

## NEW JERSEY COURT OF ERRORS AND APPEALS.

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MARY ELLEN MCGUINNESS,

Complainant and Respondent,

and

THOMAS MCGUINNESS,

Defendant and Appellant.

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ON APPEAL FROM  
CHANCERY.

BRIEF OF CARROW AND KRAFT,

For Appellant.

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This appeal involves the assertion of a constitutional right. The Fourteenth Amendment of the Constitution of the United States provides that no State shall "deprive any person of his life, liberty or property, without due process of law."

This appellant, a citizen of the State of Pennsylvania, was sued by his wife in the Court of Chancery of New Jersey for a limited divorce and alimony, and he was not served with process. Jurisdiction was acquired by publication. The decree of the Court established an alimony debt against appellant of \$1,890.40 and \$19.23 per week, besides a \$700 counsel fee and costs.

Appellant's property in Jersey City was seized under a writ of sequestration, and his property has, therefore, been taken from him without due process of law.

The Chancellor was petitioned by appellant to vacate this unconstitutional decree and he made an order denying the application. This appeal brings up said order for review.

The bill of complaint was filed in this cause on July 7th, 1889, for a divorce *a mensa et thoro* and alimony. *The first subpoena was voluntarily set aside on January 15th, 1900, (p. 89,) because the defendant had no residence in New Jersey.* A second subpoena was issued on January 15th, 1900, and was returned without comment by the Sheriff of Hudson county, but *it had annexed thereto the complainant's affidavit setting forth (p. 91) "that defendant is a resident out of the State of New Jersey, and, together with his son, resides at No. 102 South Fortieth street, in the city of Philadelphia, in the State of Pennsylvania, and has resided in said city of Philadelphia for more than eight months last past."*

The defendant was brought into court by publication as an absent defendant. The order of publication is dated February 7th, 1900, and recites (p. 92) that "it appears by the affidavit of Mary Ellen McGuiness, \* \* \* that the defendant \* \* \* *"is a resident of the State of New Jersey,* and cannot, upon due inquiry, be found in said State, and it appearing by the return of the Sheriff of the county of Hudson that process could not be served upon him." (This is not a fact, as the Sheriff made no return other than the writ without any endorsement, but accompanied the return of the subpoena with the complainant's affi-

davit as above mentioned.) *The statute requires that the Sheriff shall make a return of the writ, and as to what is a return see Bouvier's Law Dictionary, Vol. 2, p. 475.*

The bill of complaint prays for divorce, &c., "and suitable support and maintenance for complainant and the said children." *The defendant had no notice of the subject matter of the bill. The notice of the order of publication served upon the defendant (p. 93) recites "that said bill of complaint is filed against you (Thomas McGuinness) to procure a divorce from bed and board for the cause of extreme cruelty."*

It will be observed that no reference is made in the notice served upon the defendant of any claim for alimony or counsel fees, as was done in *Lynde vs. Lynde*, 9 Dick., 473.

The defendant did not appear. Neither the files of the Court nor the docket entries of the suit disclose any appearance by the defendant between the issuance of the subpoena and the making of the final decree. The proceedings were, therefore, *ex parte* from beginning to end, and a final decree *in personam* was made against a citizen of a foreign State without due process of law.

#### I.

NO DECREE CAN BE MADE FOR ALIMONY EXCEPT IN CASES WHERE THE DEFENDANT IS SERVED WITH PROCESS WITHIN THE TERRITORIAL LIMITS OF THIS STATE OR HAS ENTERED HIS APPEARANCE TO THE SUIT.

"A judgment *in personam* in a State Court without personal service, and in violation of Const. U. S., Art.

14, prohibiting the deprivation of a person of property without due process of law, is not valid within the State, and may be collaterally impeached in an action brought in the State Court on such judgment.

"A judgment for alimony rendered against a defendant domiciled in another State, without service of process within the State, is a decree fixing a personal liability without 'due process of law,' prohibited by Const. U. S. Amend., Art. 14."

*Elmendorf vs. Elmendorf*, 13 Dick., 113.

In *Elmendorf vs. Elmendorf*, *supra*. (p. 114), "The notice served on the defendant stated that the object of the suit was to obtain a divorce and contained no notice that alimony was prayed." The final decree was made on November 29th, 1887, and allowed the complainant alimony. In 1899 the order for a *ne exeat*, based upon said final decree, was set aside.

In *Hervey vs. Hervey*, 11 Dick., 178, the defendant had property in New Jersey, and the Court said that under these circumstances the claim for maintenance under our statute involves as a basis for jurisdiction the status of the parties, and when this Court has status of the parties, by reason of the domicile of both parties, a decree may be made. *The defendant petitioned that all orders, &c., be set aside*; the Court found that the defendant resided in New Jersey and refused the application to set aside the order allowing alimony.

On appeal (*Hervey vs. Hervey*, 11 Dick., 428) the decree for alimony was reversed, the Court holding that "the proceedings must be in personam whether there is or is not property in New Jersey."

In *Lynde vs. Lynde*, 9 Dick., 473 (affirmed, 10 Dick., 591), the decree entered was merely reserving to the Court the right to allow alimony. The Court held (see 11 Dick., 429), that alimony could not be granted except the proceedings be *in personam*, i. e., personal service or the defendant entering his appearance.

“Yet we have declared that our act will not justify a decree for alimony against a defendant not domiciled here and who had not been served with process nor entered appearance in the suit.”

*Felt vs. Felt*, 14 Dick., 613.

*Wallace vs. Wallace*, 17 Dick., 514.

The learned Chancellor in his opinion bases the validity of the decree for a divorce *a mensa et thoro*, upon the cases of *Felt vs. Felt* and *Wallace vs. Wallace*, *supra*, and seeks to distinguish the case in hand from the cases in which the doctrine in *Pennoyer vs. Neff* has been applied, to the effect that in all such cases the decrees were for the complete severance of the marriage relation, with alimony as an incident to the decree, while in the case before him the decree was from bed and board only.

But there is no difference between a decree dissolving marriage with alimony as an incident, and a decree from bed and board with alimony as an incident. The decrees in both cases are based upon the marriage relation, and as to such status, are *in rem*, but as to the award of alimony are *in personam*.

The Supreme Court of the United States, in *Haddock vs. Haddock*, 26 Sup. Ct. Rep., 525, which case came before that Court upon a writ of error bringing up for review a decree of the Court of Appeals of the State of New

York, affirming a decree of separation from bed and board and alimony, held that

“Where a personal judgment has been rendered in the courts of a State against a non-resident merely upon constructive service, and, therefore, without acquiring jurisdiction over the person of the defendant, such judgment may not be enforced in another State in virtue of the full faith and credit clause. Indeed, a personal judgment so rendered is, by operation of the due process clause of the 14th amendment, void as against the non-resident, even in the State where rendered; and therefore such non-resident, in virtue of rights granted by the Constitution of the United States, may successfully resist, even in the State where rendered, the enforcement of such a judgment. *Pennoyer vs. Neff*, 95 U. S., 714,”

is a legal proposition irrevocably concluded by the decisions of that Court, and in reaching that conclusion *Felt vs. Felt* and *Wallace vs. Wallace* were considered by the Court.

In *Bunnell vs. Bunnell*, 25 Fed. Rep., 214, cited by the Chancellor, the statute of Michigan under review provided that “In all cases where alimony \* \* \* shall be decreed \* \* \* the Court may award execution for the collection of the same, or the Court may sequester his real or personal estate.” The Court in considering that statute deemed itself bound by *Pennoyer vs. Neff*, and held:

“A State statute permitted its Courts, in suits for divorce, to award alimony and to sequester the property of the defendant within the jurisdiction, and appropriate the same to the payment of the alimony. Held, that this statute did not apply where the defendant was called into court by publication, and that a decree for alimony against

*a defendant not personally served with process was void for want of jurisdiction."*

Under these decisions the decree from bed and board and for alimony is invalid. The decree for debt, alimony and counsel fees cannot be regarded as a proceeding *in rem* because it involved the establishment of a debt which had no prior existence until the decree was made, and hence the decree is purely *in personam*.

The fourteenth amendment of the Constitution of the United States provides that no State shall "deprive any person of life, liberty or property, without due process of law." This amendment took from New Jersey the right to finally say what should constitute "due process of law" within this State, and subjects its enactments to the scrutiny of the Supreme Court of the United States. The decisions of that Court are clear that a judgment *in personam* cannot be effectively rendered against a defendant who has not been served with process within the jurisdiction of a State Court, or entered his appearance therein.

No State has authority to invade the jurisdiction of another, and, by service of process, compel parties there resident or being to submit their controversies to the determination of its Courts. Substituted service, as by published or posted notice, "is restricted in its legal affect, and cannot be made available for all purposes. It will enable the Court to give effect to the proceeding, so far as it is one *in rem*, but when the *res* is disposed of, the authority of the Court ceases. The statute may give it effect so far as the subject matter of the proceeding is within the limits, and therefore under the control of the State; but the notice cannot be made to stand in the way of process,

so as to subject the defendant to a judgment against him personally."

*Flower vs. Flower*, 15 Stew., 152.

*Doughty vs. Doughty*, 1 Stew., 581.

*Cooley's Cons. Lim.*, p. 498-500.

*C. B. & Q. R. R. vs. Chicago*, 166 U. S., 226.

*Freeman vs. Alderson*, 119 U. S., 185.

*Hart vs. Sansom*, 110 U. S.; 151.

*Harkness vs. Hyde*, 98 U. S., 478.

*Davidson vs. New Orleans*, 96 U. S., 102.

*Pennoyer vs. Neff*, 95 U. S., 733.

*See Cooper vs. Reynolds*, 77 U. S., 318.

*See Bischoff vs. Wethered*, 76 U. S., 814.

*Ableman vs. Booth*, 62 U. S., 515.

*Dunn vs. Dunn*, 4 Paige, 430.

*Beard vs. Beard*, 21 Ind., 321.

*Cousins vs. Alworth*, 10 L. R. A., 504.

*Meyer vs. Bucks*, 16 L. R. A., 231.

## II.

THERE WAS NO APPEARANCE INVOLVING ANY WAIVER OF DEFENDANT'S CONSTITUTIONAL RIGHT.

In the month of February, 1902, eight months after the making of the final decree which operated as the basis of the confiscation of the defendant's property in New Jersey, the defendant filed a petition in this Court alleging what the files already showed, *i. e.*, that he was a citizen of the State of Pennsylvania, and praying that the enrollment be opened, the final decree vacated and the sequestration proceedings set aside (and incidentally for the

dismissal of the bill) and such further and other relief as the nature of his application required.

It is argued that the defendant in his prayer to the petition to set aside these void proceedings asked too much and that the excess should be resolved into a waiver of his constitutional right to personal service; in other words, if a foreign citizen, whose property has been confiscated on a final decree *in personam* without due process of law, goes before the Chancellor of the State on a petition to vacate the proceedings and asks for more relief than he is strictly entitled to on his motion, he shall be deemed to have entered such an appearance as to confer original jurisdiction upon the court. *No law warrants this remarkable proposition.*

The purpose and character of this motion negatives any idea of waiver. The design of the petition was to challenge the jurisdiction of the Court and not to cure it by an utterly inconsistent construction of a pleading. This is an attack that goes to the very foundation of the suit and the final decree cannot be cured by any subsequent motion of this nature; in other words, a decree void for want of original jurisdiction over the person cannot be cured by any subsequent act of the defendant.

In *Mehrbach vs. Partridge*, 29 N. Y. Supp., 681, an appeal was taken from an order denying a motion made by the defendant to set aside the judgment entered against him, because the service of the summons was defective, the Court (p. 682) said:

"It is conceded that the defendant did not appear, either in person or by attorney, prior to the entry of the judgment, and no act of his subsequent to the entry of

*the judgment could confer jurisdiction. The order appealed from must, therefore, be set aside."*

"A judgment void for want of personal jurisdiction is not cured by the appearance of the party for the purpose of vacating it."

*Baskins vs. Wylds, 39 Ark., 347.*

*Gray vs. Haines, 8 Cal., 562.*

*Paxson vs. Daniel, 1 Wash., 19.*

*Chahoon vs. Hollenbeck, 16 S. & R., 425.*

*Cloud vs. Pierce City, 86 Mo., 358.*

*Boals vs. Shules, 29 Iowa, 507.*

*Mills vs. State, 10 Ind., 114.*

*Higgins vs. Beckwick, 102 Mo., 456.*

*Newall vs. Appleton, 46 N. Y. Super. Ct., 6.*

"A party who appears for the purpose of applying to have the proceedings set aside for want of jurisdiction waives nothing by such appearance, and may bring error under the judgment founded on such proceedings."

*McCasin vs. Camp, 26 Mich., 390.*

"Where a party appears specially and his written objection specifies certain objections as a separate defense in case his objections to the jurisdiction are overruled, this is not a full appearance."

*Stearns vs. Smith, 25 Minn., 131.*

"Where defendant appeared only to question the jurisdiction of the Court, and when that was decided took no further steps in the cause, either in person or by attorney, *Held*, that this was not such an appearance as authorized the default to be taken."

*McNeb vs. Bennett, 66 Ill., 159.*

"An appearance for the sole purpose of objecting to the jurisdiction of the Court does not constitute a general appearance."

*Halsted vs. Manning, 34 Fed., 565.*

*Meyer vs. Brooks, 29 Or., 203.*

*Elliott vs. Lawheed, 43 Oh. Ct., 177.*

"Whether an appearance is general or special is to be determined by the substance and not by the form."

*Bank vs. Bank, 45 Neb., 29.*

"A judgment, void for want of personal jurisdiction, is not cured by the appearance of the party for the purpose of vacating it.

"The appearance of Cheever in the court *after judgment* was rendered and his motion to set it aside, did not cure the fatal defect of a want of jurisdiction. Had the court set aside the judgment and permitted him to answer to the merits, a judgment subsequently rendered would have been valid. *But the appearance of a party for the purpose of objecting to the prior void proceeding will not cure it.*"

*Gray vs. Howes, 8 Cal., 563 & 570.*

"Upon an application to set aside a judgment shown to have been absolutely void because the Court had acquired no jurisdiction in the cause, *an objection distinctly made upon that ground should not be deemed to have been waived* from the fact that the moving party also urges in support of his application additional reasons not inconsistent with the alleged want of jurisdiction, or because *by asking to be allowed to file an answer as in a pending cause*, he indicates his present willingness to

submit himself to the jurisdiction of the Court, in order that, after a hearing upon the issues thus presented, the Court may proceed to judgment. The course of the moving party in thus seeking to have a void judgment set aside—to which relief he is entitled as a matter of right—but at the same time consenting and asking that the Court shall now hear and adjudicate upon the cause, may justify the Court in entertaining the cause and proceeding as in an action pending in which the defendant has voluntarily appeared. *But in thus urging his legal right, and thus invoking and consenting to the future action of the Court, the moving party should not be deemed to have conferred jurisdiction retrospectively, so as to render valid the previous judgment, which, being unsupported by any authorized judicial proceedings, was not merely voidable, but void, and in legal effect a nullity.*”

*Godfrey vs. Valentine, 39 Minn., 338.*

“In an action against a New York corporation publishing a newspaper there, service of summons in this State upon a person whose only connection with the company consists in receiving advertisements at published rates, forwarding the same to the home office, receiving thence bills for the same and collecting them upon commission, is not a service upon an agent of the company within the meaning of section 88 of the Corporation act.

*“After the counsel for the defendant had obtained a rule to show cause why such service should not be set aside, he got an order extending his time to file a plea. It appearing that such order was taken to prevent a judgment being entered by default before the determination of the rule to show cause and for the purpose of fortify-*

*ing defendant's position under the rule, it cannot be regarded as a general appearance which waived the irregular service."*

*Mulhearn vs. Press Pub. Co., 24 Vr., 151.*

"Where service by publication is made upon an absent defendant, the fact that he appeared at a hearing and objected to the jurisdiction did not authorize any decree against him."

*Mande vs. Rodes, 34 Keny., 45.*

*Barbour vs. Newkirk, 83 Keny., 529.*

*24 Ind., 260; 34 Kan., 346.*

The defendant did not pray for too much. He was entitled to have the enrollment opened, the final decree and sequestration vacated and such other and further relief as might be consistent with the exigencies of the case.

*In Hervey vs. Hervey, supra, the petitioner prayed that all orders made in the cause be set aside.*

### III.

THE RIGHT OF THE APPELLANT TO MAINTAIN THIS APPEAL.

The statute (Pam. Laws 1902, p. 545) provides that: "All persons aggrieved by any order or decree of the Court of Chancery may appeal from the same, or any part thereof, to the Court of Errors and Appeals."

This was not a discretionary matter, like an application for a re-hearing; it concerned a constitutional right; in other words, substantial property rights were affected by an illegal decree.

In *Reed vs. Patterson, 17 Stew., 218*, it was held that an order made by the Chancellor refusing to set aside a decree and denying to appellant the right to answer, was appealable. The Court, pages 218 and 219, said:

*"The interlocutory decree, which settled the merits of the case, was made without the appellant being properly brought into court, and without an opportunity being allowed him to present the merits of his defense. \* \* \**

*"On the facts presented by this petition the decree was not only made in a suit in which the defendant was not summoned and to which he never appeared, but also upon a record which did not present the merits of the case."*

In *Camden and Amboy R. R. Co. vs. Stewart, 6 C. E. Green, 485*, the Court said:

*"The language of the statute upon this subject is that 'all persons aggrieved by any order or decree of the Court of Chancery may appeal from the same or any part thereof.' \* \* \* From the terms here used, it is clear that the intention was to give wide scope to appeals. The only limit imposed on the right is the circumstance that the party appealing must be, in a legal term, 'aggrieved' by the order sought to be reviewed.\* \* \* (P. 488.) An order to be appealable must go, to some extent, to the merits of the controversy, or substantially affect the legal or equitable rights of the party appealing."*

*"It is said by the appellee that this is not an appealable order or decree, and that the appeal should be dismissed for want of jurisdiction in this court. The appellant is surely aggrieved by this order, if, as he claims in his petition, his homestead farm is sold from him by an illegal sale."*

*Woodward vs. Bullock, 12 C. E. Green, 507.*

In the above case an order made by the Chancellor refusing to set aside an illegal sale was reversed.

“An order refusing to set aside a sale upon an application based upon the illegality of the sale is appealable; it is not a discretionary matter.”

