination of this defendant, Mr. Grobart? A. Yes, sir.

Q. Can you give us the date? A. I can't tell you exactly when that was.

20 Q. Did you, on October 17th, and October 18th, 1927? A. If it states so there.

Q. And what physical examination did you make?

BY THE COURT:

Q. Did he tell you what he wanted to be examined for? A. Yes, sir.

Q. Did you examine his private parts? A. Yes, sir.

30 BY MR. LEVY:

Q. Will you state what you did? A. He just stripped, and I examined his external parts, and as far as external parts are concerned, he seems normal.

Q. What did you do to ascertain whether or not it was possible for him to obtain an erection? A. I couldn't do that.

Q. You didn't do that? A. Couldn't.

40

Dr. M. S. Joelson. Called by Complainant. Cross.

Q. Now, you saw Mrs. Gobart, I believe, three times, you testified; did you ask her as a first question, when she came to see you, if she was pregnant?
A. No.

Q. Did you say to her that you would have to put in writing that she was a virgin? A. No, nothing mentioned of that.

Q. Now, when she obtained this certificate, did she tell you anything about such a certificate being requested by a lawyer? A. Well, that was quite a while after. She was down to my office in the early part of the summer, or spring, and the certificate was given quite some time later. Probably at that time she requested it; I can't recall. 10

Q. Would your records show when she first came to see you? A. Yes; I have the record.

Q. Mrs. Grobart testified that she saw you, I believe, in the months of June and July; does that refresh your recollection? A. I would say the early part of the summer; yes. 20

Q. And it was July 26th, that you gave her the certificate? A. Yes.

Q. Did she at that time tell you it was requested by a lawyer? A. I don't recall; she just said she wanted that certificate, saying what I found; that was all.

Q. Did she tell you of her intimate relations with her husband at the times you saw her? A. Not the first time; no. 30

Q. What did you tell her the first time? A. I told her to go back to her husband, and she came back and she was quite run down, and she said there was nothing accomplished, and I told her to go away a little while and see if that would help.

Q. What did you tell her the third time? A. That is all. 40

Dr. M. S. Joelson. Called by Complainant. Cross.

Q. You repeated it the third time? A. Perhaps her nervous condition—

Q. Was she in a nervous condition? A. She was.

Q. The nervous condition could be caused by the refusal on her part, could it not? A. Not so much. A person would be staunch and brave, and is not so nervous about it.

10 Q. There is a form of nervous disturbance where women and men have an aversion to sexual intercourse? A. That is a different form.

Q. I would like to know whether you, Doctor, made an examination of Mrs. Grobart with respect to any possible mental condition, that would cause such a nervous condition? A. She didn't seem to me—I mean she didn't appear to be suffering from any mental condition.

20 Q. Was her nervous condition an exceptionally bad one? A. Not exceptionally bad, no. Just upset and nervous, and that was all.

Q. As to the cause of her nervousness, of course, you took her statements? A. Yes; certainly.

Q. Did you know Mr. Grobart, at the time you examined Mrs. Grobart. A. Oh, yes; I had known Mr. Grobart for a long time.

Q. Did you suggest to her that she send Mr. Grobart down to you? A. No.

30 Q. Did she say anything about his seeing a doctor? A. She did; she said she suggested his seeing a doctor, and he said he didn't have to.

Q. Did she say that on all occasions. A. No; I think the second call.

Q. Can you tell us what she described was the intimate relations between them, in a minute way? A. At times she said he would just go to bed and that was all, and she said if he did try, he would first work around and she would get no satisfaction at all.

40

Dr. M. S. Joelson. Called by Complainant. Redirect.

Q. Did she tell you about seeing Doctor Granet?

A. She told me about seeing some doctor, but I don't remember his name now.

Q. Did she tell you about her sickness the previous winter? A. I don't think so.

Q. Did she tell you she had had pneumonia? A. No.

Q. She didn't tell you that? A. I don't think so. 10

Q. Did you examine her heart and lungs? A. Yes, I listened to them, but there was nothing wrong.

Q. Did she tell you who sent her to you? A. She said that her landlord had said I was a good doctor, and that I was her family physician for a good many years, and if she wanted to go to a doctor, I would be the one to go to.

Q. Did she mention her husband about sending her to you? A. No; she said Mrs. Smith. 20

Q. Did she say Mr. Grobart told her to go and see you? A. No; I don't recall that.

Mr. Bentley: That is all.

REDIRECT EXAMINATION BY MR. VICKERS:

Q. Doctor Joelson, I show you three checks, one dated July 7th, one July 15th, and one July 26th, and I ask you if you got them, and ask you if they refresh your memory as to when this lady saw you? A. Yes, sir. 30

Q. And this last one being July 26th, does that refresh your recollection when that was? A. Yes, sir.

Mr. Vickers: That is all.

Dr. A. Granet. Called by Complainant. Direct.

DR. ADOLPH GRANET, a witness produced on behalf of the complainant, being first duly sworn according to law, testified as follows:

DIRECT EXAMINATION BY MR. VICKERS:

10 Q. Doctor Granet, you are a practicing physician? A. Yes, sir.

Q. And practice where? A. 45 East 86th Street.

Q. How long have you practiced in New York? A. Twenty-five years.

Q. Of what medical institution are you a graduate of? A. In Europe.

Q. When were you graduated there? A. 1898.

Q. Are you connected with any institution—medical institutions, or institutions of learning in New York City? A. Yes, sir.

20 Q. What? A. I am attending physician and instructor of medicine in Columbia University.

Q. For how long? A. Thirteen years.

Q. Do you know Bessie Grobart, the complainant in this case? A. I do.

Q. How long have you known her? A. I knew her parents in the old country yet, and I have known her for a number of years.

Q. Known her as a child? A. Yes, sir.

30 Q. Do you remember treating her in the early part of the year 1926 for bronchial pneumonia? A. Yes sir, influenza and bronchial pneumonia.

Q. And after that do you remember treating her for any disturbances, or examining her? A. Yes, sir.

Q. Can you fix the time when that was? A. About the middle of June, 1926.

Q. And what examination did you make of her? A. Well, she came and complained of general weak-

Dr. A. Granet. Called by Complainant. Direct.

ness, headaches, general debility, lack of sleep and many other things, and so I made a physical examination, and I couldn't account for it, and she seemed to have recovered from her acute illness, and could not find anything to explain this nervous condition, and as is customary, in the course of our investigation, failing to account for the complaint in the physical way, we turn to question the patient, her social life, sexual relations, etc. 10

Q. Did you do that in this case? A. Yes, sir.

Q. And following that, did you make a further examination of her genital parts? A. I did.

Q. With what results? A. I found her to be a virgin.

Q. From the family physician, and from the history given by the patient, did you know that she was married at that time? A. Yes, I did, and I met her husband when she was ill before. 20

Q. While you were treating her? A. Yes, sir.

Q. When you discovered that after marriage she was still a virgin, did you form any opinion that the conditions that you found in this patient, were or were not connected with these abnormal relations? A. It was considered in all medicine, and so much more in modern life, that sexual relation has much to do and is the cause of nervous disturbances. 30

Q. An abnormal sexual life, in persons married, does that or does it not produce a neurotic condition in either one or the other of the spouses? A. It generally does.

Q. Is a woman more susceptible to that than a man? A. It is about the same.

Q. And did you, at that time, give her any advice as to what effect, if any, a continuation in this mode of life would have upon her health and mental 40

Dr. A. Granet. Called by Complainant. Direct.

condition? A. I didn't exactly give her advice to that effect, but I explained in a general way this is the root of all your troubles, and you will have to do something about it.

Q. And later on, between the middle of June, and the middle of October, did she see you again as to her physical condition? A. She did.

10 Q. Did you find her condition—withdrawn. What did you find as to her neurotic or nervous condition when you saw her again? A. In going into discussion as to the more intimate relations with her husband, &c., she intimated that perhaps he is not exactly up to the mark. Naturally, if I were to examine the husband I couldn't tell, because we have no means of ascertaining whether a man is potent or not on physical examination, but she told
20 me things from which I suspected there was something wrong somewhere, but naturally, I couldn't tell her anything definite about it. I simply made sure by my question, whether she was willing or no-resisting to the act and the way she told me, she was willing and non-resisting.

Q. By the way, are there certain physical symptoms by which a doctor can form an opinion, whether a woman is willing, or resistant? A. There
30 are.

Q. And where there is a resistance, what is the condition, what is it called? A. It is as follows: When a person tries to examine the genital parts the woman would usually bring her thighs together and resist.

Q. Is there such a thing known to your science as vaginismus? A. Yes, sir.

Q. And is that one of the things by which you determine whether there is resistance or non-
40 resistance? A. It is.

Dr. A. Granet. Called by Complainant. Cross.

Q. Was there any vaginismus present? A. I could separate her thighs, and I could separate the outer part of her genitals, and inspect the hymen and see; there is enough room to get in the tip of the finger without doing any harm, and I did this and didn't encounter any unusual resistance.

Q. Can you tell us whether or not she is normal in her sex organs? A. She is. 10

Q. Can you tell us about when it was this second examination—the one after the middle of June, was made by you? A. In about a month or so, she came around again.

Q. The nervous condition, Doctor, which you found this woman to be in, both in the middle of June, and later, when you examined her, in your opinion, was that the result of the sex irritation, the result of the abnormal sex irritation? A. I 20 couldn't place it to anything else.

Mr. Vickers: That is all.

CROSS EXAMINATION BY MR. LEVY:

Q. Doctor, are you related to Mrs. Grobart? A. No, sir.

Q. Or any member of her family? A. No, sir.

Q. I believe you said you knew her parents in Europe? A. I did. 30

Q. Did you know her in Europe? A. No, sir.

Q. For how long prior to her marriage did you treat her? A. Prior to her marriage—I haven't treated her for a number of years.

Q. Prior to her marriage, did she come to see you? A. I don't remember; I don't think she did.

Q. Didn't she come to see you prior to her marriage, for advice as to her marital relations? A. 40 For advice?

Dr. A. Granet. Called by Complainant. Cross.

Q. Yes, or information? A. What information? There was no information.

Q. Beg pardon? A. There was no cause for information.

Q. I am asking you if she came to you as a family doctor? A. I don't recall that she did.

10 Q. Have you any recollection that you gave her a prescription for some pills, prior to her marriage? A. I don't know; I don't remember.

Q. Will you say you didn't? A. I don't remember.

Q. Will you tell us whether you gave her a pill—I withdraw that. Did Mrs. Grobart, prior to her marriage, discuss with you, means to prevent her pregnancy? A. Whether she discussed with me?

20 Q. Yes. A. I think she asked me thing; whether she wasn't too weak to have children.

Q. When was that? A. I can't tell you exactly; I don't recall when she was married.

Q. You recall treating her in February, 1926, for influenza? A. Yes, sir.

Q. Was this talk too weak to have children or not prior to that time? A. I believe it was.

Q. How long before? A. I couldn't tell.

30 Q. Where did that conversation take place? A. I think it must have been in my office.

Q. Then she came to see you prior to February of 1926, and asked you your advice of that subject; is that right? A. I suppose so.

Q. She was married then, was she not? A. I don't know.

Q. Can you tell us whether it was a month or two months prior to the date of her illness, that she came to you and talked to you on that subject? A. I couldn't tell you the date.

40

Dr. A. Granet. Called by Complainant. Cross.

Q. You don't know whether she was married or not? A. I don't know; I only know that she was married when I treated her for the pneumonia.

Q. Tell us everything that was said by her, and everything that was said by you about her being too weak to have children; what did she say? A. She asked me if she was strong enough to have children, and I told her she was. 10

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

Q. Didn't she tell you she was about to be married? A. I don't remember.

Q. You mean to say that she came in your office— A. Of course, I cannot recall all the conversation, or all the details of the conversation, but she asked me if she was strong enough to have children. It must be that she contemplated being married 20 shortly.

Q. Just see if you can recall anything in that conversation? A. Recall what?

Q. Anything else on that subject, besides the words you have told us? A. No; I don't recall anything else.

Q. Now, that you have recalled that conversation, Doctor, can you tell me whether or not you gave her any prescription at that time? A. I don't remember whether it was that time, or whether it was sometime after; I couldn't remember. 30

Q. What prescription, do you recall? A. Well, I gave her a number of prescriptions; I couldn't recall.

Q. I mean prescriptions other than for her pneumonia or influenza? A. One time she came in and complained of a discharge—of a vaginal discharge, and I think I prescribed for her then. 40

Dr. A. Granet. Called by Complainant. Cross.

Q. Outside of the time she spoke to you about being strong enough to have children, when was the time that you prescribed for this discharge? A. I couldn't tell you.

Q. Before or after? A. I couldn't tell.

Q. But you did then prescribe something for her? A. I did.

10 Q. Were they pills or powders? A. Suppositories.

Q. Are you quite sure they weren't pills? A. I call them suppositories; not pills.

Q. Were they made up dry and the contend gelatin? A. I don't remember.

Q. How were they to be applied? A. They were to be introduced into the vagina.

Q. By her? A. Yes.

20 Q. And how long does it take such a suppository to dissolve? A. I don't know; I couldn't tell you how long it would take. They are used before retiring and left there.

Q. Were they supposed to have any relationship with the act of intercourse? A. No, sir.

Q. Were those pills or suppositories to be used for a preventative for pregnancy? A. Any antiseptic can be used.

30 Q. Then they contained antiseptic? A. Yes, sir.

Q. Did you tell Mrs. Grobart that would be a preventative against pregnancy? A. No, sir.

Q. Did you tell her what it was for? A. I told her it was to cure her discharge.

Q. Can't you tell us whether that was before her marriage, or afterwards? A. I could not tell you, sir.

Q. Now, it was before her illness in February? A. I think it was.

Dr. A. Granet. Called by Complainant. Cross.

Q. Now, Doctor, when she saw you in August, I believe you testified, did you prescribe for her? A. In August?

Q. Yes. A. I don't remember. I may have given her something for her nerves.

Q. Do you recall whether she had a cough? A. A cough?

Q. Yes. A. I don't remember. 10

Q. Will you say that she did or didn't? A. I don't remember, so I can't say.

Q. Have you any record in your book of the result of your examination, or what you prescribed for her? A. When?

Q. Have you any record in your book, what you prescribed for Mrs. Grobart, or what you did for her? A. I don't think I have, because at that time I treated her for pneumonia, and then she came around, and I didn't find anything the matter with her, I don't think I have any record. 20

Q. I thought you told us on your direct examination that you examined her and you found her ailment completely healed? A. Yes, sir.

Q. Then will you say you treated her for a cough in August? A. I don't remember; I may and I may not; I don't remember.

Q. Now, when did she tell you for the first time of the intimate marital conduct by her and her husband? A. I think that was a time after her recovery from bronchial pneumonia—from her influenza. 30

Q. Was that the first time she came to see you in the summer of 1926? A. I don't remember whether it was the first or second; she came a couple of times.

Dr. A. Granet. Called by Complainant. Cross.

Q. When she came to see you the first time, you found this nervous condition, did you not? A. I don't know whether it was the first time or subsequent visits.

10 Q. What did you treat her for, or what did you treat her for the first time you saw her in the summer of 1926? A. I made a general examination, the same as I do of any patient.

Q. Did you find some nervousness then? A. Yes, and told her at the office that her nerves were very, very, very much unstrung.

Q. Did you see her prior to her marriage? A. Not very close to her marriage.

Q. So you can't tell us whether her nervous condition was different when you saw her in February, than it was before her marriage? A. I cannot.

20 Q. Do you remember making an affidavit in this matter? A. I do.

Q. Do you remember making this statement: "I found that her neurosis was the result of her sexual agitation"? A. Yes, sir.

30 Q. Do you now say she had a neurosis? A. She didn't have a neurosis fixed. A person has a neurosis he has fear or gets melancholy, or he gets an accomplished neurosis—a general neurosis, I would say.

Q. Doctor Joelson has said that there was a wide difference in a nervous condition and neurosis; do you agree with him on that? A. I do.

Q. Would you say she was a neurosis? A. In this way: when she came she would always talk about her condition of marriage and sexual relations, which didn't come to any successful result.

40 Q. The mere fact that what she told you were facts, did that make you conclude that she had a

Dr. A. Granet. Called by Complainant. Cross.

neurosis about it? A. If a person's mind is around a channel, and that led to sexual life, that would lead any person to believe she had a neurosis.

Q. There is a neurosis due to a state of frigidity on the part of a woman, is there not? A. Most women are frigid, and they are not neurotic. Contrary to opinion, the most of women are frigid, and still they go on with their sexual life.

10

Q. Still, it isn't normal for a woman to nag after a man from day to day, for sexual intercourse, is it? A. I don't know.

Q. In your examination of Mrs. Grobart, did you find her a normal woman or not, in that respect?

A. We cannot see shows of sexual sensibility. Her condition would be different when she came to the doctor, or when she went to bed with her husband. The only thing I knew that she didn't have proper sexual relations was to find her a virgin so long after marriage.

20

Q. Any woman could prevent a man from having sexual intercourse with her, provided she was not under the influence of liquor or a drug? A. I am not here—

Q. You know the anatomy of the human form? A. I knew it one time.

Q. I am asking you if it isn't a physical fact that any woman can easily prevent penetration?

30

Mr. Vickers: I object to the question on the ground that it isn't a question of whether any woman can do it.

The Court: I will allow it.

A. In legal jurisprudence, medical jurisprudence, which should be familiar to the law profession as well as legal, every woman has a nature to resist a

40

Dr. A. Granet. Called by Complainant. Cross.

man, and she resists to a certain extent, and you find that their resistances are overcome.

Q. Doctor, without the use of physical force, is it possible for a man anatomically to penetrate? A. It is. We will have to go into details, which would not be nice in court.

10 Q. Doctor, now will you tell us, whenever it was, exactly what she said to you of the intimate relationship between herself and her husband? A. I, naturally, began to question her about details, because she is a married woman, and I tried to help her out in these matters, but from what I could gather, perhaps her husband had weak erections, and sometimes I couldn't establish whether he had erections at all—I mean from her. I never spoke to or examined Mr. Grobart, but only from her
20 story, and she also told me that most of the time he would ask her to lie on his body, and rub her body against his body, and on other occasions she told me that he wouldn't come to her bed, but would stay in his own bed, and in a state of excitement and busy with his private parts. That is what she told me.

Q. Can you tell us anything else that she told you along that line? A. I asked her very often if she was willing to let him penetrate, and she always told me she was, and he not being successful, he got irritable, and he wants awkward positions—
30 wants to put himself in various awkward positions, the reason for which I could not find out, except to relieve himself of his passion.

Q. Did she ask you if she could be pregnant? A. She did not.

Q. Are you sure of that? A. I believe—she asked me if she could have children. If that is the same question, I would say she did.
40

Dr. A. Granet. Called by Complainant. Cross.

Q. I am speaking now specifically. In June or July, did she ask you if she is pregnant? A. I don't think she did.

Q. Did you examine her with that idea in mind, to find out whether she was pregnant or not? A. I examined her to see, in view of her history, that she didn't have regular intercourse, I examined her to see if she was a virgin, and if she was a virgin, and from her monthly flowing period, I knew she wasn't pregnant. 10

Q. As I recall, from her descriptions, you said he had partial erections, or no erections; is that right? A. I really could not get much out of her; I tried to explain, but I couldn't.

Q. Did you come to any conclusions? A. No; I couldn't come to any conclusion, except that I ascertained that she was still a virgin, and she suffered from irritation, and I thought he didn't have satisfactory erections. 20

Q. That was your conclusions? A. Absolutely; I said so.

Q. Did she describe just the position of herself and husband in their marital relationship; that is the relative position of him and her? A. She told me things that her husband told her; why she doesn't help along, and she asked me if there was any way a woman could help along, and I said the act of the woman was passive, and all she had to do was make the parts accessible by supporting the thighs, and it would be painful the first time, but she must bear up. 30

Q. Did Mrs. Grobart, during her illness in February, say anything about her marital relations with her husband? A. No, she did not.

Q. You found her in a nervous condition then, did you not? A. No, but she was hyposensitive; 40

Dr. A. Granet. Called by Complainant. Cross.

more so than other persons. If she had a sore throat, she would suffer more than an ordinary person would with that kind of a sore throat, and if she had a pain in her side it would be more severe than a normal persons.

Q. She was hypo-sensitive? A. Yes, sir.

10 Q. That has no relationship with sexuality? A. It may not, but we go into the history, and we put one and two together.

Q. I am speaking of her sensitiveness in February? A. Yes, sir, I get you.

Q. Did you at that time come to the conclusion that it was due to sexual troubles? A. She was too sick, she was very, very ill.

Q. It was noticeable, wasn't it? A. It wasn't an important factor.

20 Q. Now, in July, when you examined her, did you know that she had consulted a lawyer? A. In July?

Q. Or August? A. I did.

Q. You knew it in August? A. She told me she had consulted a lawyer.

Q. She told you that in August? A. I don't recall when.

30 Q. On the occasion when you examined her in August, and she told you she had consulted a lawyer, did she tell you what she had in view? A. She told me that she realized she couldn't go on any longer and bear this condition of excitement, and she had to do something about it, and whether I would be prepared to give in writing, a certificate to the effect that she was still a virgin, and I said I would.

Q. Did she say anything on the same subject on the previous visit? A. I don't remember.

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Mr. Levy: That is all.

Dr. A. Granet. Called by Complainant. Redirect.

REDIRECT EXAMINATION BY MR. VICKERS:

Q. This vaginal discharge of which you have testified, has that a name? A. Vulva vaginitis.

Q. When you spoke of a certificate which Mrs. Grobart wanted, did you say you were informed she had consulted counsel, was that an affidavit certificate that she wanted for the lawyer; she wanted your affidavit that she was a virgin? A. Yes, sir, I think so. 10

Q. I show you three checks, and ask you if they refresh your recollection as to the three times she saw you? A. Yes, sir.

Q. August 2nd, 1926, November 24th, 1926, and November 30th, 1926? A. Yes, sir.

Mr. Vickers: That is all.

The Court: We will now adjourn this case until May 8th, 1928, at 10 o'clock A. M. 20

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SECOND DAY.

IN CHANCERY OF NEW JERSEY.

10	Between BESSIE GROBART, Complainant, and LOUIS GROBART, Defendant.	}	On Bill &c. Continuance of Testimony.
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Paterson, N. J., May 8th, 1928.

Before—Honorable VIVIAN M. LEWIS,
Vice-Chancellor.

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APPEARANCES:

GEORGE T. VICKERS, Esq., Solicitor for the
 Complainant;

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JOHN D. MASTERSON, Esq., appearing for
 Messrs. EVANS, SMITH & EVANS, and
 PETER BENTLEY, Esq., and MR. LEVY, of
 the New York Bar, Solicitors for the De-
 fendant.

Mr. Bentley: If your Honor please, may we
 call Doctor Stinson out of order?

The Court: Yes.

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Dr. R. Stinson. Called by Defendant. Direct.

RICHARD STINSON, M. D., a witness produced on behalf of the defendant, being first duly sworn according to law, testified as follows:

DIRECT EXAMINATION BY MR. LEVY:

Q. Where do you live, Doctor Stinson? A. 641 East Eighteenth Street, Paterson, New Jersey.

Q. And you practice medicine in Paterson? A. 10 Yes, sir.

Q. What institution are you a graduate from? A. Columbia of New York.

Q. Did you examine Louis Grobart, the defendant? A. I did.

Q. Do you know the date? A. No, I don't.

Q. Do you remember the month? A. No, it was about a month and a half ago.

Q. Where did you examine him? A. At my 20 office.

Q. Will you state to the Court what examination you made? A. I made a thorough physical examination, removing all his clothes and going all over him.

Q. Did Mr. Grobart ask you to examine him particularly, with reference to any function of his body? A. Yes.

Q. What did he say to you? A. He wanted to know whether he was able to have intercourse. 30

Q. And with that question in mind you made this physical examination? A. Yes, sir.

Q. Will you kindly state what you found? A. As far as I could see, I saw no reason why he shouldn't. His body is in perfect shape and his organs were normal and no signs of disease.

Q. And when you speak of "organs," you mean the genital organs? A. Yes, sir.

Mr. Levy: That is all.

Dr. R. Stinson. Called by Defendant. Cross.

CROSS EXAMINATION BY MR. VICKERS:

Q. When you say, Doctor, his organs were normal, you mean that he had a scrotum, testicles and a penis; is that what you mean? A. That is the idea, yes.

Q. What? A. Yes.

10 Q. Is that as far as your examination went as to his normality? A. Yes, my examination went only so far, because he told me further examination was done by others, and it wasn't necessary for me to do so.

Q. It was because he limited your examination, that you didn't go any further? A. Yes.

20 Q. What other examination could you have made, as to his ability to copulate? A. Simply seen if he was able to have an erection and express semen.

Q. How could you have done that? A. By massage, or as some do, by self-masturbation.

Q. If that method had been pursued, that would have, according to your science, determined whether he was able of copulation, would it? A. I think it would give very excellent evidence.

Q. It would give very excellent evidence? A. Yes.

30 Q. Your science does know that there are conditions where men, capable of erection, who pursue the act of masturbation, and yet have neither the desire or competency to copulate in the normal way; isn't that so? A. Yes, but not altogether. Here we had a normal man—normal in mentality and normal in body and normal in organs.

Q. What examination of him did you make to see if he had a psychosis, regarding sex function. A. I made none.

40 Q. But he could have that, and in body appear to be in good condition, and could have the appear-

Dr. R. Stinson. Called by Defendant. Cross.

ance of the sex organs which you found in him; isn't that so? A. I think he would have developed some symptoms of psychosis in my examination; his actions were normal in every way.

Q. His answers? A. His questions.

Q. Did you do anything to determin his nervous condition? A. I went over his reflexes.

Q. Did you get any answers from him as to whether he had ever been afflicted with any venereal disease? A. He denied it. 10

Q. He denied it? A. Yes, sir.

Q. Did he state to you what the purpose was for this examination, over and above getting your opinion of whether he was capable of copulation? A. He told me his examination was for the purpose of seeing whether he was potent, and the examination was for a divorce case, he told me after. 20

Q. And did he give you his history—that he had been married for ten months, during which time he occupied the same bed room with his wife, and the same bed, practically, I think? A. He said he didn't occupy the same bed.

Q. He said he didn't; is that right? A. Yes.

Q. In giving you his history he told you he was not able, at any time, to occupy the same bed, occupied by his wife? A. Yes; always occupied by the relatives. 30

Q. Always occupied by the relatives; that is the story he told you? A. Yes, sir.

Q. Let's get that straight; this defendant, when he came to you, told you that he was not able to occupy the same bed with his wife, because it was always occupied by relatives? A. Yes, sir.

Q. And the gentleman you examined, is the gentleman sitting here in the court room? A. Yes, sir.

Q. And did he, at any time in the course of your examination of him, tell you that he had been in 40

Dr. R. Stinson. Called by Defendant. Redirect.

Dr. R. Stinson. Called by Defendant. Recross.

a bed with his wife, both undressed, he on his knees, between her legs, and had not copulated with her?

A. He said that he had tried to, but she had refused.

Q. He had tried to? A. Yes.

Q. Did he tell you the circumstances under which he had tried? A. I don't know the circumstances;
10 I suppose he tried like any other man.

Q. That is what we would like to know—whether he did try to, like any other man. What did he tell you he did, and what opportunity he had to perform the sex act? A. He told me that immediately after the honeymoon, his wife became very ill, and then she had something the matter with her teeth, and he didn't bother her for quite some time, and then when she had recovered, she would holler and
20 scream, if he attempted it.

Q. And that was after she had been ill, and after her tooth trouble, was his story to you? A. Yes, sir.

Mr. Vickers: That is all.

REDIRECT EXAMINATION BY MR. LEVY:

Q. When Mr. Grobart came to you, did he say anything about seeing any other doctor? A. Yes, sir.

Q. Did he mention the name? A. Yes, sir; Doctor
30 Greengrass.

Q. Did Mr. Grobart tell you not to make any further examination than what you did make? A. No; I thought it wasn't necessary.

Mr. Levy: That is all.

RECROSS EXAMINATION BY MR. VICKERS:

Q. Did he tell you it wasn't necessary for you to make it? A. No; I said so, because Doctor Green-
40 grass did that.

Dr. T. Bender. Called by Complainant. Direct.

Q. Didn't you say so on your direct examination?

A. No; the patient told me that Doctor Greengrass had made it.

Q. In your presence? A. No.

Q. He told you Doctor Greengrass had made it?

A. Yes, sir.

Q. And he told you it wasn't necessary? A. I don't know whether he said so; I thought it wasn't necessary. 10

Mr. Vickers: That is all.

THEODORE BENDER, a witness produced on behalf of the complainant, being first duly sworn according to law, testified as follows:

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DIRECT EXAMINATION BY MR. VICKERS:

Q. Doctor Bender, you are a practicing physician and surgeon, licensed to carry on your profession in the State of New Jersey? A. I am.

Q. And do you practice here? A. Yes, sir.

Q. How long have you practiced here? A. Seventeen years.

Q. From what institution are you a graduate? 30

Mr. Bentley: I will admit his qualifications.

Q. Doctor, do you know Mrs. Bessie Grobart, the complainant here? A. I do.

Q. Have you heretofore made examinations of her? A. At one time.

Q. Can you fix the date? A. October 5th, 1926.

Q. And what was the character of the examination you then made of her? A. What is termed an ordinary genealogical examination. 40

Dr. T. Bender. Called by Complainant. Direct.

Q. And what did that examination evidence? A. It showed a virginous woman.

Q. At that time, did you get any history from the patient, as to what her status was, as to whether she was married or not married? A. She was married, yes.

10 Q. And what, if anything, was her condition as to her nerves, so far as you could determine? A. You had better qualify that; a statement of nerves is rather broad.

Q. Suppose you tell us what you found her condition to be, after having got her objective and subjective symptoms? A. She presented herself to me in rather an excitable mood, and her thoughts flowed very, very rapidly, and she manifested a general nervousness. She came to me with a history, and with a desire to determine whether she was capable of going through the ordinary marital rights, and it was for that reason she came to me for her examination.

20

Q. Did that examination evidence whether or not the sex organs were normal? A. As far as physical examination could be made.

Q. And so far as the examination that you made, and your knowledge in your profession, can you tell us whether or not the sex organs were normal, and apparently capable of copulation? A. My answer to that is yes.

30

Q. Now, then, what, if anything, did Mrs. Grohart say to you, as to whether or not she was living with her husband, and what their sex relations, or attempted sex relations were? A. She stated to me that at that time she desired to live with her husband, and desired to fulfill her marriage contract, but didn't understand why she was incapable of fulfilling it.

40

Dr. T. Bender. Called by Complainant. Direct.

Q. And is there known to your profession any evidence as to whether or not a woman patient is hypersensitive to the examination of the genital parts? A. Yes.

Q. Is that called vaginitis? A. Not to the examination.

Q. Does it mean contraction existing in penetration? A. Yes, sir. 10

Q. And where a person is mentally—has a mental aversion to copulation, is that evidenced by vaginismus? A. Vaginismus may be a form of the manifestations.

Q. Was there any such thing visible in her, in your examination of her? A. No.

Q. Doctor, was anything said by you, to this patient, at that time, as to the effect, or probable effect, of a continuance of her mode of living, upon her health? A. With the history that she gave to me, of the condition of her husband and his manifest action toward her, resulting in her nervous condition, I suggested that it may be better if she seek other advice, rather than medical. 20

Q. You said that there was no medicine that would help her; that what she needed was a lawyer? A. Yes; I suggested that she seek counsel.

Q. What is recognized in your profession as the probable result upon either of the spouses of a condition of unnatural marital relation, caused by non-copulation? A. The usual result is a development of the other psychic neurosis. 30

Q. And is that detrimental to health and well-being, or is that a condition of not well-being? A. It is a condition of not well-being.

Q. And if the cause is continued, is it progressive, or probably progressive? A. Progressive in what respect? 40

Dr. T. Bender. Called by Complainant. Cross.

Q. Would it lead to a—probably to a destruction of either the mental faculties or physical faculties?

A. It can eventuate in such a thing.

Q. And can you say whether the condition in which you found this patient, on the fifth of November, 1926, evidenced a condition of neurosis? A. As far as I was able to determine, yes, and not respect
10 the knowledge of her pyschiatry; I am not a neurologist.

Q. That is the sort of a thing that comes within the realm of the practice of the ordinary physician, in the condition of life, either male or female, where there is an abnormal sex relation, or abnormality, because of failure of sex relation? A. Surely.

Q. Did you give Mrs. Grobart, at that time, any advice, or suggestions as to the discontinuance of
20 this mode of living, for the sake of her health? A. Yes, I did.

Q. And that was given by you, was it, as a result of your experience as a physician, and what you observed objectively, and the subjective history that you got in the case? A. Yes, sir.

Mr. Vickers: That is all.

CROSS EXAMINATION BY MR. LEVY:
30

Q. Doctor Bender, you are purely engaged in surgery, are you not, in this city? A. Yes, sir; that is all I do.

Q. That is all you do? A. Yes, sir.

Q. How many times did Mrs. Gobart come to see you? A. One time—one time for an examination, and one time for consultation.

Q. And when did she come to see you the second
40 time? A. I couldn't very well tell you that; she came with Colonel Vickers.

Dr. T. Bender. Called by Complainant. Cross.

Q. She came with Colonel Vickers to your office?

A. Yes, sir.

Q. And that was after the time that she came to be physically examined? A. A considerable time after.

Q. When she came to you the first time, did she say she had already consulted a lawyer? A. No; she made no mention of that to me.

10

Q. When you told her it wasn't a case for a physician, but it was a case for a counsel, did she tell you she had already consulted counsel? A. No, sir.

Q. Did she tell you that she came there at the suggestion of a lawyer? A. No, sir.

Q. When you examined her, did you make a general genealogical examination? A. In what respect?

20

Q. When you make an examination of a woman, how many forms of examination are there? A. The genealogical examination differs in a non-virginous woman than it does in a virginous woman.

Q. In a non-virginous woman— A. The examination of the outside organs and the examination of the inside organs.

Q. And in a virginous woman? A. In a virginous woman, no examination is made through the vagina; it is made through the rectum.

30

Q. In a non-virginous woman it is made through the vagina? A. Yes, sir.

Q. But a virginous woman, it is made by a rectum examination? A. Yes, sir.

Q. And by inspection externally? A. Yes, sir.

Q. And by means of the spectrum, in the virginous woman? A. Yes, sir.

40

Dr. T. Bender. Called by Complainant. Cross.

Q. What examination did you make of Mrs. Gohart? A. The examination—the one you make of a virginous woman. The inspection of the vagina, and the presence of the hymen, and the inspection through a small vaginal telescope, and which is a small instrument that carried with it a small electric light.

10 Q. And all that was done? A. Yes, sir.

Q. And that is complete? A. As complete as a physical examination is ordinarily done.

Q. Now, I believe you said that when she spoke to you she was excited, and she spoke and apparently thought quickly, and showed general excitability; is that correct? A. Yes.

Q. That may be caused by many things, may it not? A. Surely.

20 Q. What is the form of neurosis, where a woman has a repulsion to sexual intercourse? A. Just as I told you a moment ago; I am not going to qualify as a neurologist.

Q. But I thought you did say to Colonel Vickers, that her general state was due to the lack of sexual relationship? A. No; I made no positive statement. I said I thought it was due to a lack of sexual intercourse.

30 Q. In coming to that conclusion, especially as an expert, you would have to be a neurologist? A. Surely.

Q. So it is no more than a guess? A. What do you term a guess?

Q. Well, expert opinion is based upon expert knowledge, is it not? A. Yes. Pardon me: ordinary knowledge doesn't necessarily have to be a guess, does it?

Dr. T. Bender. Called by Complainant. Cross.

Q. I understood you to say that the symptoms could have been due to a number of psychic conditions? A. Yes, sir.

Q. When you said it was due to the lack of intercourse, you said you thought so? A. Yes.

Q. On what was that thought based? A. Her history.

Q. Her statements to you? A. Yes. 10

Q. If the fact was, that instead of being denied by her husband, she had denied her husband, would the condition have been the same—her physical condition? A. Her physical condition is as I found it.

Q. Then her mental condition? A. It would all depend upon their relationship.

Q. Their relationship—what do you speak of? A. A woman might have an aversion to the man himself; the mere aversion might have produced it. 20

Q. The mere aversion may have produced the same mood of speaking and thinking quickly? A. Yes; it could be possible.

Q. I think you said that she said to you—I withdraw that. What was the first thing Mrs. Grobart said to you? A. I have her history here.