*Bank vs. Sprague, 6 C. E. Gr., 460.*

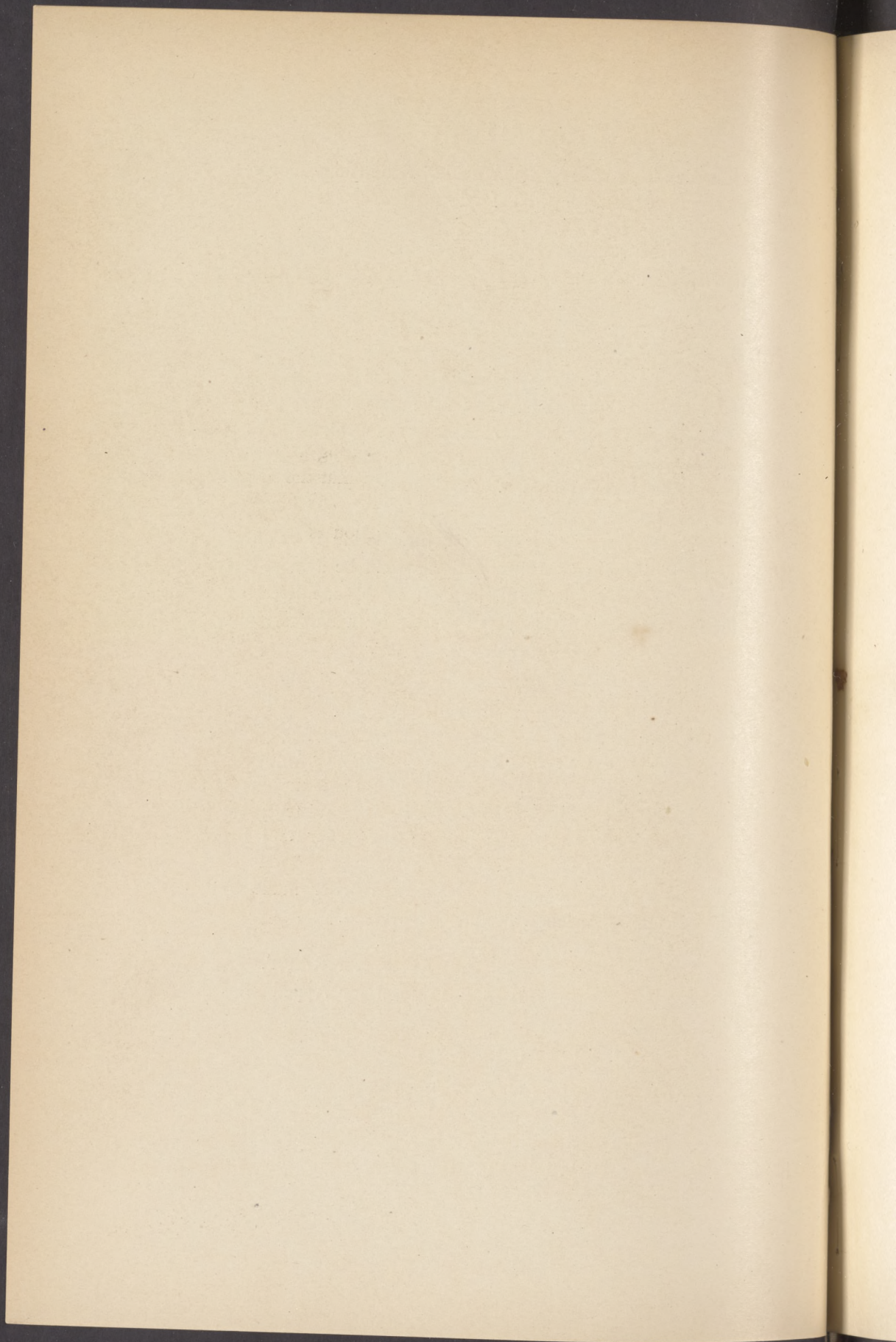
In the Myers will case, decided at the June term of the Court of Errors and Appeals, the appeal to the Court of Errors was from an order made by the Orphans' Court setting aside a decree of probate and reinstating a caveat. In this case there seemed to be no question that the order was appealable.

The very purpose of appellate jurisdiction is to safeguard constitutional rights, and it would be a most extraordinary thing for this tribunal to denude itself of jurisdiction in so important a matter by a narrow construction of its appellate powers.

In the argument below, learned counsel on the other side referred to the fact that no appeal had been taken <sup>from</sup> the final decree within the time required. Just as if this neglect could, upon any principles of justice, be deemed to have cured an illegal decree. There was no appeal in *Elmendorf vs. Elmendorf, 13 Dick., 113*, and ten years intervened between the making of the order and the order vacating it.

It is respectfully submitted, that the order made by the learned Chancellor should be reversed.

CARROW & KRAFT,  
Counsel for Appellant.



# New Jersey Court of Errors & Appeals

Between

MARY ELLEN MCGUINNESS,  
Complainant—Respondent,

and

THOMAS MCGUINNESS,  
Defendant—Appellant.

On Appeal from  
an order of the  
Court of Chancery

## BRIEF FOR RESPONDENT.

### THE FACTS.

The complainant, having been a resident in New Jersey since the year 1883, filed her bill in the Court of Chancery of New Jersey, July 7, 1899, for divorce *a mensa et thoro* on ground of extreme cruelty, for custody of three of the four children of the parties, and for the support of herself and the three children. (See bill of complaint, pp. 1 to 19 of Case).

*Subpoena ad res.* was issued, returnable August 1, 1899, and returned "served" by the sheriff of Hudson County (see pp. 19 and 20 of Case); and application was made for alimony *pendente lite* and counsel fees, the affidavits and notice of motion therefor being served by leaving copies thereof at the house in Jersey City which the complainant and her counsel believed to be the home and residence of the defendant. (The notice of this motion and the accompanying affidavits of George V. Drew, John F. McCarthy, Cathryn E. McCarthy, May 1. McGuinness, William Maxon and Mary Ellen McGuinness,

New Jersey State Library

appear on pages 21 to 33, and 43 to 51 of Case).

The matter of this application was adjourned to July 24, 1899, and again to August 7, 1899; more affidavits were taken (See pp. 34 to 39 of Case), and on said August 7, 1899, further order was made requiring mailing of the papers to the defendant, etc., and that defendant show cause on August 14, 1899, etc. (See p. 52 of Case).

James Fielder, Esq., of the law firm of Brinkerhoff & Fielder, appeared for the defendant specially on this application, for the sole purpose, as is recited in the order of September 11, 1899, of objecting to the sufficiency of the service of notice of the application. The hearing of this order to show cause was further adjourned to September 11, 1899, when order was made (See pp. 85 and 86 of Case), that the defendant pay a certain weekly sum, therein stated for the maintenance and support of the complainant, a counsel fee, and costs of the application; and the same day, the defendant having failed to answer, an order of reference was entered referring the matter to Issac F. Taylor, Esq., special master, to ascertain and report as to the truth of the allegations of the complainant's bill, etc (see pp. 84 and 85 of case). A petition was presented to the Court, in the following month of October, praying for a writ of sequestration and appointment of a receiver to enforce the order of September 11, but no action was had thereon. October 31, 1899, notice, with affidavits of defendant and others annexed, was served on complainant's solicitor by Messrs Brinkerhoff & Fielder, in which they described themselves as "solicitors and of counsel with Thomas McGuinness," stating that "application would be made to the Chancellor of New Jersey on Wednesday the eighth day of November then next, at the Chancery Chambers in Newark, to vacate and set aside the return of the Sheriff of Hudson County to the subpoena-ad-respondendum issued in this cause, and to vacate and set

aside the order for temporary alimony and counsel fees made in said cause and for such other and further relief in the premises as might be equitable and just." The affidavits annexed to this notice maintained that defendant had a bona fide residence in the State of Pennsylvania at the time the subpoena and notice of application for alimony pendente lite were served at the house in Jersey City. No action was taken on this application until January 15, 1900, when an order, over the written consents of the solicitor of complainant and solicitor of defendant, was advised by Vice-Chancellor Emery and entered, setting aside the subpoena-ad-respondendum and return of the sheriff thereto and the order for temporary alimony and counsel fees and all proceedings based thereon, and vacating the order of reference, without costs to either party (see pp. 89 and 90 of case). It is recited in this last mentioned order that it is "Upon motion of William Brinkerhoff, solicitor and of counsel with the defendant (who appears specially for that purpose) and upon the consent of Marshall Van Winkle, solicitor and of counsel with the complainant." This order was consented to by the complaint's counsel without suspicion or knowledge of the fraudulent character of the defendant's residence in Pennsylvania. This knowledge was acquired later when the depositions of complainant's witnesses were taken at Philadelphia.

On January 15, 1900, after the signing of the last referred to order new subpoena ad respondendum was issued and sent to the sheriff of Hudson County and returned by him "*Non Est*" (see pp. 87 to 90 of case). On February 7, 1900, order for publication was made and filed against defendant (see pp. 90 to 93 of case), and a certified copy thereof and of the notice of suit were, on the same day served personally on defendant, at his boarding house, No. 102 South Fortieth Street, in the City of Philadelphia (see p. 94 of case). May 4, 1900, order of reference was made and filed referring it to Washington B. Williams, Esq., a Special

Master, to report as to the truth of the allegations of the complainant's bill, etc (see p. 95 of case). After the taking of testimony of witnesses at Jersey City and Philadelphia and a thorough investigation of the case, he filed a report, on or about January 20, 1901 (see pp. 107 to 111 of case), wherein he reviews the evidence and finds that the ground on which the bill relies, that of extreme cruelty inflicted by the husband upon the wife, is fully proved in all important particulars and is well corroborated. He said, among other matters in this report, "I remember no case exhibiting such brutality, taking into account the fact that they are people of a middle rank of life among their associates and co-religionists, etc. He advised a decree for separation with alimony. A Supplemental order, of reference was made to him, on March 19, 1901 (see p. 149 of case), directing him to "ascertain and report the location and value of the defendant's real and personal property and the proper amount of alimony to be paid the complainant for her support and maintenance and the support and maintenance of said three children, and to whom the care and custody of said three children should be awarded." On the coming in of the Special Master's supplemental report, on May, 18, 1901 (see pp. 150 to 153 of case), a final decree was made in the cause (see pp. 158 to 160 of case) reciting the necessary jurisdictional facts, confirming the said report, and supplemental report, declaring that defendant had been guilty of extreme cruelty towards the complainant as charged against him in her bill, *had, without any justifiable cause, separated himself from her and neglected to maintain and provide for her*, and granting her a divorce forever from the bed and board of said defendant. By the said final decree, the complainant was given the custody of their three daughters until the further order of the Court, and the defendant was directed to pay her alimony from the date of the filing of her bill to the date of the said final decree, amounting to \$1890.40,

and the further sum of \$19.23 per week from the date of the final decree until the further order of the Court, for the support and maintenance of the complainant and said three children, also to pay to her counsel a counsel fee of \$750.00, and give bond for the regular payment of said weekly sums. The final decree was filed in the office of the Clerk of the New Jersey Supreme Court, and, by virtue of an act of the Legislature of New Jersey entitled "An act respecting the Court of Chancery," approved March 27, 1874, the amount due under said final decree is a lien on any real estate owned by said defendant in this State. It appears, from the supplemental report and other papers filed in the cause that, from a date long prior to the inception of complainant's suit to the present time, the defendant has been the owner of real estate situated on Grand Street and Clinton Avenue, in Jersey City, of the sale value of \$61,500.00. On July 9, 1901, certified copies of the final decree, and bill of taxed costs together with a written demand for the payment of the amounts therein named were served personally on said defendant in Pennsylvania (see pp. 156 and 157 of case). He refused to pay any part of said sums and failed to provide the bond required under the decree, and a petition for writ of sequestration was filed by complainant's solicitor (see pp. 161 to 162 of case), and order made thereon, on September 27, 1901 (see pp. 163 and 164 of case), directing that a writ of sequestration should be issued to John S. McMaster, Esq., one of the Special Masters, for the sequestration of the personal estate of said defendant and of the rents, issues and profits of his real estate to satisfy said final decree and until the further order of the Court; by virtue of which writ said John S. McMaster has since been in possession of said real estate of defendant's in Jersey city and has collected the rents thereof toward the payment of said alimony counsel fees and costs.

On February 19, 1902, the complainant and said sequestrator filed a bill of complaint in this Court, to set aside, as against her said final decree, a certain judgment for \$6186.88 obtained by one, Thomas McLaughlin, against said Thomas McGuinness in the Hudson County Circuit Court, alleging that said judgment and the attachment suit upon which it was founded were fraudulent and instituted for the purpose of hindering and delaying her in the collection of her said alimony. Said suit resulted in the entry of a final decree on November 26, 1904, setting aside said judgment and attachment and declaring them fraudulent and void as against the said final decree of complainant in the divorce suit. On February 24, 1902, a petition was presented to Vice-Chancellor Stevenson by William Briinkerhoff, of counsel with Thomas McGuinness, petitioner, (See pp. 164 to 225) and an order was advised by him thereon on that day (See pp. 226-227 of Case), requiring complainant to show cause before this Court at the Chancery Chambers in Jersey City, on Monday, the third day of March, 1902, at ten o'clock in the forenoon of that day or as soon thereafter as the Court could attend to the same, why the enrollment in this cause should not be opened and the final decree and all orders therein should not be opened and vacated and the subpoena at respondendum and the service thereof together with the writ of sequestration issued in this cause should not be set aside and the complainant's bill of complaint be dismissed and the other relief prayed for in said petition should not be granted; that true copies of said petition, affidavits and order, which need not be certified, be served on said complainant or on her solicitor within five days from the date thereof; and that John S. McMaster, sequestrator, desist and refrain until the further order of the Court from paying to the complainant or to any other person any of the rents received by him from the tenants or occupants of the defendant's real estate." The origi-

nal petition and order were filed at Trenton on the same day (February 24, 1902), but for some reason, which does not appear, the order was never signed by the Chancellor. Complainant and her solicitor received no notice that said petition or order had been filed until nine months afterwards, when, on November 19, 1902, in looking over the original papers in the cause, complainant's solicitor came across them. No copies of said petition or order were served on complainant or her solicitor, until the month of April, 1905, when they were served for the purpose of the present motion. It is true that William Brinkerhoff, Esq., about February 24, 1902, told the complainant's solicitor that he had applied to Vice-Chancellor Stevenson for some such order, but he at the same time informed complainant's solicitor that the Vice-Chancellor had refused to advise the rule to show cause except it be upon the condition that said Brinkerhoff stipulate to be bound by the decision of the Court on his petition, whatever that decision might be. The petition is signed by Thomas McGuinness in person as petitioner and by "Brinkerhoff & Fielder, Solicitors for and of Counsel with said petitioner, Thomas McGuinness." It will be noticed that in no place in the said petition or order is there a statement that said Brinkerhoff appears for the purposes only of the rule to show cause. The petition is filed by "Brinkerhoff & Fielder, Solicitors," and the order is "on motion of William Brinkerhoff of counsel with said petitioner." It will also be noticed that no mention is made in the petition or affidavits annexed thereto of the suit for divorce instituted by the defendant in Pennsylvania two months prior to the filing thereof; also that in said petition and in his affidavit annexed thereto, said defendant makes oath that he was "not aware until October, 1901, that the complainant's bill prayed for a decree or order for counsel fees or alimony, " whereas he applied to the Court on October 31, 1899, as hereinbefore stated, by

notice and affidavits, to set aside the subpoena and the order for temporary alimony and counsel fees, and also states in the last few lines of his affidavit that he did not employ or authorize any attorney, solicitor or other individual to defend said suit for divorce or permanent alimony, nor did he interest himself therein, *except to protect himself from any order to pay alimony during the pendency of the suit, or counsel fees, should any proper proceedings to that end be commenced or be proceeded with against him.*" In his affidavit and the other affidavits annexed to the petition of February 24, 1902, said defendant also goes extensively into the merits of the case and contradicts the testimony given by witnesses before Special Master, Washington B. Williams.

The defendant insists, in the latter part of the petition, that "at the time of the filing of the complainant's bill and long prior thereto, and ever since, he has been an actual resident and inhabitant of the State of Pennsylvania, has not been served with a subpoena in this cause, and *that said final decree should not have been made nor should said writ of sequestration ever have been issued.*" He then prays "*that the enrollment in said cause be opened; that the final decree and all orders therein be opened and vacated, and that said subpoena ad respondendum and the service thereof, together with the writ of sequestration, be set aside, and that the complainant's bill of complaint be dismissed, and for such other and further relief in the premises as may be agreeable to his Honor, the Chancellor.*"

On September 27, 1902, the said defendant sent a registered letter to said John S. McMaster, Sequestrator recognizing the latter as receiver of his real estate in Jersey City, requesting the sequestrator to pay the taxes on the property from the rents collected by him in order to prevent a threatened sale for non payment of taxes, etc. He enclosed a letter to him from W. H. Browne, whom he described as a lawyer and law editor. The last mentioned letter contained advice as

to the duties of a receiver of real estate, holding that on receipt of rents of realty it was his duty to pay the taxes and repairs prior to paying such money or any portion thereof to the party or parties legally entitled thereto, and should he omit so to do, and the property be sold for non-payment of taxes, the court would hold him and his sureties liable, The sequestrator answered these letters at once, giving defendant assurance of his intended preservation of the property, etc.

On April 3, 1905, a consent for substitution and order of substitution were filed, that Howard Carrow be substituted as solicitor for the defendant in the place and stead of Brinkerhoff & Fielder (See pp. 235 and 236 of Case). On April 5, 1905, complainant's solicitor received from said Howard Carrow, by mail, a copy of the petition and rule to show cause of February 24, 1902, together with a new rule to show cause, advised by Vice-Chancellor Garrison, on April 3, 1905, reciting the petition and rule to show cause of February 24, 1902, and that the appearance of said Howard Carrow "is specially entered for the purpose of this application only", that the order made on February 24, 1902, be brought to hearing at the Chancery Chambers in Camden on May 1, 1905, and that complainant then show cause why the same relief (specifying it) should not be granted to defendant as is asked for in said petition of February 24, 1902, (See pp. 237 and 238 of Case). On May 1, 1905, Vice-Chancellor Garrison adjourned the hearing on said rule to show cause to be heard by the Chancellor, at the State House, in Trenton, on May 9 1905. (See p. 239 of Case)

NOTE.—Some contention was raised on the argument before the Chancellor and will probably be raised in this court, also to the effect that the second *subpoena ad respondendum* was not returned by the sheriff and has the affidavit of the complainant annexed, such contention is erroneous. An examination of the subpoena

on file will show that N. P. Wedin, special deputy-sheriff, was deputized by the sheriff of Hudson County to serve the subpoena and that the affidavit of said N. P. Wedin is annexed to the subpoena and states in substance that he duly inquired for the defendant for the purpose of serving him with said process and was not able to find him in Hudson County, and that he was credibly informed and verily believed that the said defendant was out of the State of New Jersey and resided at the City of Philadelphia, in the State of Pennsylvania. This affidavit was sworn and subscribed to by said N. P. Wedin before John J. Heavey, Esq., then deputy-sheriff of Hudson County and Notary Public, and constituted a proper return to the subpoena. (See *Equitable v. Laird*. 9 C. E. Gr., 319, and Dick. Ch. Pr., 19, 23 and 24).

The Chancellor filed his opinion February 13, 1906, (See pp. 240 to 249 of Case); and the order founded thereon and from which this appeal is taken, discharging the orders to show cause of March 3, 1902, and May 1, 1905, was filed March 27, 1906. (See pp. 250 and 251 of Case).

This appeal was taken immediately on the filing of the order on March 27, 1906. (See notice of appeal, petition of appeal and answer of respondent, pp. 251 to 254 of Case).

#### THE LAW.

The order to show cause advised by Vice-Chancellor Stevenson, on February 24, 1902, and that advised by Vice-Chancellor Garrison, on April 3, 1905, requiring complainant to show cause why the final decree herein should not be opened, etc., are without any force.

The first is void because not signed by the Chancellor. These applications to open final decree, enrollment, etc., should have been made to the Chancellor; and the petition for that purpose should have

been presented within six months after notice in writing was given the defendant of such decree, or within three years after such decree in case no written notice thereof was given him; and it was then within the discretion of the Chancellor to allow the petitioner to come in and defend or not.

*Cresse v. Security Land Invest. Co.*, Vol. 19  
N. J. L. J., 342, "Act respecting Court of,"  
Sec. 18.

The application must be made within the time limited by that section.

*Consolidated Electric S. Co. v. Atlantic Trust Co.*, 5 Dick., 93.

That the statute applies to decree in personam as well as to those in rem is clear from an examination of the last above-quoted case.

Written notice of the final decree was served on the defendant July 9, 1901, and his petition to open the enrollment and final decree was not filed until February 24, 1902. More than three years elapsed between the date of the filing of the petition and April 3, 1905, when the last order to show cause was advised by Vice-Chancellor Garrison.

The defendant has been guilty of laches in prosecuting his application to open the decree.

*Mutual Life Ins. Co. of N. Y. v. Pinner*, 16  
Stew., 52-54.

*Gray v. Gates*, 37 Wis., 614.

In the last quoted case, the Court in dealing with a statute very similar to ours held: (I quote the syllabus),

1.—"After the expiration of the term at which a valid judgment is rendered, the Court has no power to open it, except that given by statute.

2.—“The appearance of a party against whom a judgment has been rendered, to move that it be opened, and for leave to answer, is a general appearance to the merits, and waives all defects in the service of process and other proceedings preliminary to the judgment and gives the Court jurisdiction of his person.

3.—“But after the lapse of three years from the rendition of such a judgment, the Court has no power to disturb it, even upon the application of a defendant who had no actual notice of it until within a short time before making the application.”

“Before the defendant is allowed to enter a special appearance for the purposes of this application he will be required, as a condition to the granting of such leave, to insert in his order or rule to show cause an undertaking or stipulation that he will submit without further process to the order of the Court, if the point should be decided against him.”

Hervey v. Hervey, 11 Dick., 182.

The foregoing part of Vice-Chancellor's Emery's opinion was not reviewed by the Court of Errors and Appeals in reversing the decree, and it stands as a rule of practice in our Court of Chancery.

See opinion of Vice-Chancellor Emery in *Groel v. United Electric Co. of N. J.*, 59 Atl. Rep., 640.

In case of *National Furnace Co. v. Moline Malleable Iron Works*, 18 Fed. Rep., 863, the defendant asked to file special appearance to contest jurisdiction, and at same time to contest cross-bill—held, that under *Daniells Ch. Pr.*, pages 453-512, he could challenge sufficiency of service by special appearance for that purpose alone, without leave of Court. “But if he asks the privilege of fighting his side of this battle under a special appearance, he should not be allowed to do it.”

"A party ought not to be allowed the benefit of any proceeding unless he also assumes the responsibility of it." The Court refused to allow a defendant to appear specially to move to set aside a default and dismiss the action for want of jurisdiction.

*Douglass v. Pacific Mail S. S. Co.*, 4 Cal., 304.

A special appearance having been entered by the clerk upon the order book at the request of the defendant's attorney without leave of the Court, held, that such an appearance was an admission of jurisdiction.

*Thayer v. Wales*, Fed. Cases No. 13, p. 872.

"A defendant interested in a controversy cannot be allowed to come in under a special appearance, and avail himself of all the chances of a decree in his favor, and retire without harm if the decision of the Court should be against him."

*National Furnace Co. v. Moline Malleable Iron Works*, 18 Fed. Rep., p. 863.

"Defendant cannot have the advantages of a general appearance and yet avoid its disadvantages."

*Swift v. Tross*, 55 How. Pr., p. 255.

*Romaine v. Insurance Co.*, 28 Fed. Rep., p. 625.

"The reason that under the circumstances a special appearance is converted into a general one, is, that otherwise the defendant would be given this advantage: after objecting that he was not properly in court, he could go in, take his chance of a trial on the merits, and, if it resulted in his favor, insist upon the judgment as good for his benefit; but if it re-

sulted against him he could set it all aside upon the ground that he had never been properly got into court at all. If a party wishes to insist upon the objection that he is not in court, he must keep out for all purposes except to make that objection."

Lowe v. Stringham, 14 Wis., 222.

The contention of defendant's counsel is, in effect, that the enrollment and final decree in this cause should be opened, the subpoena ad respondendum together with all orders therein should be set aside, and that the complainant's bill should be dismissed, for the reason that no decree can be made for alimony against a defendant except in cases where he is served with original process within the territorial limits of this State or has entered his appearance to the suit.

**In answer, the complainant (1) does not concede such proposition of law, and (2) maintains that the defendant has entered a general appearance to complainant's suit and is bound by the final decree and all other proceedings had and taken therein.**

#### I.

Complainant's bill was filed for divorce a mensa et thoro, custody of children of the marriage and alimony, and contains a charge, and the final decree a finding, that "the defendant without justifiable cause had abandoned the complainant, had separated himself from her and had refused and neglected to maintain and provide for her," within the contemplation of Section 20 of the Divorce Act.

It remains an open question whether or not a suit for alimony could be sustained in New Jersey at the time of the filing of complainant's bill, if the defendant was not served with original process within the State but had property here. Section 4 of the new

Divorce Act of 1902, gives the Court of Chancery jurisdiction in such cases, and a scheme is provided in section 20 thereof for seizure by sequestration of the defendant's property in the inception of the suit a proceeding analogous to an action by attachment against absent or absconding debtors in our common law Courts.

The present suit was instituted and the final decree therein was entered prior to the Revision in 1902 of the Divorce Act.

The decisions on this subject distinguish between divorce with alimony given by virtue of the inherent or statutory power in the Court for that purpose and support and maintenance allowed by the Court under statutes similar to Section 20 of our Divorce Act of 1874 and 1902.

The case of *Hervey vs. Hervey* (11 Dick., 166, and on appeal, 11 Dick., 424), was for support and maintenance under Section 20. It is clear, from the language used by Justice Adams, in delivering the opinion for the Appellate Court, that our Court of Chancery had jurisdiction to make decree for support and maintenance under Section 20 where the defendant had been brought into Court on substituted service of process. It is equally clear, from a reading of the opinion of Chancellor McGill, in the case of *Lynde vs. Lynde* (9 Dick 473, affirmed on appeal in 10 Dick, 591, for the reasons given by the Chancellor), that the Court had jurisdiction to award alimony against the defendant, who was an absent defendant, who was not served with process and did not appear in the case, provided he had property which was under the Court's control. The defendant, in that case, was proceeded against as a non-resident or absent defendant and a decree for divorce without alimony was rendered, and was afterwards amended to include alimony on the ground that he had acquired property in New Jersey since the rendition of the decree. The decree was affirmed on appeal.

In the case of *Brand vs. Brand*, Vol. 63 L. R. A., 209, it is held that, where there is property within the State it is immaterial whether the proceedings be by attachment or by bill in chancery, it is substantially a proceeding in rem.

See also dissenting opinion of Justice Hunt in *Pennoyer vs. Meff*, 95 U. S., 792.

In *Mutual Life Ins. Co., vs. Pinner*, 16 Stew., 52, it is held "A defendant will not be deprived of any of his rights by judicial sentence without an opportunity of being heard in his defence, but the method by which he shall be notified of a suit instituted against him, so that the Court may acquire jurisdiction over him, is a subject over which the law-making power of every independent government has supreme control. A decree pronounced against an absent defendant who has been notified of the suit in the manner prescribed by the statute, is in all respects, just as valid and effectual, for all local purposes, as a decree made against a defendant who has been brought into Court by the personal service of process."

The case of *Blackinton vs. Blackinton*, 141 Mass., 432, distinguishes between cases for divorce with alimony, and maintenance without divorce under a statute very similar to Section 20 of our Act, and maintains that a valid decree for separate maintenance may be rendered upon personal service out of the State if the statute permits such service.

The following cases are to the same effect:

*Thurston vs. Thurston*, 59 N. W. Rep., 1017.

*Wisner vs. O'Brien*, 56 Kan., 724.

*Prosser vs. Prosser*, 47 Vt., 667.

*Laing vs. Rigney*, 160 U. S., 542.

"Nelson on Divorce and Separation," Vol. 2, pp. 972, 890, 935. See also "Beno on Non-Residents," Sec 257 and "Courts and their Jurisdiction" by Works p. 507.

Downs vs. Flanders, 150 Mass. 92.

Brown on Jurisdiction, Sec 11 and page 44,  
Sec. 7.

Brown on Divorce, p. 267.

Vol. 2 Bishop on Marriage, Divorce and  
Sep., Section 844.

(The writer of the letter enclosed in defendant's letter to the sequestrator, in this cause, is the author of the above works "Brown on Jurisdiction" and "Brown on Divorce".)

## II.

The prayer of defendant's petition is, that the Court open the enrollment and the *entire* final decree and set it aside together with the subpoena ad respondendum, the order of publication, order of reference and all the other orders in the cause, that the complainant's bill be dismissed, and that the defendant have general relief. In other words, the Court is asked to declare null and void complainant's entire case, even to dismiss her bill, and to give defendant such relief as it might decide he is entitled to have, e. g. custody of the children, an absolute divorce or other affirmative relief. The object of the petition is not only to open such parts of the final decree and proceeding as are in personam, but it reaches further and seeks to set aside these parts thereof in rem which constitute the subject matter of the suit—the divorce from bed and board, the award of custody of children, the counsel fees, costs, etc.

That the filing of such petition, signed by defendant and sworn to by him, the obtaining and filing of rules to show cause thereon (without expressing therein that the motion was by leave of the court or for the purpose only of setting aside such decree and proceedings) and the letters sent later by the defendant to the sequestrator, recognizing the latter's authority and appointment, constituted a general appearance and

brought the defendant within the jurisdiction of the Court for all purposes, will clearly appear from an examination of the opinions in the following cases  
How could there be a more general appearance?

It must be conceded that our Court of Chancery, by substituted service, acquired jurisdiction over the subject matter of the present suit, i. e. the right to make a decree of divorce a mensa et thore, and for custody of the children of the marriage.

Felt vs. Felt, 14 Dick., 606.

Wallace v. Wallace, 20 Dick., 359.

It is a general rule, which admits of no exception, that if the court has jurisdiction over the subject matter, a general appearance gives jurisdiction over the person; and that a non-resident becomes subject to the jurisdiction of the court by a general appearance.

North Hudson Co. Ry. Co. v. Flanagan, 28 Vr., 696.

Ency. Pl. & Pr. Vol. 2, pp. 639, 642.

Cyclo. of Law & Pro., Vol. 3, p. 515.

“A special appearance is one mode for the purpose of urging jurisdictional objections; but an objection to jurisdiction over the person, to be availing, must not be raised in connection with denial of jurisdiction over the subject-matter. An appearance to deny the jurisdiction of the court over the subject-matter is, according to the weight of authority a general appearance.”

Fitzgerald v. Fitzgerald, 137 U. S., 98.

Elliot, v. Lawhead, 43 Ohio St., 172.

Handy v. Ins. Co., 37 Ohio St., 366.

In Fitzgerald v. Fitzgerald, 137 U. S., 98, it is held:

“Where jurisdiction has been obtained by service of garnishee process in a proceeding *in rem*, the court has

power to proceed notwithstanding defect in service on the person. In such case, objection to jurisdiction over the person, to be availing, must not be raised in connection with denial of jurisdiction over the subject matter" \* \* \* (at page 106). "By the amendment to its answer, its plea and motions, the defendant insisted that the court had no jurisdiction to proceed, and thereby declined to stand upon the objection to the service, and submitted itself to the decision of the court in respect to jurisdiction over the subject matter which jurisdiction it is entirely clear, the court possessed. These proceedings were taken by defendant after discovering the alleged grounds of objection to the service and there was no action on its part confined solely to the purpose of questioning the jurisdiction over the person. That such jurisdiction resulted under the circumstances admits of no doubt, and the rule to that effect seems well settled, etc."

Opinion by Chief Justice Fuller.

In *Elliott v. Lawhead*, 43 Ohio St., 171, the following motion was filed by defendant "Charlotte Elliott, the defendant above-named, by her attorneys, Charles Follett & Son, now comes for the purpose of this motion and for no other purpose, and moves the court to strike the above-named case from the docket of said court, and the petition from the files, *for the want of legal and proper service* and because the said court has no jurisdiction of the *subject matter of said action or of defendant*, and for the same reason that all proceedings herein by said plaintiff against her be dismissed". On page 176, the Court said: "this last ground was in the nature of a demurrer to the jurisdiction of the court, and was in itself an appearance in the case. It amounted to a waiver of service, and gave the court jurisdiction over the person of the defendant".

In *Handy v. Insurance Co.*, 37 Ohio St., 366.

1.—“ A policy of marine insurance, which contained a stipulation that in case of loss or misfortune the insurer would contribute ratably to expenses incurred by the assured or their agents in and about the recovery of the insured cargo was issued by a corporation of the State of Connecticut, also doing business in the State of Ohio. The cargo was sunk in waters of the State of Michigan, and labor was expended in efforts to recover it. Held, that the breach of such stipulation on the part of the insurer constitutes a cause of action against the company cognizable by the court of this State”.

2.—“ After the filing of a petition on such cause of action and the issuing of a summons, which was returned served on the defendant by delivering a true and attested copy on an agent of the defendant, the defendant filed a motion to dismiss the action, for the reason that this court has no jurisdiction of the case, it appearing from the petition on file that said defendant is a foreign insurance company, and that no part of the alleged cause of action arose in this state. Held, that the filing of such motion was a voluntary appearance in the action and a waiver of any defects in the service of the summons”.

In *Ulmer v. Hiatt*, 4 Ia. (G. Greene's Reports) 439, the opinion is as follows :

“ The appellees brought their suit against the appellants upon an account, and on a special contract. The notice was returned by the sheriff without service. At the term of the court to which suit was brought, the defendants below appeared and made application to continue the cause for want of notice. During the term, a default was taken against the defendants for want of an answer. The defendants then filed their motion to open up the default. This motion is not sustained by any affidavit. The motion was overruled and judgment given for want of an answer. The only question presented, which we deem material, is,

whether the defendants below made an appearance in the case that would authorize the court to take jurisdiction of the person of the defendants.

The rule adopted by this court, appears to be this, that a defendant may so far appear, as to object to the jurisdiction of the court, either over the person or subject matter of the suit, but if the party appearing by motion or otherwise seeks to call into action any power of the court except such as pertain to its jurisdiction, it is an appearance. To appear and apply for a continuance, clearly admits a cause of action and a party. It concedes a cause over which the court has power to act. It amounts to a general appearance and waives defects in the service of process".

"Where, in accordance with his rights, a defendant wishes to raise the objection that the court is without jurisdiction over his person, he must, according to the weight of authority, limit his appearance to that single question, or he will be deemed to have waived the objection".

Nichols v. People, 165 Ill., 502 and 46 N. E. Rep., 237.

Bailey v. Schrader, 34 Ind., 260.

Salina Nat. Bank v. Prescott, 60 Kan. 491 and 57 Pac., 121.

Reed v. Chilson, 142 N. Y., 152.

St. Louis R. Co. v. McBride, 141 U. S., 127.

Wabash Western R. Co. v. Brow, 65 Fed 941.

Wabash Western Ry. Co. v. Brow, 65 Fed. Rep., 941, was a case where suit was brought in a county circuit court, in the State of Michigan, and the defendant corporation filed a petition to remove to the United States Circuit Court on the alleged ground of adverse citizenship. The order of removal was

granted, and the defendant then made the following motion in the United States Circuit Court to which the cause was removed: "And now comes the Wabash Western Railway, defendant, (appearing specially for the purpose of this motion), and moves the court, upon the files and records of the court in this cause, and upon the affidavit of Fred J. Hill, filed and served with this motion, to set aside the service of the declaration and rule to plead in this cause, and to dismiss the same for want of jurisdiction of the person of the defendant in the state court from which this cause was removed and in the court". The motion was refused on the ground that "a more defect of service may be waived by a defendant, and is held to be waived if he enters a general appearance in the cause, or appears for any other purpose than to object to the sufficiency of the service."

"When a party only appears for the purpose of showing he is not properly before the Court, he should so confine it in his motion, else he may be adjudged to have appeared for all purposes—that his appearance, not being limited to a specific purpose, will be held to be a general appearance."

Abbott v. Semple, 25 Ill., p. 107.

"A motion to adjourn the cause acts as a general appearance."

State v. Napton, 62 Pac. Rep., p. 686.

Cincinnati R. R. Co. v. Belle Centre 48 Ohio St., 273.

"The filing of a demurrer to plaintiff's original pleading or the taking of proceedings analogous to demurrer amount to a general appearance unless the demurrer is based solely on the ground of want of jurisdiction of the person."

Cyclo. Law & Pro., Vol. 3, p. 506, 507.

A motion to dismiss the complainant's bill for want of equity, held analogous and equivalent to demurrer and amounting to a general appearance.