Q. Look at it, if you wish to. A. I will tell you the statement made by her to me. She came in with this statement: That since her marriage she had become highly nervous, and then lost weight, and she had reached the state that life was unbearable, and death would be desirable. She said that at no time since her marriage had she had sexual relations, and that had developed a dislike to her husband, on account of his suggestive sexual intercourse. 30

Q. Is that all she said? A. That is all she said.

Dr. T. Bender. Called by Complainant. Cross.

Q. I thought you said she didn't know whether she was incapable of sexual relations? A. She presented herself to me to examine her, to see if she was capable of intercourse. Her request is different than the history.

Q. That is a statement? A. Yes, and it wouldn't be included in the history.

10 Q. She didn't say why she wanted this examination made? A. No.

Q. When was the first time that you knew that the examination was wanted for the benefit of this case? A. I didn't know it until you made a statement here.

Q. Did you know Mr. Grobart before this time? A. No.

Q. You made an examination of Mr. Grobart? 20 A. I did.

Q. What date? A. October 20th, 1927.

Q. October 20th, 1927? A. Yes, sir; he came to me with a letter from Doctor Greengrass.

Q. Have you that letter with you? A. Yes; I have the letter here.

Q. What did Mr. Grobart ask you?

Mr. Vickers: Unless the witness—
30 Mr. Levy: He is our witness now.
Mr. Vickers: All right.

A. The letter was this: "This will introduce to you Mr. Grobart. Will you kindly give him an examination. Very truly yours, G. G. Greengrass".

Mr. Bentley: What is the date of the letter?
The Witness: October 18th, 1927.

40 Q. When did you examine him? A. Two days after.

Dr. T. Bender. Called by Complainant. Cross.

Q. Will you tell us what you found? A. I examined him physically, and he was normal, and normal as the genital possibilities existed.

Q. That is, manifest to the examination that you made? A. Yes, sir.

Mr. Levy: That is all.

10

CROSS EXAMINATION BY MR. VICKERS:

Q. Did Mr. Grobart say anything about his wife being to see you? A. I don't think so, Colonel; I don't think anything was said about Mrs. Grobart at the time.

Q. Did he give you his purpose of coming to you for an examination? A. No; he came with his counsel or one of them.

Q. Mr. Evans? A. I don't know whether it was Mr. Evans or not, but it was someone; he came there represented by counsel, and I think at that time an affidavit was taken right then and there, in the office.

20

Q. An affidavit in this case or action in the Court of Chancery of New Jersey; is that right? A. Well, it was an original affidavit; I don't know whether it was in this particular court or not.

Q. Doctor, you referred to the fact that on a subsequent visit—subsequent to the fifth day of November, 1926, when Mrs. Gobart called with me, was that two or three days before the previous hearing in this case? A. Yes, sir.

30

Q. Two or three days after that you were supposed to be in court here, and you were late? A. Yes, sir.

Q. The only other time you have seen Mrs. Grobart with me was in court here? A. Yes, sir.

40

Dr. T. Bender. Called by Complainant. Cross.

Q. Doctor, from your examination of Mr. Grobart, there was no way of determining, was there, as to whether or not he was capable of sexual intercourse, determining it as a medical fact? A. As a fact, not suspicion, no.

10 Q. And in addition thereto, if it would not be determinable as a medical fact, even though you knew he was capable of sexual intercourse with some other person, that he was capable of intercourse with a particular person; isn't that so? A. That does not necessarily follow.

Q. So there would be no way of determining, as a medical fact, whether a person would be able to complete sexual intercourse with a particular spouse, is that right? A. That is right.

20 Q. Did Mr. Grobart give you any subjective symptoms to guide you in the matter of determining whether or not he was capable of sexual intercourse? A. No.

Q. Did he relate to you the circumstances of his married life with his wife? A. He may have made one or two little statements that I took no cognizance of, or I gave no thought to.

30 Q. Did you take any notes of his statements to you, in the same manner that you have given us of the notes of Mrs. Grobart's statements to you? A. No, because he was sent to me primarily for a physical examination of his genitalia, and that was all.

Q. And by the examination that you made of him, it was determined, was it not, that he had a scrotum; that he had testicles and a penis, apparently in normal form? A. And with examination you may determine other things, and you may determine whether a man is potent, in the sense of a few other factors.

Louis Grobart. Recalled. Direct.

Q. And was there any other way that you did determine whether he was apparently capable of an erection? A. Yes.

Q. And how did you determine that, Doctor? A. He determined that for me.

Q. That is to say by self-pollution; is that right? A. Yes, sir.

Q. Now, Doctor, that brings up this question: a person might be competent to produce an erection by that means, and incapable of normal erecting for the purpose of sexual intercourse; isn't that so, and recognized by your profession? A. Yes.

Q. And that is indicative of a neurosis in itself, isn't it? A. Yes.

Mr. Vickers: That is all.

20

LOUIS GROBART, the defendant in the above entitled cause, having already been called and sworn, is recalled and testified as follows:

DIRECT EXAMINATION (continued) BY MR. BENTLEY:

Q. Mr. Grobart, I want to direct your attention at this time, to December 22, 1920, the second day that you were in Buffalo—in 1925—1925; that morning when you awakened, were you in the room with your wife? A. Yes, sir.

Q. And were you occupying the same bed? A. No, sir; we had twin beds.

Q. Did you make any advances toward your wife that morning? A. Yes, sir.

Q. Just tell us what you did? A. She repulsed me.

40

Louis Grobart. Recalled. Direct.

Q. Tell us what you did? A. I went over and started to love-up.

Q. Did you get in bed with her? A. Yes, sir, and loved-up with her.

Q. What do you mean by loving-up? A. I was hugging and kissing her.

10 Q. And where was your body, with relation to her body? A. I was in bed, and I told her I would like to have intercourse with her, and she said: "I have a cold, and I am not going to let you have any intercourse," and we dressed and I desisted.

Q. Did you try to have intercourse? A. She wouldn't let me.

20 Q. What did she do to keep you from having intercourse? A. She told me that under no circumstances would she allow me to have intercourse. She started to cry, and I said all right; I was getting out of bed, and we started to dress and we decided to go to see the Falls, and they had taxis from the hotel to the Falls.

Q. So you went to the Falls? A. Yes, sir.

Q. What time did you return? A. At evening.

Q. Did you stay in Buffalo that night? A. Yes.

Q. This was the night of the twenty-second? A. Yes, sir.

30 Q. What time did you retire? A. We retired around eleven o'clock.

Q. What happened after you retired? A. It happened the same thing, and she said: "I have fifty dollars"—

40 Q. What did you do? A. I undressed and went to her bed—went over to her bed, and she started crying, and she said: "If you don't let me alone, I have fifty dollars; I am going to take the next train out," and I said: "You don't need to bother; we are only three days married, and you don't need to bother."

Louis Grobart. Recalled. Direct.

Q. What did she say then? A. I went to my own bed and went to sleep.

Q. During this time, did you have an erection?
A. Yes, sir.

Q. The next morning, December 23rd, 1925, did you make any further advances to your wife, the next morning? A. I did not; we went down stairs and we sent a telegram that we were coming to Chicago; her brother was in Chicago. 10

Q. And you left on the train? A. At twelve o'clock.

Q. Without having any further time to have sexual intercourse with your wife? A. Yes, sir.

Q. What time did you arrive in Chicago? A. About 12 o'clock the next morning.

Q. Where did you stay in Chicago? A. In the apartment house called the Chelsea. 20

Q. Did you try to have sexual intercourse in Chicago? A. No, sir.

BY THE COURT:

Q. How long were you there? A. Seven days.

Q. Why didn't you? A. Because, her brother had a room next to mine, and she said he would hear all the noise, and we would wait until we got back. 30

BY MR. BENTLEY:

Q. Did you want to? A. Yes, sir.

Q. What did she tell you? A. She said we wouldn't have any sexual intercourse until we get to our own home.

Q. What did you say to that? A. I said: "All right." I had to be satisfied, because she refused. I had to be satisfied. 40

Louis Grobart. Recalled. Direct.

Q. When did you leave Chicago? A. We stayed there seven days, and we came back on the Twentieth Century, and we arrived in New York City.

Q. Do you know what day you arrived in New York City? A. I believe I had a calendar in my pocket, but I can't remember the date.

Q. That is near enough. Where did you go? A.
10 We arrived at the Grand Central Station.

Q. Where did you go? A. I took her home, and I came over to Paterson to see if everything was all right.

Q. Where did you stay that night? A. I stayed in Paterson, and arranged to get coal, because it was winter time.

Q. Did you stay at your mother's house? A. Yes, sir.

Q. Where did she stay? A. In her parent's home.
20

Q. Then what did you do? A. Then I went over to New York and brought her over to Paterson to my mother's home.

Q. And where did you sleep? A. I slept in my room and she slept with my mother.

Q. How long did that keep up? A. Four nights.

Q. Did you try to have sexual intercourse with your wife there? A. No, sir, because she slept in my mother's room.

Q. When did you move in your own home, about?
30 A. It was a Friday; we left Paterson, and she said we would visit her folks on Friday, Saturday and Sunday, and I agreed to go with her, to her folks in New York, and on Friday evening we went to a show, and on Saturday evening we took her folks also to a show, and when we came back on Monday, we went to our own home.

Q. While you were at her mother's home, where
40 did you sleep? A. I slept on a couch in the front

Louis Grobart. Recalled. Direct.

room; there was no room for me, and I slept on the couch, and she slept with her mother.

Q. Now, when you went back to your own home, what did you have there? A. Two bed rooms and bath and a kitchen and dining room and parlor.

Q. How many bed rooms did you have? A. Two.

Q. What was in your bed room? A. Twin beds.

Q. Will you tell us what happened that night when you retired? A. I went over and loved her up and hugged her, and I said I would like to have intercourse with her, and she said: "Have you a rubber"? And I said: "What do you want a rubber for?" And she said: "I am not going to let you have anything to do with me without a rubber." And I said: "I have some, and I will put one on." And I put it on, and I had an erection, and she said: "Wait a minute," and she took a pill—

Q. Where did she get the pill? A. From a box.

Q. Did you see where the box came from? A. Doctor Granet.

Q. Did she say what the pills were for? A. She said the pills were to clean herself, and she didn't want to get in the family-way, and she said I had to wait for fifteen minutes for the pill to dissolve, and my erection went down, and I had another erection, and I discharged in the rubber.

Q. Did you try to have sexual intercourse with her; did you enter her? A. I couldn't.

Q. Why not? A. Because, she said I hurt her, and I was a brute, and she pushed me off.

Q. How did she push you off? A. She gave me a push and I went out of the bed, because it was only a small bed.

Q. How often did you try to have sexual intercourse with her in your own home? A. Pretty nearly every night.

Louis Grobart. Recalled. Direct.

Q. What happened? A. She said she was sick, and I hurt her.

Q. What happened with respect to the pills? A. Every time I wanted to have intercourse, she said: "Wait a minute." And she would use one of the pills, and every time she used the pills the erection would go down, and when it was down she would say: "I am ready."

10 Q. Did you say anything about it to her? A. I said that I couldn't go on that way, and she said she was sick, and when she got better, she would be all right, and I asked her to go to the doctor—I would go to the doctor with her, and she said it didn't look nice, to go to the doctor with a man, and if she went to the doctor, she would go with her mother.

20 Q. Did you think there might be something the matter with her? A. I thought there might be something wrong, and she said she had pyorrhea, and had trouble with her teeth, and would complain of illness, and always had to pay doctor bills.

Q. Now, week-ends, from the time you returned to your home, in 1926, where did you and your wife stay? A. Week-ends?

Q. Yes. A. I went down the following week—

30 Q. A number of weeks, where did you and your wife stay? A. We went always to her folks' house, and there was no place there for me to sleep, except on the couch, and we had our own house, but she said she was going every week, and she left every Friday, and came back on Monday, and always with some of her family—her father or mother or sisters.

Q. So your wife took ill in February, 1926? A. Yes, sir.

Louis Grobart. Recalled. Direct.

Q. And up to that time, had you made almost nightly endeavors to have sexual intercourse with her? A. Yes, sir.

Q. And she refused you? A. She refused me.

Q. And did you have an erection? A. Yes, sir.

Q. And did your wife have knowledge of the fact that you had an erection? A. Yes, sir.

Q. Did you have your wife help you penetrate her? A. She refused. 10

Q. Did you try; did you ask her? A. Yes.

Q. What did you say to her? A. I said: "Why don't you help me?", and she said she wouldn't take hold of it for a million dollars.

Q. Where was your wife when she was taken ill, in 1926? A. New York City.

Q. How long was she confined to her home? A. I believe it was six or seven weeks. 20

Q. Who paid for her illness? A. I did.

Q. Paid for the trained nurses? A. Yes, sir.

Q. When did she return to you? A. After she was better she wanted to go to Atlantic City, and I wanted to go with her, and she said: "Why should you go and leave your work; I will take my mother", and I said: "All right".

Q. Who paid for that? A. I did; I gave her cash, and I always gave the nurses cash. We had two nurses from the Mount Sinai Hospital—a day nurse and a night nurse, and I always paid them in cash. 30

Q. When was it your wife returned from Atlantic City? A. I can't really recollect the date.

Q. Can you refresh your recollection? A. She didn't return to Paterson until after the Easter Holidays.

Q. Of 1926? A. 1926, yes.

Louis Grobart. Recalled. Direct.

Q. When she returned to your home, did you try to have sexual intercourse with her? A. It happened the same identical thing as formerly.

Q. When she returned to your home, did you try to have sexual intercourse with her? A. Yes, sir.

10 Q. What did you do in trying to have sexual intercourse with her? A. It happened the same identical thing as formerly, and she still complained that she was weak and ill.

Q. How long did that go on? A. That went on right until the day she left me.

Q. Did your wife leave you for any temporary trip, after she returned from Atlantic City? A. Yes; she complained she was weak, and I wanted to go with her to the mountains.

20 Q. When was that, about? A. In July—in the month of May, pardon me for interrupting here; in May we went to Keamisha Lake, and we stayed three or four days at the Keamisha Inn.

Q. Did you try to have sexual intercourse with her there? A. I did, and she complained that her teeth were bothering her.

Q. When you came back from this lake, did you try again to have sexual intercourse with her? A. Yes, sir.

30 Q. For how long, up until the time she separated? A. Up until the time she left.

Q. After you came back in May, how long did you try to have sexual intercourse with her; up until she left you again? A. Up until the time she left.

Q. Up until she left you again, after you came back in May, how often did you try to have sexual intercourse with her, up until she left you again? A. Pretty nearly every night, and she always refused.

Louis Grobart. Recalled. Direct.

Q. Did your wife go away during the summer of 1926? A. Yes, sir.

Q. When? A. She left the twenty-sixth of July.

Q. Who paid her way? A. I paid her way.

Q. Where did she go? A. She went to Lake Hopatcong.

Q. Why didn't you go with her? A. Her father and whole family went there with her, and I wanted to go to the mountains, and she said she didn't want to go to the mountains; she wanted to be near New York. 10

Q. Why didn't you go? A. She didn't want me to go.

Q. While she was at Lake Hopatcong, did you visit her? A. I visited her on Sunday.

Q. Did you try to have sexual intercourse with her there? A. I couldn't very well. 20

Q. When did your wife return from Lake Hopatcong? A. She left the day after Labor Day.

Q. Do you know what date it was? A. It was, I think, the second of September.

Q. Labor Day comes on Monday? A. Yes, sir.

Q. Did you telephone Colonel Vickers on Labor Day, 1926? A. If I telephoned?

Q. Yes. Did you telephone Colonel Vickers on Labor Day, 1926? A. No, sir.

Q. Did you ever telephone Colonel Vickers? A. No, sir. 30

Q. Did you ever call up his office? A. No, sir.

Q. Did you have a telephone in your house? A. Yes, sir.

Q. What was the number? A. Sherwood, 6883, I believe, party J, a party wire.

Q. When your wife returned to you on Labor Day, 1926, did you try to have sexual intercourse with her? A. Yes, sir. 40

Louis Grobart. Recalled. Direct.

Q. Will you tell us what happened? A. She complained that she had a cold, and she was coughing, and she always complained that she had trouble with her teeth, and I said "Why don't you go to a Paterson man?" and she said she didn't care enough about a Paterson man; they didn't know anything; she had a good man in New York.

10 Q. Did your wife make any promise with you that night to allow you to have sexual intercourse? A. No, sir.

Q. Did she ever agree to allow you to have sexual intercourse? A. No, sir.

Q. How long did you continue trying to have sexual intercourse with your wife, as you have described? A. As long as I was with her.

20 Q. When did your wife leave your home? A. October 14th, 1926.

Q. On October 13th, 1926, did you try to have sexual intercourse with her, do you remember? A. Yes, sir.

30 Q. Did you succeed? A. No, sir; I couldn't have it with her, because she had a woman, and she asked me if I would let a colored woman come to her house—a colored woman she had known since she was a little girl, and she had just came back from Havana, and she knew I had to go to New York on October 14th, and she asked me if she could have this woman stay all night, and I said: "Yes", and she was to help her do some cleaning.

Q. How did you know your wife knew you were going to New York on October 14th? A. Because, I had told her I was expecting to have some commission weaving done in New York, and I had to go and see about it, and I had told her that.

40 Q. How did she know you went to New York on that date? A. Because, when I left the house

Louis Grobart. Recalled. Direct.

I kissed her good-bye, and I told her not to have any dinner ready, and she had this woman to do some cleaning.

Q. Did you tell your wife when you would be home? A. Yes, sir.

Q. When did you tell her? A. In the evening.

Q. Did you return? A. Yes, sir.

Q. What time? A. About 6:30.

10

Q. What did you find? A. I found the house was dark, and I asked up stairs, and they said they didn't know where my wife is, and I kept looking around the house, and I found the letter which I have, on the table.

Q. I show you Exhibit D-1, of April 5th, 1928, and ask you if that is the letter that you found waiting for you—look at it? A. Yes; this is the letter, absolutely.

20

Q. And I show you an envelope, and ask you if it was in that envelope, addressed to Louis? A. Yes, sir.

Mr. Bentley: I offer the envelope in evidence; the letter has been offered.

Envelope marked Exhibit D-2, as of this date.

Q. What did you find the condition of the house to be, with respect to the furniture? A. I found all of her clothes were gone, and I called her that night, at her home, and she said she was going to Lakewood for a couple of weeks, and she said: "If I come back, I will talk to you".

30

Q. Any other conversation that day? A. That was all that day.

Q. When did you next see or hear from your wife after that? A. I didn't see her until I sent a friend over, and I called her on the telephone, and

40

Louis Grobart. Recalled. Direct.

I didn't know what the trouble was, because I just received this letter, and I didn't know anything about it.

Q. How many times did you call your wife and succeed in talking to her on the telephone? A. I have called her a dozen times; perhaps two dozen times.

10 Q. What did you say to her, and what did she say to you? A. She said: "I have nothing to discuss with you".

Q. What did you say to her? A. I asked her to come home, and I asked her what the trouble was, and she said: "No trouble at all; my lawyer will explain to you".

Q. What became of the furniture at the house? A. I kept on paying rent for October and November and December—I paid the rent, and I asked her to come back during that time, and I had Mr. Evans during that time, and I asked her to come back at that time, and I had to give the landlord three months notice that I was going to vacate the house, and they came in then and broke in and cleaned the furniture out of the house, of everything.

Q. And you didn't know they were going to do it? A. No, sir; I was told by some neighbors that her father and brother were there with an express-
30 man.

Mr. Vickers: I object to that, and ask that it be stricken out.

Mr. Bentley: I consent.

Q. Have you been examined by Doctor Bender? A. Yes, sir.

Q. And Doctor Greengrass? A. Yes, sir.

Louis Grobart. Recalled. Cross.

Q. And have you been examined by Doctor Stinson? A. Yes, sir.

Q. I show you a letter dated October 19th, 1926, addressed to Mr. Louis Grobart, signed George T. Vickers, in an envelope addressed to Mr. Louis Grobart, 104 Carroll Street, Paterson, New Jersey, post marked Jersey City, New Jersey, and ask you if you received this through the mail? A. Yes, sir. 10

Mr. Bentley: I offer the letter and envelope in evidence.

Letter marked Exhibit D-3, and the envelope is marked Exhibit D-4, as of this date.

Mr. Bentley: That is all.

CROSS EXAMINATION BY MR. VICKERS:

Q. Mr. Grobart, you have testified that you never knew your wife, or heard of her until after Mrs. Brody gave you her name; do you recall that? A. Yes, sir. 20

Q. That is the fact, isn't it? A. Yes, sir.

Q. And when Mrs. Brody gave you her name, you called Miss Berkowitz on the telephone and made an appointment to go there for the purpose of meeting her; is that right? A. Yes, sir.

Q. And the place where Mrs. Brody told you to find Miss Berkowitz, that is to say, your present wife, is the place where you called and found her, and met her first; is that right? A. Yes, sir. 30

Q. And you are sure of that, are you? A. Yes, sir.

Q. And it is not true that you had known of your wife—heard of her for a year or two previous to your having called at the house? A. No, sir.

Q. It is not true? A. No, sir. 40

Louis Grobart. Recalled. Cross.

Q. I show you a paper writing and ask you whether the top memorandum is in your writing—your own handwriting; yes or no? A. Yes, sir.

Q. Where did you get that address? A. The address from Mrs. Brody.

Q. Is that true? A. Yes, sir.

10 Q. And that is where you went; yes or no; did you go there? A. Yes, sir; and I got this from Mrs. Brody.

Q. And that is the place you went? A. I didn't go in that place, no, sir; I got this out of the telephone book, and they had the address 200 West 128th Street.

Q. And then it isn't true that you got the house number when you called on Mrs. Brody, at that time? A. (No answer).

20 Q. I ask you whether it is true that you got the street address to the place to go up to Bessie Berkowitz' from Mrs. Brody, at that time, and the first knowledge you had of the whereabouts of your present wife? A. I never called her from Mrs. Brody's; I called her from the telephone book.

30 Q. Isn't it a fact that you had this memorandum, and you told your wife that you had known of her for two years last past, and Mrs. Brody had then given her name to you as a marriageable young woman; isn't that true? A. No, sir.

Q. You are sure of that? A. I am sure of that.

Q. But you remember making that memorandum? A. I took that memorandum out of the telephone book, and I had the wrong address and I went to Mrs. Brody, and she told me she lived at 1851 Seventh Avenue, New York.

Q. I show you another one, and ask you how you came to put that there? A. I didn't put that there.

40

Louis Grobart. Recalled. Cross.

Q. Look at that and see if that isn't your handwriting? A. No, sir; it is not.

Mr. Vickers: I would like to have the first one marked in evidence.

First address marked Exhibit C-3, as of this date.

Mr. Vickers: I offer this one for identification. 10

Second address marked Exhibit C-4 for identification, as of this date.

Q. So you may have full opportunity, I show you again this slip from the note book, which is marked C-4 for identification, and I ask you whether the memorandum at the top of the page is in your handwriting—"A. Berkowitz", is in your handwriting, "200 West 13th Street"? A. The bottom writing is mine, but I don't know who the top is. "New York" is mine. 20

Q. Suppose you compare it with Exhibit C-3, and make up your mind if the whole thing isn't in your handwriting? A. I probably had it on; it was my book and it was stolen.

Q. Is it your handwriting? A. Yes, sir; it is.

Q. Now, can you explain, having identified them both, how you came to have two memorandums of the Berkowitz address in your book? A. I might have made a mistake and put it down twice, as I was taking it out of the telephone book. 30

Q. So your explanation is, that at the time you took the address of Miss Berkowitz, that you might have put it down twice, from the same telephone book; is that right? A. I might have done it.

Q. That is the best explanation you can make? A. I might have put it down twice; looking in the 40

Louis Grobart. Recalled. Cross.

telephone book for the address, I might have put it down twice.

Mr. Vickers: Now I offer the second slip in evidence.

Second slip marked Exhibit C-4, as of this date.

10

Q. Did you ever show that slip, or the book with the pages in it, to your wife, and say to her: "Here it is, Bessie; I have known of you and wanted to know you for two years", or words to that effect?
A. No, sir.

Q. Never did? A. No, sir.

20

Q. Now, you said in your testimony that you were engaged in the month of September, 1925; do you recall that—do you recall saying that? A. In September?

Q. Yes. A. I kept company in September, 1925, but I didn't give her the ring until November.

Q. Didn't give her the ring until November? A. Sometime in November; I can't remember.

Q. I am talking about an engagement; you testified—do you remember testifying that you were engaged in September? A. In September or October; I can't remember.

30

Q. Do you mean to say that from the time you were engaged, and until the time you now speak of her, you gave her an engagement ring? A. Yes, sir.

Q. Are you sure of that? A. Yes, sir.

Q. A ring different than the engagement ring? A. Yes, sir.

40

Q. Isn't it true that you didn't meet this girl until after the Jewish Holidays in September, of that year? A. No, sir; I met her before the Holidays.

Louis Grobart. Recalled. Cross.

Q. When did you meet her? A. In July or August.

Q. When did you go and take out the marriage license? A. The marriage license was taken out some time in the latter part of November. We have the marriage certificate there.

Q. What was your business at the time that you first met Bessie Berkowitz? A. My business was 10
to take care of the property.

Q. What property do you refer to? A. The Estate of Bernard Grobart.

Q. Your father had then been dead how long? A. He died in 1921.

Q. And you had taken care of the Estate ever since? A. Me and my brothers, yes.

Q. Which one did take care of it? A. Each one had something different to do.

Q. What was your business? A. To see that the coal was in and repair work done; we have men working for us where we have to repair different parts of the mill, and that was my job, to take care of it. 20

Q. Wasn't you in any business? A. No, sir; at that time I wasn't.

Q. Had you had a business? A. My mother gave me a present, a plant of fifty looms, when I got married. 30

Q. When you first met Bessie, what was your business? A. My business was to take care of the property.

Q. Had you had any other business? A. Not at that time.

Q. Had you ever had any other business? A. No, sir.

Q. And up to that time—I withdraw that. Up to your father's death, what was your business? 40

Louis Grobart. Recalled. Cross.

Mr. Bentley: I object to the question. We have agreed that the financial ability of this man don't inquired into until a later date, with your Honor's approval.

The Court: I will allow it to stand. You may note an objection.

10 A. I worked for my father.

Q. What did you do? A. Well, the same; looked after things; worked for my father; looked after the mill and saw that everything was going on, and before he bought the mills I used to work.

Q. Who did you work for? A. I worked for Federbush.

Q. What did you do? A. I was a salesman, and we had stores before we had the mills, and I worked for my father in the stores.

20 Q. Your wife, at the time you met her, didn't make any inquiry as to your wealth or household of you, did she? A. Mrs. Brody told her—

Q. I ask you, did she make any inquiry of you as to your wealth or property worth? A. I took her through the mills and showed her the estate.

Q. Did she ask you, or did you do it? A. She asked me to do it.

30 Q. She wanted to know what you were worth before she married you? A. Yes, sir.

Q. And you were anxious to marry her? A. I liked her, and I wanted to marry her; yes.

Q. What representations did you make? A. I took her around and showed her the estate.

Q. You said they were your mills, didn't you? A. I said it was an estate; I didn't say it was mine.

Q. You told her it was an estate and just what it amounted to? A. I didn't tell her what it amounted to, because I didn't know myself.

40

Louis Grobart. Recalled. Cross.

Q. How is it that you didn't know, if you managed the estate, and you didn't know what it was worth at the time you married her?

Mr. Bentley: I object to the question; he didn't say that.

The Court: I don't recall it.

10

Q. Didn't you say a moment ago, your occupation was the management of your father's estate? A. I said taking care of the repairs.

Q. Didn't you first say that you managed it, and then that you and your brothers managed it? A. No, sir; I said who took care of the repairs.

Q. All right. Up to the time that you were married, you never had the responsibility of the support of any person, did you? A. No, sir.

Q. On the second day of January, 1918, did you fill out a questionnaire of the Draft Board, in which you stated—applied for exemption on the ground that you were a man with dependent, aged and infirm parents? 20

Mr. Bentley: I object to the question on the ground that is immaterial and irrelevant, and not having any materiality.

The Court: The objection is overruled.

30

A. No, sir.

Q. You say you didn't? A. I never claimed exemption; no, sir.

Q. You say you didn't claim exemption? A. I never claimed no exemption.

Q. Now, you are sure of that, are you? A. Yes, sir.

Q. Have you your exemption card now? A. No, sir.

40

Louis Grobart. Recalled. Cross.

Q. Where is it? A. Well, I don't know where it is. She stole all the papers in the house; I kept all the papers generally in the house, and she stole everything.

BY THE COURT:

10 Q. Where is your exemption card? A. I don't know.

Q. You don't know where it is? A. I don't know where it is now; I always kept it in the house.

Mr. Bentley: My objection runs to all this line.

BY MR. VICKERS:

20 Q. I ask you whether your application for exemption under Class 3-B, that is a man with aged, infirm and dependent parents, was rejected, and you were put in Class A-1, and were afterwards physically examined by the Draft Board physicians? A. I don't understand you.

Q. Were you examined by the Draft Board physicians? A. Yes, sir.

Q. Were you exempted? A. I was not exempted; I was not exempted from the draft.

30 Q. You have seen what you call your exemption card many times, haven't you; the card that you say you think your wife stole; you have seen it many time? A. Yes, sir.

Q. You knew what was on it at the time you had it? A. Yes, sir.

Q. What class were you put in? A. On account I was sick and in the hospital with pneumonia—

Louis Grobart. Recalled. Cross.

BY THE COURT:

Q. He asks what class you were put in? A. I don't know what class it was.

BY MR. VICKERS:

Q. Will you say it wasn't in Class 5-G? A. I don't know. 10

Q. Do you know whether it was an acceptance or rejection of you? A. I don't know.

Q. Were you called upon to be examined? A. Here in Paterson, yes, sir.

Q. Who examined you? A. The doctors and the board.

Q. Don't you know who they were? A. I don't recollect from 1918.

Q. Do you know Doctor Scribner? A. No, sir. 20

Q. Don't know him? A. No, sir.

Q. You remember, don't you, that you had to fill out a questionnaire for the board? A. I never filled out a questionnaire that I know of. I was examined and they put me in Class 1, and then in Class 5, because I was sick.

Q. Didn't it say that a person totally physically and mentally unfit for military service; did you ask for that examination? A. I don't know anything about that. 30

Q. Will you admit in writing, that your private questionnaire may be produced in this court?

Mr. Bentley: I object; it is privileged, and he don't have to agree to it.

Mr. Vickers: I didn't say he has to agree to it; I asked him if he will.

The Court: I will allow it.

Louis Grobart. Recalled. Cross.

Mr. Bentley: This is seven years anterior to it.

The Witness: I don't know anything about it.

BY THE COURT:

Q. Will you agree to have it produced?

10 Mr. Bentley: I submit, as his adviser, I have the right to advise him before he answers the question.

The Court: Yes.

Mr. Bentley: My advice to him is to refuse.

20 Q. So on the advice of counsel, you refuse to consent in writing—you refuse to have produced in this court, your questionnaire from Washington, to ascertain whether it is true or not, that you claimed exemption from Army service under Class B-3, being a man with aged, infirmed and dependent parents, or secondly: in Class 5-G, of being a person totally unfit, mentally and physically, for military duty? A. I never said that.

30 Q. Now, listen to the question: So on the advice of your counsel, you refuse to consent in writing, to have produced in this court, your questionnaire from Washington, to ascertain whether it is true or not, that you claimed exemption from Army service under Class B-3, being a man with aged, infirm and dependent parents, or secondly: in Class 5-G, of being a person totally unfit, mentally and physically, for military duty? A. Your Honor, I don't know anything about it.

Q. Answer that question yes or no. A. I never made application for relief.

40 Q. If there is such an application, do you consent to have it produced here, to see whether it is yes or no?

Louis Grobart. Recalled. Cross.

Mr. Bentley: I don't know whether he understands, but my advice to him is to refuse.

The Court: He says he never made it out; he may get it now.

BY THE COURT:

Q. What do you say about it; do you want it produced? A. They may produce it if they want to. 10

Mr. Bentley: Your counsel says to you, not to consent.

The Witness: I don't consent.

BY MR. VICKERS:

Q. Mr. Grobart, did your wife tell you anything about having gone to Doctor Joelson? A. No, sir. 20

Q. Nothing? A. No, sir.

Q. Sure of that? A. Yes, sir.

Q. Did she tell you anything about having gone to Doctor Bender? A. No, sir; never said it.

Q. Sure of that? A. Yes, sir.

Q. Do you recall an occasion going to the—just shortly before your wife left you—going to the movies with her, and standing in line for a long, long time, and she refusing to remain longer, and going up to the window and getting the coupons changed for the following week? A. No, sir. 30

Q. That never happened? A. No, sir.

Q. You don't recall that? A. No, sir.

Q. Never went to the movies with her? A. Went many times.

Q. This was within ten days of her leaving you; do you recall that—having gone to the movies with her, and she complained that she couldn't stand, having waited an hour and a half for the line, and 40

Louis Grobart. Recalled. Cross.

she couldn't stand any longer, and you said you having bought the tickets, you didn't want to lose them, and she went up to the window and exchanged them for you? A. No, sir.

Q. Do you remember an occasion when she related a conversation to you with Doctor Bender?
A. No, sir.

10 Q. Do you recall when you went to the drug store of Doctor Shameck, and got a prescription filled for your wife? A. No, sir.

Q. You say that with emphasis; is there anything wrong with it? A. I never went to fill any prescriptions for her.

Q. Although you say that she was always sick?
A. I never had any prescriptions filled for her.

Q. How do you fix the date you went to the hospital with pneumonia?
20

Mr. Bentley: I object to the question; it is not material.

The Court: I will allow it.

A. It was around the war time.

Q. Was it in 1916, or 1918, or when? A. It was when the United States declared war.

Q. When was that? A. Either 1918, or 1919.

30 Q. When the United States declared war? A. I don't recall it; I was ill in the hospital.

Q. I am trying to find out when it was. When was it? A. I can't remember it.

Q. Then you don't remember whether you were in the Barnert Hospital in 1917, or 1918, do you?
A. It was during the war.

Q. Do you remember whether it was in 1917 or 1918? A. I don't remember the year.

Q. Was it in the Fall or Spring of the year? A.
40 It was in the Fall of the year.

Louis Grobart. Recalled. Cross.

Q. Will you say it wasn't in the Fall of 1918? A. I can't say what year; I don't know exactly what year the United States entered the war; I don't know what year it was.

Q. Do you remember Armistice Day; the first one, not the false one, but the first real one? A. I was in the hospital at that time.

Q. Assuming that was November 11th, 1918, how long were you in the hospital then? A. I was in the hospital a little over six months. 10

Q. And is this the time that you refer to that you were in hospital and they operated on you? A. Yes, sir.

Q. That is the sickness you refer to? A. Yes, sir.

Q. On your direct examination, you said the only time you were sick was when you had pneumonia, and you were in the Barnert Hospital? A. I was in the Barnert Hospital at that time. 20

Q. And is that the only sickness you had? A. Yes, sir.

Q. And you were in the hospital on Armistice Day; is that right? A. Yes, sir.

Q. Is there something that fixes that in your mind? A. Yes, sir.

Q. Was there anything that fixed it in your mind? A. I was in the hospital at that time.

Q. Do you remember the celebration? A. I was a sick man, but knew something about it. 30

Q. You then knew the war was over? A. I didn't know whether the war was over or not, because I was in the hospital.

Q. You were so sick on November 11th, 1918, that you didn't know the war was over, although it was Armistice Day? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Louis Grobart. Recalled. Cross.

Q. In view of the fact that you knew you were in the hospital on Armistice Day, November 11th, 1918, and the war was over, then I now ask you, then I now ask you whether that illness had anything to do with your exemption by the draft board?

10

Mr. Bentley: I object to the question on the ground that it is immaterial.

The Court: I will allow it.

A. Well, that is what they exempted me for, for being sick. I was supposed to go in the Army, but I was sick and I was in the hospital.

20

Q. Now, Mr. Grobart, you said something about your wife breaking into your apartment; you knew she had a key to the apartment, didn't you? A. She left the key under the mat at the time she left the house, and she had no key at the time she left.

Q. You are sure of that? A. Yes, sir.

Q. Did you find anything broken? A. I didn't find anything broken; she probably got the key from the landlady up-stairs. They were very good friends.

Q. Then she didn't break in? A. She broke in; yes.

30

Q. Then if she got the key from the landlady—it was your apartment and hers? A. Yes, sir; I paid for both of us.

Q. And you were willing for her to come back any time she wanted to? A. Yes, sir.

Q. And still you say she broke in? A. They took the furniture away.

Q. You say she broke in? A. I found some of the windows were open; they weren't locked, and I found some of the screens were out of the way.