Albert v. Clarendon Land Investment Co.,  
8 Dick., p. 623.

The petition and motion of the defendant, McGuinness, to open the enrollment in this cause and to dismiss the bill of complaint is in the nature of a demurrer and an objection to a pleading within the contemplation of Rule 213 of this Court. A similar application was made in the above-quoted case of Albert v. Clarendon Land Invest. Co., and there held to be a general appearance.

In Sayre & Fisher Co. v. Griefen, 60 Atl. Rep., p. 513, it is held: "A demurrer is an appearance in the cause, and by filing it defendant waives all objection of the Court over his person." In that case there was a demurrer to the jurisdiction over the person and over the subject matter.

"Moving to dismiss a bill for want of jurisdiction and also for want of equity amounts to a voluntary appearance"

Ency. Pl. and Pr., Vol. 2, p. 626.

Jones v. Andrews, 10 Wall. (U. S.), p. 327.

"And a demurrer on those grounds waives the objection of jurisdiction."

Merrill v. Houghton, 51 N. H., p. 61.

"Where a demurrer for want of jurisdiction is filed with a general demurrer to the petition, this is a general appearance."

Underwood v. Wood, 93 Ky., p. 177.

Edgell v. Felder, 84 Fed. Rep., p. 69.

Townsend v. Stoddard, 26 Ga., p. 430.

"Any pleading to the merits, by means of an answer, plea, or by any informal manner attacking plaintiff's case, is a general appearance."

Hall v. Laurence, 21 N. J. L., p. 727.  
Ency. Pl. and Pr., Vol. 2, p. 636.

"Answering fully, on the merits, a bill in chancery submits the defendant to the jurisdiction of the Court, notwithstanding any objection to jurisdiction over the defendant reserved in the answer."

Polhemus v. Holland Trust Co., 16 Dick,  
p. 654.

"Held, that proper way to raise question of jurisdiction of Court of Equity and to demand *in limine* the judgment of the Court whether he should answer the bill should be taken by plea or demurrer. "If the matter showing lack of jurisdiction appear on the face of the bill, the question is to be raised by demurrer; if not, a plea setting forth the matter is the proper course."

Wilson v. Am. Palace Car Co., 20 Dick., p.  
730.

If it might be considered that the present petition of the defendant is in the nature of a bill of review, see

Bergholz v. Ruckman, 14 Stew., p. 134.  
Buckingham v. Corning, 2 Stew., p. 258.

In the latter case it was held that, as a general rule, a bill of review is filed without leave, or is inconsistent with the leave granted, it will be ordered to be taken from the files.

"The principle to be extracted from the decisions on the subject as to when a special appearance is con-

verted into a general one, is that where the defendant appears and asks some relief which can only be granted on the hypothesis that the Court has jurisdiction of the cause and the person, it is a submission to the jurisdiction of the Court as completely as if he had been regularly served with process, whether such an appearance, by its terms, be limited to a special purpose or not.

Ency. Pl. & Pr. Vol. 2, p. 625, and cases cited.

In *Deming Inv. Co. vs. Ely*. (Wash). 57, Pac., Rep., 353 — it is held (on page 354).

“The test as to whether an appearance is general or special is usually the relief asked. *If the granting of the relief requested in the appearance is consistent with a want of jurisdiction over the person*, the defendant may appear for a special purpose, without submitting himself to the jurisdiction of the Court for any other purpose.”

In the case in hand, if the Court granted the relief asked for, i. e. dismissal of complainant's bill etc., such proceeding on the part of the Court *would not be consistent* with a want of jurisdiction over the person of the defendant, for in order to dismiss the complainant's bill on defendant's motion, the Court must have jurisdiction over the person of the defendant. This is shown in case of *Reedy vs. Howard*, 11 S. D. 160 (76 N. W. Rep. 304).

In that case the motion was to quash the service of the summons and dismiss the action. I quote part of the opinion:

“*An action in South Dakota is commenced by the service of summons*, and a motion to quash the service of summons and dismiss the action on the ground that the Court has not acquired jurisdiction of the person of the defendant, is, in effect, the same as a motion to quash the summons, and, if granted, has

the effect to dismiss the action, or perhaps, more properly speaking, terminates the action, \* \* \* \*

*In States where the action is commenced by filing the complaint*, a motion to quash the service, if granted, does not necessarily affect the action, as that is still left pending, and hence the act of the Court in dismissing the action is the exercise of a power necessarily requiring jurisdiction, not only over the subject matter but the person of the defendant, and where the defendant asks the exercise of that power he submits his person to the jurisdiction of the Court and waives the defective service of the summons.

In *Aultman & Taylor Co. vs. Steinan*, 8 Neb., 109—Held, that “Where a defendant appears specially for the purpose of objecting to the jurisdiction of the Court over his person, he must restrict his motion to the single question of jurisdiction.”

In *Meixell Kirkpatrick*, 29 Kan 680 — Held: “Generally speaking, any plea or proceeding which raises questions non-judicial and involving the merits is a general appearance, and waives all questions as to the regularity of service.”

“An appearance for any other purpose than to question the jurisdiction is general.”

Century Edition, Vol. 3 — 2979.

“An appearance by defendant for any purpose other than to contest the jurisdiction of the Court will give it general jurisdiction over such person for all purposes of the litigation.”

*Burnham vs. Lewis*, 70 Pac, 337.

“If the appearance is, in effect general, the fact that the party making it characterizes it as a special appearance does not alter its effect.”

*Nicholas vs. People*, 165 Ill, 502 (46 N. E. Rep. 237).

## Crawford vs. Foster 84 Fed. 239.

"An appearance is special if made for the *sole* purpose of objecting to the jurisdiction of the Court of the person of the defendant, because there was no service, or defective service of process, because of defect in the process, or action was commenced in wrong county.

McNab vs. Bennet, 66 Ill, 157.

McCaslim vs. Camp, 26 Mich, 390.

Mayer vs. Brooks, 29 Oreg, 203. (44 Pac., 281).

Sheery vs. Devine, 11 Heisk (Tenn). 722.

Sanderson vs. Ohio Cent. R. Co., 61 Wis. 609 (21N. W. 818).

Halstead vs. Manning 34 Fed. 565.

U. S. vs. Am. Bell Tel. Co. 29 Fed. 17.

"The object of a summons or process is to put the defendant upon notice of the demand against him and to bring him into Court at the time therein specified. If the defendant makes a general appearance, then the issuing and service of process is not jurisdictional and is waived."

Ency. Pl. & Pr. Vol. 2, 644.

Citing Cornell vs. Mathews, 27 N. J. L. 523.

Citing Ayres vs. Swayze 5 N. J. L. 812.

"Besides waiving the issuing of process, a general appearance will cure any defect in process or its service."

Ency. Pl. & Pr. Vol. 2, 646.

Citing.

Palmer vs. Sanders 51 N. J. L. 408.

Palmer vs. Campbell, 1 N. J. L. 109.

Murat vs. Hutchinson, 16 N. J. L. 46.

Clifford vs. Overseers of Poor, 37 N. J. L. 153.

Foulkes vs. Young, 21 N. J. L. 438.

“Where defendant appears to except to sufficiency of citation, he cannot at the same time urge any matter of defense.”

7 La. An., p. 542.

“A party who, by motion or any other form of application to the Court, seeks to bring its powers into action, may be deemed to have appeared generally.”

Porter v. Chicago & N. W. Ry. Co., 1 Neb., p. 14.

“Where a party files a disclaimer or plea of intervention, or where a non-resident of the state interpleads in accordance with an order therefor, he thereby makes a general appearance.”

Cyclo. Law and Pro., Vol. 3, p. 507.

“If a party makes a motion in the cause, not limiting his appearance to a specific purpose, he will be held to have appeared generally for all purposes.”

Flake v. Carson, 33 Ill., 525, and

“The filing of a motion to dismiss the suit constitutes a general appearance.”

Welch v. Ayres (Neb., 1885), 61 N.W. Rep., p. 635.

It is a familiar rule, that a general appearance waives any defect in the process and confers jurisdiction of the person. To avoid the effect of this rule it is the common practice, when it is desired to take advantage of any defects in process, and to deny jurisdiction over the person, to *appear specially for that purpose only*. A special appearance is only proper

when a party seeks to deny the jurisdiction of the Court over his person."

Ency. of Pl. and Pr., Vol. 2, p. 621.

Reed v. Chilson, 142 N. Y., p. 152.

In Livingston & Gibbons, 4 Johns, ch. 94—

"The service of a general retainer and a *general appearance* in an action by an attorney for a non-resident defendant is equivalent to personal service of the summons and gives the Court jurisdiction of the person of such defendant."

Reed v. Chilson, 142 N. Y., p. 152.

"Service of notice of general retainer or appearance or filing such notice with clerk after complaint filed constitutes a general appearance in equity."

In Collier v. Folk, 66 Ala., p. 223—

"An appearance by an attorney not shown by a proper entry to be limited or special, must be taken as a general appearance; and the authority of the attorney to appear being admitted, the defendant cannot obtain equitable relief against the judgment, on the ground that the appearance was only for the purpose of obtaining a continuance of the cause in such case, the record is conclusive."

"An appearance in action in rem will permit a judgment in personam.

Conolly v. Lerche, 27 Va., p. 95.

State v. Jersey City, 26 N. J. L., p. 444.

"A motion to vacate a judgment based on the sole ground of want of jurisdiction of the person, does not constitute a general appearance, but, if the motion is based on other grounds, either alone or coupled with this, the appearance is general. And the same is true

where defendant, after making a motion to vacate, voluntarily consents to the dismissal of the motion."

Cyclo. Law and Pro., Vol. 3, p. 509.

"A general appearance validates a judgment that was therefore absolutely void for want of jurisdiction."

Cyclo. Law and Pro., Vol. 3, p. 525.

"In case of the Kaw Life Association, defendant, v. Jennie Lambert, reported in 40 Kan., p. 142 (19 Pac., p. 337), it is held there a party against whom a judgment is rendered files a motion to vacate the judgment upon the ground that the Court has no jurisdiction of the defendants, and said motion is also based upon non-jurisdictional as well as jurisdictional grounds, held, that thereby said party enters a general appearance as though said appearance had been made at the trial."

In case of Fisk v. Thorp, 84 N. W. Rep., p. 80, the following language is used: "Whatever may have been the status of the case as to jurisdiction, the defendant in error have admitted and acknowledged jurisdiction by appearing and invoking the powers of the Court to set aside the deficiency judgment against them. Such appearance gives the Court jurisdiction over them as to all proceedings in the entire case."

In Dean v. Gerlach, 34 Ill., p. 233: "Theodore B. Gerlach, one of the defendants below, and one of the appellants here, entered his appearance with an attempted reservation that it was only for the purpose of the motion, but at the same time, filed an affidavit in support of his motion, grounded upon certain matters set forth in the affidavit which raised an issue of fact *dehors* the record. Thus an issue of fact was

presented to the Court as a basis of relief. We are of the opinion that such presentation of a material question of fact could not be made, and at the same time the defendant occupy the position of an *amicus curiae* merely. One who seeks to occupy such a position must limit his appearance to a making of suggestions to the Court of allegations appearing on the face of the record. A party who appears and enters upon the trial of material facts requiring affidavits or witnesses for their proof cannot be allowed the right to limit his appearance to a special purpose."

In *Alderson v. White*, 32 Wis., p. 308 :

1.—"A motion to set aside a judgment, based partly on the failure of the Court to obtain jurisdiction of the moving defendant, and *partly upon mere irregularities*, not jurisdictional, is a general appearance, and a waiver of all objections to the jurisdiction."

2.—"Thus, where such a motion, in a mortgage foreclosure suit, was based in part upon the absence of proof of due filing of *lis pendens*, and, after the first judgment had been set aside, a like motion as to a second judgment was based in part on an alleged illegal taxation of costs and error in computing the amounts due on the mortgage: Held, that each of the motions was a general appearance and submission to the jurisdiction, although both were also based in part on defects in the service of summons."

In *Anderson v. Coburn*, 27 Wis., p. 558: Held, that "Where a defendant not duly served appears after an execution sale under a judgment in the cause, and moves to set aside the judgment and execution, not only because of the defective service, but for lack of proof of certain facts essential to his liability, and for excess of damages, this is a *general appearance*, and cures the defect of jurisdiction."

Case of *Henry v. Henry*, 87 N. W. Rep., p. 523, is a divorce case, and following is a quotation of the syllabus :

“When a party who has not been properly served with process appears in a case, and asks to have a decree against him set aside, for the reason that the Court has no jurisdiction of his person, and for the further reason that such decree was procured by fraud and deceit, and was without evidence to support it, such appearance is general, going directly to the merits, and is a waiver of all defects in the service of process.”

In case of *Perkins vs. Hayward*, 132 Ind., 95 (31 N. E. Rep., 67C).

“Where the Court had rendered judgment against the remonstrators, establishing the ditch, and the clerk had taxed the costs of the proceedings against them, but no judgment for costs has been entered up, and a motion was filed for a nunc pro tunc entry, to that effect, and the remonstrators after, entering a special appearance expressly challenging the jurisdiction of the Court over their persons, and before any ruling was made on that question, filed a counter-motion on the subject of costs, they thereby waived want of notice, and the action was equivalent to a full and voluntary appearance to appellee’s motion.”

In case of *Crane vs. Penny*, 2 Fed. Rep., 187: “An application by a defendant in an action against whom a judgment by default has been entered, for a vacation of the same, and for other relief, and procuring a stay of proceedings until the hearing and determination of such motion, is such a submission to the jurisdiction of the Courts as will cure all defects of jurisdiction to the person of such defendant.”

In *Blackburn vs. Sweet*, 38 Wis., 578, it is held:

“Where motion to set aside a judgment is founded partly on the failure of the Court to obtain jurisdiction of the defendant, and partly upon the ground of mere irregularities consistent with the fact of jurisdiction, and which imply its existence, this constitutes a general appearance, and a waiver of any defects on service of process.”

In *Pry vs. Hannibal & St. Joseph R. Co.*, 73 Mo., 123:

Held, “The defendant (after judgment) both before and after making a special appearance for the purpose of objecting to the sufficiency of the service of the summons, appeared for other purposes, looking to the defense of the action. Held, that he had thereby waived all questions as to the sufficiency of the service.” The Court, at page 127 of the opinion says: “Besides this the defendant appeared on the same day and moved to strike the petition of plaintiff from the files of the Court, which was an appearance to cut up by the roots plaintiff’s cause of action, and in addition to this appeared in the first and most important stage of the cause and contested with plaintiff the amount of damages recoverable by him” \* \* \* “that these appearances had the effect of waiving any insufficiency if any existed, in the service of summons, is certain.”

In *Dikeman vs. Struck*, 76 Wis., 332.

Judgment was against three defendants, and an attorney thereafter appeared for one of the defendants, who had been served by publication, and gave notice that said defendant whom he represented “appeals to the Supreme Court from said judgment and from each and every part thereof.” The attorney in the Appellate Court insisted that the defendant was not served with summons, etc. Held, that the appearance was general.”

The attorney should not have attempted to open the judgment as to the other two defendants.

In *Likens vs. McCormack*, 39 Wis., 313.

"Defendants, appearing for that purpose only, moved to vacate a judgment against them on the ground that the Court had not acquired jurisdiction of them. Order was thereupon made vacating the judgment, but setting a time for them to answer; and from this they took no appeal. Held, that by such submission to the order, defendants waived the defect of jurisdiction."

In *Blackburn vs. Sweet*, 38 Wis., 578 — Judgment was against joint debtors. Motion was to set aside judgment as to one of the defendants on ground of irregularity of service. The Court said, (page 580 of opinion): "It is said that the rule is, when a party seeks to take advantage of want of jurisdiction, he must object on the ground alone and must keep out of Court for every other purpose. The principle to be extracted from these decisions is, that a motion to set aside a judgment which is founded partly on the failure of the Court to obtain jurisdiction of the moving defendant, and partly upon grounds of mere irregularities in the rendition of the judgment consistent with the fact of jurisdiction and which imply its existence, amounts to a general appearance. That is, where the moving party asks some relief which can only be granted upon the hypothesis that the Court has jurisdiction of the cause and person this is a submission to the jurisdiction and waives all defects in the service of process. This seems to us to be a reasonable rule," etc.

In *Grantier vs. Rosencrance*, 27 Wis., 488.

A motion to set aside a judgment on the ground that the complainant does not state a cause of action, is a general appearance, and waives any defect in the

service of summons, although the notice of the motion states that defendant "appears specially" for the purpose of setting aside the judgment, and although such defective service is also assigned as a ground for the motion." "He did not ask to have the judgment vacated for that reason alone."

In divorce case of Long vs. Long, 59 Mich., 296.

"A decree *pro confesso* will not be set aside for a confessed technical irregularity in the prior proceedings, unless the application is made at the first opportunity." "A defendant cannot claim a re-opening in such case as a matter of right, *when he filed his petition long after the time for an appeal has expired, without exhibiting his proposed answer or offering any excuse for such delay.*"

In Marsden vs. Soper, 11 Ohio, 505, 506.

"If the motion was grounded upon irregularity, or error in the judgment alone, aside from the question of jurisdiction, the motion itself would constitute such an appearance as would have the effect to waive the question of jurisdiction."

If the motion was based on an alleged want of jurisdiction, it would be no such appearance or waiver; and if the motion had been erroneously determined against the defendants in the judgment, they might have taken their exceptions and reversed the ruling of the Court. *But, instead of doing this, while they were in the proper Court, at a proper time, and while the whole matter was under the control of that Court, they voluntarily consented to the dismissal of the motion, and, by so doing, it seems to us, they voluntarily consented to let the judgment stand against them, and ought not now to be allowed to allege a want of jurisdiction in the Court which rendered it.*"

See also Ency. Pl. & Pr., Vol. 2, pp. 655 & 656.

“Moving for a postponement of sale, in a partition suit, *after decree*, is a general appearance.”

Tallman vs. McCarthy, 11 Wis., 401.

“A general appearance subsequent to the entry of a void judgment will validate it, but a special appearance will not.”

Ency. Pl. & Pr., Vol. 2, p. 657.

In *De La Montanya v. De La Montanya*, 112 Cal. 101 (44 Pac., 345), divorce case, service by publication; divorce granted, with alimony and custody of children living outside jurisdiction of Court. Motion was to vacate the decree only as to alimony and custody of these children. The motion was thus *properly limited* to the matters over which the Court had no jurisdiction.

For other cases as to effect of appearance after decree or judgment. See:

Burdett v. Corgan, 26 Kan., 102.