40

Louis Grobart. Recalled. Cross.

Q. Don't you know she went in the house with her own key, and that you had put a Yale lock on to keep her out, but she had opened the door with her own key; didn't you know that? A. I don't know whether she broke open the door or not, but she took the furniture; she cleaned the place out.

Q. It was her furniture, wasn't it, Mr. Grobart?
A. Yes, sir.

10

Q. And you don't know whether she broke in, but she took her furniture, and you accused her of breaking in, and you told your lawyers, and to strangers, and claimed she had broken in your apartment and cleaned out your household furniture? A. I didn't say anything to strangers at all; I just said it to Mr. Evans.

Q. If Mr. Evans wrote that to Doctor Fishel, that it was your furniture and your apartment, was that correct? A. Mr. Evans never wrote to Doctor Fishel in regard to furniture.

20

Q. Not with your consent? A. No, sir.

Q. Is that your house key, or was it at the time? (Showing the witness a key.) A. I don't remember; the landlord has plenty of keys.

Q. Is that the key? A. Yes, sir.

Mr. Bentley: How can he tell?

The Court: He can say so, if he can't.

30

Q. Now, at the time that Mrs. Grobart removed her furniture, this apartment was for let, wasn't it? A. Not by me.

Q. Wasn't it? A. Not by me.

Q. Didn't you put a sign up there? A. No, sir.

Q. That your handwriting on that, yes or no?

A. This here (indicating)?

Q. Yes. A. Yes, sir.

40

Louis Grobart. Recalled. Cross.

Q. Didn't you put that sign up on that apartment, "To Let"? A. No, sir.

Q. You are sure of that? A. No, sir; I never put any sign up, because it wasn't my property; how could I put a sign up?

BY THE COURT:

10

Q. Why did you write on it? A. We owned property, too, and I put a sign on to call—inquire 104 Carrol Street; we had property on Thirty-second Street; the sign was probably in the house; I may have taken the sign down and put it in the house and she has gotten ahold of it.

BY MR. VICKERS:

20

Q. Now, Mr. Grobart, you say the last line in there is not written in your handwriting? A. No, sir.

Q. Is that your handwriting? A. I don't know even what the word means.

Q. Is it your handwriting? A. The top writing, "104 Carrol Street" is my handwriting.

Q. Is the bottom one? A. Yes, sir.

30

Mr. Vickers: I offer it in evidence.

Mr. Bentley: I object to it on the ground that it is immaterial.

The Court: It can be marked for identification. Objection sustained; it will be marked for identification.

"To Let" sign is marked Exhibit C-5, for identification, as of this date.

40 Q. Now, Mr. Grobart, I am going to ask you if it is a fact, that you put this sign up on the prem-

Louis Grobart. Recalled. Cross.

ises where you and your wife had this apartment, that you have been talking about? A. I probably had the sign in the house.

BY THE COURT:

Q. What he wants to know is, did you put it up on the house? A. No, sir.

10

BY MR. VICKERS:

Q. You didn't? A. No, sir.

Q. Did you have anybody put it up for you? A. No, sir.

Q. When did you give your landlord notice that you were going to quit? A. I don't remember the date, but I have the paper here that I gave notice from the court.

20

Q. What is your best recollection of the month?

Mr. Bentley: He says he don't recollect.

A. I have a paper there to show it.

Q. I would like to know, if you can remember, after the fourteenth day of October, 1926, when did you give your landlord three months' notice? A. I can't recollect; I have the paper there that I gave notice there, from the court, through the constable.

30

Q. Did you do it in October—your wife left on the fourteenth of October; in that month did you do it? A. No, sir.

Q. Did you do it in the month of November? A. No, sir.

Q. Did you do it in the month of December? A. I can't tell; I have the paper there, because the constable served it on the landlord.

40

Louis Grobart. Recalled. Cross.

Q. Would you like to have the paper to refresh your recollection?

Mr. Bentley: It is unfair, but we have the paper here, and you can have it.

10 A. November 30th, 1926, I gave three months' notice.

Q. At or before that time, had you put a "To Let" sign up for the renting of that apartment?

A. No, sir.

Q. Mr. Grobart, before you went to the Barnert Hospital, on account of the sickness that you have described, had you ever been at the Barnert Hospital, as a patient, for anything else? A. No, sir.

20 Q. Had you ever been under a doctor's care, since you had grown, for anything else? A. I may have had a cold, or a headache; that is about all.

Q. What doctors, if any, have treated you for anything, since you have reached your majority—since you were twenty-one years of age? A. I had Doctor Joelson and Doctor Spickers, and internes in the hospital—I don't recollect.

Q. Who was the first doctor, after you were a man, of age, that treated you? A. Joelson.

30 Q. When was that? A. Why, I can't recollect. Sometimes I had a cold and didn't feel well, and I called on the doctor, and when I was sick in the hospital, Doctor Joelson took care of me.

Q. Can you tell us at all when you first had Doctor Joelson as your doctor? A. I had him occasionally; he has been our house physician since he has been a doctor.

40 Q. Have you had any other doctor outside of Doctor Joelson? A. No, sir; outside of Doctor Spickers, who operated on me.

Louis Grobart. Recalled. Cross.

Q. So you can't tell, before you were in the hospital, when you had Doctor Joelson before that, can you? A. I can't recollect that.

Q. What sickness have you had? A. I only had pneumonia; that is the only sickness I had.

Q. And you are sure of that? A. Yes, sir.

Q. Did you ever have Doctor Greengrass for a physician? A. No, sir. 10

Q. You are sure of that? A. Yes, sir.

Q. How did you come to go to him now to be examined? A. I went to him now, because I wanted to prove that I was all right.

Q. How did you come to go to him; why didn't you go to Doctor Joelson? A. I heard that he was a specialist.

Q. Specialist in what? A. To examine people; I knew I was all right, but I wanted to get him for a witness. 20

Q. Will you say you had never been to Doctor Greengrass for treatment—at any time for treatment, before this suit was started? A. No, sir.

Q. You never have? A. No, sir.

Q. You are sure of that? A. Yes, sir.

Q. Now, Mr. Grobart, you have said in your direct examination, that when you were keeping company with your wife, you loved her, kissing and hugging her, and she must have been aware of the fact that you had an erection; do you recall so testifying, or words to that effect? A. Yes, sir. 30

Q. On these occasions of loving, was your wife responsive to you; did she hug you, too, and kiss you, too? A. To a certain extent, yes.

Q. To the full extent that a respectable girl, not married, could go; do you mean that? A. I used to kiss her and hug her, yes, after I was engaged, when I said "Good night" to her, naturally, like any other fellow would do. 40

Louis Grobart. Recalled. Cross.

Q. Did she respond, like any other girl would do?
A. I don't understand the word "respond."

Q. Did she hug and kiss you; when you hugged her, did she hug you? A. Yes, sir.

Q. She seemed to be normal? A. Yes, sir.

Q. You had had a lot of experience along that line? A. Experience that occasionally a fellow
10 gets with a girl; he sort of gives her a kiss or a hug.

Q. Offhand. Go head; answer the question, if you can. A. What is the question.

Q. You have had experience? A. Yes, sir; I have had experience.

Q. And up to the time that you were married on this twentieth day of December, your now wife was normal, so far as you knew, in her responses to your affections; is that right? A. Yes, she was normal
20 at the time before we were married.

Q. If you thought that she could tell something about your condition, from all your experience, could you tell whether she was sexually responding to you? A. I don't understand that question.

Q. All right, then; I will withdraw it then. So you got on this train, and proceeded to undress, you and she, and then you say she didn't want to have sexual intercourse in this compartment, on this
30 train; is that right? A. Yes, sir.

Q. Did you attribute that to modesty on her part, or did you attribute it to fear or aversion to child-birth at that time?

Mr. Bentley: I object to the question; it seems quite immaterial.

The Court: It is quite material, to get his state of mind. I will allow it. You may note an objection.

40 A. She started to cry.

Louis Grobart. Recalled. Cross.

Q. Did you attribute that to modesty on her part, or did you attribute it to fear or aversion to childbirth, at that time? A. I don't know. She started to cry, and I asked her what she was crying about, and she wouldn't explain.

Q. And she didn't explain? A. No.

Q. Didn't explain at all, so you rolled over and went to sleep? A. I didn't go to sleep. 10

Q. What did you do? A. I loved her up and tried to have sexual intercourse with her, and she said she was going to holler and scream.

Q. She was going to holler and scream? A. And it didn't look nice, and to wait until we got to Buffalo.

Q. And you were in a bridal apartment, and you knew nobody could see, yet you were willing to desist until you got to Buffalo? A. No, sir; I tried that night. 20

Q. How long did you try? A. I tried for ten minutes, and I raised an erection, and I wanted to penetrate her, and she wouldn't let me.

Q. What position were you in, trying to penetrate her? A. She stopped me; she threw me off, and she said—she showed me some money, and she said she had fifty dollars—

Q. You said that took place in Buffalo? A. She showed me the money and said she was going to leave me. 30

Q. On the train? A. On the train she started crying, and said: "Wait until we get to Buffalo." And she said: "There are people around here, and don't be too hasty." And I said: "All right; I will wait until you get to Buffalo."

Q. You just said she threw you off on the train; is that correct? A. Yes, sir.

Q. Physically? A. Yes. 40

Louis Grobart. Recalled. Cross.

Q. She grabbed you and threw you off? A. She pushed me around.

Q. She pushed you around? A. Yes, sir.

BY THE COURT:

10 Q. How big is the drawing room? A. It is a compartment.

Q. It has a door to it? A. Yes, sir.

Q. And it was locked? A. Yes, sir.

Q. She couldn't throw you around much there?
A. No, sir.

BY MR. VICKERS:

Q. You didn't use any force? A. No, sir.

20 BY THE COURT:

Q. Why didn't you? A. She explained to me that if I went about it nice and easy I would have a better opportunity, and I always respected her.

BY MR. VICKERS:

30 Q. Suppose you told so far what took place in that compartment that night; didn't you think it was because she was modest, and didn't want to give in to you there, under these circumstances; didn't you think so at that time? A. I don't understand the question.

Q. All right; we will go to Buffalo. You got to the hotel, and you say she insisted on having twin beds in the room? A. Yes, sir.

Q. She did? A. Yes, sir.

Q. Did you try to get a room with a single bed?

40 A. I was looking after the baggage, and she went

Louis Grobart. Recalled. Cross.

over to the window and asked for a room with twin beds.

Q. Did you object to that? A. Yes, sir.

Q. What did you say? A. I asked her why she didn't get a single bed, and she said it was better to sleep separately.

Q. And that is all you said? A. Well, I didn't say anything more.

10

BY THE COURT:

Q. How long had you been married then; twenty-four hours? A. Yes, sir.

BY MR. VICKERS:

Q. When did you get there? A. In the morning. It wasn't twenty-four hours. We got married at eight o'clock at night, and we got there eight o'clock in the morning.

20

Q. She asked you to wait until you got in Buffalo? A. Yes, sir.

Q. Did she say it would be all right in Buffalo? A. Yes, sir.

Q. And she immediately wanted twin beds, instead of a single bed, as you say? A. She ordered twin beds.

30

Q. You went up stairs, and this was in the morning, and you immediately undressed? A. We were tired out from riding all night, and we had breakfast.

Q. And this bride that refused you, after breakfast, immediately undressed and disrobed and went to bed; have I described it correctly? A. No, sir.

Q. Just suppose you describe it. A. We went up stairs, and we undressed, and we were going to

40

Louis Grobart. Recalled. Cross.

bed, and it was about half past nine, and we were tired; we had been riding all night, and I undressed and went over to her, and she said: "You are not going to do anything." And I said: "Why not?" And she said: "I am not going to let you do anything without a rubber."

Q. Were you undressed? A. Yes, sir.

10 Q. And was she undressed? A. Yes, sir.

Q. Was she in bed? A. While the conversation was going on we were undressing, and she said: "You are not going to do anything without a rubber." And we took a rest, and toward the evening I said I would go out and get something.

Q. This lady who said you could have your desires gratified after you got to Buffalo, then, after you got undressed and went to bed, then she raised the question about rubbers? A. No, sir.

20 Q. When did she say it? A. She said if I didn't have any rubbers she was not going to let me have intercourse with her."

Q. Then you went to bed? A. Yes, sir; we went to bed and rested a few hours.

Q. How many? A. We went down and had lunch after, and I told her I was going out and get the rubbers, and she told me when I went out: "I want you to get fish skins."

30 Q. You didn't know what they were? A. I had heard of rubbers, but not fish skins, and I went to the drug store, and I asked for fish skins, and he said he didn't have any, and he said: "You can use them; they are just as good as the fish skins." And when I came back she said she wasn't going to allow me to use them, because they were poisonous.

Q. What color were they? A. Reddish.

40 Q. Did any color come off? A. I don't know whether any color came off; they were in a paper,

Louis Grobart. Recalled. Cross.

and after the paper was red. Those were the ones he gave me.

Q. What did you say when she talked about cundrums that you had never heard of, with your experience you had had with women, for two or three times a week before that; what did you say when she talked to you about fish skins? A. I asked her how she knew it, and she said Doctor Granet told her. 10

Q. You asked her? A. Yes, sir.

Q. That was simply a question of durability, whether they were fish skins? A. Se said she wanted fish skins, because Doctor Granet told her they were the best.

Q. You had used rubbers before? A. I had sexual intercourse before that.

Q. You had used them? A. I used them when I was married. 20

Q. Had you used them before? A. No, sir.

Q. You had never used them? A. I knew what they were.

Q. But you had never used them? A. Not until with my wife.

Q. Do you say your wife went down to luncheon with you on the first day in Buffalo? A. Yes, sir.

Q. Did you go back up in the room again in the afternoon? A. I went out and got the rubbers, and toward evening we went up in the room. 30

Q. Between dinner or supper, whichever you want to call it, you went up in the room? A. We had supper at that time, and then we went up stairs.

Q. You had luncheon? A. We had supper; we went to bed at nine, or half past nine; we didn't get up until four or five.

Q. You went down and had supper, and she was willing to go back to bed at nine o'clock? A. She 40

Louis Grobart. Recalled. Cross.

wasn't ready. She was waiting in the lobby, and I went out and got the rubbers in the drug store.

Q. Then you went up stairs? A. We sat around the lobby a while, reading the papers.

Q. Didn't you ask her to come on up stairs; weren't you in a hurry? A. No; I wasn't in a hurry; I knew we were going to bed after.

10 Q. What time did you go up stairs? A. I don't know; we sat around the lobby a while, and then we went up stairs.

Q. What time was it? A. I don't know.

Q. Was it mid-night, or nine o'clock? A. It must have been ten o'clock, probably.

Q. Then what happened? A. I undressed and she said: "Let me see those rubbers", and I showed them to her, and she said: "They are poisonous;
20 those are not fish skins, and I am not going to let you use them", and I went over and I got an erection and I put one on anyway, but she wouldn't allow me to use it.

Q. Why didn't you try it without a rubber? A. I tried and she wouldn't let me, and when I had the rubber on she said: "Wait a minute", and she said: "Wait a minute; I have got to use a pill", and I said: "What are those for?" and she said: "Those
30 are for the purpose of keeping me clean"; I said: "To keep you clean?" and she said: "I don't want to get pregnant, and that is the reason I am using them".

Q. Although you had a rubber on? A. Yes, sir.

Q. And she had proved her experience by showing that she knew the difference in cundrums? A. Yes, sir.

Q. And she still wanted other protectives? A. Yes, sir; she said: "Sometimes the rubbers break".

Louis Grobart. Recalled. Cross.

Q. You couldn't do it without a rubber, and you couldn't do it with a rubber? A. I can do it any time.

Q. I mean at that time? A. I had an erection and she wouldn't let me.

Q. And then you went to your bed and you remained there for the rest of the night; is that so? A. I went to bed; yes.

10

Q. And you remained there for the rest of the night? A. I fell asleep.

Q. Morning came and you started in again to love her up? A. Yes, sir.

Q. Did she resist you? A. Yes, sir.

Q. In loving her up? A. She told me she had a cold the next morning.

Q. Did that stop you from loving her up? A. And she told me to keep away, because I would get the cold.

20

Q. But, despite the fact that she was solicitous about your cold, you went over? A. Yes, sir; and I tried to have intercourse with her, and I asked her to help me, and she said she wouldn't touch that for a million dollars.

Q. And this young bride, you asked her for help? A. Yes, sir; she turned her back to me, and I asked her to get ready.

Q. And when you asked her to help you, you meant for her to take hold of your penis with her hand and help you get it in her organ; is that right? A. To help me; yes, sir.

30

Q. Couldn't you put it in? A. She held her legs tight together.

Q. Couldn't you open them? A. I wouldn't use any force, and she started to cry.

Q. And she started to cry? A. Yes, sir.

40

Louis Grobart. Recalled. Cross.

Q. And she said she wouldn't touch it for a million dollars; couldn't you coax her out of that mood? A. I tried to coax her, but it didn't do any good.

10 Q. You say, Mr. Grobart, this thing went on time after time, night after night, for ten months while you were together? A. We weren't together for ten months.

Q. How long were you together? A. If you figure out the time she was away from me, during the time she was sick, and her vacation, and from Friday until Monday, I don't believe you will find it four months.

20 Q. But if it was only four months, that wasn't long enough for you to accomplish your purpose, either by force or coaxing, to secure your marital rights? A. She claimed she was sick all the time, and I have been paying doctor's bills, and I knew she was sick.

Q. And is that the reason you left her alone? A. I had to tell her so, because her doctor told me I had to leave her alone.

30 Q. When was that? A. The first time my wife took sick, and I went over and I stayed there, and the next day the doctor came, and that was February 27th, 1926, and I was introduced to Doctor Granet, and he told me my wife was very sick, and I told him—

Q. You told him what? A. I asked him what the trouble was, and he said she had a heavy cold, and in a little while she would be all right.

Q. What part of the conversation did he tell you you would have to leave her alone? A. He told me a few days after her illness.

40 Q. Didn't you just swear that on the first time you ever met Doctor Granet, he told you you would have to leave her alone? A. He said that; yes.

Louis Grobart. Recalled. Cross.

Q. When was it; the first time was a few weeks afterwards? A. It was a few weeks afterwards, yes. I was there every day that he was there.

Q. Just tell us what Doctor Granet said to you on this occasion when you met him three or four weeks after you met him? A. He said you would have to send your wife away; she will have to have some fresh air, and you shouldn't bother her. 10

Q. Did you ask him what he meant by that? A. I didn't have to; he explained and I understood it.

Q. What did he explain? A. He said I would have to keep away, on account of her illness, because she was weak.

Q. Were you trying to get next to her? A. After she got better, yes.

Q. There at the house? A. No.

Q. Where? A. He told me at the house that when she got better she would have to go away, and I would have to keep away from her, so she could get over her sickness. 20

Q. Did you ask him why? A. I didn't have to.

Q. Did he say it had anything to do with your sex relations? A. I didn't ask him anything about that.

Q. Why did you understand that Doctor Granet wanted you to stay away? A. Because, she had been sick. 30

Q. You mean you stayed away from your wife because Doctor Granet told you she was sick? A. Yes; I tried to have sexual intercourse with her, and she would say: "Didn't the doctor tell you to keep away from me?"

Q. That was after she came back from Atlantic City? A. Yes, sir.

Q. Doctor Granet didn't tell you to stay away from your wife when she was well? A. He said I would have to stay away until she gets well. 40

Louis Grobart. Recalled. Cross.

Q. Was she sick when she came back from Atlantic City? A. She said she wasn't right yet.

Q. You and your wife were on friendly terms, except this question of sexual intercourse; you were happy together? A. Yes, sir.

Q. Except for that? A. Yes, sir.

10 Q. She wrote to you frequently when she was at Atlantic City, and when she was in Hopatcong? A. No, sir; she never wrote to me. She wrote to my mother while she was in Atlantic City, and never mentioned my name, or sent me any regards, and never mentioned my name.

Q. You mean to say that while your wife was in Atlantic City, your wife never wrote to you at all? A. She may have sent a postal card, but I don't believe she did.

20 Q. When she was at Lake Hopatcong, did she write you? A. I called her on the 'phone near every night.

Q. Why don't you answer my question; did she write you? A. I think she sent me a postal card.

Q. Do you now say to the Court that she didn't write you a letter from both places, and ask you to come and see her? A. No, sir; from Atlantic City she never did, but from Lake Hopatcong, I think she did.

30 Q. You swore she didn't? A. She used to get the mail at the house herself. She may have written it and gotten it herself. I used to leave in the morning and come back in the evening.

Q. Mr. Grobart, at the time your wife was in Atlantic City, you and she were on perfectly good terms, weren't you? A. Yes, sir.

40 Q. I show you a letter dated April 8th, 1926, and dated Atlantic City, and ask you if you received that from your wife? A. No, sir; I never received

Louis Grobart. Recalled. Cross.

that in my life; no, sir; I didn't never receive that letter.

Q. Never did? A. No, sir.

Q. It is your wife's handwriting? A. I don't know whether it is her handwriting or not; I don't know her handwriting good enough, because when she was at Atlantic City I stayed at my mother's house, and not my own house, and I didn't receive that letter; I will swear to it. 10

Q. You are swearing to it. A. I am, and I will say it again, that I didn't receive it.

Q. Do you know that your wife was quite anxious that a telephone should be put in her home, after she returned from her serious illness, in March, 1926? A. We had a telephone put in, and of course, we had to wait for some time, and she said she would try to see somebody in New York, and have it quicker. 20

BY THE COURT:

Q. Did you have a telephone in the house? A. Yes.

Mr. Vickers: I would like to have this letter marked for identification.

The Court: Yes.

Letter marked Exhibit C-6, for identification, as of this date. 30

BY MR. VICKERS:

Q. I show you the same kind of a letter, dated April 26th, 1926, addressed: "Dear Louis", and ask you if you ever received it? A. No, sir; I never received it and I swear to it. 40

Louis Grobart. Recalled. Cross.

Q. I show you a letter on the same kind of stationery, and dated "Sunday", and headed: "Dear Louis", and ask you if you ever received that from your wife? A. No, sir.

Q. You don't have to look at it, or read it? A. No, sir; I received a postal card, but never a letter.

10 Q. You never received a letter which said: "Lots of love" and then a lot of little dots, and says: "Kisses and regards to your mother"; you never received that? A. No, sir.

Q. I show you a postal card which says: "Regards to your mother", and ask you if you ever got that from Lake Hopatcong? A. No, sir; never with so much on. I only got a postal card with "Regards; from Bessie".

20 Q. When was that? A. I haven't got it, but I never received that.

Mr. Vickers: I ask that it be marked for identification.

Postal card marked Exhibit C-7, for identification, as of this date.

30 Q. I show you a letter dated Tuesday, August 3rd, 1926, addressed to "Dear Louis", and ask you if you received that? A. No, sir; I always called her on the telephone, at the Edgemere, on the telephone, but I never received that.

The Court: We will now take a recess until two o'clock.

Jacob J. Greengrass. Called by Defendant. Direct.

(After recess.)

Mr. Bentley: Doctor Greengrass is now here;
may we call him at this time?

The Court: Yes.

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JACOB J. GREENGRASS, a witness produced on behalf of the defendant, being first duly sworn according to law, testified as follows:

DIRECT EXAMINATION BY MR. LEVY:

Q. Doctor Greengrass, you are a practicing physician of this State? A. I am.

Q. Where is your office? A. 117 Broadway, Paterson, New Jersey.

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Q. How long have you been licensed to practice? A. Over seventeen years.

Q. Will you state what training you have had and what hospital you are in? A. I am a specialist in syphilis and skin diseases.

Q. In what hospital? A. Barnert.

Q. Since when? A. Since I came back from service.

Q. And before that? A. I was with Doctor Otter from 1912 to 1917.

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Q. When you were in the service, did you have any training in genital diseases? A. I did; I took it up at Fort Oglethorpe.

Q. What institution are you a graduate of? A. Institution of Virginia.

Q. Do you know Louis Grobart? A. Yes, sir.

Q. Did you make a physical examination of him? A. Yes, sir.

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Jacob J. Greengrass. Called by Defendant. Direct.

Q. When? A. November 11th, 1926.

Q. Did you make any other examination of him?

A. I made a complete examination of him at that time.

Q. Did you have any conversation with him at that time? A. No; he came in for an examination.

10 Q. Did he ask you to examine any particular portion of his body? A. Yes, sir.

Q. What did he say? A. He wanted to know if he was sterile or not, and he wanted to know if he was potent or not.

Q. You use the term "sterile" and "potent"; in what respect are the two related? A. Sterile means that a man cannot have children; he is sterile, but if a man is impotent, he cannot complete the sexual act.

20 Q. May a man be potent and still be sterile? A. Yes, sir.

Q. Can a man be impotent and still be sterile? A. Can a man be impotent—

Q. I withdraw that. In determining sterility, what is the important thing? A. Spermatozoa.

Q. Can a man be sterile and still have spermatozoa? A. Yes, sir.

30 Q. What are the tests to tell whether a man is potent or impotent? A. You get a full history of the case, to see if a man is physically fit—his heart and lungs are normal, and go in his early history, from his infancy, up to his adult age, and then if a man is married and living with his wife, I ask them if he has intercourse, and I go into the history, and in this case the man wasn't living with his wife, and I subjected him in another room, and I asked him to masturbate, which he did, and he produced plenty of fluid, and I examined it under the microscope, and found sperm and quite a large amount

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Jacob J. Greengrass. Called by Defendant. Direct.

of fluid—the normal amount. I would say large, in the normal man.

Q. You made a physical examination of his genital organs? A. I did, sir.

Q. In what condition did you find them? A. Normal.

Q. Did you examine his heart and lungs? A. I did that his first visit, November 11th. 10

Q. And in what condition did you find them? A. They were normal.

Q. What else did you do? A. Did a Wasserman, that is to his blood, and that was negative as to disease. I did that yesterday; I had him masturbate again and found the normal amount of fluid an ordinary man would have, and I massaged him and found a poststatic fluid.

Q. You found the germs alive? A. Yes, sir. 20

Q. Did he have an erection? A. He must have had.

Q. In order for him to— A. Yes, sir.

Q. What did you do yesterday? A. I examined the fluid, and looked for spermatozoa, and found them, and that is the only examination I made yesterday.

Q. Now, Doctor, can you tell us what some of the causes—I withdraw that. Will you tell us exactly what causes impotency? A. Impotency is classified into three parts, or four parts. The first we speak of is organic impotency. Organic impotency is due particularly to syphilis, and the members become hard and they don't function properly. 30

Q. In your examination of Mr. Louis Grobart, did you or did you not, look for a case of organic impotency? A. I did.

Q. And did you find any of them present? A. I did not. 40

Jacob J. Greengrass Called by Defendant. Direct.

Q. Then proceed to the next classification. A. The next classification is the relative impotency.

Q. What is that? A. Relative impotency is where a man has not the ability to have intercourse at his will. He may try and fail, and that is chiefly due to a frigidity of the opposite sex.

10 Q. Is that so called relative impotency, that you have described, due to any inherent condition of the male? A. It is always due to the frigidity of the woman.

Q. Now, do I understand that the term "relative impotency" would apply to the case where a man would be potent, without the frigid woman? A. His power to have intercourse is normal with other women.

20 Q. With respect to a particular woman? A. Just a particular person.

Q. And do I understand you to say that the impotency is due in such a case to some act, or failure to act, on the part of the woman? A. I wouldn't just exactly say failure—probably the woman may try, but with all her trying may not be able to help in this matter.

Q. Then what other cause may create that relevancy, so to speak? A. It is beyond the will.

30 Q. Is that form of impotency a form of neurosis? A. It has something to do with the nervous system.

Q. Did you examine Mr. Grobart to see if he had any such neurosis? A. I couldn't find any.

Q. Did you examine him? A. I did.

Q. What was the result of your examination? A. I found him normal.

Q. You could find no trace of any impotency? A. No.

40 Q. What is the next case? A. There is another one which may be due to a long standing case of

Jacob J. Greengrass Called by Defendant. Cross.

desease, such as rheumatism, diabetis, pneumonia, probably tuberculosis.

Q. Now, in order to have the atonic form— A. Also may be due to rum, tobacco, people who work in lead factories, persons who work in paint and have a chronic lead poisoning.

Q. Did you make an examination of Mr. Grobart, to see if he had any atonic impotency? A. 10
He was negative.

Q. Did he tell you he had had pneumonia some time ago? A. He told me he was in the hospital, and was operated on for pleurisy, and he had some fluid in the lung.

Q. Did you examine his lungs? A. I did.

Q. Did you find any fluid? A. I couldn't find any.

Q. What would you say as to whether or not he 20
was an atonic? A. I would pass him up as a normal man.

Mr. Levy: That is all.

CROSS EXAMINATION BY MR. VICKERS:

Q. What is the— A. The psychic?

Q. Those are the four parts? A. They would 30
come under the one head, or relative to the sypchic.

Q. Then there are three? A. There are three; the relative comes under a sub-division.

Q. Under the head of relative impotency, you have said that is due to the frigidity of the opposite sex; is that right? A. Yes; I did.

Q. And by frigidity, do you mean disinclination or disability? A. It is not a disinclination; it is a disability, more.

Q. And that disability is ascertainable, just the 40
same as you ascertain the ability or disability in

Jacob J. Greengrass. Called by Defendant. Cross.

the male? A. They all classify these as to the frigidity, as to the woman.

10 Q. How do you determine the desirability on the part of the woman, in order to check up under which of the three classes an impotency falls, in order to know there is an impotency? A. That is easy enough. You have the atonic and you know if you have a syphilitic. In your atonic you have your
10 drug and your disease and lead, and in the case of the relative impotency you can find out in case it is beyond the will power of the woman.

Q. Supposing you are dealing with a male, as the subject under discussion; now, if the maid, the opposite sex, were not frigid— A. If the male?

20 Q. If the female were not frigid, could you in the case such as this, account for a failure at consummation? A. Well, I would deduct the other forms of impotency and base it upon the relative impotency.

Q. That is the point. A. By deduction.

30 Q. It is well recognized in your science, is it not, that there is a relative impotency which is characterized by a desire and ability to get an erection, or partial erection, the ability to ejaculate semen, and yet having no will power at the same time, to perform the sex act? A. With a certain person, yes.

Q. With a certain person? A. Yes.

Q. And that is recognized, irrespective of the frigidity of the other person? A. Of the male—which other person are you speaking of, the male or the female?

40 Q. Speaking of frigidity in the female. A. I don't understand your question. When I speak of relative impotency and frigidity of the person, I am referring to the female.

Jacob J. Greengrass. Called by Defendant. Cross.

Q. You didn't say so at first? A. I did; I said the frigidity is in the female.

Q. Which person are you referring to as to the impotency, the male or the female? A. Both sides.

Q. In your direct examination you subdivided those classes in which potency is recognized or established, and you gave as the second relative impotency, and you were then relating to a male when you said it was uniformly due to the frigidity of the opposite sex; then you referred to the female, did you not? A. No. I say the frigidity is due to the woman. 10

Q. In her or toward her? A. Toward her.

Q. What do you mean? A. I mean in relative impotency, it is beyond the will power; the centers don't react; they try, but they have no power to encourage their sex feeling. 20

Q. Do you mean a male or female? A. I refer to the female.

Q. When you described Louis Grobart, did you refer to Louis Grobart, or his wife? A. I wasn't referring to anybody in this case.

Q. Let's go all over it again. There is such a thing as relative impotency? A. There is.

Q. And is one of the characteristics of that, if the person has not the power to have intercourse at his will? A. Yes, sir. 30

Q. And that was your language on your direct examination, wasn't it? A. Yes.

Q. Then you refer to the male, don't you? A. I don't mean his will; I mean their power. It was an error.

Q. Do you mean their joint will or one of them? A. One of them.

Q. Where that lack of power to have intercourse at his will is in the male, to what do you ascribe 40

Jacob J. Greengrass. Called by Defendant. Cross.

that? A. It may be due to any cause; the organic, the atonic, the man may have syphilis, or may have a disease of long standing, or may have a drug habit.

10 Q. I understand you put that under the head of relative impotency? A. No; that is the third form—the atonic. I said the atonic was due to diabetes, tuberculosis, drug habit, a person working in paint, absorbing lead through the lead coming through the skin.

Mr. Vickers: May I have the stenographer read what the witness said on his direct examination, about relative impotency?

The Court: All right.

20 The Stenographer: "Q. Then proceed to the next classification. A. The next classification is the relative impotency. Q. What is that? A. Relative impotency is where a man has not the power to have intercourse at his will. He may try and fail, and that is chiefly due to a frigidity of the opposite sex. Q. Is this so called relative impotency that you have described, due to any inherent condition of the male? A. It is always due to the frigidity of the woman."

30 Q. Having heard that testimony, is that what you mean? A. I may not have made myself clear. In relative impotency, the power of having intercourse is nil. By that I mean it is beyond the control of the will, and that is due to the frigidity of the woman. The male may have an erection at that time.

40 Q. And is it beyond the power of the will of the male, or beyond the power of the will of the female,

Jacob J. Greengrass. Called by Defendant. Cross.

is what I am trying to find out? A. I see what you mean. It may be beyond the power of both.

Q. Well, is there a condition recognized in your science, where a man is capable of having an erection for the purpose or through masturbation, and is, nevertheless, suffering from relative impotency, and is incapable of exercising the will power to have intercourse with a certain individual of opposite sex? 10
A. He may be unable.

Q. Is that recognized in your science, is my question? A. That question can't be answered that way.

Q. Why not? A. It can't be answered yes or no.

Q. Is it recognized? A. I haven't found it; I haven't seen it in any book.

Q. Would you say it isn't recognized? A. It might be possible.

Q. Would you say it is not recognized in your science, so far as your knowledge and experience goes? A. I cannot answer the question. 20

Q. You said with respect to this relevant impotency, a woman may try, and still there may be no accomplishment of the act of copulation. Does that refer to the relative impotency in the male? A. I haven't had any case where a relative impotency existed; I am just quoting White & Martin, who have a book. These cases are rare.

Q. And is it because they are rare, and because of your inexperience, that you come to your conclusion? A. I wouldn't say inexperience; I wouldn't say a man of seventeen years is inexperienced. 30

Q. I don't mean general experience. A. You don't meet it every day.

Q. Have you ever met it before? A. No.

Q. What did you mean when you said a woman may try, and yet the sex act is not satisfied? A. The male may not appeal to her. 40

Jacob J. Greengrass. Called by Defendant. Cross.

Q. May not appeal to her? A. No.

Q. What did you mean by a woman trying? A. Just like any ordinary person would try to have intercourse.

Q. In your experience, I mean, as a physician, does a woman have to try to have intercourse to bring about penetration? A. She has to do the same as anybody else.

Q. Do you mean to put herself in position? A. Yes, sir.

Q. Absolutely? A. She has to put herself in position for the male, and assist the male.

Q. I mean for the act of penetration; is there anything she has to do, besides putting her body in a relative receptive position? A. She has to assist the male, especially in a virgin.

Q. Has that anything to do with the question of relative impotency? A. It may.

Q. It may? A. If the woman is cold to the male, and won't assist him.

Q. Now, is relative impotency a form of neurosis? A. No, sir.

Q. Nothing to do with it at all? A. It is beyond the control of the will.

Q. By the way, has long—a long standing habit of masturbation anything to do with producing the condition of relative impotency? A. Masturbation has no bad effect.

Q. Isn't it regarded as one of the devitalizing habits, destructive of the genital organs? A. Absolutely not; absolutely.

Q. And your science doesn't recognize the fact, according to you, that there is a condition in both male and female, and where, despite opportunity at normal intercourse, no satisfaction is gotten, except by masturbation; is that right? A. No, sir.

Jacob J. Greengrass. Called by Defendant. Cross.

Q. And you are familiar with Kraft Ebbing? A. I am.

Q. Will you say Kraft Ebbing is not an authority for that recognized form of perversion? A. Not in comparison with White and Martin, he is not.

Q. I didn't ask you that; I asked you if those particular persons are not authorities? A. No, he is not, in the medical profession.

10

Q. I am not asking you if he is accepted as an authority, over and above anybody else; I am asking you whether the book or work of Kraft Ebbing is authority for that statement; whether that is a part of the sex perversion recognized by that work? A. Do you want my opinion?

Q. No; not your opinion—your knowledge of that work; whether that work recognizes that kind of sex perversion? A. I don't recognize it.

20

Q. I didn't ask you that. A. I didn't ask you that—I recognize a book recognized by the medical colleges; that book isn't recognized by the medical colleges.

Q. I am asking you if he recognized it? A. He talks on that subject; yes.

Q. And you disagree to that? A. Yes, I do.

Q. That is all. A. I don't take him as my authority.

Q. Now, do you say, Doctor Greengrass, that by the examination that you made, you were able to determine that Louis Grobart is capable of sexual intercourse with his wife? A. I don't know about his wife, but I know he is capable.

30

Q. Assuming that she is normal in her genital parts, do you say he is capable? A. I don't want to discuss with his wife, but I say he is capable to have vigorous sexual intercourse.

40

Jacob J. Greengrass. Called by Defendant. Cross.

Q. And you say that because he went in an adjoining room and masturbated and brought you the fluid? A. I saw the penis erected, and saw the product that he produced as you described.

10 Q. It is true, Doctor, there is no forming of abrasions inside of the penis, in the presence of the opposite sex, in a position to copulate? A. I don't understand your question; what do you mean by an abrasion?

Q. Rubbing it. A. An abrasion is a sore.

Q. Well, rubbing it then. A. Do you want to correct the word "abrasion"?

Q. Rubbing—friction. A. Friction is necessary.

Q. Is it? A. Yes.

20 Q. So it is necessary, when a man wants to copulate with his bride, it is necessary for him to go in a corner and produce an erection, in order to copulate with his bride? A. No; that is not necessary.

Q. And in your examination of Mr. Grobart, you took into account the subjective symptoms, did you not? A. Yes, sir.

Q. And as part of the history of the case, he told you he was not living with his wife; is that right? A. Which examination are you referring to; I examined him yesterday.

30 Q. I mean in November? A. After I had examined him, he told me.

Q. After you had examined him? A. Yes, sir.

Q. And after you had examined him, and before he told you, had you come to a conclusion? A. What do you mean?

Q. Before he gave you his subjective symptoms? A. He did not tell me anything about his wife, until after I had examined him.

Louis Grobart. Recalled. Cross.

Q. Had you come to a conclusion before he told you about his wife? A. Yes; because I found the sperm there.

Q. And then he told you about his wife? A. Yes, sir.

Q. And still you say there may be sperm and not be able to have connection? A. That is true.

Q. And the fact that you found sperm there, and he brought about an erection, if he did bring about one, you say he is capable of sexual intercourse? A. Yes, sir. 10

Mr. Vickers: That is all.

LOUIS GROBART, the defendant in the above entitled cause, having already been called and sworn, is recalled and further testified as follows: 20

CROSS EXAMINATION (Continued) BY MR. VICKERS:

Q. Mr. Grobart, I show you a letter under date of August 30th, 1926, and ask you whether you ever received that from your wife? A. No, sir.

Q. And you don't know whether that is her handwriting? A. That is her handwriting, but I didn't receive it. 30

Q. That is her handwriting, is it? A. I believe it is; I am not an expert on handwriting.

Q. No, but you recognize it as her handwriting, so far as you are able to tell? A. I am not an expert on handwriting, and I have never seen her handwriting, much.

Q. Is it her handwriting, to the best of your knowledge? A. I am not an expert. 40

Louis Grobart. Recalled. Cross.

Q. To the best of your knowledge, is it her handwriting? A. I don't know.

Mr. Vickers: I ask that it be marked for identification.

Letter marked Exhibit C-11, for identification, as of this date.

10

Q. I show you another letter, without date, but on the stationery of The Edgemere, and ask you if you received that from your wife? A. No, sir.

Q. You answer that without reading it? A. I never received any letter from her, outside of one from Lake Hopatcong—one postal card.

Mr. Vickers: I ask that that letter be marked for identification.

20

Letter marked Exhibit C-12, for identification, as of this date.

Q. I show you another, under date of March 26th, 1926, and ask you if you received that from your wife? A. No, sir; I never received any letter like that, or any Emma; I don't know who Emma is.

Q. Emma? A. No, sir; I never heard of her.

Q. Is that in your wife's hand-writing? A. I believe it is, but I never received it.

30

Q. You said something before recess, that your wife may have written letter to you and received them at the other end, and you never received them; you mean at the home where you lived, at the apartment? A. Yes, sir.

Q. That is what you mean? A. Yes, sir; when my wife was away, I stayed at my mother's home all the time.

Q. Now, what was the address of your mother's home? A. 104 Carroll Street.

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Louis Grobart. Recalled. Cross.

Q. I show you the envelope which accompanied the letter which I last showed you, addressed to Mr. Louis Grobart, 104 Carroll Street, Paterson, New Jersey, personal, and ask you if you got that?
A. Yes, sir; absolutely; I must have received it.

Q. Having received the envelope, and having the letter before you, I ask you if you got that letter from your wife? A. Not that letter.

10

Q. Not that letter? A. No, sir; I received the envelope, but not the letter. When she went away she took everything away with her.

Q. You were stopping at your mother's home, and your wife was in the hospital in New York; now, explain how you got the envelope, and your wife got the letter out of the envelope?

Mr. Bentley: I object to the question; he didn't say that.

20

Q. I withdraw it. Is it true that your wife was in her home in New York, suffering from bronchial pneumonia? A. She was in New York, but I was there every day.

Q. And the letter is post-marked Paterson, and addressed to 104 Carroll Street, at the home of your mother, and addressed "Personal", and I am asking you how you could have received the envelope and not the contents? A. The recollection comes to me now about "Emma". There was a colored woman cleaning our house, and my wife was expecting to come back, and there was a colored girl cleaning our house, named Emma, and there was some laundry that my wife wanted back. It just came to me after reading this letter. I received this letter, now.

30

Q. When you refer to "Anna" you mean "Emma"? A. I said "Emma".

Q. All right.

40

Louis Grobart. Recalled. Cross.

Mr. Vickers: I now offer the letter and envelope in evidence.

The Court: Let them be marked.

Said envelope is marked Exhibit C-13, and the letter Exhibit C-14, as of this date.

10 Q. Mr. Grobart, what was 62 Ryle Avenue, Paterson? A. 62 Ryle Avenue was a mill.

Q. That was your place? A. Yes, sir.

Q. That was a mill? A. Yes, sir.

Q. And your wife didn't have anything to do with the mill there? A. I want to explain; my wife went to the Post Office and said the mail that came there, to leave it at the box.

Q. That is your explanation? A. I believe she did.

20 Q. Do you say then that mail didn't come to you at 62 Ryle Avenue, when it came addressed to you at that address? A. I can't recollect that I received any addressed at 62 Ryle Avenue, and I lived at 104 Carroll.

30 Q. I show you a letter post marked New York City, and it is addressed: "Louis Grobart, Grobart Mills, 62 Ryle Avenue", and addressed "Personal", and I will ask you if you got that? A. I will look at it. Yes, sir; I received this letter.

Q. You received this letter? A. Yes, sir; in August; Yes, sir; at the time she wanted to come home. Yes, sir; I received it.

Q. This is an indication that she had left Lake Hopatcong; is that right? A. Yes, sir; and she was going home.

Mr. Vickers: I offer the letter in evidence. Letter marked Exhibit C-15, as of this date.

Louis Grobart. Recalled. Cross.

Q. I show you an envelope and contents, addressed to Mr. Louis Gobart, 62 Ryle Avenue, Paterson, New Jersey, Grobart Mills, Paterson, New Jersey, and ask you if you got that? A. No, sir; the stamp is rubbed off.

Q. That is the reason you didn't get it? A. Yes, sir.

Q. When you gave that answer you didn't take the trouble to look inside, and see what the contents was, to tell whether or not you ever received it, did you? A. No, sir. 10

Q. I now ask you to look at the letter inside? A. No, sir; I don't remember receiving this.

Q. Will you say you didn't get it? A. I don't remember receiving this.

Q. Is it your wife's hand-writing? A. I believe it is. 20

Q. Do you recognize any of the contents of the letter at all? A. I read it through; I never received that letter.

Q. You never received that letter? A. No, sir.

Mr. Vickers: I ask that it be marked for identification.

Letter is marked Exhibit C-17, for identification, as of this date.

Q. I show you another letter, dated at Dover, on which the stamp is not rubbed off, and is on the stationery of The Edgemere, and ask you if you received that from your wife? A. I will see a letter, you know. Yes, sir; I received that. She was in Dover, at the show house, and I received that. 30

Mr. Vickers: I offer the letter in evidence.

Said letter is marked Exhibit C-18, as of this date. 40

Louis Grobart. Recalled. Cross.

Q. I show you an envelope, post marked: "Atlantic City, April 5th, 1926", and I ask you whether you didn't receive that, and in that envelope; this letter which has heretofore been marked Exhibit C-8, for identification? A. I received this letter at 104 Carroll Street, at the time she was at Atlantic City; yes, sir. You didn't show me the envelope before, and I didn't remember. I received that.

Q. Now, Mr. Grobart, the letter which you have now, and which you say you received, is the same letter which you denied this morning you received? A. You didn't show it to me; I know I got a letter from her from Atlantic City.

Q. You said you didn't receive any letter from her, from Atlantic City, and now I show you the envelope, and want to know what refreshes your memory? A. Because, I know she stopped at that hotel, and I was staying with my mother at 104 Carroll Street, and I believe I received that letter while she was away.

Mr. Vickers: I offer in evidence the letter marked Exhibit C-8, for identification, together with the envelope, identified by the witness.

Letter and envelope is marked Exhibit C-8, as of this date.

Q. Now, I show you another envelope addressed to you at 62 Ryle Avenue, and ask you whether you received that envelope? A. Where is the letter?

Q. I am asking you if you received the envelope? A. If I read the letter I can tell you whether I received it or not.

Q. While your wife was at Lake Hopatcong, you went each day, did you not, at this address, 62 Ryle Avenue? A. Yes, sir; I went there every day.

Louis Grobart. Recalled. Cross.

Q. And got your own mail there, didn't you? A. Yes.

Q. Well, I ask you whether you didn't get this Postal Card, Exhibit C-9, for identification, in that envelope? A. The envelope I received, but I never received a card like that.

Q. You received the envelope? A. I must have received something in the envelope, but I didn't receive that card. 10

Mr. Vickers: I offer it in evidence.

Envelope marked Exhibit C-19, as of this date.

Q. When you were in Chicago, did you have a room with one bed in it? A. Yes, sir.

Q. And only one bed—a double bed? A. One bed—a folding bed, and there was also another bed; we occupied two rooms. 20

Q. Was one a bath room? A. Her brother slept in the other room.

Q. You and your bride didn't sleep with somebody else in the other room? A. There was an opening.

Q. You and your bride slept in a connecting room? A. There was a door between, but it was two rooms together. 30

Q. Did you lock the door? A. I believe I locked the door; yes.

Q. And then in this bed room that you and your bride occupied, there was but one bed, and that a double bed; is that right? A. Yes, sir.

Q. And you stayed there and occupied that one bed for seven days with her, didn't you? A. Yes, sir. 40

Louis Grobart. Recalled. Cross.

Q. And you didn't have intercourse with her? A. No, sir.

Q. And each day, you say, was this same performance, because, you say, she cried, and she had fifty dollars, and she wouldn't let you; is that right? A. Yes, sir.

10 Q. And occupied that bed during the daytime, also, sometimes, during those seven days? A. No, sir.

Q. She didn't lie down on the bed during the day time? A. No, sir.

Q. Didn't you testify to that before? A. That happened in Buffalo, but not in Chicago.

Q. What you want this Court to believe is that, although you two people were partially undressed, and you being thoroughly veril, if you know what
20 that implies—able; you slept with that woman for seven days, and you didn't have intercourse with her because she wouldn't let you; is that what you mean? A. Yes, sir.

Q. And between that time and the fourteenth day of October, you occupied other rooms where you and your wife slept together in a double bed together— A. Beg your pardon—

Q. You and your wife slept in a double bed together— A. On what date?
30

Q. After you left Chicago? A. I don't know what you refer to.

Q. After you left Chicago, didn't you and your wife sleep together? A. No, sir.

Q. Didn't you at Kimmisia? A. No, sir; it was two beds.

Q. Where did you stay? A. In a room; it was two beds.

Louis Grobart. Recalled. Cross.

Q. Do you know the number of the room? A. No, sir.

Q. You were perfectly good friends with your wife in Kimmisia? A. Yes, sir.

Q. And all this time you were perfectly good friends together? A. Yes, sir.

Q. Up to the time she left, on the fourteenth of October, you and she were good friends, and you had no complaint to make about her, except you say she wouldn't let you have sexual intercourse? A. I complained all the time. 10

Q. About that? A. And when she came back from Edgemere, I told her it couldn't keep on forever, and when I told her it couldn't go on forever, she said: "I am going to New York next week, and I am going to see my doctor, Doctor Granet", and she said she was over there and couldn't find him in, and she packed up, and October 14th, and that is why I know I received the letter. 20

Q. You were friendly, weren't you? A. I was friendly; I was nice to her; for one reason she was sick.

Q. According to you, she wasn't too sick to have sexual intercourse? A. She was over the pneumonia, but she had pyorrhea.

Q. And you didn't have intercourse with her, because she had pyorrhea? A. Yes, sir; she said she was sick, and I was paying doctors' bills and I stayed away. 30

Q. You stayed away? A. Yes, sir.

Q. When did you begin to pay the doctors' bills and keep away from her? A. In the month of October, I told her something ought to be done; I said: "You ought to be well now; I am not going

Louis Grobart. Recalled. Cross.

to stay away from you any more", and then on the fourteenth she left.

Q. What do you say about these doctor bills you said you had to pay and then stay away from her; when was that? A. I didn't get your question.

10 Q. You say she was sick, and the doctor told you to stay away from her, and you kept on paying doctors' bills, and you stayed away from her; now, when did you make up your mind to stay away from her? A. On February 26th, 1926, she took ill, and I kept away from her, and if it wasn't her sickness, it was her teeth, or a cold, and there was always something wrong.

Q. You mean that she was sick and you kept away from her on that account? A. She said she was sick, and she asked me to stay away from her,
20 and I did, until she got well.

Q. And you did that? A. Yes, sir.

Q. Did you go up to Lake Hopatcong to visit her while she was up there? A. Yes, sir.

Q. At your suggestion, or her suggestion? A. Both.

Q. Didn't she write to you that she was looking for you to come up? A. I went down to see her every week.

30 Q. Do you remember her writing you to get yourself a new pair of shoes, and a new suit and a new hat; that you were a big man and she liked to see you look nice; do you remember that? A. I don't remember that; she wrote some letters.

Q. She wrote that she was looking forward to your coming up there, didn't she? A. She might have wrote that.

Q. But you don't remember it, do you? A. No.

Louis Grobart. Recalled. Cross.

Q. And you say you didn't stay with her over night, anytime while she was at Lake Hopatcong?

A. No, sir.

Q. You are sure of that? A. Yes, sir.

Q. You didn't? A. No, sir; I went home every night.

Q. You and she had your photograph taken together up there, didn't you? A. Photograph? 10

Q. Yes. A. I believe we did.

Q. And yet you made no effort, day or night, to have sexual intercourse with her? A. The picture, I believe, we had taken in Chicago; if I saw the picture, I could tell you.

Q. If you saw the name of the hotel on it, you could tell? A. I was in swimming, also.

Q. Didn't have a picture taken of that, did you—recognize that photograph? A. Yes, sir. 20

Q. Where was that taken? A. That was taken in Lake Hopatcong.

Q. Yes. A. Yes, sir.

Q. Your wife and you perfectly loving and friendly there, weren't you? A. Yes, sir; her brother was in back of us.

Q. He didn't interfere with you, did he? A. Oh, no.

Q. And you were perfectly friendly there? A. Yes, sir. 30

Q. And you had then made up your mind that you were not going to have any sexual intercourse with her? A. I couldn't, very well; her whole family was there.

Q. Her whole family was there? A. Yes, sir; at that time.

Q. Didn't you say this morning, Mr. Grobart, that up to the day before you left this woman, you 40

Violet Fineman. Called by Complainant. Direct.

tried to have sexual intercourse with this woman, and she refused? A. I never left her; she left me.

Q. Up to the day before she left you, you tried to have sexual intercourse with her, and was unsuccessful? A. Yes, sir.

10 Q. And you said this morning that that was almost every day when she was there; isn't that so? A. Yes.

Q. Then it isn't true, is it, that you were going to leave her alone, from the time she had pneumonia, until October, because she wasn't in a condition, according to the doctor, for you to have anything to do with her? A. I don't get you.

The Court: We will now take a recess.

20 Mr. Vickers: I have a person here to prove the records of the Barnert Memorial Hospital, and it will only take a minute. May I do that now?

The Court: All right.

VIOLET FINEMAN, a witness produced on behalf of the complainant, being first duly sworn according to law, testified as follows:

30

DIRECT EXAMINATION BY MR. VICKERS:

Q. Are you connected with the Barnert Memorial Hospital of the City of Paterson? A. Yes, sir.

Q. And in answer to a subpoena, have you produced a record of the illness of Louis Grobart? A. Yes, sir.

40 Q. May I see it? Admitted, October 5th, 1918; discharged, December 25th, 1918. Diagnosis: Em-

Violet Fineman. Called by Complainant. Direct.

piema, and condition, improved, and Doctor Joel-
son was the physician? A. Yes, sir.

It is stipulated and agreed by and between
counsel for the respective parties hereto, that
either party may be permitted to examine the
record at any time, at the hospital, in the in-
terim.

10

Mr. Vickers: That is all.

(No cross examination.)

The Court: We will now take a recess. We
will have to arrange for another date at some
future time.

20

30

40

Louis Grobart. Recalled. Cross.

THIRD DAY.

IN CHANCERY OF NEW JERSEY.

10	Between BESSIE GROBART, Complainant, and LOUIS GROBART, Defendant. } On Bill,&c. TESTIMONY.
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Paterson, N. J., October 8th, 1928.

Before—HONORABLE VIVIAN M. LEWIS,
Vice Chancellor.

20

APPEARANCES:

GEORGE T. VICKERS, Esq., Solicitor for the
Complainant;

WILLIAM W. EVANS, Esq., appearing for
Messrs. EVANS, SMITH & EVANS,
PETER BENTLEY, Esq., and
SAMUEL M. LEVY, Esq., of the New York
Bar, Solicitors for the Defendant.

30

LOUIS GROBART, the defendant in the above en-
titled cause, having already been called and sworn,
is recalled and testified as follows:

CROSS EXAMINATION (CON.) BY MR. VICKERS:

40 Q. Mr. Grobart, in your previous testimony, and
referring to the fact of your wife going to Lake

Louis Grobart. Recalled. Cross.

Hopatcong, you testified on page 124: "She didn't want me to go." By that do you mean that she didn't want you to go to Lake Hopatcong? A. I wanted to go with her to the mountains, and I wanted to go to Lake Hopatcong, but she said: "My family is going there also." And she didn't want me to go.

Q. You and she together made the arrangements about going to Lake Hopatcong, didn't you? A. No, sir. 10

Q. Did she go without any notice to you, and then let you know she was there? A. She made arrangements with her mother and sister.

Q. You recall that she wrote you a letter, don't you, in which she referred to your coming up there? A. Yes; she asked me to come up.

Q. Then why do you say she didn't want you to go? A. I didn't want her to go to Lake Hopatcong, but she wanted to go with her mother. 20

Q. I show you a little scrap book, or composition book, it is called, and ask you whether it was kept in your house at the time? A. I don't know; she might have kept it.

Q. You never saw it, did you? A. It might have been there; I don't remember; it might have been there.

Q. So far as you know, it was never in your hands? A. Probably it was around the house; I believe I have seen it. 30

Q. Let me call your attention to a part of a page in there, and see if you didn't practice your initials? A. Yes; that is my writing.

Q. Doesn't that refresh your memory that it is in your handwriting? A. Surely; I said yes.

Q. With regard to this occasion when she went away, do you recall that she made out the laundry 40

Louis Grobart. Recalled. Cross.

list, of the things to be sent to the laundry, and sent instructions to you to take care of it, and see that it went to the laundry when she went away? A. Whatever she had, I don't remember; I always used to take care of them, because she was in New York, and it always came Monday morning—The Palace Electric Laundry.

10 Q. I show you the date, July 28th, 1926, was that the date she went to Lake Hopatcong? A. She went sometime in July; I don't remember the date.

Q. By reference to the laundry list made out, does that refresh your memory? A. She used to make out the laundry list and mark down what went away, and I used to take care of it, because on Monday morning she was always in New York, and I used to receive it and pay for it.

20 Q. Do you recall that July 28th, 1926, wasn't a Monday? A. I don't remember.

Q. Turn over to the other page—according to the Jewish custom, you write the other way, don't you; you write from the back of the book to the front; you write that way, don't you? A. Yes.

Q. Now, turn to the next page, and I ask you if that was the list for you, with reference to her going away? A. No, sir; I have never seen that in the book.

30 Q. You have never seen that in the book? A. No, sir; I have never seen that in the book.

Q. I show you two slips from the Palace Electric Laundry, and I ask you with reference to the two slips I show you, whether you can identify the entry made in the book? A. I don't know anything about this.

40 Q. You paid it, didn't you, while your wife was at Lake Hopatcong? A. Why, yes; I used to pay the bills, but I didn't know what was in it; I used to take the package and pay him for it.

Louis Grobart. Recalled. Cross.

Q. You never checked it up? A. No; I didn't check it up; she used to check it up herself.

Q. If she was at Lake Hopatcong she didn't check it up, did she? A. She couldn't.

Q. Now, is it a fact, that the twenty-eighth being on a Wednesday, that the arrangement with her brother Barney was to come to Paterson, and take your wife to Lake Hopatcong, and he didn't come; do you recall that? A. I objected to her going. 10

Q. Why don't you answer the question? A. I don't remember.

Q. Is it a fact that on the day she went to Lake Hopatcong, she came to the office of the Ryle avenue mill, and she said "Good-bye" to you there, and she was in the car with her people? A. No, sir; I had lunch with her that day, and she said she was going with her people, but she was never over to the mill with her people; she had her mother and sister there, but her brother never saw it. 20

Q. On Wednesday, when she did actually go to Lake Hopatcong, didn't she leave this memorandum for you, and didn't she leave the list for you to see the following morning, and didn't she say in the note that she would be at the Ryle mill about nine o'clock the following morning? A. No, sir; I never did see that.

Q. That is the place where she did leave memorandum for you? A. I never saw this memorandum before. 30

Q. Is that the place where she left a memorandum for you? A. I never looked at the book; I didn't know anything about the book; I never looked at it.

Q. Let's look at another page; do you remember that she left that note for you, that she had gone over to New York? A. This, here? 40

Louis Grobart. Recalled. Cross.

Q. Yes. A. No, sir.

Q. Never saw that? A. No, sir.

Mr. Vickers: I ask that the sheet containing the laundry list, and the memorandum be marked for identification.

10

The Court: All right; it will be so marked.

Sheet containing the laundry list is marked Exhibit C-5 for identification, and the memorandum is marked C-51 for identification, as of this date.

20

Q. Now, Mr. Grobart, regarding your testimony, on page 125, that you said to your wife: "Why don't you go to a Paterson man", referring to the dentist, "and she said she didn't care enough about a Paterson man; they didn't know anything; she had a good man in New York"; do you remember so testifying? A. Yes, sir.

Q. And you remember that that is what took place? A. Yes, sir.

Q. Isn't it a fact, Mr. Grobart, that you told your wife that she couldn't go to a Paterson man, to your dentist in Paterson, because you owed him money? A. No, sir.

30

Q. Isn't that the fact? A. No, sir.

Q. Is it a fact—I withdraw that. Who was your dentist in Paterson, at the time? A. I had no particular dentist.

Q. Did you have some that wasn't particular? A. If I had a toothache—sometimes it stopped, but if it didn't, sometimes I went to one, and sometimes to another one.

40

Q. Was there any dentist to whom you owed money, about May, 1926? A. I don't remember.

Louis Grobart. Recalled. Cross.

Q. Did Doctor Mahler ever do any work for you?

A. Yes, sir.

Q. I show you a bill, rendered for professional services, under date of March 13th, 1926, and ask you whether or not this dentist in Paterson, did do dental work for you, and whether you owed him that amount? A. Yes, sir; he did.

Q. At the time you talked to your wife about her dental work, isn't it a fact that you had this due bill; that it was unpaid in the month of May, and you told her to wait a while, because you hadn't paid the bill? A. No, sir. 10

Q. It isn't? A. No, sir; I paid the bill.

Q. When? A. I can't remember the date, because the checks were stolen.

Q. Will you say you paid it in the month of May, 1926? A. I don't know. 20

Q. Let me show you a check to Doctor Mahler, and ask you if that is your check, paying that Doctor for your dental services? A. I paid him twenty dollars, yet.

Q. Did you pay that bill, which was rendered to you in March, with that check; yes or no? A. I can't remember; that is my check, and it is paid, and that is all I know.

Q. Now, except for the check that it is paid, and you saw the due bill, and you don't know whether the check was for dental services included in that bill? A. I don't know; I had some work done by Doctor Mahler; he put a cap on my tooth also. 30

Q. Isn't it a fact that you told your wife, sometime in the month of May, that she couldn't go to your dentist in Paterson, because you owed him a bill? A. No, sir; I had no particular dentist.

Louis Grobart. Recalled. Cross.

Mr. Vickers: I offer the bill and check in evidence.

The Court: Let them be marked.

Doctor Mahler's bill is marked Exhibit C-52 and Mr. Grobart's check is marked Exhibit C-53, as of this date.

10 Q. Do you know Doctor Singer, a dentist in Paterson? A. Yes, sir.

Q. Did you have any work done by him? A. Yes, sir; I had no particular dentist.

Q. And in the month of May, you owed him money, didn't you? A. I don't know; when the bill came due, I paid it.

20 Q. If this check pays for services rendered—for services rendered prior to March, you didn't pay him when it was due, did you? A. I paid him when it was due.

Q. I show you a check dated April 20th, and one dated June 20th, 1926, each to the order of Doctor Singer, and each for ten dollars, and ask you if that refreshes your memory? A. Yes; I had work done by Doctor Singer, and I paid him.

Q. Do you know when that work was done? A. I don't remember.

30 Q. Do you know the month it was done? A. I can't remember.

Q. Can you remember within three months, when the work was done? A. I don't remember.

Q. Can you tell us whether it was in the year 1926? A. I don't remember.

Q. Can you tell us whether it was in the year 1925? A. I don't remember.

40 Mr. Vickers: I offer the bill and check in evidence.

Louis Grobart. Recalled. Cross.

The Court: Admitted.

Bill marked Exhibit C-54 and the check Exhibit C-55, as of this date.

Q. On page 118 of your testimony you said you stayed in Paterson and tried to get coal, because it was winter, and that was the time you returned from your honeymoon, in Chicago; do you remember that? A. I don't understand your question. 10

Q. I withdraw it. You said you stayed in Paterson to arrange for your coal, because it was winter? A. Yes; I had coal.

Q. And do you remember testifying, on page 118, down in the center of the page, that your wife stayed in her parents' home, and you went out to Paterson, because you had to take care of the coal; do you remember testifying about that? A. Yes; she stayed there for a day, and then she came to Paterson. 20

Q. Did you testify to that? A. I believe I did testify.

Q. That means you had to get coal in the house? A. I had to arrange to make steam; I had the coal there, I believe.

Q. Don't you remember? A. I don't remember, exactly. 30

Q. When you testified that you had to arrange to get coal, do you mean you had to get it from the coal bin in your cellar to the furnace, or from your coal dealers? A. I don't remember.

Q. That is what you meant when you so testified; is that right? A. (No answer).

Q. The fact is, isn't it, Mr. Grobart, that before you were married, you arranged to get the coal into the house; isn't that true, and the fact is that there 40

Louis Grobart. Recalled. Cross.

is your due bill for the coal, and you ordered it and got it before you were married? A. I said I don't remember, and that is the bill; yes.

Q. And now, having been shown the bill, and that is dated October 5th, 1925, and being shown the bill, and the fact that it was charged to you on November 9th, 1925, do you still say that you had to go to Paterson, when you came from Chicago, to get coal in? A. I said I was going to get it warm.

Q. Speaking of your return: "We arrived at the Grand Central Station, and I took her home, and I came over to Paterson to see if everything was all right. Q. Where did you stay that night? A. I stayed in Paterson and arranged to get coal, because it was winter time". Did you so testify? A. I might have said that, but I had to get steam up, because there was no heat there.

Q. Now, Mr. Grobart, you said something about what your occupation was at the time you met your wife; do you recall it? You testified about what your occupation was—your business was taking care of the estate; do you recall that? A. Yes.

Q. And that time—the interim while you were living with your wife, were you a salesman, selling goods? A. Sometimes.

Q. I mean, after you had met your wife, or while you were living with her? A. I can't remember; sometimes I have some merchandise I have to sell, and I sell it for different people.

Q. I show you what purports to be an identification card of the Commercial Travelers' Association of America; do you recognize that as yours? A. Yes; I have had insurance from the Mutual Insurance.

Q. I show you the policy and ask you if that was yours? A. Yes, sir; that is my policy; surely.

Louis Grobart. Recalled. Cross.

Q. Now, that policy refers to your occupation, as follows: "I don't work on machinery, but sell merchandise that was made by the machines"; do you recall that—here it is in your application for your policy? A. Yes; I sell, sometimes, merchandise.

Q. Do you recall making that statement of your occupation; that is what I want to know? A. I don't remember, but if it is there, I probably made the statement. 10

Q. You can see it there—that is your signature? A. Yes, sir.

Q. You don't remember what you said your occupation was? A. No, sir.

Q. But you did take out this policy? A. Yes, sir.

Q. Now, this policy was applied for on the nineteenth day of March, 1926, and issued on the fourteenth of April, 1926, and it is made to the benefit of your mother. I am asking you if your mother wasn't made beneficiary by you, because you then knew that this marriage hadn't been consummated, and you were incompetent to consummate it? A. I don't know anything; but I know this much, that I have taken the policy out. 20

Q. Well, you know what I now ask you, don't you? A. I don't understand the question. 30

Q. You don't? Do you mean you don't remember it, or don't understand it? A. I know I have taken the policy out; that is all I can remember.

The Court: It is a very simple question, and relates to your sexual ability, and we would like to have an answer.

Q. I will repeat the question. Now, this policy was applied for on the nineteenth of March, 1926, 40

Louis Grobart. Recalled. Cross.

and issued on the fourteenth of April, 1926, and it is made to the benefit of your mother. I am asking you if your mother wasn't made beneficiary by you, because you then knew that this marriage hadn't been consummated, and you were incompetent to consummate it? A. I don't remember anything of that.

10 Q. You know that you applied for this policy, don't you; yes or no? A. I haven't applied for this policy; I was in New York City, in the office of a friend of mine, and he was writing these policies up, and he asked me to take one, and I said: "All right, make one out for me", and he made it out, and what he made it out, and what he made it out, I don't know; it was traveler's insurance.

20 Q. Did you carry an identification card, for this policy, with this number on it? A. I don't understand you.

Q. Did you carry this card, corresponding with this policy; did you or didn't you? A. I don't remember.

30 Q. Now, you say, Mr. Grobart, that you didn't apply for this policy, but this man was making them out, and what amount he put in, you don't know? A. I left it and he made it out, and he said: "It doesn't need any examination by a doctor".

Q. Was this an intimate friend of yours? A. Yes, sir.

Q. How long have you known him? A. Fifteen or sixteen years.

Q. What was his name? A. Julius Kleinan.

Q. Where was his office, at that time? A. Either at Thirtieth Street, or Thirty-seventh Street; they are located at Thirty-seventh Street now; they had

Louis Grobart. Recalled. Cross.

a place at Thirtieth Street, but they moved to Thirty-seventh Street.

Q. And he sent you the policy; is that right? A. Yes, sir; he sent it to me.

Q. I show you an envelope— A. He didn't mail it; he sent it to me.

Q. Didn't you get it from Simon H. Glass, the Paterson agent, and didn't Simon H. Glass send it to you in this envelope? A. No, sir; that was a policy issued on the machinery of the mill. 10

Q. The accident insurance policy? A. They carry everything; the machinery I had insured by Simon Glass.

Q. The policy was issued on the fourteenth day of April, 1926; the envelope bears a Paterson Post Stamp on April 17th; do you say you didn't receive that policy in that envelope? A. No, sir; I did not. 20

Q. So your memory is very clear, as to the receipt of that envelope? A. Yes, sir.

Q. But your memory is very hazy about the policy? A. Because I had insurance on the machinery with Simon Glass, and nothing else.

Q. Did you give to the agent, Mr. Kleinan, the information that you were born in Austria? A. Yes, sir.

Q. Did you give him the information that you resided at 421 East Thirty-third Street and Broadway? A. I believe I did. 30

Q. That was the place you were residing with your wife? A. That is where I resided with her; yes, sir.

Q. And did you give as your occupation, silk ribbons, 62 Ryle Avenue, Paterson, N. J.—why do you have to have the policy to see if you did or not? A. We used to manufacture ribbons—my father, at one time. 40

Louis Grobart. Recalled. Cross.

Q. Did you manufacture silk ribbons? A. It is a silk belting.

Q. Did you give him that information? A. I believe I did.

Q. And did you give him the name of Bertha Grobart, and tell him it was your mother? A. He might have made a mistake, and put my mother's name on, because he didn't know my wife's name.

Q. Then you say you didn't give to this agent the name of Bertha Grobart, she being your mother, as the beneficiary in this policy? A. I don't remember.

Q. What makes you think he made a mistake, then? A. He probably had made a mistake; he probably didn't know I was married when he made that out; he wasn't at my wedding.

Q. He wasn't at your wedding? A. No, sir.

Q. And you didn't inform him? A. No, sir.

Q. You knew at the time this man was making out this policy, someone, in case of your accidental death, someone would be a beneficiary under this policy, didn't you? A. I didn't know anything of the kind.

Q. You didn't? A. He was making out some policies, and he made one out for me, and he signed the application.

Q. Then you didn't know what benefits would come under this policy, in case something happened to you, did you? A. I don't know anything about it.

Q. You didn't know who would be benefited by anybody holding this policy, did you? A. He being a friend of mine, I told him to go ahead.

Q. Did you know that if anything happened to you, somebody would be benefited by this policy—did you? A. I told him to make it out, and I gave him six dollars, and I gave him the money.

Louis Grobart. Recalled. Cross.

Q. Did you pay six dollars for this accident policy, not knowing who it would benefit; is that what you say? A. He said that in case I got in an accident I would get some compensation.

Q. And in case you got killed? A. I don't know anything about being killed; if I got hurt I would get certain compensation.

Q. Mr. Grobart, do you mean to say that under Section "A," you didn't know that for loss of life you got ten thousand dollars—you didn't know that? A. No, sir; I didn't know that. I had another policy in my wife's name. 10

Q. Why? A. Because she was my wife.

Q. Did you expect her to get anything in case anything happened to you? A. Yes, sir.

Q. Was that an accident policy? A. That wasn't an accident policy; that was a regular policy. 20

Q. How soon was it taken out, after your marriage, if you remember? A. I don't remember, but I got that policy out.

Q. Do you remember whether it was a month, or six weeks after? A. I don't remember the date.

Q. September 29th, 1926. You knew you took it out, didn't you?

The Court: How much is it for?

Mr. Bentley: Seventy-five hundred in case of death, and fifteen thousand dollars in case of accidental death, to his wife, Bessie. 30

Q. You knew she would benefit by that in case of accidental death? A. She said she would like to have a policy, and I took it out.

Q. Now, Mr. Grobart, do you remember testifying that the reason you gave for not trying to have any sexual intercourse with your wife, for seven 40

Louis Grobart. Recalled. Cross.

days, or thereabouts, at the Chelsea, in Chicago, was because your wife's brother was in the room next to yours, and your wife said it would make too much noise, or words to that effect; do you remember that? A. Yes, sir.

10 Q. Have you thought that question over in your mind, and come to any conclusion as to whether you were mistaken about that, or whether that is a fact? A. That is a fact.

Q. You are sure of it? A. Yes, sir.

Q. And you are sure that is the reason why you let her alone and didn't try to do anything—have sexual intercourse with her for seven days, while you were in Chicago; do you remember so testifying? A. She wouldn't let me.

20 Q. Do you remember testifying to that? A. I testified that her brother had a room next to us.

Q. And she said she wouldn't have any intercourse with you, because it would make too much noise, and you let her alone? A. Yes.

Q. Do you remember so testifying, I am asking you? A. If I testified that way, it must be so.

Q. I am asking you if you did so testify? A. I suppose so, if it is there.

30 Q. Then you don't remember whether you told that story the last time you were here in court, do you? A. I do remember, to a certain extent, that I was there and her brother had a room right next to ours, and she said: "Let me alone; I have a cold, and be nice and quiet, and when we get home we will have it."

Q. And that is the reason you let her alone? A. Yes, sir; until we got home.

Q. And for the reason that her brother had the room next door? A. I suppose so.

Louis Grobart. Recalled. Cross.