Cohen v. Trowbridge, 6 Kan., 385.

Curtis v. Jackson, 23 Minn., 268.

Paxton v. Daniel, 1 Wash., 19.

Cabbey vs. Wright, 23 Neb., 250.

Briggs vs. Sneghan, 45 Ind., 14.

Ryan vs. Driscoll, 83 Ill., 415

Shafer v. Hockheimer, 36 Ohio St., 215.

Yorke v. Yorke, 55 N. W. Rep., 1096.

Tipton v. Wright, 7 Bush. (Ky.), 448.

In going over the brief of the counsel for defendant, in the Chancery Court, I found that it contained a number of material erroneous statements.

On page one of his brief, he claims, in substance, that the sheriff did not make return to the subpoena,

and that the complainant's affidavit is annexed to the subpoena. An examination of the original writ on file will show this claim is erroneous.

On page three he states that in the Elmendorf case, twelve years intervened between the making of the decree and the filing of a petition to vacate proceedings. There was not any petition filed in that case to vacate the proceedings. The application was to set aside a writ of ne exeat on habeas corpus, and the decree for alimony had been made in a foreign state.

Counsel for the complainant examined all the cases quoted by defendant's counsel in his brief and found that *in none of them did the Court have jurisdiction over the subject matter of the suit differing in this important respect from the case in hand.* His quotations apply to cases where the *entire judgment or decree* is void for want of jurisdiction. Taking up the cases quoted by him in part II of his brief in their order:

In *Mehrbach v. Partridge*, 29 N. Y. Supplement 681. It is clearly stated in the opinion that there was no jurisdiction over the supplementary proceedings because of the fact that the summons was not served within the county. *There was no jurisdiction over the subject matter.*

In *Baskins v. Wylds*, 39 Ark., 349. The judgment was entered without any notice to defendant, and a statute of that state provided a method to open the default without making a general appearance. *There was no jurisdiction over the subject matter* because there had been no notice given or process served, the Court holding "that the filing of a motion to vacate a judgment rendered without service of notice upon the defendant, is no appearance to the suit nor waiver of notice of it," and "the writ of certiorari can not be used by the Circuit Court for the correction of errors of inferior courts as upon appeal, but where the inferior judgment shows upon its face that the Court

*had no jurisdiction of the subject matter, or the person of the defendant, it may be quashed upon certiorari."*

In *Gray v. Hawes*, 8 Cal., 562. In this case the defendant appeared specially for the purpose only of objecting that the Court had no jurisdiction over their persons, and could not render a judgment in personam. *They did not also object to the jurisdiction over the subject matter.* On page 569 of the opinion, the Court says: "The appearance of a party for the purpose of objecting to the prior *void* proceeding will not cure it."

In *Paxton v. Daniell*, 1 Wash., Rep., 19. An examination of the opinion in this case, on page 21, discloses that the suit was *merely in personam*; and it was properly held, under those circumstances that "a judgment rendered against a non-resident defendant, no property of the defendant having been brought under the control of the Court, without personal service upon him, or his voluntary appearance is void," and, that "a special appearance by a non-resident defendant for the purpose of making a motion to set aside the judgment and default entered against him, does not waive any jurisdictional rights."

In *Chahoon v. Hollenback*, 16 Serg. & R. (Pa.), 425. The only reference here bearing on the case is at page 431. "Duane was served by the present plaintiff under a special deputation; and at the return of the writ, judgment was signed against all by default. At the next term this judgment was set aside, at the motion of Mr. Evans, who entered no appearance, and took no further part in the cause," \* \* \* "And the plaintiff in error, availing himself of this circumstance, objects that all the defendants are not disposed of on the record, judgment not having been rendered expressly against George Chahoon, for whom it is said

Mr. Evans appeared. But Mr. Evans did not appear at all. While the judgment by default remained in force, the cause was at an end, and no appearance could be received; and after it again became a cause depending, Mr. Evans did not think proper to appear; it is absurd, therefore, to speak of his motion as an appearance. Chahoon did not appear specially and he cannot be distinguished from the other defendants, who appeared along with their landlord, Hollenbeck, he may be considered as disposed of by the judgment in their favor."

In *Cloud v. Inhabitants of Pierce City*, 86 Mo., 358. This case holds, on page 370. "And the result thus announced is not in any manner affected by reason of the fact that the city of Pierce, *the successor of the defendant*, (R. S. 1879, See 4385) having organized as a city of the fourth class, appeared on the second of March, 1880, by its attorney, and moved to set aside the judgment against the defendant, as being obtained on insufficient service, and asking leave to plead to plaintiff's petition, and asserting that it had a good and valid defense to plaintiff's cause of action, etc. The City of Pierce, under the provisions of the statute cited, no doubt, became the successor of the defendant corporation, *but this change did not affect the suit then pending, Ib. Sec 4386*. Nor is that result affected by the denial by the court of the motion to vacate and to be permitted to plead; nor by failure of the city to except or to appeal. *Neither the action of the city, nor of the court thereon, could by relation, give jurisdiction over the defendant where none existed before*, or confer on the judgment rendered a retrospective validity. The only instance that I am aware of where the subsequent appearance of a party has such an effect is where a party having been served by publication and judgment rendered appears within the statutory period and files a petition for review, in which case, if he fail within the time limited him to answer or demur to the original

petition, the judgment he seeks to review is made absolute."

In *Boale v. Shules*, 29 Ia., 507, after default, an attorney pointed out to the court, *without entering any appearance or filing any papers*, the fact only that *original process was fatally defective*. Held, that this was not a general appearance as would validate the void judgment."

In *Mills v. State*, 10 Ind., 114, Held, "Where a summons has been issued upon a *praceipe* the error might be waived by appearance without a motion to set aside the default, *will not operate as a waiver of the error*."

In *Higgins v. Beckwith*, 102 Mo., 456, "The record entry in such case that, the 'cause be continued by agreement' will not give jurisdiction of defendant where he had never entered his appearance and was not present in court, so far as the record shows." "The appearance of the defendant for the purpose of filing a motion in arrest of judgment will not give jurisdiction *where none had been acquired before*."

In *Newhall v. Appleton*, Vol. 46 N. Y. Superior Court Rep., 6: It is held, on page 8, that, "the order appealed from was *void for want of jurisdiction of the subject-matter* in the judge holding the trial term after the judgment" and that the appearance could not, therefore, confer jurisdiction.

In *McCaslin vs. Camp*, 26 Mich., 390., it is held:

"Several errors are assigned, mainly relating to the jurisdictional proceedings, which are not waived by an appearance made merely to set the order aside for want of jurisdiction."

In *Stearns vs. Smith*, 25 Minn., 131, held.

That the Court had no jurisdiction because notice was not filed within ten days and that the jurisdiction of the District Court depended upon the filing of said

notice within that time, "The defendant appeared in the District Court, specially and for the purpose, only, of interposing an objection to the jurisdiction of the Court, on account of the insufficiency of the notice in the respect above indicated. The objection was specified in writing, signed by defendant, and was presented upon a motion to dismiss the proceedings. Held, that this was a proper way to take the objection. After stating his objection to the jurisdiction, the defendant, in the same document proceeded as follows, viz: "If such objection to the jurisdiction he overruled, the undersigned, further, as a separate defense in said matter, objects, etc., setting up as a defense upon the merits. Held, that this was not a full appearance or a waiver of the objection to the jurisdiction." On page 134, the Court says: "Under the provisions of the statute which provides for trials, in cases of this kind, only after answers filed, it is difficult to see how a party can avail himself of an objection to the jurisdiction, except in some such way as was followed in this case. We think, however, that as a matter of practice, it would be more workmanlike to separate the objections to jurisdiction from the manner to the merits, by putting each in a document by itself, etc."

In *McNab vs. Bennett*, 66 Ill., 159. Here the defendant appeared specially to question the jurisdiction of the Court over his person, claiming that he was not served in the county where process was issued, but was fraudulently forced into the other county for the purpose of making service upon him, etc."

In *Halsted v. Manning, Bowman & Co.*, 34 Fed Rep., 565, the defendant appeared especially for the purpose only of objecting that the court had no jurisdiction over his person.

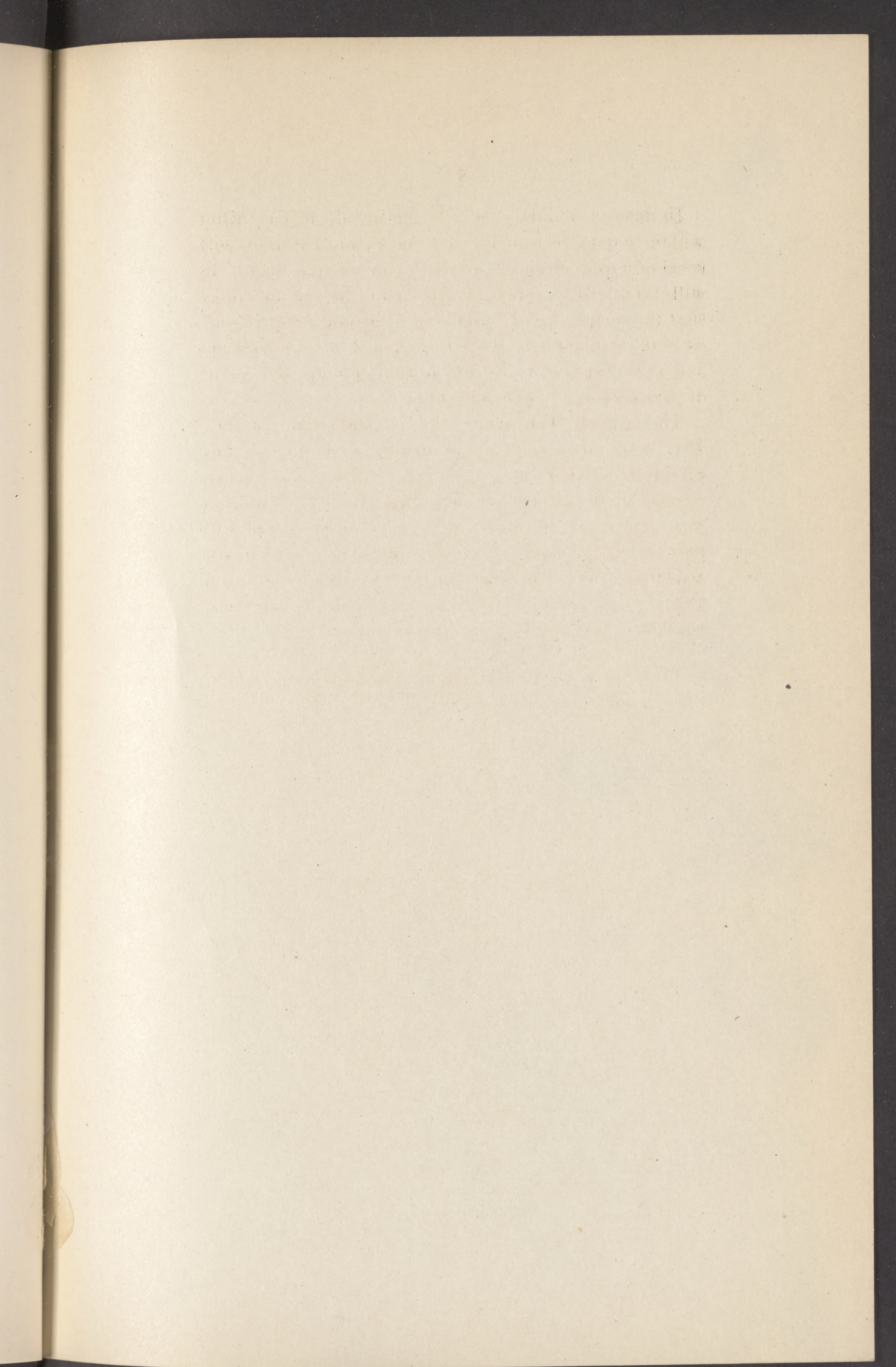
*Meyer v. Brooks*, 29 Or., 203 and *Elliott v. Lawhead*, 43 Ohio St., 177, have been quoted in complainant's brief.

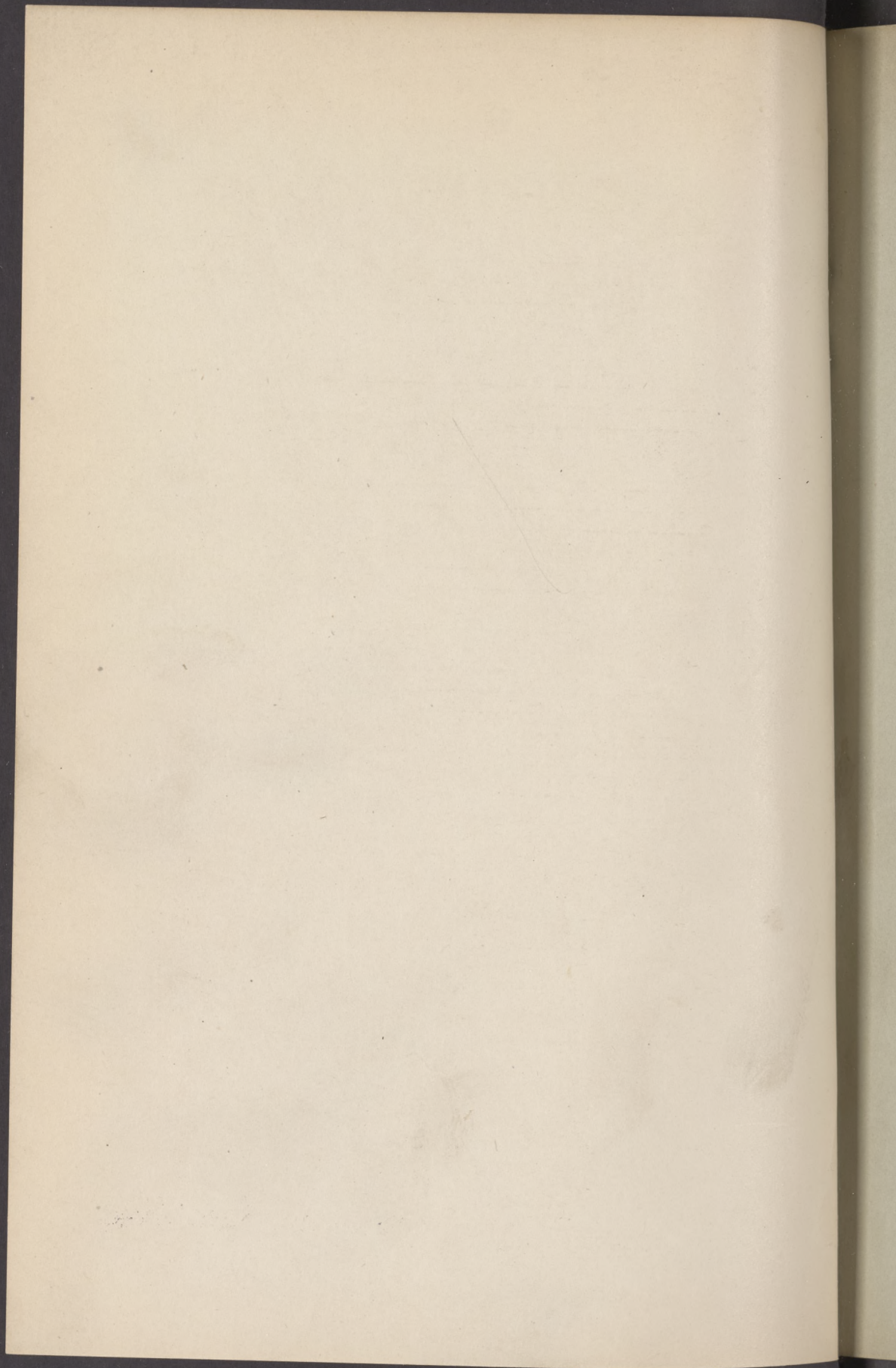
In case of *Godfrey v. Valentine*, 39 Minn., 336, which is greatly relied upon by defendant and extensively quoted on the ninth page of his brief, it will be found, from an examination of the opinion, that the court had acquired no jurisdiction, either over the subject matter or the person of the defendant, and that the entire judgment was void for want of jurisdiction. (See page 338.)

The case of *Mulhearn v. Press. Pub. Co.*, 24 Vr., 151, was an action in personam, and has no application to the case in hand. The other cases quoted by defendant, as here shown, have no application to the present case. They are cases entirely in personam, or where there has been no jurisdiction acquired over the subject matter by reason of failure to serve process directly or through substituted service, or by reason of defective process.

It is submitted that no proof of the decree or other proceedings should be opened or set aside.

CLARENCE KELSEY,  
for Complainant.





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**N. J. Court of Errors & Appeals**

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MARY ELLEN MCGUINNESS,

Complainant and Respondent.

AND

THOMAS MCGUINNESS,

Defendant and Appellant.

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ON APPEAL FROM CHANCERY.

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MARSHALL VAN WINKLE,  
Solicitor for Complainant and Respondent.

HOWARD CARROW,  
Solicitor for Defendant and Appellant.

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BILL OF COMPLAINT.

IN CHANCERY OF NEW JERSEY.