Q. Mr. Grobart, you know that isn't true; that her brother's room wasn't on that floor at all? A. It was.

Q. That was her brother Barney? A. Yes, sir.

Q. He is here in court, isn't he? A. Yes, sir; the man with the glasses on.

Q. Do you remember sending the bell boy out to get some nuts to eat with some wine you had there? 10
A. No, sir.

Q. Do you remember sweeping up the nut shells, after this little party you and your wife and her brother had there? A. I remember the nuts, but I didn't sweep them up; the porter was there.

Q. Do you remember going down stairs to Barney's room, and having some wine down there, and bringing up a jug of it up to your room, where you and Bessie were staying there in the room? A. No, 20
sir.

Q. That didn't happen? A. No, sir; we went to visit other people in the hotel, but Barney had the room next door.

Q. You were in his room, weren't you? A. Yes, sir; the rooms were together.

Q. What do you mean, "together"? A. There was only a door between.

Q. And did you have the door open? A. Yes, sir.

Q. You and your wife were on your honeymoon, 30
and you had that kind of a room, did you? A. We couldn't get any other.

Q. You are perfectly certain of that, are you? A. Yes, sir.

Q. Mr. Grobart, did you check out of the hotel on December 29th, 1925? A. I believe we checked out, but I don't remember the date.

Q. You don't? A. No; I don't remember the date, but we checked out; yes, sir. 40

Louis Grobart. Recalled. Cross.

Q. Let me show you what purports to be the original ledger: "Room 601, left, and has Grobart checked out", and under the date of December 29th, 1925? A. I don't remember the number of the room.

Q. You stayed there for seven days, under those agonizing conditions, and you don't remember the number of the room? A. No, sir.

10 Q. Do you remember the floor? A. I don't remember.

Q. Will you say it wasn't the sixth floor? A. I don't know; I didn't hire it; my brother-in-law hired it.

Q. You were with your bride? A. Yes, sir.

Q. You and your bride in one room? A. Not one room—two rooms.

20 Q. I ask you whether it isn't a fact, that your brother-in-law, Barney, at that time, didn't occupy room 208, and that is the room to which you and your bride went to his room, and where you had some wine, and you, together with your bride and Barney, came up to your room, No. 601; will you say that isn't true? A. I don't understand what you mean; I don't remember the number of the room.

30 Q. I ask you whether it isn't a fact, that your brother-in-law, Barney, at that time, didn't occupy room No. 208, and that is the room to which you and your bride went, upon your arrival at the hotel—you went first to Barney's room, and there you had some wine, and then you and your bride and Barney came up to your room, which was room No. 601; will you say that isn't true? A. He had the room next to mine; that is all I know.

Mr. Vickers: I ask that the answer be stricken out.

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The Court: Strike it out.

Louis Grobart. Recalled. Cross.

Q. Will you please answer the question? A. I hadn't been in any room, except we had the two rooms together; I don't remember any other rooms.

Mr. Vickers: I still insist that the answer is not responsive.

Mr. Bentley: There are a number of questions there, in that question.

10

Q. Will you say it isn't a fact that your brother-in-law, Barney, didn't occupy room No. 208? A. I don't know the number of the room.

Q. Will you say it isn't a fact, within your knowledge, that Barney didn't occupy a room on the same floor that you and your wife did? A. He occupied it on the same floor; yes.

Q. At that time? A. At that time; yes.

Q. And the room was next door to the room you had? A. Yes, sir.

20

Q. And you know that, because you went into it? A. Certainly.

Q. And you went in there with Barney? A. Barney was in there; there was only a door between.

Q. But you don't know the number of the room you and your wife occupied, do you? A. No, sir.

Q. Was that an elevator hotel? A. Yes, sir.

30

Q. Do you know whether you had to go up one floor in the elevator, or several floors; don't you remember? A. I don't remember; we had to go down and have something to eat, and then go up together.

Q. Who? A. Her and her brother.

Q. You always went together? A. Yes, sir.

Q. You and your wife never went together to your room? A. Yes; me and my wife went together.

Q. Fixing your mind on some occasion when you and your wife went alone to your room, I am ask-

40

Louis Grobart. Recalled. Cross.

ing you if you know whether you went up one story, two stories, three stories, four stories, or what? A. I don't remember.

Q. You don't know whether it was in the basement or not? A. I know it wasn't in the basement.

Q. You know you weren't going down when you went in the elevator; is that right? A. Yes, sir.

10 Q. Mr. Grobart, you said something about your wife constantly being sick, and you constantly having to pay bills. You don't want to say that your wife was unnecessarily extravagant in the way of going to doctors, do you? A. She always complained of illness to me.

Q. You don't mean that she unnecessarily made debts for doctors and dentists; you didn't mean that, did you? A. I wouldn't say unnecessarily; 20 she always told me she was ill, and she always complained about the cough, when we got back from Chicago, and she always complained about that right along. I asked her to have the tonsils out, and she said she was afraid, on account of asthma.

Q. You were her medical adviser, weren't you? A. Not necessarily; I told her my sisters had them out, and they didn't have colds any more, like they used to.

Q. She wanted you to go to the doctor to have your genitals examined, and you wouldn't go? A. I was always ready to go, and she wouldn't go. 30

Q. You never had any trouble with her about money matters? A. No, sir; I always gave her what was necessary.

Q. And she gave you cash, too? A. Yes, sir; I gave her cash, and she cashed checks.

Q. You gave her cash and she gave you checks; what do you mean? A. She said: "You give me so much money." And she said: "I want to keep 40

Louis Grobart. Recalled. Cross.

things straight." And she would give me a check and she would say: "I am going to New York; have you any money?" And I would give her cash.

Q. She gave you checks and you gave her money—you owe Bessie money now, don't you? A. I owe her money?

Q. Yes; come on and tell us. A. I don't owe her any money, that I know of, but I know what you are after. 10

Q. You know, do you; let us have it? A. I was looking at a piece of paper, and I said that wasn't the way to sign it, and she said: "How do you write it", and I wrote it and then she said: "Now I got you".

Q. Your wife got you to write your name on a blank piece of paper, and then she wrote something over it; is that right? A. Yes, sir. 20

Q. Now, Mr. Grobart, is that the paper you refer to, yes or no, quick? A. I want to read it.

Q. Of course. A. I had my name signed on there; that is my signature.

Q. Is that the paper you just now told about; yes or no? A. I signed several papers; there was a big sheet of paper.

Q. Is that the paper? A. That is one sheet, yes; but there is a big sheet of paper. 30

Q. Then it isn't the paper you were telling the court about, is it? A. She has another paper.

Q. That isn't the paper you were telling the court about, is it? A. She has another paper.

Mr. Vickers: I ask that the answer be stricken out, and that the witness be instructed to answer the question.

The Court: Yes; answer the question.

Louis Grobart. Recalled. Cross.

A. Yes; that is the paper, but there is another one.

Q. Why did you say the sheet was a large one?

A. She had several papers.

Q. Why didn't you say that before? A. I wasn't very good in spelling, and she used to show me how to write, and she used to show me different things.

10 Q. Then this piece of paper that you have in your hand is one of your writing lessons? A. That is my signature, but that is her writing.

Q. That is her writing? A. Yes, sir.

Q. And you said here, at a previous hearing, that you could not identify her writing on the letters?

A. Now I know it.

Q. It says there that on September 20th, 1926, you owed Bessie one hundred and ninety dollars?

A. My signature is there.

20 Q. And you say you wrote that name, "Louis Grobart"; that the paper was then blank, and your wife filled the writing in afterwards? A. I wouldn't say that that is my signature.

Q. Do you say, when you signed that paper, the writing wasn't on there? A. I don't believe it was on there—no. She used to show me how to write.

Q. And you mean to say that paper was signed by you, without any writing on it, by your wife?

30 A. Yes, sir; that is my signature, but there wasn't any writing on it.

Mr. Vickers: I offer the paper in evidence.

The Court: Let it be marked.

Paper marked Exhibit C-56, as of this date.

Q. On September 20th, 1926, there was no scrap between you and your wife, was there? A. No, sir.

Louis Grobart. Recalled. Cross.

Q. You were perfectly good friends, weren't you?

A. Yes, sir.

Q. There was no reason, so far as you know—so far as her conduct toward you was concerned, why she should get you to sign your name, and then she write an "I. O. U." after it? A. I say, I don't know what she did; she cleaned every paper out and stole them, so she must have prepared herself.

10

Q. You refer to the checks she has? A. Yes; she has checks and other stuff that she cleaned out. I had nothing closed to her; I had everything open.

Q. Is it true that the checks were in a Knox hat box, with her things? A. No, sir; they were in the drawer.

Q. She had free access to them? A. Yes, sir; everything was open.

Q. You know why those checks were of importance to your wife? A. I know now; I didn't know at the time; if I had known it, she wouldn't have got them.

20

Q. Just tell the Court what you know the importance of those checks to be to her; just tell the Court; you have just sworn to it. A. I don't know how important they are, but I know she has got them.

Q. What do you mean by that? A. She has got them, and she started the case against me, and she is after money.

30

Q. And you think these checks are of importance for that reason? A. She figured that the papers would be of importance to her; I don't know whether they are or not.

Q. Don't you know that sometime in the month of May, you and Bessie were in your brother Sam's office, and some question came up about your wast-

40

Louis Grobart. Recalled. Redirect.

ing your money, and Bessie then produced these checks, and said: "This is the way you are wasting your money"; is that true or not? A. Yes, sir; she was in my brother's office.

10 Q. Now, about that time, and after that time, Bessie went to your mother, and told your mother about the unnatural condition in which you and she were living? A. No, sir.

Q. Didn't you come to Bessie and tell her that you had had your first fight, and that she had squealed on you, and you would get even with her? A. No, sir.

Q. You are sure of that? A. Yes, sir; I am sure of that.

20 Q. Didn't Bessie tell you that she had been to your mother, and had told your mother, and had asked your mother to use her influence to have you go to a doctor and have yourself cured? A. No, sir.

Mr. Bentley: That has been gone over very fully before.

The Court: Where is it?

Mr. Bentley: It is right here, in the record.

Mr. Vickers: That is all.

30 REDIRECT EXAMINATION BY MR. BENTLEY:

Mr. Bentley: I offer in evidence, policy No. 9,606,458, issued by the New York Life Insurance Company, on the life of Louis Grobart, for \$7,500 and \$15,000, accidental death, payable to the complainant, Bessie Grobart.

Mr. Vickers: No objection.

The Court: Let it be marked.

40

Louis Grobart. Recalled. Recross.

Life insurance policy marked Exhibit D-50,
as of this date.

Q. Mr. Grobart, I show you bills of Doctor Fishel, dated October 5th, 1926, for thirty dollars; another of the same date for seventy-five dollars; another of September 1st, 1926, for seventy-five dollars; another of February 1st, 1927, for one hundred and twenty dollars, and still another, dated October 26th, 1926, from Doctor Feldman, for twenty-five dollars, and another, dated December 3rd, 1926, from Doctor Feldman, for ten dollars, and ask you if those are bills rendered to your wife? 10
A. Yes, sir.

Q. Each one is marked: "For professional services rendered to Mrs. Grobart"; did you pay those bills? A. Some of the bills were paid, and others 20
were when she was away.

Q. And you didn't pay those? A. I didn't pay them when she was away from me.

Mr. Bentley: I offer the bills in evidence.

The Court: Let them be marked.

Batch of bills fastened together and marked Exhibit D-51, as of this date.

Mr. Bentley: That is all. 30

RE CROSS EXAMINATION BY MR. VICKERS:

Q. Mr. Grobart, with reference to these bills, in February, 1927, did you direct or authorize your attorneys, Evans, Smith & Evans, to write to Doctor Fishel, that your wife had appropriated to her own use, all the household furniture, without Mr. Grobart's consent, and in view of the fact that she had decided to go her own separate way, he would have 40

Bertha Grobart. Called by Defendant. Direct.

to look to her for the payment of the bills? Did you authorize them to write that letter? A. Yes, sir; I told counsel to write the letter.

Mr. Vickers: That is all.

10

BERTHA GROBART, a witness produced on behalf of the defendant, being first duly sworn according to law, testified as follows:

DIRECT EXAMINATION BY MR. EVANS:

Q. Mrs. Grobart, you are the mother of Louis?
A. Yes.

20

Q. Do you remember when Louis and his wife came back, after their honeymoon? A. Yes.

Q. Did you have any conversation with Mrs. Grobart, Louis' wife, when they came back? A. I can't speak English; I want an interpreter.

Mr. Evans: We have Mr. Bernstein here, who is the official interpreter of the County, and I ask that he may be sworn.

The Court: He may be sworn.

30

(Samuel Bernstein, sworn as interpreter.)

Q. Did you have any conversation with Mrs. Grobart, after her return from the honeymoon? A. Yes, sir; she was by me.

Q. Where did you have that conversation? A. She stopped with me several days; she came up in our home, to fix up her house, and she was there several days, in our house.

40

Q. Did you have any conversation with her? A. Yes, sir; she slept with me, in my room.

Bertha Grobart. Called by Defendant. Direct.

Q. What did she say to you? A. She informed me that before she was married she went to a doctor, and he examined her, and I asked her: "What has a girl got to do with a doctor", and she informed me that all the girls in New York City, before they get married, go to a doctor and get examined; that is what she told me. I got dressed and she was still in bed, and then she told me also, that she took some money with her; that she had some expenses; that in case my son didn't treat her right, she could come home; she is right here; let her state to the contrary. 10

Q. Did they occupy the same bed room when they were at your home? A. No; she told me she wanted to sleep with me, in the room.

Q. Did she complain to you of the fact that she had the asthma? A. No; she informed me that she always suffered from colds, and I told her to have her tonsils removed, as my two daughters had their tonsils removed— 20

Q. Did she visit you after? A. Yes; she used to come to my home; yes, sir.

Mr. Vickers: I move to strike out all of the answer, except "No."

The Court: Yes; strike it out. 30

Q. Did she ever tell you of the fact that Louis was not doing his duty by her as a husband? A. Never did.

The Court: These questions are all leading.

Q. Did she ever say anything to you about her preference to New York City, as a place of residence? 40

Bertha Grobart. Called by Defendant. Cross.

Mr. Vickers: I object to the question, on the ground that it is leading.

The Court: The objection is sustained.

10 Q. What did she say to you with reference to her residence in Paterson? A. She said it was a place that was damp; it was a very damp place, and she would rather live in New York City.

Mr. Vickers: My attention is called to the fact that there is a misinterpretation; that she told me to go, and I object to it on the ground that the witness is alleged to have said that: "She told me to go".

The Interpreter: She didn't say that.

20 Q. Did you tell her to go to New York? A. I told her it wasn't my business; she could live wherever she wanted to live.

Q. Was there anything there said between you and Mrs. Grobart with reference to childbirth? A. She told me that a cousin got married, and that at the time she was going to have a child she died at child-birth. Her name was also "Bessie"; I don't know her cousin.

30 Q. Did you receive this letter from Mrs. Grobart? A. Yes; I was ill, and I received that letter from Mrs. Grobart.

Mr. Evans: I offer the letter in evidence.

The Court: Let it be marked.

Letter marked Exhibit D-52, as of this date.

Mr. Evans: That is all.

CROSS EXAMINATION BY MR. VICKERS:

Q. Mrs. Grobart, you and Bessie were friendly, weren't you? A. Yes, sir.

Bertha Grobart. Called by Defendant. Cross.

Q. You never had any trouble with each other?

A. No, sir.

Q. She came to your house many times, to talk to you, didn't she? A. Yes; she used to come many times, but after that she stopped.

Q. She was away for a while, wasn't she? A. It was stopped, because she went away—she went home. She stood there in my kitchen, and she told my daughter that she was going to take an apartment for one hundred and twenty-five dollars, and my daughter told her it wasn't necessary for her to get an apartment, because she was only there three or four days a week, and she didn't need an apartment, and she had to have a few dollars for a rainy day, and she came in then to me, and informed me that she was very angry with my daughter; that my daughter had informed her about the apartment, and she would never come to my house again. 10 20

Q. Mrs. Grobart, you weren't present when Bessie and your daughter had the conversation, were you? A. No; she told me.

Q. Bessie came in and told you that your daughter, her sister-in-law, was interfering with her domestic relations, and she resented it; didn't she? A. No, sir; my daughter only told her that she was only home two or three days a week, and it wouldn't pay her to have an apartment for a hundred and twenty-five dollars. 30

Q. Bessie didn't like it, because your daughter interfered; isn't that so? A. I haven't heard; I wasn't there in the house.

Q. You heard what Bessie told you, didn't you? A. Yes, sir.

Q. Bessie told you that she didn't like your daughter interfering in her household affairs; isn't 40

Bertha Grobart. Called by Defendant. Cross.

that so? A. No, sir; she only asked me whether I had told my daughter to tell her that.

Q. And Bessie objected to her having anything to do with her household affairs; isn't that so? A. I don't know; I wasn't there; I don't know what they had between them; I don't know.

Q. I am asking you what Bessie told you? A. 10 That is what she told me.

Q. Is it true, or is it not true, that Bessie came to you about the month of May, and told you that she and Louis were not living right, as husband and wife? A. No, sir.

Q. Nothing at all? A. No, sir.

Q. Are you sure of that? A. Yes, sir.

Q. Don't you remember, Mrs. Grobart, that you 20 put your fingers to your ears and said: "A decent person shouldn't listen to such things," or words to that effect; isn't that true, now? A. No, sir; why didn't her father and mother come; why should she tell me?

Q. You say she didn't tell you? A. No, sir.

Q. Let me ask you if she didn't talk to you for 30 more than an hour, and you and she cried together, there, and didn't you say to her: "Only a street girl would talk about such things? A. No, sir; she is not telling the truth; she didn't tell me, or her father didn't tell me, and her mother didn't tell me.

Q. Mrs. Grobart, didn't Bessie say to you, when you said something to her about being a street girl, that you can't prove that you weren't a street girl, but I can; didn't Bessie tell you that? A. No, sir; she didn't insult me.

Q. Didn't she say she was still a virgin, and that 40 would prove that she wasn't a street girl? A. No, sir; she didn't tell the truth. If she was ashamed of herself, why didn't she send her father or mother to inform me?

Rose Rowitz. Called by Defendant. Direct.

Q. At no time, Mrs. Grobart, did you have any conversation with your daughter-in-law about Louis being sick, or not being a proper man, or anything like that, did you? A. I don't know anything about it. I have been informed afterwards; I don't know anything about it at that time, but a case like that, why didn't she send her father or mother?

Q. Mrs. Grobart, according to your religion, is a statement made by you to the Rabbi, considered to be more binding than a statement made in a court of law? A. I could state that even before a Rabbi, and I am telling the truth—whatever she told me. I am an old lady and I will not tell lies. 10

Mr. Vickers: That is all.

20

ROSE ROWITZ, a witness produced on behalf of the defendant, being first duly sworn according to law, testified as follows:

DIRECT EXAMINATION BY MR. EVANS:

Q. You are the sister of the defendant, Mr. Grobart? A. Yes, sir.

Q. Did you have any conversation with Mrs. Grobart, the wife of your brother, after the return from the honeymoon? A. Yes, sir. 30

Q. When and where did the conversation take place? A. After about three weeks—I invited her to my house for supper.

Q. What took place? A. I was then living at 630 East Twenty-second street, and my brother was supposed to come after business to meet her, but she spent the afternoon with me, and she brought the subject up, and she wanted me to tell her a 40

Rose Rowitz. Called by Defendant. Cross.

10 sure prevention for not having children, and I asked her why she wanted to know that, and she said she didn't care to have any children, because she lost a cousin by child-birth, and she thought she was too old to have any, and being my husband was a druggist, I should ask him what to do, and I said my husband didn't know anything about that.

BY THE COURT:

20 Q. Is that the only conversation you had, relative to that matter? A. That was the only conversation, only my baby was sick, and she wanted to know how I lived with my husband—if I had any secret with my husband, and I dropped the subject; I said I wouldn't discuss anything like that.

Mr. Evans: That is all.

CROSS EXAMINATION BY MR. VICKERS:

30 Q. What do you say—she tried to get some information from you, as to how you lived with your husband? A. The second time she asked me how I lived with my husband—that I didn't have any children, and I dropped the subject.

Q. Just give her language; just tell, as nearly as you can, what she said; just the words as nearly as she said them? A. The first time, or the second time?

Q. The second time. A. The second time my baby was sick, and she came over to see me and she brought the subject up again.

40 Q. What did she say? A. She asked me how I lived with my husband—what prevention I used.

Rose Rowitz. Called by Defendant. Cross.

Q. What did she say? A. She asked me what I am using to prevent not having children.

Q. What she said to you was : "What do you do to prevent having children"? A. She said : "How do you live with your husband."

Q. Those are the words: "How do you live with your husband"? A. That was the second time.

Q. Was that all she said: "How do you live with your husband"? A. She said: "How do you live with your husband and don't have any children." 10

Q. She said: "How do you live with your husband and don't have any children"? A. She came over the second time to see my baby, and she brought the subject up again, and she said: "How do you live with your husband, not to have any children."

Q. The fact was that you then had a sick baby? A. My baby had a cold. 20

Q. You had a baby, and yet she asked you how you lived with your husband and didn't have any babies? A. I don't get that; I don't understand that.

Q. You had a baby, didn't you? A. My baby was little.

Q. And this woman said: "How do you live with your husband and not have any babies"? A. My baby was then seven months old, and she asked me how I lived with my husband from that time on. 30

Q. You nursed your baby, didn't you? A. Yes.

Q. Did you explain to her that a woman didn't generally have children, while they were nursing babies? A. No; I didn't know that.

Q. What did you say about not having babies? A. I told her I didn't like to discuss this subject, and we dropped it.

Q. And on the first visit, when she asked you about something as a sure preventative for having 40

Samuel Grobart. Called by Defendant. Direct.

babies, you told her that your husband didn't know anything about such things; didn't you? A. Yes.

Q. Why did you tell her that? A. I didn't want to discuss those things; I was only a young bride myself; I was only married a year.

Q. How old were you? A. Twenty-three.

10 Q. You weren't afraid to discuss that with your sister-in-law? A. I never heard it in my home, and I didn't want to hear that.

Q. Your mother didn't discuss those things? A. No.

Q. She was opposed to it, wasn't she? A. I don't understand what you mean.

Q. She was against discussing those things? A. My mother was an old fashioned mother, and she never discussed those things.

20 Mr. Vickers: That is all.

SAMUEL GROBART, a witness produced on behalf of the defendant, being first duly sworn according to law, testified as follows:

DIRECT EXAMINATION BY MR. BENTLEY:

30 Q. Mr. Grobart, you live in Paterson? A. I do.

Q. What relation are you to the defendant? A. I am his brother.

Q. Were you present at the marriage? A. I was.

Q. What has been your brother's residence, for the last ten years, to your personal knowledge? A. At 104 Carroll Street.

Q. Paterson, New Jersey? A. Outside of the period he was married.

40

Bernard Berwick. Called by Complainant. Direct.

Q. But he lived with his wife in Paterson? A. Yes, sir.

Q. So you can say that for the last ten years he has lived in Paterson, New Jersey? A. Yes, sir.

Mr. Bentley: That is all.

(No cross examination.)

Defendant rests.

10

BERNARD BERWICK, a witness produced on behalf of the complainant, being first duly sworn according to law, testified as follows:

DIRECT EXAMINATION BY MR. VICKERS:

Q. Mr. Berwick, you are the brother of Bessie Grobart, the complainant, are you? A. Yes, sir. 20

Q. In the month of December, 1925, were you temporarily living in Chicago? A. Yes, sir.

Q. Where? A. At the Chelsea Hotel.

Q. At that time, what room did you occupy? A. Room No. 208.

Q. I show you two statements from the Chelsea Hotel to Mr. Berwick, for room No. 208, and ask you if they are statements rendered to you? A. Yes, sir. 30

Q. Did you, at any time, occupy room No. 206? A. Yes, sir.

Q. What floor of the hotel was that? A. Second floor.

Q. Do you know who made the arrangements for a room for Louis and Bessie Grobart, when they came on their honeymoon, to Chicago? A. Personally, I did.

40

Bernard Berwick. Called by Complainant. Cross.

Q. Do you know what floor they occupied a room on, at that time? A. Sixth floor.

Q. How long, in all, from time to time, did you live in that hotel? A. Approximately, for about three or four months.

10 Q. And are you familiar with the floor plans of the hotel, and whether the floors correspond with one another, in arrangement? A. Yes, sir; very familiar.

Q. I show you a paper, and ask you whether you can tell us from your familiarity with that hotel, and examination of that floor plan, whether that represents the identical floor plan of that hotel, at that time, in 1925? A. Yes, sir; it does.

20 Q. And on that floor plan, can you point out where the room of your brother-in-law and sister was located, on the sixth floor? A. Right here, in this corner.

Mr. Evans: I would like to cross examine him.

The Court: All right.

CROSS EXAMINATION BY MR. EVANS:

30 Q. Which floor does this plan cover? A. This plan covers all floors of the Chelsea Hotel; it is an architect's plan.

Q. Have you been through the rooms to see that they are identical? A. I haven't been through all of them.

Q. How many rooms have you been through? A. A half a dozen, about, but the location of a commercial hotel is about the same.

40 Mr. Evans: I object to this; this is not the floor plan.

Bernard Berwick. Called by Complainant. Direct.

BY THE COURT:

Q. What was the number of your room? A. 208.

Q. What was Mr. Grobart's room number? A. 601.

BY MR. VICKERS:

Q. Do you know whether room No. 601 was a corner room, or an inside one? A. It was a corner room, and commanded a double view, easterly and southern.

Q. And when your sister and brother-in-law was there in December, 1925, did you occupy a room adjoining theirs? A. No, sir; I did not.

Q. Can you tell us whether or not your brother-in-law, alone, or he and his wife, together, were in your room, while they were there in the Chelsea Hotel? A. They were there on two or three occasions.

Q. Is there anything to fix that fact in your mind? A. The very first night they arrived, after seeing their room, they were curious to see mine.

Q. What then? A. They saw that my room was smaller than theirs.

Q. Did anything happen in your room, that fixed the fact in your mind that Louis and his wife were in your room? A. I was hostess, and I gave them a drink of wine, and I saw that flowers and candy was in their room, and Mr. Grobart liked the wine.

Q. Did he say anything about it? A. Yes; he said he would like to have some of it, and he took the container, and we took it up to his room and left it there with them.

Q. Did you have any nuts there? A. I believe we sent one of the bell boys to get some of those nuts, at one of the candy stores there.

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Bernard Berwick. Called by Complainant. Direct.

Q. Are you familiar with the ledger sheets of the Chelsea Hotel? A. Yes, sir.

Q. I show you a piece of paper, dated December 23rd, 1925, and ask you whether the name "Berwick", No. 208, refers to your room in that house?

BY MR. EVANS:

10

Q. Are you the bookkeeper? A. No, sir.

Q. How did you get it? A. It was given to me by the manager of the hotel.

Q. It is not in your handwriting? A. No, sir.

Mr. Evans: I object to it.

The Court: It will not be marked in evidence; it may be marked for identification.

20 BY MR. VICKERS:

Q. By means of a paper writing, purporting to be a ledger sheet of that hotel, to see if that refreshes your memory as to when you checked out of room No. 208?

Mr. Evans: I object to it, as this is not in his handwriting, and is in the handwriting of somebody else.

30

The Court: I will allow it.

A. I remember when I checked out; I checked out January 3rd, 1926.

Q. And throughout the time, while your sister and her husband were there at the Chelsea, did you, continuously, up to January 3rd, 1926, occupy Room No. 208? A. Yes, sir.

Q. And no other? A. No other.

40

Mr. Vickers: That is all.

Bernard Berwick. Called by Complainant. Cross.

CROSS EXAMINATION BY MR. EVANS:

Q. You testified, on your direct examination, that you had room 206 and 208, on the second floor, so you had a suite there? A. No, sir; two separate rooms. I stayed there the latter part of the year, and sometimes I would be away for a day or two, and when I returned that room might be occupied, and they would give me a room as close to it as possible, but for a period of two months, or two and a half months, I occupied room No. 208. 10

Q. At the time you made arrangements for the room for Mr. and Mrs. Grobart, what room were you actually in? A. No. 208.

Q. And not No. 206? A. No, sir.

Q. The first night they were there—just what happened the first night that they were there, so far as you know? A. What do you bear on? 20

Q. What happened when they arrived at the hotel? A. We met them at the railroad station, and they were several hours late, and they got there about three o'clock.

Q. In the afternoon? A. No, in the morning, and their room was reserved, and Mr. Grobart registered, and I offered my congratulations, and we went up to their room first, and then they wanted to see my room, and they went down to see my room, and after about a half an hour, we said "Good-night", and separated. 30

Q. What time did they arrive at your room? A. After ten or fifteen minutes.

Q. What time did they arrive at the hotel? A. About three o'clock in the morning.

Q. What did you do, after they arrived at the hotel? A. I left them alone.

Q. After they arrived at the hotel, you left them alone? A. Naturally. 40

Louis H. Berwick. Called by Complainant. Direct.

Q. What room was it you said they occupied. A. Room No. 601.

Mr. Evans: That is all.

10 LOUIS H. BERWICK, a witness produced on behalf of the complainant, being first duly sworn according to law, testified as follows:

DIRECT EXAMINATION BY MR. VICKERS:

Q. Mr. Berwick, you are a brother of the petitioner, Bessie Grobart? A. Yes, sir.

Q. I show you Exhibit C-5, for identification, and I ask you if you have ever had that in your possession? A. I did.

Q. Where did you first see it? A. I believe, at the front porch of my sister's residence.

Q. Where, in Paterson, or where? A. In Paterson.

Q. Where she and Louis Grobart lived? A. Yes, sir.

Mr. Vickers: I offer it in evidence.

30 The Court: Admitted.

C-5 for Identification, is marked Exhibit C-5, as of this date.

CROSS EXAMINATION BY MR. EVANS:

Q. What date was that? A. The early part of January, 1927.

Q. What was the occasion of your visit? A. That was the occasion of taking the furniture from my sister's home.

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Bessie Grobart. Recalled. Direct.

Q. You helped her take it out? A. No, I supervised it; we just saw to it that it was packed carefully.

Mr. Evans: That is all.

BESSIE GROBART, the complainant in the above entitled cause, having already been called and sworn, is recalled and testified as follows:

DIRECT EXAMINATION BY MR. VICKERS:

Q. Mrs. Grobart, at the time that your brother Louis removed this sign, as he testified to, you were present? A. Yes, sir.

Q. Before that date, when this sign was removed, had you seen the sign any place on the house? A. Yes, sir; many times; long before.

Q. Can you tell how long it was, with relation to your having gone away on the fourteenth of October? A. I left on October 14th, and about three weeks later, or two and a half weeks later, I was in Paterson, on Thirty-third street, at 367, about a block and a half away from my home, on the same side, and I just passed by a moment—

Q. Give us the date. A. About the fifteenth of November.

Q. Did you see the sign? A. Yes, sir.

Q. Fix the time. A. About the fifteenth of November.

Q. Now, I show you Exhibit C-56, and I ask you what were the circumstances under which it was written and signed by your husband? A. I pleaded with my husband not to tell your mother that I

Bessie Grobart. Recalled. Direct.

am squandering your money, and don't say that I am squandering your money, and I said, "I will give you money". I said: "Louis, you told your mother that I squander your money; now, how much money have I given to you—"

10 Q. Please answer my question. A. I said: "Louis, how often have I given you this money and you always said: 'Mark it on the ice'", and I said: I don't want it back", and I said: "Every time you give me money, I will sign for it, and when I give you money, you sign for it".

Q. Was this money that you gave to Louis? A. Absolutely.

Q. Did you have Louis sign this paper, and then you fill in any part of it after Louis had signed it? A. My God! No.

20 Q. I show you an entry in what is labeled on the outside as a composition book, the page being marked C-50, for identification, and I ask you if that is your handwriting? A. Yes, it is.

Q. And I call your attention to the next page, toward the front of the book, marked C-51, for identification, and I ask you if that is in your handwriting? A. Yes, sir.

Q. Was the date "July 28, 1926", written there at the time? A. Yes, sir.

30 Q. Will you explain to the Court how this entry that is marked "Laundry", and the other memorandum to Louis came to be written? A. On July 28th, I was ready to leave for Lake Hopatcong, and I had arranged with Mr. Grobart to see that the man got the laundry, and when it came back I marked it down, and he was to verify it, to see that I didn't lose anything, and he hired a single room at the Edgemere, at Lake Hopatcong. I waited that morning until about ten o'clock, for

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Bessie Grobart. Recalled. Direct.

my mother to send the car over, and the car belonged to brother Barney, and about 12:30 I got a call that he couldn't send any one to drive the car.

Q. Did you go then to New York? A. Yes, sir, and I went to New York, and I notified him that I would be at the Ryle Mill tomorrow morning.

Q. Did you go in a car to Lake Hopatcong, the next morning? A. Yes, sir. 10

Q. Did you see your husband on July 29th, and if so, where? A. I didn't see him that day.

Q. Were you ready to go? A. I was ready to go to the mill and he called me on the 'phone, and we had a terrible fight over the telephone, and he said I could go, but he wasn't going, and I could get a single room, and then he cut me off.

Q. Louis did? A. Yes, sir. 20

Q. That was the morning of the twenty-ninth? A. Yes, sir.

Q. Mrs. Grobart, I show you an envelope postmarked from Mt. Arlington, the second of August, on stationery of the Edgemere, and enclosed therein a card marked C-9 for identification, and I ask you if you sent that card to your husband, Louis Grobart, 62 Ryle Avenue, Paterson, N. J.? A. Yes, sir.

Q. What is on that postal card that has anything to do with the argument that you had on July 29th, on the telephone? A. "Why are you nice on Wednesday and bad on Thursday?" 30

Q. Is that with reference to the telephone conversation? A. Yes, sir.

Q. Following that, did you, on the next day, August 3rd, write C-10 for identification, to Louis? A. Yes, sir. 40

Bessie Grobart. Recalled. Direct.

Q. What in there has reference to the quarrel?

A. I couldn't forgive him to go on so, the way he did, between Wednesday and Thursday, acting the way he did towards me.

Q. And the single room that is referred to in this letter; has that reference to the single room that you have spoken of, with reference to him? A. Yes, sir.

Mr. Vickers: I offer the letter and postal card heretofore offered for identification, in evidence.

The Court: They will be admitted.

C-9 for identification is marked Exhibit C-9, as of this date.

C-10 for identification is marked Exhibit C-10, as of this date.

The Court: We will now take a recess until two o'clock.

AFTER RECESS.

BESSIE GROBART, recalled.

30 DIRECT EXAMINATION (continued) BY MR. VICKERS:

Q. Mrs. Grobart, I show you C-11, for identification, and ask you if that is your letter, written by you and mailed to your husband? A. Yes, sir.

Mr. Vickers: I offer it in evidence.

The Court: Admitted.

Letter marked Exhibit C-11, as of this date.

Bessie Grobart. Recalled. Direct.

Q. I show you a letter marked C-7, for identification, and dated April 6th, 1926, and ask you if that is your letter, written by you and mailed to him? A. Yes, sir.

Mr. Vickers: I offer it in evidence.

The Court: Admitted.

Letter marked Exhibit C-7, as of this date. 10

Q. I show you an envelope and letter therein, marked C-17, for identification, and ask you whether that is your letter, written by you to Louis, and mailed by you in that envelope to him? A. Yes, sir.

Mr. Vickers: I offer it in evidence.

The Court: Admitted.

Letter marked Exhibit C-17, as of this date. 20

Q. Mrs. Grobart, referring to the time when you and your husband were together in the hotel at Buffalo, did you ever say to your husband: "I have a cold, and I am not going to let you have any intercourse," or words to that effect? A. No, sir; I never did.

Q. At the Hotel Chelsea, in Chicago, do you know whether or not your brother had a room on the same floor of that hotel as you and your husband had a room? A. I am sure he didn't have a room on the same floor. 30

Q. Do you know which floor your brother's room was on, and if so, how do you know? A. Two or three times my husband and I took the elevator and went down to Barney's room.

Q. Which floor was it on? A. The second.

Bessie Grobart. Recalled. Direct.

Q. Did you ever, at the Chelsea Hotel, tell your husband that you wouldn't let him have intercourse with you there, because Barney was in the next room and it would make too much noise? A. No, sir.

Q. Did you ever say to wait until you get back to Paterson, or words to that effect? A. No, sir.

10 Q. At any time, while you were in Chicago, or in Buffalo, or any other time, when you and your husband were together, tell him to wait a minute, you wanted to use pills or something before he would have sexual intercourse with you? A. No, sir; never.

Q. Did you ever say to him: "I am ready?" A. Yes, sir; many times.

Q. Were you? A. Yes, sir.

20 Q. I show you Exhibit C-4 and Exhibit C-3, and ask you whether you, before they were exhibited here in this court room, ever saw those papers that I show you? A. Yes, sir, Mr. Grobart showed them to me.

Q. I call your attention to the name of A. D. Berkowitz, and ask you if that is the name of your father? A. Yes, sir.

30 Q. I call your attention to the numbers on each —200 West 113th Street, and ask you whether, in the month of July, or in August or September, or any time thereafter, in 1925, you lived at that address? A. No, sir.

Q. Where did you live at that time? A. 1851 Seventh Avenue.

Q. And how long prior to July had you lived at that address? A. I lived there from April, on.

Q. And at the time your husband first called on you was your telephone number Cathedral 3607-J? A. No, sir.

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Bessie Grobart. Recalled. Direct.

Q. Was that your telephone number? A. No, sir.

Q. And in the green book you were listed under a different number? A. No, sir.

Q. Is that the same number you have now in your parents' house? A. No, sir.

Q. What was it Louis said when he first came to call on you? A. He said it ought to have been two years before, because he had me in his mind all this time. 10

Q. At the time you were on the train, in the compartment, going from the Grand Central Station to Buffalo, the night of your marriage, or the following morning after it, did you say that if he didn't leave you alone you would scream or yell or holler, or anything to that effect? A. No, sir.

Q. Was there any conversation about intercourse that morning? A. I just asked him to be nice and gentle. 20

Q. Either in Buffalo, or in Chicago, or in your home, or at any other place, did you ever refuse to have intercourse with him, unless he provided himself with cundrums? A. No, sir; I never asked him to.

Q. Until you heard it here in this court room, had you ever heard of such things as fishskins? A. Never heard of it, no. 30

Q. Did you ever say to him that you wouldn't let him have intercourse without a certain kind of cundrums, and you wanted fishskins? A. No, sir, never knew anything about it.

Q. When you were at Carmesia, what kind of furniture was in the room? A. A large double iron bed.

Q. Were there twin beds? A. No, sir. 40

Bessie Grobart. Recalled. Direct.

Q. Did you select twin beds at Buffalo? A. No, sir.

Q. Did you have them there? A. Yes, sir.

Q. Did you select them? A. No, sir.

Q. And what did you have in the room in Chicago? A. A double bed.

10 Q. In the bedroom, in which you slept at home, in Paterson, you had twin beds? A. Yes, sir.

Q. How was that? A. We discussed that before we bought the furniture, according to our religion, twin beds are necessary, his mother and sisters had it.

Q. Did you say so? A. No, he said so.

Q. Why was it necessary, according to the religion; has it something to do with menstruation? A. Yes, sir, that is just what I mean.

20 Q. You did have a double bed in the guest room? A. Yes, sir.

Q. Did you and Louis every occupy it? A. Very often.

Q. Your husband has said that he never stayed with you over night at Lake Hopatcong; what is the fact? A. He did stay with me.

Q. Who made the arrangements? A. I did.

Q. And can you fix the time when he did stay? A. Yes, sir.

30 Q. Have you any memorandum, or bill that you paid, fixing that time? A. Yes, sir; when mother and sister left I have a check that they paid; he was there on a Sunday night, over night.

Q. And he stayed with you? A. Yes, sir, in that little room, with only one bed.

40 Q. Mrs. Grobart, except for this one complaint that you have spoken of as leucorrhea, for which you went to Doctor Granet, can you say whether or not, before your marriage, you were in good health? A. Yes, sir.

Bessie Grobart. Recalled. Direct.

Q. It is a fact, that before you were married you went to Doctor Granet, to see if you could have children? A. No such discussion; I just asked him about leucorrhea.

Q. Did you ever ask him, or any other doctor, if there was any organic trouble with you? A. No, sir.

Q. Had you ever had any illness, before your marriage, that affected your nervous system, so far as you know? A. No, sir; never. 10

Q. Your husband has testified that when you came back from Lake Hopatcong, he said to you, that you are now well and able to have intercourse with me, and that he couldn't live with you and you couldn't live together any longer in this way; is that so or not? A. No, sir; not true.

Q. Your husband has testified that you said that you wouldn't go to a Paterson dentist, because they didn't know anything, and that you had a good man in New York? A. That is not so. 20

Q. Will you tell the Court what did happen, with regard to a suggestion about going to a Paterson dentist? A. I asked him who his family dentist was, and he mentioned a few; he said he had Doctor Muller or Matter, or some such name, and I asked him where he was located, and how I could get there, and he said: "You had better wait a while; I didn't pay him, as yet". 30

Q. At any time, did he have, and did you discuss Exhibit C-52, Doctor Mahler's due bill? A. That is right.

Q. Did you? A. Yes, sir.

Q. And so far as you know, up to the time that you did go to Doctor Fishel, in New York, had your husband paid the bill to Doctor Mahler, or any other dentist? A. No, sir. 40

Bessie Grobart. Recalled. Direct.

Q. Do you recall when you did go to Doctor Fishel? A. I waited and waited, until late in June, and then I went to Doctor Fishel.

Q. Did you ever have pyorrhea? A. No, sir; this tooth turned dark in front, and I wanted to know what was the matter with it.

10 Q. And you had a pivot tooth put in; is that right? A. Just a jacket crown.

Q. Your husband has testified, that on one or more occasions, when he had an erection and was ready for intercourse with you, that you applied a pill, or some substance, insisting that it be permitted to dissolve for fifteen minutes; did any such thing ever happen? A. Never, Colonel.

20 Q. Your husband has testified that on one or more occasions—in fact, frequently, when he attempted to have intercourse with you, you forced him away from you; is that true? A. That is not true, either.

Q. Did you on any occasion or circumstance, push him away from you, and if so, for what reason or circumstance? A. I never pushed him away from me.

30 Q. Mrs. Grobart, at any time, in these attempted acts of sexual intercourse which have been described by you, did you observe any peculiar effect upon your husband; what did he do? A. He would stay on his knees about ten or fifteen minutes, playing with himself, and then he would lower himself.

Q. What do you mean? A. He would come close to me and I would say: "Go on", and he wouldn't move one inch. As I said before, he was practicing self-abuse.

Q. You mean in that position? A. Yes, sir.

40 Q. When you say he laid there and didn't do anything, did you talk to him? A. Yes, sir.

Bessie Grobart. Recalled. Direct.

Q. Did he answer you? A. Yes, sir.

Q. What did he say? A. He left it all to me, and he would say: "Give me some help".

Q. At that time, when you say your husband said that to you, were you in your bed? A. Yes, sir.

Q. On your back? A. Yes, sir.

Q. Undressed? A. Yes, sir.

Q. Was he undressed? A. Yes, sir.

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Q. Was he between your legs, or wasn't he? A. He was.

Q. Was there, so far as you know, any help that you could give him, under those circumstances? A. No, sir; I said: "Go on", and he just practiced self-abuse, and he would fall over me, dead weight, and he would fall over on me, and he would laugh and then he would cry, and he would lie there like dead, and I would have to crawl out from under him.

20

Q. What effect did this have on you—on your state of mind? A. It was driving me insane; my head hopped and my intestines turned over, and in the morning I said: "Lou, what made you laugh last night; there was nothing funny", and I said: "You are killing me; can't you do something about it".

Q. Did this cause you any pain? A. A lot of pain.

Q. Did you ever speak to him the following morning? A. Yes, sir.

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Q. What did you say? A. I said I couldn't stand straight; my spine was shrinking.

Q. From pain? A. Yes, sir; I couldn't sleep.

Q. Have you gotten over it? A. No, sir.

Q. What do you notice now? A. I lose myself.

Q. Blow up, like you did in the court room today? A. Yes, sir.

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Bessie Grobart. Recalled. Direct.

Mr. Vickers: If there have been any letters that have been marked for identification, counsel says they have no objection to consider that they have been marked in evidence.

10 Q. Mrs. Grobart, Mrs. Grobart, Senior, has referred to conversations that you had with her; do you identify the circumstances which she refers to, when you and your sister-in-law had some talk; do you identify the time? A. Yes, sir.

Q. Was there any such conversation? A. Yes, sir; I did not want the older people to interfere in my home life.

20 Q. At any time, did you ever have a talk with Mrs. Grobart, Sr., about Louis' physical condition, and if so, what was the conversation? A. About ten days before I went to Carmesia, and about ten days before, I went to Mrs. Grobart.

30 Q. Tell the court what took place. A. I came in there and she said I was spending too much money, and I started to cry, and she said: "What are you crying about", and I said: "What the trouble is, is more important than money", and I started to tell her what happens at night, and the first thing she did was to put her fingers to her ears, and she said it wasn't anything for her to hear, and I said if she didn't listen, I would go to Sam, and she said that Sam wouldn't listen to me, and she said "Nobody but a street girl would talk like that", and I said: "Mamma, if you think I am a street girl, you can't prove that you weren't a street girl, but I can prove it that I am not, and I will show you", and I said: "The money matters is the least", and I said: "Not only that he goes around from house to house and makes a fool out of me", and I said: "Every time

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Bessie Grobart. Recalled. Cross.

I speak to him he just laughs and thinks it is a joke, and he says doctors don't know anything.

Q. Did you ever go to the house of Mrs. Rowitz?

A. Yes, sir.

Q. Have you ever had any conversation with her about having children? A. No, sir.

Q. I don't mean about you having children, but anybody having children? A. No, sir. 10

Q. What were you saying? A. I was playing with the child.

Q. What was said? A. We discussed the baby, and we were playing with the baby.

Q. Did you ever ask her to find out from her husband, who was a druggist, to find out something that was a sure preventative from having children? A. No, sir.

Mr. Vickers: That is all. 20

CROSS EXAMINATION BY MR. EVANS:

Q. What reason did you give your husband for not having sexual intercourse? A. I never gave him any reason; there was no discussion about not having sexual intercourse.

Q. When was the time when this first episode happened? A. In April, right after I—you mean 30 this laughing and crying?

Q. Yes. A. Right after I came back from my sickness, in April.

Q. Did he do that on your honeymoon? A. No, sir; not so bad then.

Q. Was this every night? A. Yes, sir.

Q. Did you complain about the affect it was having on your health? A. Yes, sir.

Bessie Grobart. Recalled. Cross.

Q. How frequently would he do that—go through this operation? A. You mean the times?

Q. Yes. A. Every night.

Q. Every night? A. Yes, sir.

Q. And you complained to him every night about the effect it was having on your health? A. Absolutely.

10 Q. You never refused him intercourse, did you? A. I never did.

Q. Did you observe at any time—were you in a position to notice the position of his organs, when he was attempting to have intercourse with you? A. I felt it on my body.

Q. Was it hard or soft? A. Soft; I felt it dangling around my legs.

Q. What did he do when he practiced self-abuse? 20 A. He didn't; I did it right on his body.

Q. What was the result? A. I became exhausted; I couldn't do anything more.

Q. Did you find out any time if his parts were soft? A. No, sir.

Q. Just limp all the time? A. He took his hand and put his organ on my body, and he said if he could do that it would be all right, but it wasn't.

Q. It was never soft? A. No, sir.

30 Q. Did he do anything to you—abuse you in any way? A. Abusing me and using his finger on my body.

Q. Where? A. In my body.

Q. Did that give you a sensation? A. Yes, sir.

Q. What sort of a sensation did it give you? A. It irritated me; I am normal.

Q. Would this be every night? A. No, sir; every 40 other night, and I would say: "Go on; do something", and I would practice self-abuse on him, too, and every other night he would use his finger on me.

Bessie Grobart. Recalled. Cross.

Q. Would that be the extent he tried to have intercourse with you? A. He didn't try; he always got close to me and said: "Give me some help; give me some help".

Q. Did he hit you with his fists? A. No, sir.

Q. Or bite you? A. No, sir.

Q. Or do anything other than what you have testified to? A. No, sir. 10

Q. How often did you ask him to be gentle with you? A. Just on the train, going to Buffalo.

Q. Is it true, that a relative of your died in childbirth? A. No, sir.

Q. Never? A. No, sir.

Q. You didn't have a cousin who died in childbirth? A. No, sir.

Q. Who selected the furniture? A. My brother and I and Mr. Grobart saw the pictures of it in the furniture exchange, in New York, in 1925. 20

Q. Did you ever ask a doctor if you were strong enough to have children? A. No, sir; I never had anything the matter with me, only the leucorrhea, and the doctor said it was only a cold, and lots of women had it.

Q. Did you want to have children? A. Yes, sir; my mother had seven.

Q. And you were anxious to have sexual intercourse? A. Yes, sir; that is what I got married for. 30

Q. It started just as soon as— A. Not just as soon as, but about six or seven weeks after, and I said: "Don't you get tired of playing", and he said: "No; it gives me a sensation", and I said: "You can't play day time and night, and all the time".

Q. Did you show it right away? A. No; I recovered from my pneumonia, and I picked up nicely, and I went to Atlantic City for a week, and then 40

Bessie Grobart. Recalled. Cross.

I went to Doctor Granet, and I said: "Doctor, I am sick", and he said: "What is the matter with you; you were well when I saw you last", and I told him what went on nights, and he said: "You can't go on that way", and he said: "Some women can stand it, and others can't", and that was in May or June.

10 Q. Were you in a pretty desperate condition when you went to the doctor? A. I was losing my health, and couldn't eat and couldn't sleep.

Q. How was your nervous condition? A. I couldn't keep quiet.

Q. Did the doctor say that if you continued to live that way it would be desperate? A. He said I couldn't stand it; he said there ought to be something that could be done to cure him.

Q. You told his mother about it? A. Yes, sir.

20 Q. Did she give you any satisfaction at all?

Mr. Vickers: I object to the question.

The Court: I will allow it.

A. She promised me that she would get him to go to the doctor, and that was about a week or ten days before I went to Carmesia. She said she would get him to go to a doctor.

30 Q. Did she get him to go to the doctor? A. I don't know; he came back and said: "Bessie, you squealed on me, and I will get even with you", and I said: "You always accused me about checks, and laughed about everything, but this is no joke".

Q. When you saw that you didn't get any action from either him or his mother, how did it affect you; how did it make you feel, as though you were getting the fullest co-operation? A. No, sir.

40 Q. Then what did you do? A. I went to Sam, and in front of my husband, in his brother's office,

Bessie Grobart. Recalled. Cross.

on Van Houten street, I told him the whole story, and Sam looked at him, and I said I had just come from Doctor Joelson, and he said: "She is a liar; she is a liar", and I said: "Louis, can you let me alone; you abuse me at night", and Sam said: "What are you going to do about it", and he said he would close me out, and I said: "What, because I am giving you a nice home and everything"? 10

Q. And were you angry? A. I was going insane.

Q. Did you go to a doctor? A. Positively not.

Q. Did you go to any other members of the family? A. No, sir.

Q. You were in quite a nervous state, weren't you? A. I should tell you so.

Q. What did you say then? A. I said that it was a pity his father died and we two had to live, and he was watching me from behind trees, and everything. 20

Q. Did you do anything else? A. Yes, sir; I went to an attorney in Paterson, and he said one day, when I came home: "I will close you out", and I said: "Who is putting you up to this, Sam or your mother", and I went upstairs, to the landlord, and I was crying, and he said he couldn't do anything.

Q. What attorney did you go to in Paterson? A. Ward & McGinnis.

Q. What was the result of that? A. They said 30 that if he closed me out, to break the door in.

Q. What did you tell him? A. I told him my husband was going to close me out, because I wanted him to go to a doctor, and what went on at night.

Q. Did you see anybody else? A. A friend in New York, and he recommended Colonel Vickers, but this was a lot later.

Bessie Grobart. Recalled. Cross.

Q. When did you go to Doctor Joelson? A. In June and July.

Q. Did you say anything to your father and mother? A. Yes, sir; my father wanted to sue the old lady. I couldn't tell my father what went on at night.

10 Q. What did you tell him? A. Doctor Granet told him that he examined me and I was still a virgin.

Q. Did you tell your mother and father what a serious effect it was having on you? A. They noticed it.

Q. And they inquired about it? A. Surely.

Q. And was this in May? A. Before May.

Q. They knew it before May, and they knew all the details? A. I didn't tell that to my father and mother.

20 Q. You told them he was impotent? A. No, sir, I couldn't tell them that.

Q. What did you tell them? A. That Doctor Granet said I was a virgin.

Q. And no more? A. How can I tell this to my father?

Q. I didn't ask you how? A. I didn't tell him.

Q. All they knew was that you were a virgin? A. Yes, and that we fight every night, and I couldn't get him to go to a doctor.

30 Q. Did your father or mother suggest anything to you? A. Only results, and it was no way to live.

Q. Did they weep and cry with you? A. No, sir, they could see that I was unhappy, and that made them unhappy.

Q. What was the date that you first went to Ward & McGinnis? A. I don't know the date; my

Bessie Grobart. Recalled. Cross.

husband started to threaten to close me out, and I guess it was in June.

Q. And when was it you went to Colonel Vickers? A. Just a little before the end of July.

Q. And you were having terrible quarrels all the time? A. Yes, sir.

Q. And you felt bitterly toward him? A. I did in the beginning, until he said he would stop it, and he cooled off and he stopped threatening me. 10

Q. When did he stop threatening you? A. That stopped in August, when I came back, and I told him Doctor Joelson said I had to go away; that this cough wouldn't leave me.

Q. When did you go from the house? A. The end of July.

Q. And everything was peaceable then? A. No, sir, I was at Lake Hopatcong, and went through this bitter experience again. 20

Q. That almost drove you insane? A. Yes, sir.

Q. And terribly upset your nervous system? A. Yes, sir.

Mr. Evans: That is all.

Mr. Bentley: We offer in evidence the affidavit made by the complainant in this case, dated the tenth day of October, 1927, taken before Gillano Addorizo, which was in support of a petition for alimony and counsel fee. 30

Affidavit marked Exhibit D-54, as of this date.

Mr. Vickers: I offer all affidavits in evidence.

The Court: All right.

Affidavits marked Exhibit C-57, as of this date.

Samuel Grobart. Recalled. Direct.

Samuel Grobart. Recalled. Cross.

Mr. Vickers: The case is closed, only as to this phase of it—

Mr. Evans: I would like to recall Sam Grobart for just a minute.

The Court: All right.

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SAMUEL GROBART, having already been called and sworn, is recalled and testified as follows:

DIRECT EXAMINATION BY MR. EVANS:

Q. Mr. Grobart, did Mrs. Grobart come down to the mill and have a conference with you, regarding her husband? A. She was down to my office once.

Q. Do you recall the time? A. No, I don't.

20

Q. Was it shortly after they were married, or shortly before they separated? A. I would say it was some time between that period.

Q. What took place? A. She came to my office, and had with her a bunch of checks—if I recollect correctly, they totalled several hundred and some odd dollars.

Q. Did she say anything to you at that time about her husband's disability? A. Nothing mentioned about it.

30

Q. What was her complaint about? A. She complained about a certain number of checks, or cancelled vouchers; that he had given out those checks and she wanted to know what they were for.

Mr. Evans: That is all.

CROSS EXAMINATION BY MR. VICKERS:

Q. At that time was Louis there? A. He came in afterwards.

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Q. He was there? A. Shortly afterwards.

Samuel Grobart. Recalled. Cross.

Q. Was he there while she was there? A. Part of the time.

Q. Did he say, with respect to his wife, that she lied? A. In that respect I can give the conversation.

BY THE COURT:

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Q. Answer the question. A. There was no discussion about anybody lying.

BY MR. VICKERS:

Q. Did Louis say, respecting his wife, that she lied; did he say that? A. He didn't say that.

Q. Would you recognize the bundle of checks, if you saw them; I show you the bundle of checks.

A. I recognize some checks. One was made out to a party by the name of Schneaberger, and I told her he was a life insurance agent.

20

Q. Do you recognize the checks? A. I do.

Q. And was the complaint that Louis accused her to his mother of spending all his money, and she was showing how he was spending it? A. It was just the reverse.

Q. Didn't she say that he was peddling it around, ten and twenty dollars at a time, and wasn't he gambling with it? A. No, sir.

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Q. What was it then? A. She wanted to know what became of it, and I explained it to her by looking at the checks.

Q. You explained it to her, did you; is that right? A. Yes, sir.

Q. I show you checks in the month of January, 1926, taken out of this package, signed by Louis Grobart, aggregating two hundred and eighty-five dollars, and about all drawn to cash; how did you

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Samuel Grobart. Recalled. Cross.

explain to her what he was doing with this money?

A. I only explained those that were endorsed. There were checks for only one month; that is all she showed me.

Q. Just checks for one month? A. That is all.

10 Q. Out of this bundle of checks that you have just handed to me, which you say she showed you at this time, and you explained to her what Louis did with his money, I hand you twenty checks, all in the month of April, all drawn to cash, and I askd you how you explained that to her? A. I told her that one went to Dave Sissman.

Q. Go ahead. A. This one went to Samuel Harris.

Q. You are reading the endorsement on the back?

20 A. Yes, sir, that is all I can tell; I don't know these men. This is Villa Brothers; they are the produce company. I explained it all to her, except about two hundred and some odd dollars.

Q. You have now taken out four checks which aggregate the sum of thirty dollars, and the others, aggregating more than two hundred and fifty dollars, you could not make any explanation of? A. There were other checks besides them.

30 Q. Didn't you just say that these are the only checks that she showed to you? A. There were more in there; where is the one to Schnaberger; where is the one to Smith?

Q. Don't ask me the questions, I am asking you.

A. I explained them all to her except about two hundred and fifty dollars.

Q. Would you say anything was said by Bessie, saying that she had a talk with your mother, and asking her to intercede for her? A. I never heard of it until this case was started.

40 Q. You and she were on perfectly good terms? A. Yes, sir.

Samuel Grobart. Recalled. Cross.

Q. And she came to your office of her own accord?

A. I believe she did.

Q. And she came and opened this subject to you as one of the family? A. With these checks, yes, sir.

Q. She came there for the purpose of showing you, didn't she? A. Correct.

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Mr. Vickers: That is all.

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Exhibit C-2.

July 26th, 1926.

This is to certify that I have attempted to examine Mrs. Grobart vaginally and found her to be still a virgin.

M. S. JOELSON.

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Exhibit C-6.

April 8th, 1926.

Atlantic City, N. J.

Dear Louis!!

20 Some more news of your wife.—She is well, and looks beautiful if you care to believe it—she behaves—*Flirts* with the “*Moon*”, nightly—if he happens to be out—she is disappointed today—its pouring and can’t flirt with the *Sun*. Jokes aside I feel wonderful and look it—the sun and air—is surely a good tonic. Thousands of people are out here now—its *paradise*—if I could take a little space of it and place it in Patterson I’d be happy—its *quite an idea*, isn’t it?

30 How are you Louis—are you well—hope matters are adjusting—satisfactorily—I mean with your plant, too bad you don’t want to write to me—writing to you—without getting a reply doesn’t feel pleasant you know—and you only phoned twice—its only 35¢—a man spends that much for smokes a day—I suppose you’ll call tomorrow evening however—I write to you often.

40 Will return on Monday—and will be in Patterson on Tuesday morning—of course you’ll phone me before.

In the meantime, keep well, and happy and with
my best wishes—love and $\frac{1}{2}$ doz. x x x x x x x

Yours,

BESS.

Regards from Mother.
Be a good fellow.

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Exhibit C-7.

April 6th, 1926.
N. J.

Dear Louis!!

Spending a pleasant a restful time—the air and
sun is just wonderful—only today its frightfully
cold and must stay indoors. I eat and sleep well,
and think of you—*pretty soon we'll be together*—
so dont feel restless—will return most likely on
Monday. Barney came out today to see an important
party. Stopping at the Breakers. He leaves
tonight. How are you Louis! *be a good boy!*
Louis, please you must attend the Brody matter.
She was over last Friday—she cried and said some
very unpleasant things—we couldn't possibly rea-
son with her. Barney, had to ask her to wait an-
other week and that the matter will be settled. send
her at least a 50.00 check now and the balance
later and we'll give her our check—and let us for
once get through with her—*I don't feel right for
my people*, to have her come all the time—and she
only asks for me—saying that I am your wife—
and to see ought that she is paid—please attend to
it and be through—please don't disappoint me
about it Louis.

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Hope you are well and as happy as possible—I am a little lonesome today too—if you were her now—I' had make you walk a few hours.

Will write again soon meanwhile, by best wishes love and a few x x x x x

Yours BESS.

- 10 P.S. Watch our little home and be after the telephone Co. please.

Regards from Mother—and some from myself.—

Exhibit C-8.

Sunday

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Dear Louis

- Awfully sorry I missed your phone call. Have been waiting till twenty minutes at eleven o'clock and think that you will not call any more—I went upstairs to sleep—mother retired at ten o'clock—and I kept on waiting—and was rather disappointed in not getting the call—however you meant well—and you did phone, only had I known it last night I might have slept better—(now that ought to make you feel better)—I first got your message this morning—I felt good—got up early—dressed well—had breakfast and started to walk—and covered over three miles—and what made me laugh to think that mother didn't dream she was walking that far—walking out here Louis is simply glorious not only does it give you health but it makes you feel that you are entitled to live at least one hundred and fifty years wish you were here with me to see how people make life worth while—how
- 30
- 40

are you—well and lonesome I guess—well it won't be much longer now so be a *good boy*—careful—how are things, please Louis go to our apartment and see that it is O. K. there—also please do not neglect any longer with the phone—go to the New York Tele. and explain the necessity of getting the phone—if you want me to stay in Paterson I must have the phone the place I am stopping at is pretty nice good meals—and I expect to come home with really rosy cheeks—the air and sun is surely doing me good what more shall I say—would rather say it personally—so in the meantime my best wishes for our good health happiness and welfare. 10

Yours with love and half a dozen good kisses—

BESS

Regards to you from mother. Will write you again tomorrow. 20

Exhibit C-9.

Stopping at the Edgemere, quite satisfied. feeling better—cough almost gone—Am still angry at you—over your last phone call, if you can be nice to me on Wednesday—and funny on Thursday just because *someone put you on to it*. I cannot forgive you. You act like a *kid* and not like a man. But I hope that someday you'll make up and stand on your own feet. I believe in God's good work—and I leave things to him. 30

BESS.

Will write you more when I am in better mode. 40

Exhibit C-10.

Tuesday August 3, 1926.

Dear Louis:

Find myself in better moode today so I sat down to write—though I sometimes forgive—but I never forget. There was no earthly reason for you to call me up on Thursday and talk the way you did—didn't we arrange everything agreeably on Wednesday? and that you were coming out Friday—surely, and that I would get a single room for us two—everything was peaceful and pleasant—Of course you spent the night at Mothers—talked things over and that made the difference—you act like a child—you should by all means love your Mother and Sisters, but you must learn to respect your wife—treat her kindly yourself and not do as others tell you—I know immediately when they prompt you to say things—A man cannot treat his wife as he darn pleases just because he gives her 25.00 or 50.00 a week. we all have our rights—and self respect. The only reason why I don't leave arrangements to you is because you have disappointed me too often.—and you don't use your own mind. I shall not write too much on this matter now—Someday you will change.

I hope you are well—and that you find time to visit our home and see that everything is right—please keep windows closed. If you cannot write to me—phone Hopatcong 67—I am around the house after 9 o'clock—*cost is reasonable*. No reason why you can't come out for weekends or Sundays full day. Never mind what your mother thinks you ought to do. Mother doesn't want to live right—and hates to see others do it. Will write again soon—Best wishes and regards Yours Bess.

P.S. My people were in Car when I spoke to you—so you need not imagine they know anything about our talk.

Exhibit C-11.

Monday night.
 August 30, 1926.
 N. J.

Dear Louis!!

Reached Lake Hopatcong safely—was received friendly but mostly strange people. I felt a little stonesome tonight. Wish it was Sunday already, in another few days we'll be together. 10

Hope you are well and not lonesome—and that'll have a lot of good luck in your new undertaking. and if I can be of any help I'll be only too happy to help work. Be a good boy—today you were pretty nice—there is a good compliment for you. Please take care of everything, and I'll hope that God will help us with many good things. Will write you more tomorrow. Meanwhile my best wishes and regards and x x x x x x x 20

Your BESS

Will expect your call. Don't forget to come early Sunday.

30

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Exhibit C-12.

Dear Louis!

Writing in pencil cannot get next to the ink—too many people after—you better buy mean a very small size fountain pen for a present instead of candy. I need one badly. I want it for Sunday.

10 What do you do with yourself—what di you do evenings—dont' play cards its a waste of money—and time and it becomes a bad habit.

20 Louis please, I must ask to manage to send to Dr. Granet to balance of 55.00 we owe him—he always calls up Father about it. He treated me in February and its a month past now. Get through with him, and you must send my dentist about 25.00—he'll wait for the balance. And the next think you must do—is get yourself a nice suit for the coming *holidays*—you need a new suit badly, and new shoes. You are a big fellow—and its necessary to be well dressed. Manage to be out Friday and please let me know in advance.

What else can I say—just be good—take care of yourself—bathe a long—take exercise and look nice—but don't flirt because I don't.

With best wishes and some kisses,

Your BESS.

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Exhibit C-14.

March 16, 1926.

N. Y. City.

Dear Louis:

Sitting at the window lonesome—weak and thinking—thoughts traveled to you—so I thought would write you a few lines. How are you. Be *very careful* all around—it pays in the long run—
 you didn't phone Monday or Tuesday—surely
 thought you were sick—so I had my folks call you.
 I trust to God to keeps us *healthy* and *happy* from
 now on—Please Louis gets the things from *Emma*
 —also please try to do something with our tele-
 phone, we must have it—I mean at 421—33 St.
 urge them to install immediately on account of
 sickness—you might succeed, also please don't neg-
 lect to notify Bush about the 2 missing articles—
 you cannot report a loss too late.

However, I sincerely trust you are real well by
 now—and I am trying my utmost to get strong and
 quick. I guess you will be in N. Y. tomorrow—
 in the meantime my love and best wishes for our
 good health and successful welfare.

With a few kisses and x x x x x x x x

Your BESS

P.S. Best regards to Mother
Pl an G. B. guess now.

Exhibit C-16.

August 24th, 1926.
N. Y. City.

Dear Louis!!

10 No doubt you'll have the surprise of your life to hear what I did—I got up this morning feeling blue with the cold and bad weather again so I decided quickly to leave with some of the people who were also leaving. I packed in 20 minutes, paid and left without being able to notify you or, my people; instead of going to Paterson I decided to go to N. Y. to attend a few things for myself and finish my vacation in dear Old N. Y. Will be home on Monday morning early—would make it Sunday but I want to go with the Folks to the cemetery for Aunty's unveiling—which was postponed from last Sunday on account of rain.

20 Have left word with Mr. Jacobs in case you phoned before the letter reached you, also hope you haven't sent anything there.

Hope you are well and not angry—couldn't not stay till Labor Day have to much to do—and the weather is rotten. Please when you get the chance call me up—either early mornings or early evening—if weather is nice I'll be out during the day—looking over N. Y. if you have to be in N. Y. during the week, let me know and I can meet you downtown.

30 Hoping everything is well—let me hear from you,

Yours BESS

Be a good boy.

Exhibit C-17.

August 31, 1926.
 Tuesday after
 breakfast.

Dear Louis!

Good-morning—its simple wonderful this morning—I am sitting on the steps in the Sun writing to you, so that you have something to read every day—I speant the night with a Mrs. Granat of Miami Fla. related to the Stein people of Paterson—in the (Poultry Business) of course it does not interest either of us, just for the sake of little news. How are you. Hope you are careful enough in your new undertaking and that a lot of good-luch will be with us. Manage not to sleep all alone in the house, be careful and be good. Will wait for your call tonight now I send best wishes and a few
 x x x x x

Your BESS.

P.S. Whatever news that comes up during the day
 —will write you a lengthy letter tomorrow.

30

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Exhibit C-18.

August 17, 1926.

N. J.

Dear Louis!

Haven't much to do—thought I'd let you read something—having a nice restful time, but sick of so much rain.

- 10 How are you—watch yourself—don't get too fat while I am away, also hope you'll do what I asked—*take care of Dr. Granet—and send me some money too. The forget the shoes please I need them badly.*

Mr. Sanford the engaged fellow—asked me to send you his regards—and take my best wishes and some x x x x x at the same time.

Will write you again tomorrow.

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Yours Bess.

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Exhibit C-57.

IN CHANCERY OF NEW JERSEY.

Between

BESSIE GROBART,
Complainant,

and

LOUIS GROBART,
Defendant.

On Bill &c.

On Petition
for Alimony
Pendente
Lite.

10

NOTICE.

To:

EVANS, SMITH & EVANS, Esqs.,
Solicitors of Defendant:

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TAKE NOTICE that on Monday, October 24th, 1927, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, I will apply to the Chancellor at the Chancery Chambers, No. 1 Exchange Place, Jersey City, New Jersey, for an order requiring the defendant to pay to his wife, Bessie Grobart, the above named petitioner, a proper allowance for her support and maintenance pending this suit, and also a reasonable sum for counsel fees to enable her to prosecute the said suit. And annexed hereto and served upon you herewith are copies of the petition and affidavits upon which said application will be made.

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Dated: October 13th, 1927.

GEORGE T. VICKERS,
Solicitor of Petitioner.

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IN CHANCERY OF NEW JERSEY.

10	Between BESSIE GROBART, Complainant, and LOUIS GROBART, Defendant.	} On Bill &c. } Petition for } Alimony } Pendente } Lite.
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The petition of Bessie Grobart, the above named petitioner, respectfully shows:

20 1. She has recently filed her bill for maintenance in this Court against her husband, Louis Grobart, alleging therein that her said husband did, by his extreme cruelty to petition, so endanger her life, health and comfort, as to compel her, on or about the 14th day of October, 1926, to leave the defendant's bed and board; he, the said defendant, thereby abandoning the petitioner within the true intent and meaning of the status in such case made and provided.

30 2. Process of subpoena was served upon the said defendant, and the defendant has filed his answer to said bill.

40 3. Defendant, since said 14th day of October, 1926, has failed to maintain and provide for petitioner, except that from time to time, up to about the end of December, 1926, he gave to petitioner the sum of \$10.00 about each ten days, which said remittances were then wholly discontinued, and defendant has refused and neglected, since said month of December, 1926, to further provide for petitioner; and the petitioner is without means of her

own to provide for herself, and is also without means to prosecute her said cause in this Court.

4. Petitioner is informed and verily believes that her husband is the owner of a large amount of real and personal property in the City of Paterson, and elsewhere in this State, as one of the heirs at law of Bernard Grobart, his father, who died intestate in this State about five years ago; and that the defendant's income, during the time petitioner and her said husband were living together, was upwards of \$700.00 per month; and that the defendant, by his answer filed in this cause, alleges that he is engaged in the silk business. 10

5. Petitioner further says that her husband's means are amply sufficient for him to raise and pay such sums of money as may be necessary for the proper maintenance of petitioner, and to enable her to prosecute her said cause of action. 20

She prays that an order may be made, requiring the defendant to pay her a proper allowance for her support and maintenance until the termination of this suit; and also to pay forthwith, a reasonable sum for the fees of counsel in prosecuting this cause for her; and for such other relief as the circumstances of the case may render fit, reasonable and proper. 30

And the petitioner will ever pray, etc.

GEORGE T. VICKERS,
Solicitor of Petitioner.

IN CHANCERY OF NEW JERSEY.

10	Between BESSIE GROBART, Complainant, and LOUIS GROBART, Defendant.	}	On Bill &c. Affidavit.
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STATE OF NEW JERSEY, }
 COUNTY OF HUDSON, } ss.:

BESSIE GROBART, of full age, being duly sworn according to law on her oath, deposes and says:

20 1. I am the complainant in a certain bill for separate maintenance filed in this Court against Louis Grobart, my husband defendant therein.

2. I am the petitioner named in the foregoing petition.

30 3. Soon after my marriage with the defendant on December 20th, 1925, I discovered that my husband was unable to consummate the said marriage by sexual intercourse.

40 4. I discovered this on our wedding trip, while in the City of Chicago, and my husband made various excuses and said that he would consult a doctor there to ascertain the reason for his apparent impotency. We were stopping at a hotel, and he did go out, ostensibly for the purpose of carrying out his expressed intention to see a doctor. On his return he brought with him some liquor, saying to me that he was advised to take this.

5. I was then twenty-seven years of age, in robust and in good health, and, so far as I know, sexually normal, with the natural and normal inclinations and desires of a woman entered into the marriage status.