*To his Honor, Alexander T. McGill, Chancellor of the* 10  
*State of New Jersey:*

Humbly complaining showeth unto your Honor, your oratrix, Mary Ellen McGuinness, of Jersey City, New Jersey, that your oratrix was married to her present husband, Thomas McGuinness, at St. Joseph's Roman Catholic Church, in Newark, by Reverend Father John Callahan, on the nineteenth day of July, A. D. 1879; that the said Thomas McGuinness had been at that time twice previously married, both of his former wives being then deceased; that the said Thomas McGuinness, 20  
at the time of his said marriage with your oratrix, had no children living by either of his former wives; that your oratrix, at the time of her said marriage, had been just about a year from school, having been educated at St. Vincent's Academy, in Newark, and was then twenty years of age, and that her said husband was then, so far as your oratrix knows, about forty-five years of age; that your oratrix was then an inexperienced girl, with no knowledge of the world; that your oratrix has had by her said husband six children, one dying in infancy in 1880, and four of whom are living, viz.: Mary 30  
Irene, now seventeen years of age; John E., now fifteen years of age; Marcella, now thirteen years of age; Anna, now about eleven years of age, and one of whom, Edward, died on the 16th day of March, 1898, at the age of five years. That before the time of your oratrix's marriage, the said Thomas McGuinness represented himself

to your oratrix as a man of great wealth; that her said husband, before her said marriage, told your oratrix that she was to live in New York City, in the Park avenue property that he owned, and that that was to be the home of your oratrix, and that your oratrix was to have a horse and carriage of her own with which to drive in Central Park, in said New York City, and that she should always be well and fully supplied with tasteful clothing according to his large means; and your oratrix

10 avers that the said Thomas McGuinness was then and is now a man of great wealth; that your oratrix does not know the exact financial standing of her said husband, but esteems him to be worth at least five hundred thousand dollars in real and personal property; that her said husband has always carefully concealed the extent of his means from your oratrix, but your oratrix knows that the said Thomas McGuinness owns real property in New York City and in Jersey City of which she can approximately specify the following in Jersey City:

20 No. 1 Clinton avenue, large building used as a cafe; No. 786 Grand street, a double flat; Nos. 7, 9 and 11 Clinton avenue, three brick houses; the large stone house on Clinton avenue, now occupied by the said Thomas McGuinness; houses Nos. 25, 27, 29 and 31 Clinton avenue; two brick houses on Harmon street; two building lots on Arlington avenue, and four lots on Clinton avenue; and in New York City, a house and store on Third avenue near Seventy-second street, and two stores on the Bowery; also property at the corner

30 of Eightieth street and Park avenue, a large and expensive private houses; and tenement property on either Fifty-sixth or Fifty-ighth street; that her said husband is now and has steadily been, since his said marriage with your oratrix, in receipt of a large monthly income; that at the time of her said marriage the said Thomas McGuinness had retired from business about thirteen years, and had done no active business during that time; and

that since her said marriage the said Thomas McGuinness has been in no business; that he has three horses, two of which he keeps for speeding on race tracks and one for his own pleasure; and that for a number of years he has kept such horses, spending large sums of money in maintaining and speeding such horses and devoting much and most of his time to that pursuit; that the said Thomas McGuinness has treated your oratrix with great and premeditated oppression, humiliation and cruelty during the entire period of his married life with your oratrix, and during all of that time has insufficiently provided for your oratrix in food and clothing, and your oratrix at the present time is and has been for a long period in a state of distress and high nervous tension as a result of the said conduct of her said husband; that the body of your oratrix has been insufficiently nourished, even at those times when she has been bearing and nursing at her breast the several children of the said marriage, and she has been for a long period impoveished in her body and health; that the said Thomas McGuinness has steadily and constantly abused your oratrix so that at this time and for a long time past your oratrix has been and is now in fear of bodily injury from the said Thomas McGuinness, her said husband; that your oratrix's children are and have been since the times of their respective births in fear of their father, your oratrix's said husband, because of his constant overbearing, domineering, abusive and threatening conduct towards your oratrix and towards the said children; and frequently have fled in fear at his approach; and that her said husband, by a studied course of cruelty, has endeavored to alienate her said children from her, and has often forbidden the said children to show any affection or feeling whatever for your oratrix in his presence. That a short time after the said marriage of your oratrix with the said Thomas McGuinness he and your oratrix started for Europe, and when the steamer was about

three days on said voyage the said Thomas McGuinness told your oratrix that he was not a rich man but was a bankrupt, merely for the purpose of distressing and humiliating your oratrix, and at the same time he would frequently find fault with the amount of food your oratrix would eat, saying, "Don't eat so much," saying that she must limit herself in that and every regard according to his low means; that the said European trip was to last three months, but was protracted to two years, the said time being spent with the relatives of the said Thomas McGuinness; that many of the days of this period the said Thomas McGuinness would go away and spend the day, leaving your oratrix without food, or means wherewith to purchase food, so that often your oratrix became weak and hungry, and although your oratrix was homesick and frequently begged and implored her said husband to take her home to this country, and relieve her from her said distress, so occasioned by the cruelty of the said Thomas McGuinness, he would not do so, your oratrix charging that at this time her said husband deliberately began to torture your oratrix by imposing upon her a miserable existence; that at the end of two years a baby was born, which lived only a short time; that as the result of improper nourishment of your oratrix at the time of this baby's birth your oratrix was taken with a fever sickness and was three months in bed at Dublin, Ireland; that shortly thereafter your oratrix and her said husband returned to this country, and the girl, Mary Irene, was born about a year after their return; that about three months before the birth of this girl, Mary Irene, her said husband brought your oratrix to her father's house, at Newark, New Jersey, in a carriage, and left your oratrix there, telling her that he would call again in a few days, but her said husband did not return until the said child had been born and was six months old; that during this period her said husband deserted your oratrix and did

not contribute to her support; that her said husband paid some of the expenses of this confinement, but refused to pay for the nurse who necessarily attended your oratrix at that time; that at the time of the return of her said husband to your oratrix he took your oratrix to a boarding house in New York City, and your oratrix lived there for about a month, during which time her said husband treated your oratrix so cruelly that she instituted proceedings against her said husband for a divorce from his bed and board; that this was in the year 1881 or 1882, and at the earnest solicitation of her said husband and his expressing contrition for his cruel conduct towards your oratrix, your oratrix relented and withdrew said application for a separation from him; that thereafter your oratrix and her said husband travelled around, during which time your oratrix frequently beseeched her said husband to provide her with a fit and proper and permanent home and abiding place in accordance with his means; that your oratrix's said husband at that time took your oratrix to a boarding house on Warren street, Jersey City, where she and he boarded for a while, when her said husband rented a house on Randolph avenue, in said city of Jersey City, for a year where he and your oratrix lived during said time, and then your oratrix's said husband bought the house on Clinton avenue which was known as Dr. Mott's summer residence, this being about fifteen years ago, and your oratrix and he lived in that house until about eight years ago, when the said Thomas McGuinness built a new house containing fifteen rooms, and the said Thomas McGuinness built houses on and improved the surrounding property, all of which he still holds and owns and receives the rents and profits therefrom. That frequently, since the occupation of this house so built by her said husband, your oratrix has been without help of any kind, and has often arose during the night to do the washing and scrubbing of the house; and your

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oratrix represents that she is an educated woman, carefully and strictly bred, and a Christian woman; that she is slight in body, and never was capable of doing such work; that her said husband is a coarse and domineering man, fierce in manner and of uncontrollable temper, of unclean and nasty habits; that during the time when your oratrix was without household help her said husband was in the enjoyment of a large periodical allowance, no part of which he would allow to or devote to

10 your oratrix; that her said husband would frequently insist upon your oratrix polishing his boots and washing his feet, and this latter at times when a scrubbing bath was what he imperatively needed, and these things your oratrix's said husband would force your oratrix to do at times when she was weak and about to be confined, and he himself was well and strong.

And your oratrix further shows unto your Honor, that for the past six years the nervous condition of your oratrix has been dreadfully distressing, causing your oratrix much pain and suffering, the said nervous condition

20 being the direct result of the denial of proper food and nourishment to your oratrix by her said husband, and because of his abuse of and cruelty towards your oratrix, and the fear with which your oratrix has received the continuous and daily abuse and intimidation by her said husband. That the said Thomas McGuinness is the owner of many fine and costly paintings, many of which are now on the walls of the Catholic Club, in Jersey City, on loan; that your oratrix would often remonstrate with her said husband, and beg of him as he had sufficient

30 money to buy such pictures, that he would provide your oratrix with necessaries in the way of food and clothing, but the said Thomas McGuinness did not change his course of cruel conduct towards your oratrix notwithstanding the imploring and the distress of your oratrix; that about seven years ago the said Thomas McGuinness went to Europe, taking with him his niece, and remained abroad

three months, freely spending money for himself and those with him, and traveling through most of the countries of Europe for his own pleasure; that at the time of this said European trip, the said Thomas McGuinness gave your oratrix \$15 with which to live during his absence; that at all of these said times the said children of your oratrix remained with her and in her care, and their affection for your oratrix and fear of their father has always been and is strong; that the said Thomas McGuinness made it his constant habit to place your oratrix beneath the servant in the house, when there was any such, and would make it a practice of humiliating your oratrix before such domestic help, and would constantly give orders directly to said help over the head of and against the wishes of your oratrix, with the expressed sole design of humiliating your oratrix in the presence of her children and the said help, and her said husband would often by direct and belittling language concerning your oratrix, addressed directly to such domestic help, strive to make your oratrix's life miserable; and such domestic help have, at different times, informed your oratrix that they could not respect her, as her said husband did not, and her said husband frequently instructed the said domestic help to take orders only from him but not at all from your oratrix; that her said husband would often encourage the domestic help to insult your oratrix; and that during the last winter, an old man, then in the employ of her said husband, at the instigation of her said husband, threw your oratrix down the embankment on the grounds of her said husband, injuring your oratrix severely, and when your oratrix remonstrated with her said husband, he laughed, and told said man to do it again; that this old man is yet in the employ of your oratrix's said husband, and at the invitation of her said husband frequently threatened your oratrix and cursed at your oratrix, calling her "bitch" and other foul names; that at times when your oratrix was nursing her children her said husband would not allow your oratrix to have necessary

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stimulants ordered for her by a physician; and that frequently, at times, when your oratrix was weak and sick, and in great need of the service and advice of a physician, her said husband would deny her such services and advice, claiming that the said services and advice would create unnecessary expense, and her said husband would tell your oratrix that she should do something for herself; that at the time of the return of her said husband from abroad, as above last stated, he sent to his house a

10 large St. Bernard's dog, which he had purchased in Switzerland for \$100 and had two doctors for this dog when it became sick immediately upon its arrival, thus granting a dog what he repeatedly denied to your oratrix, his wife; that the said Thomas McGuinness procures for himself personally the services of a physician when he is at all sick or indisposed; that your oratrix's said husband for a number of years has contemptuously referred to your oratrix as "that woman" when speaking to others of your oratrix, and he has frequently told third persons

20 such false and improper things of and concerning your oratrix that such third persons have imagined and believed until they learned the truth, that your oratrix was a low and impure woman, and of improper life; that your oratrix's said husband told the Reverend Father Carroll, of St. Patrick's Church, in said Jersey City, that she, your oratrix, was a common drunkard, and that he had to take the children away from your oratrix because she was an unfit person to be near the children, and he told Father Carroll that your oratrix was a prostitute and that your oratrix had been intimate with a colored man in the barn

30 adjoining the home of your oratrix; whereas your oratrix avers that during her entire married life she has been faithful, enduring, and true towards her said husband and chaste and circumspect in her life, hoping, working and striving to have her several children respectfully brought up, and to please her said husband, and to have him change his course of cruel and inhuman conduct towards your oratrix, but without avail; and your oratrix

charges that her said husband a short time ago arranged with the authorities of the Roman Catholic Church, of which both your oratrix and he are members, to call an ecclesiastical court in said church to give him, the said Thomas McGuinness, the privilege of, and the sanction of the church, in divorcing your oratrix, his said wife, on the ground that your oratrix was a drunkard and a prostitute, but that, although your oratrix's said husband instituted such proceedings, he abandoned them; that his purpose, in pursuing such course, was to force your oratrix to leave his house and to torture her, his expressed idea being that if your oratrix would quit his house he would be able to divorce and get rid of your oratrix on the ground of desertion. That the people of the neighborhood in which the said Thomas McGuinness resides, in Clinton avenue aforesaid, are, and for years have been cognizant of and familiar with the cruel and inhuman treatment of your oratrix by her said husband, as many of the cruel actions of the said Thomas McGuinness have been open and public, and as the said Thomas McGuinness freely derides and speaks contemptuously and improperly of your oratrix, his said wife, in all places; that your oratrix has for some years been inadequately provided with clothing; that her said husband will not allow your oratrix any money whatever with which to provide necessary or proper clothing for her person; that he has himself bought for the use and wear of your oratrix, when she was absolutely in need of clothing, second-hand clothing, obtained by him from pawn shops, or second-hand dealers, the same being worn and greasy and unfit for use; that so continuous and terrible have been the acts of the said Thomas McGuinness in the conduct of himself towards his wife, your oratrix, his children and himself, that the opinion prevails with many who know the said Thomas McGuinness that he is insane, his cruel actions towards your oratrix being so cunningly inhuman, and your oratrix being and hav-

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- ing been such a submissive and faithful and forbearing wife, in spite of years of abuse and cruelty; that times and times again the said husband of your oratrix has celled her vile and opprobrious names, such as "bitch," "drunkard" and prostitute," and this he would do time and time again in the presence of strangers and your oratrix's children; that your oratrix's said husband has never at any time treated your oratrix with any decent degree of respect, and the treatment of your oratrix in the house of her said husband is that of a menial servant; that at times when peaches and other fruit have been ripe and filling the trees on the grounds of your oratrix's said husband, your oratrix was ordered by her said husband never to pick or pluck any of the said fruit, and she would have given to her by her said husband rotten fruit, he at such times telling her that such rotten fruit was good enough for her, such actions by the said husband of your oratrix being for the purpose of rendering the existence of your oratrix so intolerable and miserable that your oratrix would be driven to a desertion of her said husband or to distraction and death; such actions and the said other actions of your oratrix's said husband towards your oratrix being devised by her said husband as a part of a system and scheme having such purpose; that your oratrix's said husband, many times in the course of a week, has called your oratrix, in the presence of her children and of others, "a damned dirty thing"; and he always has adopted towards your oratrix a fierce, threatening and intimidating tone, and time and time again your oratrix and her said children have run away from her said husband in fear and because of his threats; that time and time again, without any reason or cause whatsoever, your oratrix's said husband has absolutely refused conversation and discourse with your oratrix; that many times, when your oratrix would sit down to rest outside the house, her said husband would tell your oratrix to

go into the house and work, when your oratrix would say, "I came out here to rest," and her said husband would reply, "Go inside and try to find something to do"; that many times your oratrix has been held as a prisoner in the house of her said husband; that the grounds of her said husband are walled in, and he would frequently tell your oratrix many times that he did not wish your oratrix to pass the gate, and when your oratrix would ask her said husband, "Can't I go down and see the people pass?" he would reply, "No; I will not have you," and at such times he would be angry and express anger, and would take your oratrix by the arm and force her into the house; and that at these times your oratrix would be in dread of her said husband, and would obey because of her fear of him and of bodily injury at his hands; that the said husband of your oratrix would never allow her to read without asking his permission, although your oratrix is an educated woman, his purpose and object being to deny your oratrix the consolation of literature and books, and all consolation and recreation, that she might be distracted and distressed without any sources of relief or help; that your oratrix is an accomplished musician, and a lover of music, and many times when she has been playing some soft music as a solace just before retiring her said husband would come into the room, without notice or warning, and behind her back, and turn out the gas, saying that he could not afford gas; that at times, at night, when your oratrix would light the gas to go up a crooked stairway to get a drink of water for the baby, her said husband would deliverately and in anger towards your oratrix turn out the gas, and your oratrix would be compelled to grope her way back in the dark; that while your oratrix is now a slight and frail woman her said husband is a large man, weighing about two hundred pounds, and so fierce in looks, words and manner that he has always greatly frightened your oratrix, causing

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her to tremble at his approach; that at the present time your oratrix is in absolute fear of her said husband and of his denunciations, momentarily expecting injury or death at his hands, not knowing whether his cruel actions towards her have proceeded from partial insanity, which might develop any moment into homicidal mania; that when any ladies would call upon your oratrix her said husband would send her upstairs and then entertain the ladies himself, or send them home, his orders to

10 your oratrix to leave the room being directed to your oratrix in the presence of the said ladies; this has always been so, and your oratrix's said husband has always denied your oratrix company, entertainment and recreation of all kinds; that whenever your oratrix has been wheeling her said children around the grounds of her said husband and has stopped to talk to a neighbor, if her said husband were near by he would come and stand and listen to the conversation of your oratrix, to humiliate and distress her; that although the said husband of your oratrix has always taken out the said children whenever it suited him so to do, he would always

20 tell your oratrix that he would not allow your oratrix to take them out of the house, and he has always enforced and insisted upon such orders; that at one time, when your oratrix was informed by a physician that she was suffering from nervous prostration, the result of her husband's said cruelty towards her, her said husband told her that he would take her to Newmarket, New Jersey, for two days, and your oratrix was kept there two months, and your oratrix

30 was only allowed at this time to see children twice, they having been taken from your oratrix without her knowledge or consent, and placed in a convent of the Roman Catholic Church, controlled by the Sister thereof; these children were Mary, John, Marcella, Annie and the baby, now dead; that during the time the baby was so away from your oratrix, his mother, and

in need of your oratrix's care, and love, the said baby being then about two years of age, he contracted pneumonia, and was near the point of death, but your oratrix was never notified of her baby's condition; that for some time after the child had been so taken away from your oratrix by her said husband, your oratrix did not know where they had been taken; that for as much as six months at a time your oratrix has received from her said husband not one cent; that for some years he allowed your oratrix one dollar per week, and she was obliged to save many times **10** enough from that sum to render herself fit to come out of the house, and to spend a portion of that sum for her food, despite the large wealth and income of her said husband, and his own indulgence in luxuries; that your oratrix has for nearly the entire period of her married life been without absolutely necessary articles of food and clothing; that your oratrix's said husband has always bought what he wished for household use without consulting with your oratrix, and even thread to be used by your oratrix in necessary sewing, your oratrix's said husband would buy **20** himself, personally, and your oratrix avers that many times she and her children have been hungry, and impoverished and weak, eating only coffee and bread for breakfast, and without food sufficient in amount or quality, the said Thomas McGuinness having failed to supply the house with fit or sufficient food for the sustenance of your oratrix and the said children; that your oratrix's said husband would instruct tradesmen not to supply your oratrix with groceries or delicacies of any kind, and your oratrix has frequently been told this by tradesmen, when **30** she has applied to them for food, and they would tell her that they did not dare to trust your oratrix because of the said instructions of your oratrix's said husband, and your oratrix had no money with which to make purchases of food at these times; for as much as three years at a time your oratrix has been with but one decent dress to wear; that at one time when your oratrix asked her said

husband for a wrapper he brought her home a greasy and second-hand wrapper that he had purchased in some pawn shop, and told her to wear that; that at times when your oratrix has been nursing her babies, and when she would request her said husband to provide her with some beverage or sustaining food, and when she would be suffering intense pain from lack of nourishment for the child at her breast, her said husband would say, "Drink some water, there is a great deal of strength in that;" that the said

10 husband of your oratrix, during the period of his married life with your oratrix, and in his marriage relations with your oratrix, has been extremely brutal and has frequently charged your oratrix, during the last five years, "with being played out," meaning that your oratrix was incapable of bearing any more children; that from a robust young woman of twenty years of age at her marriage, your oratrix has become a frail and delicate woman, intensely and painfully nervous, as a direct result of her marriage relations with the said Thomas McGuinness, and in his