6. From the time I married the defendant, up to October 14th, 1926, I resided with him and throughout the time we so lived together, occupied the same bed chamber and bed with him.

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7. At no time throughout this entire time was my husband able to perform the act of sexual intercourse with me, through no fault of mine, either by reason of physical defect on my part or disinclination.

8. My husband, throughout this entire time, insisted upon my submitting myself to his futile efforts at sexual intercourse.

20

9. I made known to my husband that his conduct caused me physical and mental anguish, and repeatedly begged him to consult a physician, in order to ascertain whether his condition was curable, and if so, to take the necessary steps to bring about a cure. When I found that my husband was not carrying out his promises to consult a physician, I pleaded with him, urging that his course of conduct was causing me mental anguish and physical suffering, which he callously disregarded and soon began to chide me with allegations of non-cooperation and personal defects.

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10. Because of the physical exertions continuously required of me by my husband in his efforts at sex gratification, and because of the nervous strain and mental distress occasioned me thereby, and further because of the inconsiderate and brutal attitude and manner of my husband at such times, and at all times when the question of sexual inter-

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course and the condition of my health became the subject of conversation between us, my health became undermined to such an extent that I was physically and nervously debilitated to such an extent that I was obliged to seek medical aid.

10 11. At first I did not disclose to any doctor the conditions under which I was living with my husband until it became apparent that I was not being benefited by any medical treatment.

12. I was advised by my physician that during a continuance of such marital relationship, I could not be cured; but deeming it my duty to carry out, to the fullest extent, my part of the marital contract, I refused to accept the alternative of leaving my husband.

20 13. Because of my impaired condition of health and upon my husband's advice and consent, I absented myself from him during the month of August, 1926, in the hope that a cessation of the experiences to which I was subjected would so improve me as to make unnecessary the separation from my husband.

30 14. During this period of vacation my health improved slightly, but on my return to my husband and his insistence on continuing his previous course of conduct, I became rapidly worse until my physical and nervous resistance was so depleted that I became despondent of life, and finally, on the advice of my doctor, on October 14th, 1926, left my husband.

40 15. I was further persuaded of the justice of my course in leaving my husband because of his ultimate failure to seek any medical advice or assistance, to ascertain the cause of his trouble and possible cure, notwithstanding the effect of his condition and conduct upon my health known to him,

and my conviction that he preferred such abnormal sex gratification as he was able to obtain through his futile efforts at normal intercourse with me.

16. My husband is amply able to provide for me and maintain me. He is one of the heirs at law of Bernard Grobart, deceased, who was his father, and died intestate at the City of Paterson on or about March 24th, 1921. Bernard Grobart was a man of great wealth, and left him surviving a widow and five children, one of whom is my husband. The estate of Bernard Grobart consisted largely of improved real estate in the City of Paterson and elsewhere, and there never has been any distribution of either the personal property or the real estate. During our married life together, my husband had the use of approximately Seven Hundred Dollars per month for our personal expenditures. My information on my husband's income, in addition to his own declarations to me on that point, is based on checks on his banking statements, some of which are in my possession, and which show expenditures for five months up to September, 1926, of an average per month exceeding Seven Hundred and Fifty-six Dollars.

My husband has often told me that he has never received his share of his father's estate, and has at times declared to me that unless he were more amply supplied with funds he would get a lawyer of his own and demand an accounting.

BESSIE GROBART.

Sworn to and subscribed before me }
this 10th day of October, 1927. }

GALLIANO ADDORIZIO,

Notary Public of New Jersey.

My commission expires Jan. 10, 1932.

(Seal)

STATE OF NEW JERSEY, }
COUNTY OF PASSAIC, } ss.:

THEODORE BENDER, of full age, being duly sworn on his oath, deposes and says:

10 I reside in the City of Paterson, New Jersey, and am a licensed practicing physician and surgeon and have been practicing my profession for seventeen years. On October 5th, 1926, I professionally examined Mrs. Bessie Grobart of No. 422 East 33rd Street, Paterson, and found her in a highly nervous condition. The history presented to me by the patient was that since her marriage she has become highly nervous and has found that she has lost weight and her appetite has become variable. She manifested an increased irritability and reached a state where she stated to me that life, in the present condition, was unbearable, and that death would be desirable. She finds that this can be ascribed, she believes, to the fact that, at no time since her marriage has intercourse occurred and that she has developed a certain revulsion toward her husband on account of his various ontoward suggestions relative to sexual intercourse.

20

30 The patient gave her age as twenty-nine and her occupation as that of a housewife during ten months of her married life. The physical status of the patient was, generally speaking, normal, and an examination of the genitalia shows that the hymen is unruptured and that the parts appear, from every standpoint, absolutely normal. I should regard Mrs. Grobart as virginous as far as intravaginal intercourse is concerned. Rectal examinations shows the levator intact and apparently normal and the parts are normal.

40 At the time of this examination and as a result of the objective as well as subjective symptoms then disclosed, I advised the patient that a continuance

of her mode of living under the conditions described, and because of the conditions then apparent to me, would probably result in a complete nervous breakdown.

THEODORE BENDER.

Sworn to and subscribed before me }
this 8th day of September, 1927. }

10

FELICE CASTELLI,

Notary Public of N. J.

My commission expires March 9, 1931.

(Seal)

20

30

40

STATE OF NEW YORK, }
 COUNTY OF NEW YORK, } ss.:

ADOLPH GRANET, of full age, being duly sworn according to law upon his oath, deposes and says:

I reside at No. 45 East 85th Street, in the City, County and State of New York, and am a licensed physician and surgeon and have practiced my profession for 29 years. I have known Mrs. Bessie Grobart for a number of years as the attending family physician in the home of her parents. I knew Mrs. Grobart prior to her marriage, and had occasion, from time to time to see her with the opportunity of observing her physical and mental condition. I found her to be a normally healthy woman in body and mind. Shortly after her marriage Mrs. Grobart became my patient and during the months of February and March, 1926, I was her attending physician for a considerable time while she was suffering from an acute illness. Following the latter the patient was suffering from a nervous condition not to be accounted for by her former acute illness. In the early part of June, 1926, going into the history of the case, I found that her neurosis was due to sexual irritability caused by unsuccessful cohabitation, and on June 14th, 1926, I made a physical examination of Mrs. Grobart which disclosed the fact that the hymen was still intact and that her vaginal parts were entirely normal.

ADOLPH GRANET, M. D.

Sworn to and subscribed before me }
 this 3rd day of September, 1927. }

HENRY FRANK,
 Notary Public.

Notary Public Bronx County
 Bronx Co. Clk's No. 54, Reg. No. 2990
 N. Y. Co. Clk's No. 175 Reg. No. 9164
 Term expires Mar. 30, 1929

STATE OF NEW JERSEY, }
COUNTY OF PASSAIC, }

M. S. JOELSON, of full age, being duly sworn according to law upon his oath, deposes and says:

I reside in the City of Paterson and am a licensed physician and surgeon practicing my profession in the State of New Jersey for the last 20 years. I know Mrs. Grobart of Paterson, and on July 26th, 1926, I made a physical examination of Mrs. Grobart and upon vaginal examination I found her to be still a virgin. 10

M. S. JOELSON, M. D.

Sworn to and subscribed before me }
this 8th day of September, 1927. }

FELICE CASTELLI,

Notary Public of N. J. 20

My commission expires Mar. 9, 1931.

(Seal)

30

40

Exhibit D-1.

Oct. 14th, 1926.

N. J.

Dear Louis:

For several days I have been thinking whether to speak to you, or write—but to avoid any unpleasantness, have decided to write.

10 You will surely remember how often I have complained to you about my poor health in the last few months—but somehow—or for some reason you pretended ignorance, always covered things up with nonsense—just to get away from the subject—and only to avoid some of the disagreeable arguments and your insults I have avoided too much repetition. But now, I found it necessary to consult several reliable physicians, and find that it is absolutely impossible to go on living that way any longer.

20 Indeed I am sorry for you—but I am to be pitied more—because it is a bitter disappointment—lost my health—disillusioned—spent my life's savings—craving for happiness—now its discust, and lost every bit of interest in life. I am just miserable and caused my people unhappyness.

30 When almost desperate—I went to your mother first—hoping she would make you go to a Doctor—as I have often asked you to do. Your mother pretended, that my story was too shocking to listen to—and that I should keep such matters to myself only. Except to preserve my health, I could not take the step, I have taken—it would be my duty to remain with you—and bear my misfortune. I did not take the step—until I was convinced by my Doctors—that I was in danger—if I kept on with you—I believe in God, and if I am doing wrong—I trust in his kind judgment.

Sorrowfully your wife,

BESSIE

40 If you wish to reach me—you can find me with my family for the time being.

Exhibit D-3.

Stationery of Lazarus, Brenner & Vickers,
Lerner Building,
Jersey City, N. J.

Oct. 19, 1926

Mr. Louis Grobart,
104 Carrol St.,
Paterson, N. J.

10

Dear Sir:

Your wife, Mrs. Bessie Grobart, has consulted the writer in the matter of her rights in having for the time being separated herself from you.

Appreciating that I have but one side of the story, the situation presented is certainly serious and regrettable.

Under existing conditions as they have been related to me, I have not hesitated to advise Mrs. Grobart that she would be justified in bringing an action for separate maintenance.

20

This letter is written in the hope that it may be possible to adjust this situation amicably, without the necessity of court action and its attendant publicity. If you are inclined to accept this view of the situation, I would prefer to talk with your legal representative.

30

Awaiting your prompt reply, I am,

Very truly yours,

GEORGE T. VICKERS.

40

Exhibit D-50.

Exhibit D-50 is an insurance policy issued on the life of Louis Grobart in the New York Life Insurance Company, dated the 29th day of September, 1926, in the sum of \$7,500.00 in case of death of the insured with double indemnity if death occurs from accidental means. All payable to Bessie, wife of the insured.

10

Exhibit D-52.

May 7, 1926
N. Y. City

Dear Mother:

20 Was very sorry to hear that you are not well again—I sincerely wish you the best of health and happiness—I assure you was anxious to call to see you—but for *certain reason* could not come, and I ask you to kindly not think me rude—as it is not my nature to act that way. However, I hope you will overlook my action until I explain more. If I may suggest, Mother, would advise that you take Louise with you—and go out for a week-end like Thursday to Sunday—it would do you the World of
30 good—visit any place—as long as you make a change of air—then go again in July—no reason why you shouldn't be kind to yourself—I believe that is a mother's first duty.

Wishing you again good health and all that is good, I remain.

Yours fondly

BESSIE

40

Best wishes and kind regards from Folks.

New Jersey Court of Errors and Appeals

Between BESSIE GROBART, Complainant-Appellee, and LOUIS GROBART, Defendant-Appellant.	{	On Bill For Sup- port & Mainte- nance. On Appeal From Chancery.
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BRIEF FOR DEFENDANT- APPELLANT.

This appeal is from a decree, advised by Lewis, V. C., in a matrimonial case, in which it was found that the appellant, without any justifiable cause, abandons the appellee and separates himself from her and refuses and neglects to maintain and provide for her; and then directs the appellant to pay to the appellee her separate maintenance according to the prayer of appellee's bill of complaint, and in an amount and upon terms to be fixed by order of that court after reference to and report by a special master.

Questions Involved.

The instant case presents a question which was never been passed upon by this court or in any reported decision.

The questions involved are whether, under the evidence, (1) the court below should not have

dismissed the appellee's bill of complaint because impotency or failure to consummate a marriage contract is not cruelty; and (2) have decreed a divorce on the ground of desertion to the appellant.

The Pleadings.

The bill is filed for support and maintenance under the 26th section of the Divorce Act (2 C. S. 2038), and charges (p. 7, par. 4), "That at the time of and ever since the marriage of your oratrix to her said husband, the defendant, he was and is physically impotent and since said marriage has never consummated the marriage relation with your oratrix." That the complainant was "physically and mentally normal, apt and willing to consummate the marriage relation with defendant" (p. 8, par. 7). The bill then charges that efforts were made (and the extent) by defendant to have intercourse with the wife and husband's utter inability to perform (p. 8, pars. 8 and 9).

The husband denies the wife's charges and lays the fault at the door of his wife, she basing her refusal because she feared pregnancy. (See appellant's counterclaim, pp. 16 and 17.) Appellant prays an absolute divorce on the ground of desertion.

The Facts.

The parties to this appeal are husband and wife. They met through a so-called "marriage broker", who received \$175.00 for the meeting (p. 55, l. 22 to l. 26, p. 56). (See also p. 70, l. 29); they were married December 20th, 1925 (p. 24, l. 18); they took a "honeymoon trip" of about two weeks' duration and then went to live at Paterson (p. 75, 118 to p. 76, l. 119); the parties continued living in

their home until the morning of October 14th, 1926, when the husband left to attend his business; on his return he found his wife gone (p. 127, l. 4); and a letter from her (Ex. D-1, p. 270); from July, 1926, prior to this leaving, the wife had been consulting her lawyer although she lived on her husband's bounty (p. 41, l. 36 and p. 42, l. 1).

The period between the separation and marriage was ten months, less six days; the wife testified she remained a virgin up to the time she left her husband; just before she left she was examined by three reputable physicians and found to be a virgin (p. 79, l. 21; p. 89, l. 13; p. 108, l. 1); all these witnesses say that the wife was capable of sexual intercourse (pp. 80, l. 26; 91, l. 9; 108, l. 26); appellant admits he never had sexual intercourse with his wife; he says it was because of her fear of becoming pregnant that she refused (p. 76 to p. 78, l. 39; also see p. 126, l. 15).

From the time of the marriage the husband detailed his efforts to consummate his marriage and the wife testified to his inability.

Just what the parties said may be helpful.

The husband testified that prior to the marriage he had frequently had sexual intercourse and up to the time he met his wife (p. 7, l. 10); on the night of the marriage his wife refused him intercourse; the next day and all the time they were on their honeymoon she refused him; at Buffalo, the day after the marriage, she said she would not permit him to have intercourse without a rubber; that he had to get "fishskins"; red rubber cundrums were procured but she refused to permit him to use them; she said "the color came off these"; the wife then produced a box of pills; although Grobart wore a rubber she insisted upon using one of the pills to keep her from becoming pregnant; she said "It (the rubber) busts sometimes"; this box contained the

name of Dr. Granet (p. 75, l. 21 to p. 78, l. 34; p. 217, l. 28 to p. 119, l. 40). (It is important to keep in mind the reference to Dr. Granet's prescription.)

When the parties returned to their home at Pater-son the husband again tried to have intercourse with his wife; he says she refused and tells of a repetition of her practice with pills and of making him wait until the desire was lost; this seems to have been the almost nightly practice when the parties were together (p. 121, l. 10 to l. 40).

Dr. Granet, called by the wife, said that before the marriage Mrs. Grobart called upon him (p. 91, l. 39), and asked whether "she wasn't too weak to have children" (p. 92, ll. 19-34; p. 93, ll. 6 to 10).

The doctor gave her a vaginal prescription (p. 93, l. 36). This was a suppository to be dissolved; it contained an antiseptic and any antiseptic is a preventative from pregnancy (p. 94, l. 26).

Bertha Grobart, the mother of appellant, says the wife told her a cousin had died in childbirth (p. 212, l. 21).

Rose Horwitz, a sister of appellant, says the wife asked her to tell her a sure prevention for not having children; Mr. Horwitz asked why she wanted to know; Mrs. Grobart said she didn't care to have any children, because she lost a cousin by childbirth, and she thought she was too old to have any; that as Mrs. Horwitz's husband was a druggist Mrs. Horwitz should ask him what to do; the wife also wanted to know if Mrs. Horwitz had any secrets with her husband (p. 215, l. 36 to p. 216, l. 19).

The appellee said there was never any sexual intercourse between them (p. 25, l. 11); that she never denied him (p. 26, l. 11); at his first attempt at intercourse she says that "within thirty minutes, or so, he said it wouldn't come near enough—he couldn't raise it" (p. 26, l. 25); from line 20, page 43 to line 25, page 45, the wife gave a detailed state-

ment of the husband's efforts. An additional description is found on page 49, line 1.

After the wife described the self-abuse of appellant (p. 52, l. 1), she said he did not have an erection; that twice she knew of his having an emission.

In Mrs. Grobart's affidavit on her application for alimony and counsel fee, she said (p. 262, l. 27), that soon after her marriage she discovered her husband was unable to consummate the marriage by sexual intercourse. In the balance of her affidavit she charged him with impotency as she had in her bill.

A number of letters are in evidence which the wife wrote the husband and which she took from her husband when she left his home. Copies of the letters are found on pages 248 to 258. In not one of these letters did she mention Grobart's impotency.

POINT I.

There can be no extension or enlargement of the statutory grounds for divorce by the Chancery Court. Impotence is not a ground for divorce.

In the law of divorce there are great conflicts of opinion throughout the states on many points. One point of law has, however, been firmly established in all the states, and that is, that the law of divorce was not a part of the common law but is purely statutory.

In this State the principle was established in the case of *Re. Anonymous*, 24 N. J. Eq. 19, in which the Chancery Court adopted and followed the reasoning of *Burtis vs. Burtis*, 1 Hopkins Chancery (N. Y.) 628, and further established the principle

that the Court of Chancery cannot by judicial decision enlarge upon statutory grounds of divorce.

In 1874, for the first time in the State of New Jersey, physical incapacity at the time of marriage became a ground for an annulment of the marriage. This revision is the one referred to in the opinion of the Chancellor in *Re: Anonymous*, *supra*.

In 1854 a ground for divorce from bed and board was extreme cruelty. Chancellor Williamson in *Snover v. Snover*, 10 N. J. Eq. 261, held that evidence of adultery adduced on the trial should be suppressed upon the ground that charges of adultery did not constitute a ground, then, for a divorce from bed and board.

When *Snover v. Snover*, *supra*, was decided, adultery was not a ground for a limited divorce.

In *Moore v. Moore*, 16 N. J. Eq. Chancellor Greene said at page 277:

"Adultery by the husband is the grossest cruelty that can be inflicted upon a wife; and yet it will not be pretended that evidence of acts of adultery could be given in evidence under a general charge of cruelty."

It is evident that the legislature, from time to time, sought to meet the change of public opinion as to the grounds of divorce. We find in 1891, in addition to desertion and extreme cruelty being grounds for a limited divorce, adultery was an added ground provided, however, that the party applying had conscientious scruples against applying for a divorce from the bonds of matrimony.

In 1902 (P. L., 1902, Chap. 157, p. 502), the statute provided for decrees of nullity and of causes for divorce as follows:

"1. Decrees of nullity of marriage may be rendered in all cases where:

I. Either of the parties has another wife or husband living at the time of a second or other marriage, or

II. The parties are within the degrees prohibited by law.

“II. Causes for Divorce.

“2. Divorce from the bond of matrimony may be decreed for the following causes:

I. Adultery by either of the parties;

II. Willful, continued and obstinate desertion for the term of two years;

III. *In case the parties, or either of them was at the time of marriage physically and incurably impotent, or was incapable of consenting thereto, and the marriage has not been subsequently ratified.*

3. Divorces from bed and board forever thereafter, or for a limited time, as shall seem just and reasonable, may be decreed for extreme cruelty in either of the parties.”

We respectfully call this court's attention to the fact that in 1902 impotence was not a ground for annulment but was a ground for divorce.

For some good reason, apparently, the legislature saw fit to revise the divorce act in 1907 by P. L. 1907, Chapter 216, page 474.

By this revision we find that the Legislature made impotence a ground for a decree of nullity and excluded impotence as a ground for a divorce.

By his decree in the instant case, the court below has made the defendant's impotence, at the time of the marriage, the ground for the decree for a limited divorce. Undoubtedly, under the statute as it stood in 1902, the decree could be sustained; but under the statute of 1907, which made impotency a

ground for nullity only, the court below has, by his decree, enlarged and extended the existing statute which we submit he had no authority in law to do.

A survey of the statutory law of each and all of the states and territories of the United States shows that in a large number of states impotency is made a ground for a divorce or for annulment, just as it was in the State of New Jersey in 1902. In all of the states in which impotency is thus made a ground for divorce or for annulment cruelty is also made a ground for divorce or for maintenance. It is therefore fair to say that if impotency had ever been regarded in any one of those states as cruelty, there would have been no need to specify impotency as a separate ground for divorce.

The following is a classification of the law in such jurisdictions:

(a)

The following is a list of thirty-six states and territories of the United States in which both impotency and cruelty are named as separate grounds for divorce. (Data taken from Vol. 3, 1921 Ed. Schouler on "Marriage, Divorce, Separation and Domestic Relations") :

Alabama, Alaska, Arizona, Arkansas, Colorado, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Porto Rico, Rhode Island, Tennessee, Utah, Virginia, Washington, Wisconsin, Wyoming.

(b)

In Wisconsin, impotency is a ground for an annulment as well as a ground for divorce.

(c)

The following is a list of the states and territories in which impotency is a ground for annulment; in these states cruelty is a ground for an absolute divorce or for maintenance:

California, Delaware, District of Columbia, Hawaii, Iowa, Montana, New Jersey (since 1907), New York, South Dakota, Texas, Vermont.

(d)

In Connecticut and Louisiana there is no statutory remedy for impotency but in each of these states cruelty is made a ground for divorce.

We submit that the court below erred in its determination that impotency is a ground for divorce and should have dismissed the appellee's bill.

POINT II.

Impotency is Not Cruelty.

It is urged by the appellee in the Court below that the appellant's impotency because the health of the appellee was seriously affected, constituted extreme cruelty under the statutory definition of extremely cruelty. The Court below accepted this view and granted the wife a decree for maintenance.

We have made a careful search of all the national digests available and after such search declare to this Court that there is not a single reported decision in any state of the United States to the effect that impotency constitutes "cruelty" as the term "cruelty" is used in divorce statutes.

We are satisfied that the appellee cannot cite a single case which adjudicates physical inability to cohabit as cruelty.

We argue under our next point that a refusal to cohabit does not constitute cruelty. Clearly, if a refusal does not constitute cruelty, an inability to cohabit cannot constitute cruelty.

POINT III.

The overwhelming weight of authority in the United States is to the effect that a refusal to cohabit does not constitute cruelty even though such refusal to cohabit be wilful and deliberate.

We believe that the court below is the first which has ever held that a husband's impotency constitutes cruelty.

There are numberless authorities in the courts of many states, supporting the proposition urged under this point, that refusal to cohabit does not constitute cruelty.

Schoren v. Schoren, 110 Oreg. 272;

Pinnebad v. Pinnebad, 134 Ga. 496;

Platt v. Platt, 38 Penn. Super. Rep. page 551;

Cunningham v. Cunningham, 60 Pa. Super. Rpt. 624;

McCommons v. McCommons, 85 Pa. Super. Rpt. 624;

Schoessow v. Schoessow, 83 Wisc. 553;

Cowles v. Cowles, 112 Mass. 298;

Bishop v. Bishop, 133 Washington, 522 (1925);

Roush v. Roush, 90 West Va. 491;

Risk v. Risk, 209 App. Div. (N. Y.) 299;

Ritter v. Ritter, 284 Pacific Repts. 950 (1930).

It needs no argument to see that if the misfortune of illness should overtake a husband or if natural debility should set in upon him inability to cohabit could not be regarded as cruelty.

In *Abramovitz vs. Abramovitz*, 140 N. Y. Supp. 275, where the plaintiff sought a separation upon the ground that the defendant's state of health, to wit, pulmonary tuberculosis, constituted cruelty by making it impossible, unsafe and unhealthy for her to cohabit with him, the Court said (at p. 276) :

"Would the facts stated in the complaint, therefore, if true, warrant the inference of legal cruelty, under subdivision 1 or unsafe conduct under subdivision 2 of section 1762 of the Code of Civil Procedure? Whatever may be the rule in other jurisdictions, I am unaware of any authority in this state which holds that disease of the character mentioned is sufficient cause of separation a *mensa et thoro*. Assuming for the sake of the argument that the facts so insufficiently and inartificially pleaded (see *Fowler v. Fowler*, 11 N. Y. Supp. 419) point to the existence in the defendant of the disease commonly known as pulmonary consumption, which is very generally held to be both communicable and dangerous to health, its existence prior to the time of the marriage is not claimed, nor that any false representations as to the defendant's state of health were made so as to induce the plaintiff to wed, though, of course, had there been, it would not be available in the present form of action. The plaintiff apparently had as ample opportunity of making inquiries as to the health of the defendant before marriage as she had as to his earning capacity. See folio 3 of her affidavit. *Perhaps the exercise of as great caution regarding the former as was paid to the latter consideration would have saved both parties trouble and unhappiness.*

So far as I have had time to investigate the law in this state, there is only one form of dis-

ease which the courts have thus far recognized as sufficient for a decree of separation on the ground of legal cruelty, and this only when that particular disease is knowingly or wilfully communicated. Anonymous, 17 Abb. N. C. 231. And if disease of other sorts be not regarded as ground for separation under subdivision 1 of section 1762, no more does it constitute "such conduct on the part of the defendant to the plaintiff as may render it unsafe and improper for the former to cohabit with the latter," under subdivision 2. Conduct as here employed refers to a course of dealing on the husband's part, a continued purpose evidenced by action, and it implies intention and willful acts, not merely those which are involuntary and unintentional, or from the effects of which he himself cannot escape. *If during marriage disease attacks one of the spouses, it is not the one so afflicted who is guilty of legal cruelty. It is rather the other one who seeks on that ground a judicial separation.*

Motion denied, with costs."

In the instant case, the appellant's physical defect, if it exists, can clearly be classified as an illness. The statute gives the wife the choice of bearing the burden or of relieving herself of it by an annulment. She cannot relieve herself of this burden and also compel him to support her for the rest of his life, after she left his home.

There is not a single reported case in the State of New Jersey which holds that a *refusal* to cohabit constitutes cruelty.

There are many authorities in this state, as well as in other states, which hold that a refusal to cohabit constitutes *desertion*.

With respect to these cases attention must be called to the fact that statutory desertion must be "*wilful, continued and obstinate.*"

Therefore, such a refusal to cohabit must be wilful, continued and obstinate. In the instant case, the appellant's conduct was not wilful. He was not obstinate. The record discloses that he was earnest in his efforts to consummate the marriage. The criticism of his conduct by the Vice Chancellor was a criticism of his efforts to use every known artifice to have sexual intercourse.

The leading authorities in New Jersey are *Raymond v. Raymond*, 79 Atl. Rep. 430; *Parmley v. Parmley*, 90 N. J. Eq. 490; *Haskell v. Haskell*, 99 N. J. Eq. 399 (1925), and *Tupper vs. Tupper*, 147 Atl. 633 (Court of Errors, 1929).

In *Haskell v. Haskell*, *supra*, the evidence established that the petitioner, who was the husband, had been affected physically and mentally as a result of a deprivation of sexual intercourse. This Court, in an opinion by Judge Kays, said, on page 401:

"The family physician was called as a witness, who testified to the effect that the petitioner came to him and stated the circumstances which existed between himself and his wife; that he afterward made a physical examination of the petitioner and was of the opinion that he was capable of performing sexual intercourse; that the petitioner at the time of the examination was mentally 'blue' and very much depressed, nervous and not as physically strong as before his marriage. He stated as his opinion that a man who had been deprived of sexual intercourse under such circumstances as appeared in this case would be likely to be affected as this man was, and that the symptoms which the petitioner showed could thus be accounted for.

"We are of the opinion that the decree in this case should be reversed, and a decree for divorce on the ground of desertion granted.

"It is well established in this state that unjustified refusal of sexual intercourse persisted

in willfully, obstinately and continually for a period of two years is a ground for divorce for the cause of desertion, which rule is laid down in the case of *Parmly v. Pamly*, 90 N. J. Eq. 490, and *Raymond v. Raymond*, 79 Atl. Rep. 430."

The New Jersey law on this subject was followed and cited by the New York Court of Appeals in the first case that came before it squarely on this issue.

Mirizio v. Mirizio, 242 N. Y. 74.

We are not pretending to refer to all the New Jersey cases on this point as there is a definitely positive trend of authority well established in this state since *Raymond v. Raymond*, *supra*.

In every one of the cases in which a refusal to cohabit was held sufficient to constitute desertion, it will be found that the refusal on the part of the erring spouse was unjustified.

POINT IV.

A wife is not entitled to support from a husband from whom she separates because of his impotence.

We call attention to the case of *G. v. G.*, 67 N. J. Eq. 30, cited by the Vice-Chancellor below, in which Vice-Chancellor Pitney, in dismissing a cross bill filed for a divorce upon the ground of impotency (at the time when under the statute of 1902 impotency was a ground for divorce), said, on page 37:

"The petitioner contends that the present case shows ratification by the defendant, also lack of sincerity on her part.

"It seems to me that the point is well taken. The defendant, after living twenty years with the petitioner in the hope of his recovering his virility, instead of suing for nullity separated herself from him and accepted a competent support from him for ten years, and, so far as appears, would have continued so to accept it if he had not, upon discovery of her adultery with another man, brought suit for a divorce.

"This conduct on her part was a distinct affirmance of the marriage relation. Necessarily so, since there can, I think, be found no foundation in reason or authority for the position that a woman, who seeks a dissolution of the marriage tie on the ground of her husband's impotence, is entitled to permanent alimony. *Such alimony is only given where the husband has been guilty of a matrimonial offence, and impotence is not such an offence in any sense of the word in that connection.*"

The language of Vice-Chancellor Pitney closely applies to the instant case. There has been no matrimonial offence on the part of the appellant and alimony should not and cannot be given unless the husband has been guilty of a matrimonial offence.

POINT V.

The only remedy for the appellee was for annulment.

If the appellant is impotent and his wife does not want to seek this remedy, she must adhere to her marriage contract and live with the appellant. It is conceded that the appellee has the option of annulling the marriage or remaining in the marriage state on account of the appellant's impotence. The marriage is not void but voidable only on her part.

But this does not mean that if she does not annul the marriage that she is relieved of her other obligations under the contract of marriage. Sexual intercourse is not the only purpose of the marriage state. Each spouse is entitled to the society of the other. In the event of a husband's impotence the wife has the choice of accepting her misfortune by remaining a wife in every other sense of the word or relieving herself of the contract by an annulment. But once she elects to remain in the marriage state she has no right to further complain of her husband's impotency. If it has a harmful effect upon her health she has elected so to do by remaining in the marriage state and cannot otherwise relieve herself by a separate maintenance.

We have already argued that if a husband should become ill or so physically incapacitated that sexual intercourse is impossible after the marriage, there would be no remedy available to a wife. The same baneful effects, if any, upon a normal woman's health, due to lack of intercourse, would undoubtedly follow. Our present psychology of marriage requires that a woman under those circumstances must bear up under such a misfortune. A wilful or obstinate refusal on the part of a husband to perform his marital duties affords a remedy on the theory of desertion. In the case of impotency there is no wilful, obstinate or deliberate refusal. Impotency is a misfortune. A decree for separate maintenance against a victim of such a misfortune would surely open the doors of the chancery court to designing women who seek the financial reward of the marriage relationship and none of its duties to bear misfortunes "until death doth them part." This would be if the facts in this case justified such a decree, for it would be found that in virtually every case where impotency has come upon them the same futile efforts, as obtained in this case, are

resorted to in order to overcome the physical handicaps present in such cases.

The defendant concedes in this case that if he is impotent the appellee is entitled to a decree of annulment in that there has been no waiver of her right thereto by a ratification.

ARGUMENT OF THE FACTS.

POINT VI.

The testimony in the case does not sustain the opinion of the Court below on the facts nor does it sustain the conclusion of law.

The Court below has advised a decree in favor of the appellee wife entitling her to separate maintenance.

In his opinion, the Court below rests upon one or both of the following facts, to wit:

(a) That the appellant is impotent.

(b) That his sexual conduct consisted "of unnatural practices which finally completely broke down her health", and that such conduct constituted statutory cruelty which entitled her to a decree for maintenance.

We submit that the testimony of the appellee and her witnesses taken in the light most favorable to her can only sustain a finding that the appellant was impotent.

The parties to this case were married on December 20th, 1925. The appellee left her husband on October 14, 1926, a period of ten months less six days—an exact computation is 298 days.

The Vice Chancellor in his opinion says:

"From the time of the marriage until the separation in October, 1926, the parties occupied the same room and bed together most of the time except during a period when the wife was seriously ill."

He repeats the marriage period of ten months in another connection. This statement is not supported by the record in the case.

The parties went on a ten-day trip to Buffalo and Chicago and returned to appellant's mother's home in Paterson for a week where they occupied separate rooms (p. 27). They set up housekeeping in Paterson but practically every week end they visited the appellee's parents in New York where there were limited sleeping facilities in the parlor, and sometimes they couldn't sleep together (p. 61).

On February 26, 1926, the appellee became ill with pneumonia and was ill through March and then went to Atlantic City. She was still there on April 8, 1926 (Ex. C-6, p. 248).

The appellee was ill in July and August, 1926, with a cold (p. 32 and p. 63, l. 39). In August she was at Lake Hopatcong (p. 29) and didn't return to Paterson until after Labor Day.

A calculation shows that out of a total marriage period of 298 days, they actually lived together about 163 days, and were apart 135 days plus the natural periods of appellee's sexual indisposition.

We deem this point essential as showing that this appellee was not subjected to the continuous alleged practices of the appellant; that she had frequent intervals when she was non-accessible; that she had opportunities for recovery and that she grossly exaggerated the number of the occurrences (p. 49, l. 36); her statement being that the occurrences that she testified to transpired every day and night for

ten months (p. 49, l. 6). The Court below accepted this exaggerated statement.

It is always difficult to obtain the true version of what takes place in the marriage bed. The court below has completely rejected the appellant's story and accepts *in toto* the testimony of the appellee. She is not the simple-minded creature the court below finds her to be. She emphatically testified that prior to her marriage she sought no information from her family doctor as to sexual matters; and that she never discussed these matters with her family physician, Dr. Granet (p. 30, l. 15). We think it fair to say that she deliberately lied in this particular because the truth would contradict her own story and support the story of the appellant. Her family physician, Dr. Granet, reluctantly admitted, on cross examination, that the appellee had consulted him, prior to her marriage, as to whether she was strong enough to bear children and that he had given her a prescription for vaginal uses which he admitted was an antiseptic and was available for contraceptive purposes (p. 91, l. 37 to p. 94, l. 40).

The bill of complaint in this case will be found to have been framed in some parts a verbatim extraction of the opinion in the case of *Tompkins v. Tompkins*, 92 N. J. Eq. 113. In passing, we call attention to the fact that in that case the decree was for a nullity and not for a divorce.

All of the testimony furnished by the appellee on her direct examination to support the bill of complaint is as follows, and which we have presumed to extract for the purpose of showing what a meagre case was made out by her; and which failed utterly to support any conclusion that the appellant's conduct constituted cruelty. Such testimony is as follows:

"BY THE COURT (p. 25, l. 7) :

Q. When did you first have trouble with your husband? A. What trouble—we didn't have any trouble" * * *

"BY MR. VICKERS (l. 10, p. 25) :

Q. There never has been any sexual intercourse between you and your husband? A. No, sir.

BY THE COURT :

Q. No consummation of the marriage? A. No, sir.

Q. Did you sleep in the same bed? A. Yes, sir.

Q. *He tried to, but couldn't?* A. *Yes, sir*" * * * (p. 26, l. 25).

"BY MR. VICKERS :

Q. What happened there? A. The first night at the Statler Hotel, we occupied the same bed. He tried to make advances. Of course, I didn't know what he was going to do, and I left everything to him.

Q. When nothing happened, what did he say to you? A. Within thirty minutes, or so, he said it wouldn't come near enough—he couldn't raise it on his knees.

"BY THE COURT :

Q. I want to know if he went to a doctor? A. That night I asked him what was the matter, and he was at me for an hour.

BY MR. VICKERS :

Q. What explanation did he make; you started to say something? A. He got close to me again and he said he didn't know what was the matter; he couldn't raise it. He tried to raise it on his knees.

Q. In bed or out of bed? A. In bed.

Q. You were in bed? A. Of course.

Q. You undressed? A. Yes." End of Direct.

* * * * *

Under cross examination, continued by appellant's counsel, which was a searching examination for the truth rather than for an attempt at contradiction, the appellee elaborated very largely upon her direct testimony and made contradicting statements as to what took place in the marital bed. These statements by her are also sharply contradicted by the statements of her physicians as to what she told; furthermore she admitted that she never told her father and mother any of the details to which she testified. These persons would have been the natural persons to whom she would confide, particularly in the light of the close relationship between them. She visited them in New York every week-end even though it involved discomfort for herself and her husband; she did confide, however, in her physician but the confidence given to her doctors was in line with the allegations of her complaint and not corroborated on the matter brought on by cross examination; and if she did not confide in her father and mother the next remedy would be to her doctor and these confidences to her physicians, except in the case of Dr. Granet whom she saw in June, were or had after she consulted counsel.

Appellee had no intercourse with her husband; there was no penetration (p. 38, l. 29); he was on his knees for close to an hour; he couldn't raise it (p. 43, l. 31), and no part of his body touched hers (p. 44, l. 20); the next night was like the first (p. 45, l. 11); he was in the same condition as at first (p. 45, l. 1) and on his knees for quite a while (l. 30); he couldn't raise it (p. 45, l. 25); she further says: she didn't know what it meant by that (l. 26); but she advised him to see a doctor nevertheless (l. 30). At Chicago he insisted upon playing by putting his hand on her (p. 46, l. 30). She did not resent that (l. 38). The next day he said

he saw a doctor (p. 47, l. 4). He took some whiskey (l. 7); he tried again but nothing happened (l. 8); he was on his knees over her (l. 15) playing with himself (l. 16) until she got tired after about thirty minutes (ll. 23 and 24). The third night in the Chelsea in Chicago (l. 34) the same thing occurred; playing his hands (l. 36); no advances towards her (l. 37); no attempt to connect with her (l. 39). The next day the same thing, playing with his hands (p. 48, l. 4); that night the same condition (l. 5) and all the while she was in Chicago (l. 7); in the home at Paterson during the first week he was always on his knees (p. 49, l. 3); he had no desire to come to her (l. 9). She asked him not to play with her; that she could not stand playing with her (l. 23) it was getting on her nerves (l. 14). She was agitated about it and in a state of high excitement. She could not understand it (ll. 15 to 20). She told him she couldn't stand that playing all the time (l. 27). Every few days she asked him to go to the doctor and he didn't go and he didn't answer anything (l. 31). She lived there ten months and the same thing happened every night and in the daytime too (l. 38 to l. 40). He forced her to practice self abuse on him (p. 51, ll. 30 to 35). He did not get erections during this self abuse (p. 52, ll. 1 to 10); there was only two emissions of fluid (l. 14). She used to say "*now while you play with me don't run away, either keep in bed or stay with me*" (l. 17).

This period of self abuse continued all the time from January (l. 19); he conducted this by being over her for half an hour. He tried to come closer and closer (l. 22).

She establishes a perfect case of impotency for from the very beginning she testified that he was without physical capacity to procure an erection. She and he indulged in efforts which would natu-

rally and proximately grow from his inability to secure an erection. She did not resent it and in fact she so far participated in it that she resented his leaving the bed even for a short period of time.

The Vice Chancellor in his opinion apparently finds these practices of the defendant were repulsive to the appellee and were responsible for her alleged mental condition, whereas her testimony plainly shows on the foregoing cross examination that she willingly participated in the appellant's efforts. Her attitude towards these practices, as disclosed from the testimony, possibly reflects the Vice Chancellor's finding but was not her attitude at the time of the occurrences. She contradicted some of the foregoing statements by testifying on rebuttal, which took place at a very much later hearing. He would lower himself; he would come close to her and she would say go on and he would not move one inch; he was practicing self abuse in that position. He laid there and did not do anything (p. 234, ll. 33 to 40); he left it all to her and he said give him some help; during this time she was on her back and he was between her legs. She could give him no help. She said go on and he just practiced self abuse and would fall over her and lie there like one dead (p. 235, ll. 1 to 20). It was driving her insane; her head hopped and her intestines turned over and she said he was killing her and it caused her a lot of pain (ll. 20 to 28).

On her cross examination, the appellee was satisfied with the bare statement of the futility of the appellant's efforts and of his failure to make any real approach to her body, as set up in her bill of complaint, because on cross examination she distinctly stated and reiterated that no part of appellant's body touched hers.

On her redirect testimony, apparently for the purpose of bolstering up a claim that her ill health was the result of a lack of proper sexual relationship, she testified for the first time of a different form of effort by her husband, in that he laid prostrate upon her and that such prostration drove her insane and caused her head to hop and her intestines to turn over. No physician in the case was called upon to explain how any act on the part of the appellant could cause her intestines to hop. It is interesting to note that it is only on the redirect testimony of the appellee that an approach is made to support the allegations of the bill in paragraphs eight and nine and reincarnated in these parties the identical experiences of the parties to *Tompkins v. Tompkins*, 92 N. J. Eq. 113.

We have attempted to set out fairly the complete substance of all the appellee's testimony on the subject of her intimate relations with her husband. Her testimony is at variance in important particulars with what she told her physicians who testified in the case.

We have already adverted to the sharp contradiction between her testimony and that of Dr. Granet with respect to her consulting him prior to her marriage about the bearing of children. Dr. Granet testified on his cross examination (p. 98), in connection with her statement to him, as to what transpired in the course of the sexual relationship between the husband and the wife that "most of the time he would ask her to lie on his body, and rub her body against his body, and on other occasions she told me I wouldn't come to her bed, but would stay in his own bed, and in a state of excitement busy with his private parts" (l. 20). This is in direct variance with her testimony upon cross examination when she testified that her body never came into contact with his. Then again that he

was over her in all of his futile attempts to have intercourse and that he was busy with his private parts or that she was agitating his parts for him in her bed.

Dr. Joelson testified that on her first visit to him, which was on July 7, 1929 (p. 87, ll. 27 to 30) that she came to his office complaining of sterility as to why she did not become pregnant. He said he would have to examine her, and he said she was a virgin. She spoke about pregnancy first (p. 81, l. 2). It is the appellant's contention in this case that the appellee denied him intercourse because of her fear of pregnancy. We shall elaborate on his testimony under our next point. It is very evident that when she saw Dr. Joelson this thought was uppermost in her mind and not the alleged impotency of the appellant or conduct which is now construed to have been abuse or cruel. By July, 1926, the appellee could not have been so completely innocent of sexual relations as not to know something about pregnancy. Her further conversation with Dr. Joelson was merely to the effect that the appellant attempted to have intercourse but was unable (p. 82, l. 5) and attempted to get erections and would agitate himself a lot and would try (l. 37). To him also she said that some times he would just go to bed and that was all and that if he did try he would first work around and she would get no satisfaction at all (p. 86, l. 35).

The appellee made three visits in all to Dr. Joelson. The second on July 15th and the third on July 26th (p. 87, l. 27). Some time in July she had consulted counsel. At her first visit to Dr. Joelson she only talked about pregnancy. At her subsequent visits to which Dr. Joelson testified, she discussed the impotency of the appellant. She got a certificate from Dr. Joelson on July 26th (p. 81, l. 30) which was after the time she consulted coun-

sel. She did not tell Dr. Joelson that this certificate was required by her counsel but said that she had consulted a doctor in New York and they had talked over the intimacy in New York and from the information she received from the doctor she was not getting the proper intercourse from her husband and it was then that Dr. Joelson questioned her along that line and she told him about the appellant's shortcomings (p. 81, ll. 30 to 40).

We therefore submit that it is a fair inference that when she first consulted Dr. Joelson, pregnancy was alone on her mind, and that her revelations to Dr. Joelson to support the theory of her present case were made only after consultation with her counsel. Dr. Granet testified that she spoke to him in June so her statement to Dr. Joelson could hardly have been true that on July 26th she asked for a certificate because of this talk. Her counsel stated on the record that it was he who asked for a certificate (p. 42, l. 20).

The testimony of Dr. Bender is along an entirely different line. He testified with respect to a visit made by the appellee in October 5, 1926, about nine days before she left the home of the appellant (p. 107, l. 37); his testimony was she presented herself to him in rather an excitable mood; her thoughts flowed very rapidly and she manifested a general nervousness; *she came to me with her history, and with a desire to determine whether she was capable of going through the ordinary marital rights and it is for that reason she came to me for her examination* (p. 108, ll. 14 to 23); she further stated that she desired to live with her husband, and desired to fulfill her marriage contract, but did not understand why *she* was incapable of fulfilling it (p. 108, l. 35). She came in with this statement that since her marriage she had become highly nervous, had then lost weight, and she had reached the state that

life was unbearable, and death would be desirable. She said that at no time since her marriage had she had sexual relations and that *she had developed a dislike to her husband, on account of his suggestive sexual intercourse*. She presented herself to him to examine her, to see if she was capable of intercourse.

There is not a single statement by the appellee to her physicians of so-called perversion on the part of the appellant.

The Vice Chancellor in his opinion states (p. 4D, ll. 11-12) "complainant does not show merely non-consummation of the marriage but sets up a course of conduct of the defendant consisting of unnatural practices which finally completely broke down her health. Such practices, which need not be detailed here, if persisted in, would undoubtedly make it unsafe and improper for her to cohabit with him and therefore bring his conduct within the definition of cruelty as laid down by our courts".

We submit that the testimony which we have detailed of the appellant and her witnesses do not support such conclusion by the learned Vice Chancellor. In any event the so-called practices of the appellant were not unnatural and were at worst futile attempts to overcome impotency which we have already argued, *per se*, cannot be cruelty.

POINT VII.

For the foregoing reasons the appellee's bill of complaint should have been dismissed and the appellant should have been granted a decree of absolute divorce, on the ground of desertion, on his counterclaim.

The answer to the bill of complaint denied the material allegations in the complaint (p. 13). On the 21st day of February, 1928, the appellant filed with the permission of the court, by its order (p. 20), a supplemental counterclaim (p. 16) in which he alleged the refusal of his wife to consummate the marriage and that according to the true intent and meaning of the statute the appellee was guilty of two years wilful, continued and obstinate desertion. The reason for the filing of the supplemental counterclaim in the latter part of February, 1928, was because it was felt that that date indicated a period of two years after the time within which the wife should have consummated the marriage, subsequent to December 20th, 1925.

It is our insistence that the appellee was a most designing woman, looking for the opportunity to marry a man through whom she could advance herself financially and provide herself with a home. These are the facts which are responsible for this assertion.

As we have heretofore shown, the parties to this appeal met through a Mrs. Brody, a marriage broker. She gave Grobart the name of the appellee and subsequently he made an appointment to call upon her. This was in July, 1925. The appointment was shortly kept. The parties became en-

gaged in September following and were married in December. From the time of the meeting to the marriage was less than five months. Grobart told his wife that he had an interest in the Grobart Estate at Paterson. He took her to Paterson and showed her the property. Appellee's father promised to give appellant \$10,000.00 as a wedding present which he did not give (p. 73, l. 12; p. 74, l. 6).

Shortly after the marriage Mrs. Grobart became a great source of expense to her husband. Within sixty days she was seriously ill suffering from pneumonia, being attended by a New York doctor with a night and day nurse. After she had sufficiently recovered, her husband sent her to Atlantic City for her health. She wrote him repeatedly as shown in the various exhibits running from page 248 to page 258. In her letter of April 8th (p. 248) she refers to money; in her letter of April 6th she asks him to send a check for \$50.00 to pay the marriage broker. She also asks him to be after the Telephone Company. In her next letter (p. 250) she wrote how splendidly she was feeling and said "it makes you feel that you are entitled to live at least 150 years wish you were here with me to see how people make life worth while". In Exhibit C-9 (p. 251) she scolds him and hopes that somebody will make him stand on his own feet, she said that she would write him more when she was in a better "mode". On August 3rd (p. 252) she wrote him from Lake Hopatcong where she was summering. It is in that letter which she referred to his coming and her procuring a single room for the two. In this letter she finds fault with Grobart's mother and seems to be planting the seed to bring about a family disagreement. Exhibit C-11 (p. 253) is another letter from her in which she seems to be in the best of spirits, sends him her best wishes and regards and "XXXXXXX". She urges him to ar-

rive early on Sunday. In Exhibit C-12 (p. 254) she sends her best wishes and some kisses and admonishes her husband not to flirt because she does not. She also directs him to "bathe a long". In this letter she urged him to pay money to Dr. Granet. The next letter (p. 255) was dated March 16th, 1926, and is being referred to in the sequence which it is printed in the case. She was just recovering from her attack of pneumonia and seemed dejected. In the letter on page 256, August 24th, 1926, she wrote pleasantly enough and signed herself "Yours Bess". In her letter of August 31st (p. 257) she appears to have been in excellent spirits and refers to her social activities. She wished her husband well in his new undertaking. In her letter of August 17th (p. 258) she again requests that the appellant take care of Dr. Granet's bill and send her some money as well. Nowhere in any one of these letters is there an intimation on her part that any suffering which she has gone through was brought about by the actions of her husband as she has charged him in this case. She had consulted her counsel in July, 1926. A number of her letters were written before she had consulted her counsel and a number she had written after consultation with him. A great number of her letters were written after she had been to see her doctors and she says they had told her that her sufferings were due to her husband's condition. When it came time to act by appellee leaving her husband she had no hesitancy in writing Exhibit D-1 (p. 270) and telling him the cause of her leaving.

This woman feared childbirth or at least so a number of witnesses have testified. Appellee denied that she had visited Dr. Granet for a contraception. When Dr. Granet was called, on cross examination, he admitted, with reluctance, that such request had been made. Finally he admitted that

shortly before appellee's marriage she visited him and wanted to know if she was strong enough to have children. It was on this occasion that the doctor gave her the contraception. Mrs. Grobart has admitted that a cousin of hers died in childbirth. Mrs. Grobart, Sr., and Mrs. Horwitz have both testified that the appellee spoke of her fear of having children and the fact that her cousin died in childbirth. Appellee went farther with Mrs. Horwitz and asked her to obtain a contraception because Mrs. Horwitz's husband was a druggist.

We are not going to pretend that the appellant is a man of the usual intelligence. On the other hand we have no hesitancy in admitting that his mentality is below the average. His direct and cross examinations show that. He was just the kind of a man whom Mrs. Grobart was looking for—a piece of putty in her hands. When she found him she proceeded to ascertain what his worldly goods were. Then she married him and then she refused to consummate the marriage.

If she was the ordinary self-respecting woman it would have been her wish to have gotten rid of Grobart for once and for all by annulment proceedings. Surely the evidence which she had, if believed, was more than enough to sustain a decree. A decree for annulment would have put her back in the position she was before her marriage. Instead of that she shows just why she married Grobart by pursuing him financially. She does not now, and she never did, care for Grobart. She never wanted to be a wife to him; she wanted some of the Grobart money.

If we are right in our deduction that this woman married her husband for money and refused to permit him to consummate the marriage for a period of more than two years, she is guilty of wilful, continued and obstinate denial of sexual intercourse

for two years, which is cause for divorce, and appellant is entitled to have a decree on his counterclaim.

Tupper v. Tupper, 147 Atl. 633 (not officially reported);

Raymond v. Raymond, *Supra*.

Continuity of the wilfulness and obstinacy of the desertion—through lack of intercourse—by the appellee was not broken by the intervening suit of the appellee because it was obviously not brought in good faith.

Hartpence v. Hartpence, 121 Atl. 513 (not officially reported);

O'Brien v. O'Brien, 103 N. J. Eq. 214.

The marriage and residence of the appellant were fully established by the evidence.

It is respectfully submitted that the bill of complaint should be dismissed and the appellee should succeed upon his supplemental counterclaim.

PETER BENTLEY,
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WILLIAM W. EVANS,
SAMUEL M. LEVY,
of the New York Bar,
Of Counsel.

New Jersey Court of Errors & Appeals.

Between

BESSIE GROBART,
Complainant-Appellee,

and

LOUIS GROBART,
Defendant- Appellant.

ON BILL &C.

BRIEF FOR COMPLAINANT—APPELLEE

Because appellant has utterly failed in his brief to present either the question now before this Court or such a statement of the pleadings which would be helpful in determining the soundness and justice of the decree under review, it is deemed necessary on behalf of the appellee to invite the attention of this Court to the true issue raised by the pleadings, and the only question involved in passing on the decree from which this appeal is taken.

Under the title "Questions Involved" appellant asserts that the instant case presents a question which has never been passed upon by this Court in any reported decision. The question referred to is not stated; but following the assertion two questions are set forth as being involved. It must be assumed that the question that has never been passed upon in this Court is the one first set out, viz: "whether, under the evidence, the court below

should not have dismissed the appellee's bill of complaint because impotency or failure to consummate a marriage contract is not cruelty."

If, in fact, the questions as thus stated by the appellant had been an issue in the Court below, and the decree were, in fact, based upon any such theory, no effort would now be made on behalf of the appellee to sustain such a decree.

The cause of action is based upon conduct on the part of the husband towards his wife which so undermined her health and endangered her well-being, that she was obliged to separate herself from him; whereupon he refused or neglected to maintain or provide for her, thereby separating himself from her within the true intent and meaning of the law. In producing the facts and results giving rise to this cause of action impotence was a mere incident or instrumentality by which this husband accomplished his cruelty. Impotence is a state, a condition; is inaction as distinguished from action involved in cruelty.

The appellee readily concedes that there is no reported case in this State holding that impotence is cruelty within the definition given that term in matrimonial causes. In fact, it would be astounding if any lawyer, skilled and sane, would bring the question before the Court for adjudication.

Even the most casual reading of the bill of complaint must be convincing that the fact of impotency is not the charge upon which the complainant brings her suit.

The answer and counterclaim of the appellant are proof that the defendant below did not take the view that he was charged with cruelty consisting of his impotence. It goes without saying that if the bill of complaint had

been confined to a charge of impotency as a justification for complainant leaving her husband and seeking separate maintenance, the instant case would not have survived a motion to dismiss the bill for failure to state a cause of action. To further clarify this statement a synopsis of the issue, according to the pleadings, is set forth as follows:

Complainant alleges a course of conduct by her husband against her, characterized as abusive and mal-treatment, and resulting in the destruction of her health and making it unsafe for her to remain with her husband. She charges that he was impotent and has not consummated the marriage relation and particularizes the willful, persistent and cruel acts through which he brought about her suffering and destroyed her health.

The defendant denies these allegations *in toto*, except that he admits the marriage relation was not consummated by sexual intercourse. He says that he is not impotent and that his wife refused to consummate the marriage contract, that she told him she had no love for him, and that she left him without lawful justification and has for more than two years last past wilfully, continuedly and obstinately deserted him.

If the above correctly states the true issues in this case then Points I, II, III and IV of appellant's brief are mere academic discussions, learned and painstakingly discoursing upon a principle of law wholly foreign to the matter under review in this case in this Court.

For ready reference these points are here set out:

POINT I. (Brief p. 5)

THERE CAN BE NO EXTENSION
OR ENLARGEMENT OF THE
STATUTORY GROUNDS FOR DI-
VORCE BY THE CHANCERY COURT.
IMPOTENCE IS NOT A GROUND
FOR DIVORCE.

POINT II. (Brief p. 9)

IMPOTENCY IS NOT CRUELTY.

POINT III. (Brief p. 10)

THE OVERWHELMING WEIGHT
OF AUTHORITY IN THE UNITED
STATES IS TO THE EFFECT THAT
A REFUSAL TO COHABIT DOES NOT
CONSTITUTE CRUELTY EVEN
THOUGH SUCH REFUSAL TO CO-
HABIT BE WILLFUL AND DELIB-
ERATE.

POINT IV. (Brief p. 14)

A WIFE IS NOT ENTITLED TO
SUPPORT FROM A HUSBAND FROM
WHOM SHE SEPARATES BECAUSE
OF HIS IMPOTENCE.

It is, therefore, respectfully submitted that the appellee is not concerned with the matters argued by the appellant under these four points.

This case necessarily involves, to a very large extent, the credibility of the evidence coming from complainant and defendant respectively; and so far as appellant's brief deals with any of the matters properly before this Court an effort is made to discredit the complainant, to prove error on the part of the learned Vice Chancellor in placing credence in complainant's story and wholly disbelieving the defendant.

Briefly I shall set up the highlights of the evidence of the respective principals and point out why there is verity on one side and brazen falsehood on the other.

The complainant asserts — that she is a virgin—that she is normal, apt and receptive for sexual intercourse with her husband—that she submitted herself freely to her husband, giving him every opportunity and inducement to consummate the marriage contract—that so far as she is concerned he is impotent—that she entreated him to secure medical examination and treatment—that he obstinately failed to do this—that daily and nightly during the time they were together he excited her sexually to gratify in an unnatural way his sexual desires. That, finding herself seriously affected in her health by her husband's unnatural practices, she begged him to desist—that he persisted in his practices knowing the effects of his acts upon her health—that she finally broke down and to avoid destruction was compelled to leave him.

To test the credibility of her own story she is supported as follows:

DOCTOR JOELSON :—

As to her virginity (case p. 79, l. 26); as to being normal in her sex organs (p. 80, l. 25); that she was capable of sexual intercourse (p. 80, l. 30); as to her physical condition in July, 1926, she was "highly neurotic" (p. 83, l. 24); he advised her to go back to her husband, and she came back (to the Doctor) and she was quite run down, and she said there was nothing accomplished, and I told her to go away a little while and see if that would help." (p. 85, l. 33 to 38); that in the opinion of this Doctor the extent of her condition could not be caused by refusal on her part to have

sexual intercourse; giving as an explanation "a person is staunch and brave and is not so nervous about it." (p. 86, l. 5 to 10.)

It should here be noted that more than a year after the abandonment he alleged (October 14, 1926) the defendant went to this Doctor for a genital examination of himself; not for treatment, but to prove that his external parts seemed normal. Doctor Joelson had "known Mr. Grobart for a long time." (p. 86, l. 27.)

DOCTOR GRANET :—

Had known the complainant since she was a child (p. 88, l. 29); treated her for influenza and bronchial pneumonia early in 1926; later, about the middle of June, 1926, examined her; "she came and complained of general weakness, headaches, general debility, lack of sleep and many other things," and so I made a physical examination and I couldn't account for it and she seemed to have recovered from her acute illness and could not find anything to explain this nervous condition, and as is customary in the course of our investigation, failing to account for the complaint in a physical way, we turned to question the patient, her social life, sexual relationship, etc.; — "I found her to be a virgin" — an abnormal sexual life in a person's marriage, does that or does it not produce a neurotic condition in either one or the other of the spouses? A. It generally does. (p. 89). "I explained (to her) in a general way, this is the root of all your troubles and you will have to do something about it." There was no evidence of "vaginismus"; as a result of the medical test to determine inclination to resist (p. 90, l. 30 to 40); that she was normal in her sex organs

(p. 91, l. 10) ; that in his opinion the condition in which he found her in the middle of June and later was the result of the abnormal sex irritation—"I can't place it to anything else." (p. 91, l. 20.) He told her "that her nerves were very, very, very much unstrung." (p. 96, l. 13).

DOCTOR BENDER :—

Examination October 5th, 1926, found her "a virginous woman" (p. 108, l. 2) ; she came to me with a history, and with a desire to determine whether she was capable of going through the ordinary marital rights, and it was for that reason she came to me for her examination"; she stated to me that at that time she desired to live with her husband, and desired to fulfill her marriage contract but didn't understand why she was incapable of fulfilling it"; she evidenced no "vaginismus." "With the history that she gave to me, of the condition of her husband and his manifest action toward her, resulting in her nervous condition, I suggested that it may be better if she seek other advice, rather than medical." "Yes; I suggested that she seek counsel." (p. 109)—As far as he was able to determine she evidenced a condition of neurosis—he advised or suggested "the discontinuation of this mode of living for the sake of her health" (p. 110, l. 20). This advice or suggestion was given as a result of his experience as a physician, and what he observed objectively, and the subjective history of the case.

Here, too, it may be noted that the husband more than a year after he and his wife separated went to this Doctor for an examination of his genitalia. The Doctor was made a witness for the defense and frankly admitted that although this husband was then capable of

producing an erection by self-pollution he might still be incapable of normally erecting for the purpose of sexual intercourse." (p. 117, 1. 10 to 14).

Now, as to the incredible story of the defendant.

Some emphasis is sought to be placed on an alleged false statement by the wife that the husband's efforts at copulation were daily throughout the period of ten months while they lived together as husband and wife. This period is computed as two hundred and ninety-eight (298) days, and that they lived together only one hundred and sixty-three days (163). The matter can be of no great moment for in this case there is not even a suggestion that the husband did not have ample time and favorable opportunity to consummate the marriage contract. His sole claim is that his wife was unwilling and by coaxing and force resisted him. So far as his testimony goes he was at all times capable of instantaneous performance.

Briefly, the defendant's story is that his wife, who during courtship had responded to his love making, normally within the bounds of propriety, immediately on their wedding night when occupying a compartment on the midnight train to Niagara Falls not only pleaded with him "not to bother her," but told him that she had "Fifty Dollars and would return home." This, so the husband says, was repeated the next morning on their arrival at the Hotel Statler in Buffalo, to which the husband adds the condition precedent to allowing sexual intercourse with her that he provide himself with certain protection, explicitly designating the brand known as "Fishskins." From Buffalo they travelled, the following

day, to Chicago where they stayed for seven days at a hotel occupying the same bedroom. That there again upon arrival and the following morning he insisted upon his marital rights and endeavored to accomplish them, but that his wife persuaded him to wait until they arrived in their own apartment in Paterson. To this he acquiesced, giving as a reason for this that his wife's brother occupied the adjoining room in the same hotel. Established in their own home in Paterson from early in January until the 14th day of October continuously, except for the periods of her illness in February, her trip to Atlantic City, their joint trip to Lake Kiamisha, her stay at Lake Hopatcong and week-end visits which they jointly made to her people in New York, he was unable because of her resistance to accomplish sexual intercourse.

As to his efforts to accomplish his purpose he testified on direct examination:—

Q. "Up until she left you again, after you came back in May, how often did you try to have sexual intercourse with her, up until she left you again ?

A. Pretty nearly every night, and she always refused." (P. 124, 1s. 35 to 40).

Shown exhibit C-3, being in his own handwriting, he was asked where he got that address. He replied that he got it from Mrs. Brody. Knowing that the address there written was not the place where his wife lived when he first called on her, he endeavors to extricate himself by saying that the address of his wife was secured by him from the telephone book. Shown another memorandum he denies his handwriting although he was after-

wards forced to admit it to be his, referring to Exhibit C-4, page 131. Both memoranda referred to an address at 20 West 13th Street, whereas his wife, at the time referred to when he first met her, lived at 1851 Seventh Avenue. This is important as the memoranda supports his wife's story that he told her he had known of her for a year or two before he called her up, and it proves the brazenness with which the defendant endeavors to escape the truth even in minor matters. To test his credibility as to his condition of health before marriage his counsel, on direct examination, elicited the statement that he had never been sick except when he was in the Barnert Hospital suffering from pneumonia; to test his credibility he was asked whether he had not claimed exemption during the World War on the ground that he was a man with dependent, aged and infirmed parents. (P. 135, ls. 20 to 25). Pursuing this line of examination he was asked whether his exemption card did not show that he was in Class 5-G, and whether his application to the Draft Board was not for exemption on Class 3-B that he was a man with aged, infirmed and dependent parents, and that this application was rejected and he was placed in Class A-1 and afterwards, on physical examination, placed in Class 5-G, "being a person totally physically and mentally unfit for military duty," he admitted having an exemption card but claimed that he was exempted "on account I was sick in the hospital with pneumonia" (p. 136, l. 39). The records of the Barnert Memorial Hospital were produced showing that the defendant was admitted to the hospital on October 5th, 1918, and discharged December 25th of the same year.

The examination on this point was directed to the 2nd day of January, 1918. Having stated "I never filled out a questionnaire that I know of. I was examined and they put me in Class 1, and then in Class 5, "because I was sick" (p. 137, 1s. 23 and 27. He was asked whether he would consent in writing that his private questionnaire from Washington be produced in order to establish the facts. Upon the insistment of his counsel that his advice to refuse his consent be followed by his client, the defendant refused consent. (p. 139, 1s, 1 to 14).

It is a matter of history of which this Court will take judicial notice that there was no draft of troops in October, 1918.

Concerning the seven day stay at the "Chelsea" in Chicago, on direct examination by his counsel, and the Court, the following transpired:

Q. "Did you try to have sexual intercourse in Chicago?"

A. No, sir.

BY THE COURT:

Q. How long were you there? A. Seven days.

Q. Why didn't you? A. Because, her brother had a room next to mine, and she said he would hear all the noise, and we would wait until we got back.

BY MR. BENTLEY:

Q. Did you want to? A. Yes, sir.

Q. What did she tell you? A. She said we wouldn't have any sexual intercourse until we got to our own home.

Q. What did you say to that? A. I said: "All right." I had to be satisfied, because she refused. I had to be satisfied." (P. 119, 1s. 20 to 40).

In contradiction on behalf of the complainant, Bernard Berwick was produced and by his own testimony, plus his hotel bills for the period under consideration, together with the floor plans of the hotel, this witness proved that throughout his entire stay at the Hotel Chelsea for about two and one-half months and up to January 3rd, 1926 he occupied room No. 208 on the second floor of that hotel, and the defendant and complainant occupied room No. 601 on the sixth floor, and that on the morning when the defendant and his wife arrived at the hotel, and after the defendant had registered and all had gone to the room assigned on the sixth floor they all, that is, Bernard Berwick and Mr. and Mrs. Grobart went down to Bernard's room and remained there for about one-half hour. (ps. 219 to 222).

Asked whether his wife wrote to him when she was at Atlantic City and at Lake Hopatcong he answered:

"No, sir; she never wrote to me. She wrote to my mother while she was in Atlantic City, and never mentioned my name, or sent me any regards, and never mentioned my name.

Q. You mean to say that while your wife was in Atlantic City, your wife never wrote to you at all?

A. She may have sent a postal card, but I don't believe she did.

Q. When she was at Lake Hopatcong, did she write you? A. I called her on the 'phone near every night.

Q. Why don't you answer my question; did she write you? A. I think she sent me a postal card.

Q. Do you now say to the Court that she didn't write you a letter from both places, and ask you to come and see her? A. No, sir; from Atlantic City she never did, but from Lake Hopatcong, I think she did.

Q. You swore she didn't? A. She used to get the mail at the house herself. She may have written it and gotten it herself. I used to leave in the morning and come back in the evening.

Q. I show you a letter dated April 8th, 1926, and dated Atlantic City, and ask you if you received that from your wife? A. No, sir; I never received that in my life; no, sir; I didn't never receive that letter." (Exh. C-6, page 158)—(Exh. printed page 248).

The same denials are found with respect to Exhibit C-7.

The same denials also as to letter dated August 3rd, 1926, Exhibit C-10, p. 252, and also one dated Sunday, without further date, Exhibit C-8, p. 250.

The same denials as to letter dated August 30th, 1926, Exhibit C-11, p. 160; Exhibit at p. 253. As to his denial receiving Exhibit C-11 it may be noted that the defendant admits his wife asked him to come and see her at Lake Hopatcong which he did. This exhibit refers directly to that fact. It will be noted that the defendant attempts to explain the non-receipt of all of these letters by the suggestion that his wife may have written them and received them herself. He is then

confronted with the envelopes respectively belonging to the various exhibits, showing that they were addressed to 104 Carrol Street, marked personal, and that that was the home address of his mother where he stayed during his wife's absence, and finally is forced to admit receiving the envelopes but, notwithstanding that admission, he still denies receiving the letters which came in those envelopes. Shown envelopes to some of the letters addressed to Mr. Louis Grobart, 62 Ryle Avenue, Paterson, New Jersey, Grobart Mills, which was defendant's place of business while his wife was in Atlantic City and at Lake Hopatcong, on page 160, he admits receiving Exhibit C-15 and denies receiving Exhibit C-17, p. 177, (Exhibit p. 257), and this because he found "the stamp is rubbed off." A further examination of the testimony on pages 178 and 179 established conclusively that until the witness had no possible avenue of escape he brazenly swore falsely as to facts concerning which he could have had no doubt, and did so with the purpose of deceiving the Court and to build up the theory charged in his counterclaim that his wife had no love for him.

A review of all of the testimony will disclose numerous other falsehoods by this defendant. If it is a fact, as argued in the brief of appellant (on p. 19) that the Court below has completely rejected the appellant's story and accepted *in toto* the testimony of the appellee, can there be any doubt that for so doing the evidence in the case would fully justify such a conclusion.

Aminadverting to the testimony of the appellee the appellant's brief points out what is called a deliberate lie because it is said that

she is contradicted by Doctor Granet, her own physician. The paucity of argument which would even support a slim inference of untruthfulness is here pointed out.

The brief states "she emphatically testified that prior to her marriage she sought no information from her family doctor as to sexual matters, that she never discussed these matters with her family physician." The testimony referred to is found on page 30, when she was asked whether prior to her marriage she went to this doctor and discussed her marital relations with him, and whether prior to her marriage she went to the doctor for the purpose of getting a prescription for the purpose of preventing pregnancy. Both of these questions she answered in the negative. On page 91 et seq., Doctor Granet was asked the direct question whether prior to her marriage this woman came to him for advice as to her marital relations. It is obvious from the testimony of Doctor Granet which follows that he took the same view which Mrs. Grobart must have taken, that prior to her marriage there could have been no occasion for discussing her "marital relations," for he says:

"There was no cause for information."

As to the second question it is obvious that learned counsel is torturing the evidence given by the doctor into an admission that the prescription given for a vaginal discharge (p. 93, l. 39) technically called "vulva vaginitis" (p. 101, l. 5) into a prescription to prevent conception because the suppositories contained some antiseptic. The only other subject discussed with Doctor Granet which would have the slightest bearing upon her future marital relations was her question to the doc-

tor as to whether she was strong enough to have children, to which he answered:

"I told her she was."

As to that matter she was not interrogated.

UNDER THE TESTIMONY THE COURT BELOW COULD NOT HAVE REACHED ANY OTHER CONCLUSION THAN THAT CONTAINED IN THE DECREE UNDER REVIEW.

Under Point VI of appellant's brief an attempt is made to confine the facts found by the Court below and upon which the opinion rests. The limitation embraces two points, to wit:

(a) That the appellant is impotent.

(b) That his sexual conduct consisted of unnatural practices which finally completely broke down her health, and that such conduct constituted statutory cruelty which entitled her to a decree for maintenance.

As to the first of these, the attention of this Court is invited to what the learned Vice-Chancellor, in fact, says with respect thereto:

"Her testimony would indicate that the husband is probably impotent, at least quoad hoc. There may have been a psychosis rendering him impotent as to his wife even though there be no universal impotency, or there may have been some latent genital impairment." (p. 4C, 1s. 14 to 19).

In the case now before the Court the "impotence of the defendant was not conclusively proved and, in fact, is vigorously denied by the defendant. Com-

plainant does not know whether defendant was impotent or whether his sexual conduct with her was merely perversion." (p. 4D, 1s. 5 to 13).

From this it is incontrovertibly apparent that the Court below did not determine that the "appellant is impotent" but, on the contrary, determined that impotence on his part was not conclusively proved, was probable, but was vigorously denied by the defendant.

While it is not conceded that the opinion of the Vice Chancellor is within the description of "(b)" that paragraph is sufficiently descriptive of the basic facts to make it applicable to the opinion.

The Vice Chancellor uses the words "a course of conduct of the defendant consisting of unnatural practices" and does not say "his sexual conduct consisting" of unnatural practices. The distinction under other circumstances might seem trivial, but in the instant case it is exactly "the course of conduct" which is of vital importance.

To justify the finding by the Court below that "the course of conduct of defendant consisting of unnatural practices which finally completely broke down her health" it is only necessary to couple with the complainant's story, the admission by the defendant as to how often he tried to have sexual intercourse with his wife that he said "pretty nearly every night and she always refused." (p. 124, 1. 37).

Having all of the testimony in mind produced on behalf of the complainant, it is difficult to reconcile the statement made in the appellant's brief that it "taken in the light most favorable to her can only sustain a finding that the appellant was impotent."

In passing it is urged on behalf of the ap-

pellee that the contention of the appellant as to the only remedy open to the appellee is an annulment, is without merit, for the reason that the statute provides for a decree of nullity in this respect only where "the parties or either of them was at the time of the marriage physically and incurably impotent." The evidence in the case and the findings of the Court below conclusively show that the appellee had not sufficient evidence upon which to found a decree of nullity. It is further contended, on behalf of the appellee, that she was not obliged to seek recourse to an annulment even though she had sufficient grounds to bring her within the statute. The learned Vice Chancellor so held and the authorities cited in the opinion sustain the finding. Referring to the case of *Kirschbaum v. Kirschbaum*, 92 N. J. Eq., p. 7, it is pointed out that if, as in that case, a wife will not be heard to repudiate the marriage contract after having by a course of conduct ratified the same, it necessarily follows that she cannot be compelled to repudiate the marriage contract if she chooses to ratify it as in the instant case before this Court for review.

On behalf of the appellee it is urged that the decree of the Court below should be affirmed for the reasons given in that Court and for the reasons herein urged.

Respectfully submitted,

GEORGE T. VICKERS,

Solicitor for Complainant-Appellee.