20 brutality therein towards your oratrix; that the youngest child of your oratrix and her said husband, by name Edward, then being five years of age, strong and healthy, was taken away from the custody of your oratrix by her said husband, together with the said other children, and placed in a convent at Merion, Pennsylvania, without the knowledge or consent of your oratrix and surreptitiously, and for no reason except the desire and plan of your oratrix's said husband to distract and cruelly treat your oratrix; and that your oratrix was greatly in need of the companionship and love of her said children to enable her

30 to at all endure the miserable and cruel existence imposed upon her by her said husband, and your oratrix's said husband would refuse your oratrix the necessary money wherewith to travel to the said convent to see her said children, thus driving her to distraction, and her said husband, although your oratrix begged and implored him to allow the said children to be returned to her for

Christmas, would not do so; and your oratrix's said  
 youngest child, Edward, was seized with a lingering ill-  
 ness, while at the said convent, and your oratrix had no  
 knowledge of this, and your oratrix's said husband, mere-  
 ly to distract your oratrix, concealed from her the said  
 illness of the said child, and the said child died without  
 your oratrix being present to kiss him good-bye, and your  
 oratrix only again saw the child when he was in his coffin;  
 the said child having been away from the care and view  
 of your oratrix nine months; that about two years ago  
 the said husband of your oratrix flew into a violent rage **10**  
 at your oratrix, as has been his daily habit, without any  
 cause or provocation whatever, reviled your oratrix,  
 seized your oratrix violently and threw her on the bed and  
 choked her until she was black in the face; that your ora-  
 trix is known among the neighbors in the vicinity of her  
 husband's house, in Jersey City, as "Mrs. Guinness, buried  
 alive," and that phrase is frequently applied to your ora-  
 trix by the said neighbors and others because of the se-  
 cluded position imposed upon her by her said husband;  
 that your oratrix's said husband has been in the habit of **20**  
 often taking violent and angry hold of your oratrix and  
 throwing her about the room; and that he has frequently  
 during the last few years pushed your oratrix around  
 the room and against the furniture; and would often  
 come up behind your oratrix stealthily, and suddenly re-  
 veal himself, and shout out, to distress and frighten your  
 oratrix, and to keep your oratrix in a state of continual  
 dread and fear of him, her said husband; that in the early  
 part of last winter, during one of the violent fits of pas-  
 sionate temper, so frequently indulged in by the said hus- **30**  
 band of your oratrix, because your oratrix replied to her  
 said husband, he quickly seized a tea kettle filled with  
 boiling water from its place on the stove, and before your  
 oratrix could escape from his presence, scalded the right  
 arm and side of your oratrix, causing your oratrix to suf-  
 fer intense pain, and making necessary the services of

physicians to cure your oratrix, and your oratrix being by such injury confined to her bed, said husband being so frightened at the result of his cruel treatment that he permitted Doctors Corrigan and Bidwell, of Jersey City, to be called to attend your oratrix, and poultice your oratrix for her said scalds and burns; that the said oldest daughter of your oratrix is afflicted with spinal trouble, which causes her great weakness, and that during the last two months it became necessary to perform a surgical operation upon the said girl, she then being at the said convent at Merion; that the said husband of your oratrix preceeded your oratrix to Philadelphia by about three weeks, taking up his abode at No. 3814 Spruce street, in said Philadelphia, and when your oratrix arrived at the boarding house, No. 3814 Spruce street, she found that her said husband had informed the woman in charge of the said house and the boarders therein that your oratrix was a prostitute and a drunkard, and a low and impure woman, and not fit to associate with decent people, and your oratrix found that she was so regarded upon her arrival at the said boarding house, and she was treated as such a woman at said place until the truth was learned; that the said Thomas McGuinness is now in said city of Philadelphia, at said place, and announces that in the future his residence will be in Philadelphia, and the said husband of your oratrix has rented and leased the said house in Jersey City to his sister, without the consent or knowledge of your oratrix, and it is the intention of the said sister of your oratrix's husband to conduct the said place as a boarding house, and all this without the knowledge of your oratrix at the time that she went to Philadelphia, and with no notice of any kind to her as to this disposal of the said house in Jersey City; that your oratrix has always been chaste and circumspect and has abstained from the improper use of liquor or intoxicating drink, yet her husband has frequently in clubs and

at public places characterizes your oratrix as a drunkard and an impure woman; that your oratrix remained at Philadelphia; at the boarding house, until June 28th last, when she was compelled, by reason of the extreme cruelty of the said Thomas McGuinness, to leave him; that his violence and threats towards your oratrix became more open and frequent during the period of her stay in Philadelphia; that on the 27th of June last, the husband of your oratrix grabbed your oratrix and threw her against the wall of their room, injuring her severely; that the said daughters of your oratrix clung to your oratrix and returned with her to Newark, New Jersey, to the house of your oratrix's aged father, where they and your oratrix were compelled to seek shelter and where they now are; that your oratrix's said husband has hypothecated the trunk and paraphernalia of your oratrix and her daughters and they at present are without hardly a change of raiment; that the said Thomas McGuinness had mailed the following notice to your oratrix's said father and to others, and has also inserted it in the newspapers, "Notice—All persons are hereby notified not to trust my wife, Mrs. Mary Ellen McGuinness, as I will pay no bills of her contracting from this date. Signed, Thomas McGuinness. Philadelphia, June 30th, 1899"; that your oratrix is absolutely without any money or means whatever for the support of herself and daughters, not having even car fare to attend at her solicitor's office in this cause.

Wherefore your oratrix especially charges that by reason of the said extreme cruelty of her said husband towards her her life and health would be endangered by a longer co-habitation with the said Thomas McGuinness.

In tender consideration whereof, and to the end that the said Thomas McGuinness may answer this bill, but without oath, and that a divorce may be decreed between your oratrix and the said Thomas McGuinness

from the bed and board forever, according to the statute in such case made and provided; and that your oratrix may be decreed to have the care and custody of the said children; and that the said Thomas McGuinness may be ordered and decreed to provide suitable support and maintenance for your oratrix and the said children; and that he may be required to pay to your oratrix a reasonable weekly allowance and a proper amount for counsel fees during this suit; and that your oratrix may  
 10 have such other or further relief in the premises as may be agreeable to equity and good conscience.

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 Thomas McGuinness, commanding him, on a certain day therein to be expressed, personally to be and appear before your Honor in this Honorable Court, then and there to answer the premises and to stand to, abide by and perform such  
 20 order, direction and decree as to your Honor shall seem meet and as shall be according to the statute in such case made and provided.

MARSHALL VAN WINKLE,  
 Solicitor for and of Counsel with Complainant.

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30 STATE OF NEW JERSEY, }  
 COUNTY OF HUDSON, } ss.

MARY ELLEN MCGUINNESS, the complainant in the foregoing bill, being duly sworn, says, that her complaint in said bill is not made by any collusion between her and the defendant in said bill for the cause of dis-

solving their marriage, but in truth and good faith, for the causes set forth in bill of complaint.

MRS. MARY ELLEN McGUINNESS.

Sworn and subscribed to before me this fifth day of July, A. D. 1899.

CLARENCE KELSEY,  
Master in Chancery of New Jersey.

(Filed July 7, 1899.)

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SUBPŒNA.

[L. s.] THOMAS McGUINNESS,

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Greeting: We command you, that you appear in manner and form required by law in our Court of Chancery, on the first day of August next, at Trenton, to answer to a bill of complaint exhibited against you in our said Court by Mary Ellen McGuinness, and to do further and receive what our said Court shall have considered in that behalf; and this you are not to omit, under the penalty that may fall thereon.

Witness, his Honor, ALEXANDER T. MCGILL, Chancellor of our State, at Trenton, the seventeenth day of July, in the year of our Lord one thousand eight hundred and ninety-nine.

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L. A. THOMPSON,  
Clerk.

MARSHALL VAN WINKLE,  
Solicitor.

[ENDORSED.]

## IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,

Complainant.

AND

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THOMAS MCGUINNESS,

Defendant.

SUB AD RESP.

Returnable August 1st, A. D. 1899.

MARSHALL VAN WINKLE,  
Solicitor.

Filed July 25th, 1899.

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Sheriff's fees, \$2.28.

I hereby deputize Andrew Donnell to serve the within writ. Witness my hand and seal this 21st day of July, 1899.

[SEAL.]

ALEXANDER McLEAN,  
Sheriff.By J. J. HEAVY,  
Under Sheriff.

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Served within subpcena on within named defendant, Thomas McGuinness, this 21st day of July, 1889, by leaving a true copy of same at place of abode with a member of the family over the age of fourteen, whom I informed the contents thereof.

ALEXANDER McLEAN,  
Sheriff.By ANDREW DONNELL,  
S. D. S.

## Notice.

## IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,

Complainant,

AND

THOMAS MCGUINNESS,

Defendant.

ON BILL, &amp;c.

NOTICE.

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*To the above named defendant, Thomas McGuinness:*

Take notice that I shall apply to the Chancellor of this State, on Monday, the twenty-fourth day of July, instant, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard at the Chancery Chambers in the city of Jersey City, for an order requiring you to pay to the above named complainant a weekly allowance for the support of herself and children, pending the above entitled cause, and also a counsel fee; which motion will be founded on affidavits, copies of which are herewith served on you, and copies of which were also served on the custodian in charge of your home, in Jersey City, on Friday, the fourteenth day of July, instant, and which copies are now in the possession of William Brinkerhoff, Esq., your general counsel, in Jersey City.

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MARSHALL VAN WINKLE,  
Solicitor for Complainant.

Dated at Jersey City, N. J., July 20th, 1899.

## IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,

Complainant,

AND

THOMAS MCGUINNESS,

Defendant.

ON BILL, &C.  
AFFIDAVITT.

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

20 GEORGE V. DREW, being duly sworn according to law, on his oath says, that on Thursday, the twentieth day of July, instant, he served true copies of the annexed affidavits upon the above named defendant, Thomas McGuinness, by leaving them with William Isham, the custodian in charge of the house and grounds of the said defendant, at Jersey City, and informing the said William Isham of their contents.

GEORGE V. DREW.

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Sworn and subscribed before me this 24th day of July,  
A. D. 1899.

CLARENCE KELSEY,  
Master in Chancery of New Jersey.

## IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,

Complainant,

AND

THOMAS MCGUINNESS,

Defendant.

ON BILL FOR

DIVORCE.

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AFFIDAVIT

STATE OF PENNSYLVANIA, }  
COUNTY OF PHILADELPHIA. } ss.

JOHN F. MCCARTHY, of full age, being duly sworn, on his oath deposes and says, that he is acquainted with the above named complainant and defendant; that deponent resides at No. 3814 Spruce street, in the city of Philadelphia; that some time in the month of March last the said Thomas McGuinness applied to deponent for board for himself and wife; that he preceded his wife to deponent's house by about three days and remained about one week, his wife remaining about three days only; that when the said Thomas McGuinness had been at deponent's house one day he began talking disparagingly concerning his wife; he by repeated inuendo and remarks led deponent to believe that the said Mrs. McGuinness was a common drunkard and unchaste and unfaithful to him; that from the remarks of the said Thomas McGuinness deponent thought that Mrs. McGuinness would be an improper person for him to allow in his house; he told deponent that an old "bum" that he had taken in out of consideration, an old tramp that

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he hired as a stableman, he had seen hugging and kissing his wife, the said Mrs. McGuinness; that a large amount of groceries were charged on the grocer's book and that they were charged wrongly, that instead of being groceries it was liquor that should have been charged, and which his wife was using on the sly; that deponent should be glad that he, deponent, had a good wife, because he, McGuinness, wife was unfaithful to him; that all the remarks which the said McGuinness made concerning his wife were derogatory and degrading and painted her character in the blackest color; that the said McGuinness advised deponent not to allow the said Mrs. McGuinness to be introduced to any of the relatives or friends of either deponent or deponent's wife, because he explained that the said Mrs. McGuinness would contaminate the said friends and relatives; that the reason why he took the children of the said McGuinness from his said wife was because she was making drunkards of them and used all sorts of vile language in the presence of the said children and was unfit to care for said children; that the said McGuinness often spoke of obtaining a divorce from his said wife; that from the description which the said McGuinness gave deponent of the said Mrs. McGuinness, deponent was surprised when he met Mrs. Guinness, and after a short conversation with her and taking notice of her actions around deponent's house was led to believe that the representations of the said McGuinness concerning her must have been false; that deponent was strengthened in this belief before they left deponent's house as aforesaid; that the Mrs. McGuinness always acted and behaved as a lady and a good wife while she remained at deponent's house; that the said McGuinness told deponent before his said wife arrived at deponent's house that his said wife taught the said children nothing but immorality; and that on one occasion the said McGuinness told deponent that his said wife, one night, when

certain of the said McGuinness's male friends visited him, took her children and undressed them from their feet up to their waists, except a short skirt on each, and made the said children dance and expose their person indecently for the benefit of the said male visitors; that the said McGuinness also spoke very disparagingly of his said daughter; that when deponent was introduced to the said Mrs. McGuinness he saw at once that she was not dissipated or fast looking; that during this stay of the said McGuinness and Mrs. McGuinness at deponent's house, the said McGuinness used every effort to harass, annoy, criticise and vex the said Mrs. McGuinness and would do this openly at the table or in the presence of other boarders; that the said McGuinness and Mrs. McGuinness left deponent's home for the space of about eight weeks and returned, but not together; that Mr. McGuinness preceded his wife on this second visit about four weeks, she coming May 13th last; that they then remained at deponent's home until about June 28th last, when the said Mrs. McGuinness and her three daughters left, the said Mr. McGuinness leaving on the same day but later; that during the second visit aforesaid the treatment of the said McGuinness towards his wife was also very cruel and annoying; that the said McGuinness would sometimes take almost all of the food prepared for the said Mrs. McGuinness away from her at the table and when said Mrs. McGuinness would attempt to get something to eat after meal times he would reprimand her and scold her and forbid her to eat; that the said McGuinness would not allow the said Mrs. McGuinness to go to the door or out walking alone or with her daughter or deponent's wife; that the said Thomas McGuinness also accused his said wife of being a thief; that he also accused his said wife of attempting to poison him continually; that her going to church in Philadelphia, while the said McGuinness and wife were at deponent's home, was only a cloak, accord-

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ing to the story of the said McGuinness, because, 'as he explained or claimed, the said Mrs. McGuinness never went to church at home; that the said Mrs. McGuinness and her said daughters were in constant fear and dread of the said McGuinness while at deponent's home; that the said McGuinness was continually scolding, threatening and nagging at the said Mrs. McGuinness and the said children; that he would not give the said Mrs. McGuinness and the said children any money, not even car fares; that the said McGuinness would frequently leave with the avowed intention of going to Hartford, Connecticut, to attend to the racing of his horses, and would leave the said Mrs. McGuinness and children without any means or money for days, so that they were compelled to borrow from deponent often to pay for necessaries; that the said McGuinness compelled his said wife to do all the washing and ironing for herself and daughter; that the said McGuinness would compel his said wife to take off his shoes in the presence of deponent and others; that the said McGuinness would not allow the said Mrs. McGuinness to leave the house for days at a time; that the said McGuinness, one evening, in the presence of deponent, called his said wife "a damned liar"; that one day, while all were at the table eating, said McGuinness requested his said wife to sign a deed for him to transfer some of his property, she replied that if he would give her her share she would sign; he said, "Well, what did you put into it?" she replied that "she put herself in it," and he replied, "Well, you don't amount to anything," and "Where did I get you from? Your father is only a poor cobbler and I have had to educate you and bring you up."

That the said Mrs. McGuinness left her said husband, taking her three children with her, and deponent does not blame her because the treatment of the said Mrs. McGuinness by her husband while they were at de-

ponent's house was extremely cruel in the above and a great many more particulars.

JOHN F. McCARTHY.

Sworn and subscribed before me this seventh day of July, A. D. 1899.

CLARENCE KELSEY,  
Master in Chancery of New Jersey.

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STATE OF PENNSYLVANIA, }  
COUNTY OF PHILADELPHIA, } ss.

CATHRYN E. McCARTHY, of full age, being duly sworn according to law, deposes and says: I remember when Mr. McGuinness first came to board at my house—his wife came a few days later—he informed deponent that he would have to buy the ticket for his wife to travel with from Jersey City to deponent's home, because if he sent her money instead she would not buy a ticket with it, but would spend it for liquor and get drunk—the said McGuinness requested deponent to watch his wife when she came to deponent's home, and make notes of her actions and if he ever had a suit against his wife he could use deponent's testimony and would pay her well for it and would bequeath a portion of his estate to deponent's baby in payment for deponent's help; the said wife of the said Mr. McGuinness always behaved properly while in deponent's house, but the said Mr. McGuinness acted brutally and with great cruelty towards his said wife while she was at deponent's house; that one day Mrs. McGuinness was very sick and was so for two days—she requested Mr. McGuinness to procure a doctor for her or get her some medicine; that she lay sick abed at that time, but the said Mr. McGuinness refused to do as she requested; that

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- deponent's husband bought Mrs. McGuinness medicine without the knowledge of the said Mr. McGuinness and gave it to her which helped her; that for days at a time deponent was afraid to address Mrs. McGuinness because the said Mr. McGuinness forbade her so to do; that the said Mr. McGuinness represented to deponent that his said wife was untrue to him, of violent disposition and a common drunkard and unfit to associate with decent people or have the care of her own children; that
- 10** deponent found the said Mrs. McGuinness was just the opposite; that she was a good, true wife and her children seemed to love her and cling to her and fear their father; that the action of the said Mr. McGuinness towards his wife and his treatment of her was disgusting to deponent and evidently to all the boarders and inmates of deponent's home; that when the children of the said McGuinness would go out, or down town, he would compel them on their return to return any small change which they had left, and the case was the same with Mrs. Guinness—he would never allow her to keep
- 20** any money whatever; the said McGuinness warned deponent not to introduce his wife to any of the students who boarded with deponent because she was an immoral woman and it would ruin the good name of deponent's home; the said Mr. McGuinness would scold and threaten his wife in deponent's presence and in the presence of others; the said McGuinness would dress himself in good style, but his wife had very little of clothes and hardly anything fit to wear on the street; that he would spend money on himself but little on his family.

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KATHRYN E. McCARTHY.

Sworn and subscribed to before me this seventh day of July, A. D. 1899.

CLARENCE KELSEY,  
Master in Chancery of New Jersey.

## IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,

Complainant,

AND

THOMAS MCGUINNESS,

Defendant.

ON BILL FOR

DIVORCE.

AFFIDAVIT.

**10**STATE OF NEW JERSEY, }  
COUNTY OF HUDSON. } ss.

MARY IRENE MCGUINNESS, being duly sworn, on her oath according to law, saith: I am at present living with my mother, at her father's home, in Newark, New Jersey; we came there together with my other sisters from the boarding house, No. 3814 Spruce street, Philadelphia, where my father and my mother and myself had boarded since May 13th, 1899, and until June 28th, 1899; before going to No. 3814 Spruce street I had been, for about seven weeks, in the hospital in Philadelphia, where I had undergone an operation; during our residence at No. 3814 Spruce street, aforesaid, my father's treatment of my mother was such, and she was losing health and strength through it so fast, that she had to leave him and come home to New Jersey; I remember my mother for a good many years back, although five or six years of my life have been spent in a convent, at Merion, Pennsylvania, and I remember her first as a very healthy person; she has become poor in health, nervous and hysterical, through the life which she has been compelled to lead with my

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father; my father is of an irascible, tyrannical, disposition; he is very eccentric in his actions, always going to extremes; he would at times rush through the house like a mad man, tearing his hair, and cursing at my mother and the children; he would do this without any apparent cause or provocation whatever; I remember when he scalded my mother, she had hold of the tea kettle on the stove with the spout from her, he grabbed it from her, and turned the spout toward her, and poured the boiling hot water

**10** from the tea kettle over my mother's left side and arm, scalding her so that she screamed and cried, and had to have a doctor dress the wounds on her arm and side caused by the scalding; my father scalded my mother because she resented my father bringing in a stableman to eat in the house; after he had scalded her he said, "Now will you let him come in" (meaning the old stableman), "Now will you let him come in;" I have never seen my mother drink anything except once in a very great while when my father would bring a little beer into the house;

**20** I have never seen her drink anything such as whiskey or wine; she was never intoxicated in my presence, and I was always with her when I was home; while in Philadelphia, my father would once in a great while send out and get some beer for himself, and I never saw my mother, on any of these occasions, take more than one glass, although my father would repeatedly request her to drink a second glass; my father has a number of times told me that my mother was a bad woman—that he had a detective follow my mother and saw her meet men; my mother

**30** I love dearly and respect, her teachings always remain with me because she has been a good, true mother and wife; I have never seen her act unladylike; my mother was always a very hard working woman; frequently my father would not provide her with any servants and she would do all the work until she was sick and could not work any longer, and then he would hire a servant and only then; he is a man of great wealth, but he is very

penurious and close; for a long time back he has only allowed my mother one dollar per week, which was supposed to be pin money, but he made her buy her hats, and other paraphernalia out of this one dollar; in Philadelphia, when my mother and I would go down town he would compel us on our return to account for every penny and turn over any little balance we had to him; he would always try to turn us children against her by talking mean about her; he is always threatening to cut us off in his will unless we would turn against my mother and uphold him in his wicked plans against her; he seems to have adopted a regular system of abuse towards my mother; he is constantly insulting and harassing my mother no matter who is present; I have seen him take her violently by the arms and push her about the room roughly, and order her from one room to the other and upstairs, and when she would refuse to go he would drive her, threatening and cursing; he would frequently address my mother in my presence as a "dirty vagabond," and other names equally as vile, a choice collection of which he always had ready to apply to her; my father's conversation directed to my mother was always in a commanding, tyrannical tone, never respectful or in any way affectionated; my mother, I know, to be at present without means of support whatever; she depends for the support of herself and us children upon her aged father, in Newark, and her said father is not able to provide the means.

MARY IRENE McGUINNESS.

Sworn and subscribed before me this twelfth day of July, A. D. 1899.

CLARENCE KELSEY,  
Master in Chancery of New Jersey.

## IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,

Complainant,

ON BILL, &amp;c.

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AND

AFFIDAVIT.

THOMAS MCGUINNESS,

Defendant.

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

WILLIAM MAXON, of full age, being duly sworn according to law, on his oath deposes and says: That he has been engaged in the real estate business in Jersey City for the space of ten years; that his office is at corner Grand and Communipaw avenue, in the said city of Jersey City, where deponent is engaged in real estate business with Charles A. Wells and Joseph Sperry, composing the firm of Wells, Maxon and Company; that he is familiar with the real estate of Thomas McGuinness in Jersey City, the greater portion of which real estate is within three blocks of deponent's said office; that deponent has been located in said real estate business at his present office for more than seven years last past; that the greater portion of the real estate of the said Thomas McGuinness is contained within the block bounded by Madison, Clinton and Bramhall avenues and Grand street, being houses and lots No. 1 Clinton avenue, a frame building business property; Nqs. 7 and 9 Clinton avenue, brick dwelling

houses; No. 11 Clinton avenue, frame and brick dwelling house; No. 25 Clinton avenue, Nos. 27 and 29 and 31 Clinton avenue, being four frame dwelling houses; the large stone building formerly occupied by said defendant and the large frame dwelling at present occupied by said defendant in the rear of the last named building, and the large plot and curtilage surrounding these two buildings, also the double frame flats, No. 786 Grand street, on all of which said real estate of the said Thomas McGuinness in the said block deponent places a valuation of \$58,500.00; that on two vacant lots claimed to be owned by the said Thomas McGuinness, located at the northeast corner of Clinton and Crescent avenues, deponent places a valuation of \$3,000.00; that on a plot of fifty feet frontage on the easterly side of Arlington avenue, being the property next north of the Central Railroad of New Jersey station, deponent places a valuation of \$30,000.00; and on two brick dwelling houses, located on Harmon street, deponent places a valuation of \$6,000.00, making a total in all of \$70,500.00; that deponent is informed and believes that all of the said real estate is owned by the said Thomas McGuinness, the above named defendant; that the foregoing valuations, in my opinion, are a fair market value of the said respective properties; that I have had numerous sales in the immediate vicinity of the said properties.

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WM. MAXON.

Sworn and subscribed before me this 13th day of July,  
A. D. 1899.

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CLARENCE KELSEY,  
Master in Chancery of New Jersey.

Filed July 24, 1899.

## IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,

Complainant,

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AND

THOMAS MCGUINNESS,

Defendant.

ON BILL, &amp;c.

AFFIDAVIT.

STATE OF RHODE ISLAND }  
 COUNTY OF WASHINGTON. } ss.

20 CLARENCE KELSEY, being duly sworn according to law, on his oath says, that he is an attorney-at-law of the State of New Jersey; that on the twentieth day of July last, deponent, acting under the instructions of Marshall Van Winkle, Esq., the solicitor for the complainant in the above entitled cause, visited Philadelphia, in the State of Pennsylvania, for the purpose of serving the above named defendant, Thomas McGuinness, with a notice of a motion to be made by the said Marshall Van Winkle before the Chancellor of the State of New Jersey, on Monday, the twenty-fourth day of July, 1899, at ten o'clock in the forenoon, at the Chancery Chambers, in Jersey City, for alimony for the above named

30 complainant, pending the above entitled suit, and for a counsel fee; also for the purpose of serving the said Thomas McGuinness with the affidavits of the said complainant, and of May Irene McGuinness, Kathryn McCarthy, John F. McCarthy and William Maxon, to be used at the hearing of the said motion; deponent further says that he called at the residence of John F. Mc-

Carthy, No. 3814 Spruce street, in the said city of Philadelphia, and was there informed by him that the said Thomas McGuinness had been at his, said McCarthy's, residence the Saturday, Sunday and Monday previous, and that although he and his wife had requested the said McGuinness to give them his then place of residence, the said McGuinness refused to do so, and would not assign any reason for such refusal; deponent also learned from the said McCarthy that the said McGuinness, when he removed his trunk from their house a few weeks previously employed a milkman instead of an expressman to make such removal, and refused to inform the said John F. McCarthy of his future place of residence; that said McCarthy informed deponent that he lit a match, however, and examined said milkman's wagon and procured in that way the said milkman's name and address; and that the said night on which the milkman removed the said trunk was the same day on which the above named complainant removed with her daughter from the said No. 3814 Spruce street to Newark, New Jersey; that said McCarthy supplied deponent with the name and address of the said milkman, and deponent visited said milkman and was informed by him that said trunk was removed on said occasion to the home of the niece of said McGuinness, on Sampson street, in said city of Philadelphia; that deponent then called on said niece but could obtain no information from her concerning the then whereabouts of the said McGuinness or his then place of residence; that deponent then next inquired for the said McGuinness at a livery stable on Forty-seventh street, in the said city of Philadelphia, and the man in charge refused to give deponent any information concerning said McGuinness's place of abode, but informed deponent that said McGuinness was endeavoring to sell his, McGuinness's fast horse, "Gertrude G." for \$5,000, and had removed his other fast horse from said stable; that de-

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- ponent next visited the home of Samuel Huey, the attorney for said McGuinness, in Philadelphia, at No. 4812 Chestnut street, and was informed there that the said Huey was at Spring Lake, New Jersey, but had his office in the Drexel building, in said city of Philadelphia; being unable to serve said papers, that deponent then instructed the said John F. McCarthy, and he promised to serve said notice and affidavits on the said McGuinness, personally, by the following day, Friday,
- 10 at four o'clock P. M., and failing in that to serve the said papers as near after said hour as possible on said Huey at his said office; that deponent was at Philadelphia on the same errand, the week previously, with the said affidavits and a similar notice returnable Monday, July 17th, at the Chancery Chambers, in Jersey City, and made diligent search for McGuinness at the said No. 3814 Spruce street and other places where deponent was reliably informed said McGuinness might be, but failed to find him and returned to Jersey City with said papers, and copies of same were then served at the home
- 20 of the said McGuinness, in Jersey City, as were also copies of the papers on the last occasion; that on the occasion of these two visits to Philadelphia, deponent was at work continuously from four to twelve o'clock P. M. endeavoring to find said McGuinness; and deponent believes and is convinced, from the information which deponent has received in said cities of Philadelphia and Jersey City, that the said McGuinness is trying to avoid service of said papers.

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CLARENCE KELSEY.

Sworn and subscribed before me this fifth day of August, A. D. 1899, at Narragansett Pier, Rhode Island.

CARL G. A. SHUMANN,  
Master in Chancery of New Jersey.

## IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,

Complainant,

AND

THOMAS MCGUINNESS,

Defendant.

AFFIDAVIT.

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

MARSHALL VAN WINKLE, being duly sworn, on his oath doth depose and say, that he is the solicitor of the complainant herein; that on the fourth day of August, instant, deponent went with the complainant, to the house lately occupied by the said complainant and belonging to the said defendant, situated on Clinton avenue, in Jersey City. That the said house is a large private residence situated in the middle of somewhat extensive grounds in the block bounded by Grand street and said Clinton avenue, and there are outhouses and a barn appertaining to the said residence and located on the said grounds; that the said complainant went to the said house to procure therefrom, if possible, a certain trunk containing wearing apparel belonging to the said complainant, urgently needed by her for present use; that the trunk containing the said wearing apparel was in the said house at the time that the said complainant was taken by her said husband, the said defendant, to Philadelphia, as alleged in the bill of complaint herein; that the said house at the-time of this said

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visit was closed and all doors and windows thereof shut and locked; that deponent rang the front door bell several times, but nobody responded from the house; that deponent thereupon knocked many times at the rear door of the said house, but nobody appeared therefrom; that while thus employed an old man named Thomas Walters, or Brown, who has been for some time the gardener of the said defendant, appeared, and upon being questioned said that nobody was in the house, and that he himself was in charge of the grounds, etc. That the said Brown is the person upon whom was served the application and affidavits in connection with the request for alimony heretofore made herein; that while the said Brown was so stating that there was nobody in the said house a window thereof was opened and a certain Mrs. Murphy appeared thereat; the said Mrs. Murphy stated that she was a sister of the said defendant, Thomas McGuinness, and that she was in charge of the said house under a certain lease that had been granted to her by the said defendant; upon request the said lease was exhibited to this deponent from the said window, and deponent says that the said lease bears no date, and is made between the said Thomas McGuinness and the said Mrs. Murphy, and runs for the term of one year from the first of May, 1899, at the yearly rent of \$60; that the said Mrs. Murphy ordered the said complainant away from the said house and the said grounds many times during the course of the said conversation; that at the request of deponent there was present during all of this time a policeman from the nearest police station; that the said Mrs. Murphy stated that her grandchild resided in the said house with her, but that, as nearly as deponent could gather from the excited conversation with the said Mrs. Murphy, the rest of her family is elsewhere; that the said Mrs. Murphy stated that the trunk of the said complainant had been removed from the said house on July 28th or July 29th, at whose request and by whom she did not know; that this removal was

subsequent to the hearing of the application for alimony herein.

MARSHALL VAN WINKLE.

Sworn and subscribed to before me at Jersey City this fourth day of August, 1899.

DENNIS B. RYAN,  
Master in Chancery of New Jersey.

Filed August 7th, 1899.

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IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,

Complainant,

AND

THOMAS MCGUINNESS,

Defendant.

ON BILL, &c.

ORDER.

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Upon the filing of affidavits, and upon notice, and upon the motion of Marshall Van Winkle, solicitor and of counsel with complainant, whereby it appears that the *subpoena ad respondendum* herein has been returned by the Sheriff of the county of Hudson as served upon the said defendant by serving the same at his usual place of abode; and it appearing upon the affidavits presented doubtful

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whether the place at which these affidavits were served was the then usual place of abode of the defendant; and it also appearing that the defendant cannot, on due inquiry, be found within this State, it is, on this seventeenth day of August, eighteen hundred and ninety-nine, ordered, that the said defendant, Thomas McGuinness, show cause at the Chancery Chambers in Jersey City, on Tuesday, the fourteenth day of August, instant, at ten o'clock in the forenoon of that day, why an order should not be made for the payment of alimony and counsel fee, as prayed for; and that a copy of this order be posted in the office of the Clerk of this Court; and that a copy of this order, together with a copy of the affidavits which have not already been served upon or left at the alleged residence of the defendant in Jersey City, being the place of abode of the defendant, as claimed by the complainant, be also left at said Jersey City residence, and that the originals be filed in the office of the Clerk of the Court, and copies thereof left either at the Chancery Chambers in Jersey City, or at the office of the solicitor of the complainant for inspection; that the said copies need not be certified, and that said copies shall be served, or deposited and this order posted or served, as hereby directed, by August tenth, 1899, (including that day).

By the statute.

H. G. PITNEY,  
Master.

Respectfully advised.

JOHN R. EMERY,  
Vice Chancellor.

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Filed August 10th, 1899.

## IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,

Complainant,

AND

THOMAS MCGUINNESS,

Defendant.

ON BILL, &amp;C.

AFFIDAVIT OF

SERVICE.

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

GEORGE V. DREW, being duly sworn according to law, on his oath says, that on the fourteenth day of July, instant, he called at the home of Thomas McGuinness and found no one at home but the custodian in charge of the house and grounds; the said custodian informed deponent that his name is William Irsham and that he had charge of the said house and grounds, and that no one was at home, and that Mr. McGuinness was away, and that he did not know whether the said Mr. McGuinness was in Washington or Philadelphia; and the said William Irsham also informed deponent that he had been employed by the said Thomas McGuinness as man servant for a number of months past; that deponent at the same time left with the said William Irsham true copies of the annexed notice and affidavits and instructed him to get them to Mr. McGuinness as soon as possible.

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GEORGE V. DREW.

Sworn and subscribed before me this seventeenth day of July, A. D. 1899.

CLARENCE KELSEY,  
Master in Chancery of New Jersey,

## IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,

Complainant,

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AND

THOMAS MCGUINNESS,

Defendant.

*To the above named defendant, Thomas McGuinness:*

20 Take notice that on Monday next, the seventeenth day of July, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, I shall apply to his Honor, the Chancellor of New Jersey, at the Chancery Chambers at Jersey City, for an order requiring you to pay to the above named complainant a weekly allowance for the support of herself and children, pending the above cause, and also counsel fee. And I will on said application read the affidavit of Mary Ellen McGuinness, Mary Irene McGuinness, Kathryn E. McGuinness, John F. McCarthy and William Maxon, copies of which affidavits are herewith annexed, and herewith served upon you.

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MARSHALL VAN WINKLE,  
Solicitor for Complainant.

Dated at Jersey City, July 14th, 1899.

Filed August 11th, 1899.

## IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,

Complainant,

AND

THOMAS MCGUINNESS,

Defendant.

ON BILL, &amp;C.

AFFIDAVIT.

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

MARY ELLEN MCGUINNESS, being duly sworn according to law, on her oath says, that she is the above named complainant; that since June 28th last she has been living with her three daughters at her father's home, in Newark, New Jersey; that deponent's said father is poor and not able to support deponent and her daughters; that deponent is at present without any means of support whatever for herself and said children, and is entirely dependent upon her said father; that deponent's husband, the above named defendant, is very wealthy, a conservative estimate of his wealth, in deponent's opinion, being five hundred thousand dollars; that deponent is not acquainted with the location of some of her said husband's real and personal property, and her husband has considerable property about which he has never informed her, but deponent knows that he is the owner of the houses and premises, No. 1, 7, 9, 11, 25, 27, 29 and 31 Clinton avenue, Jersey City; No. 786 Grand street, Jersey City; two brick houses on Harmon street, Jersey City; two building lots on Arlington av-

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enue, and four building lots on Clinton avenue, in the said city of Jersey City; he is also the owner of real estate in New York City, viz: a house and store on Third avenue, near Seventy-second street; two stores on the Bowery, property at the corner of Park avenue and Eightieth street, which is a large and expensive private house; also tenement property on one of the two streets, Fifty-sixth or Fifty-eighth streets; that deponent's said husband is and has been since the marriage

10 of her said husband to deponent in receipt of a steady income from this property; that the said Thomas McGuinness has not been engaged in business during the last thirty-four years, he having retired on his income; that the said Thomas McGuinness is the owner of three race horses, named respectively "Zano," "Gertrude G." and Bernaline"; also the owner of a large amount of personal property of great value, some of it consisting of a number of very valuable oil paintings which he frequently loans to different clubs and institutions for

20 the purpose of exhibition; that deponent's said husband spends most of his time and a large amount of money in speeding and maintaining race horses; that deponent filed her bill of complaint in the above entitled cause on the seventh day of July, instant, for a separation from her said husband because of his having treated her with extreme cruelty during the entire period of their married life; that deponent has read her said bill of complaint and knows the contents thereof and the allegations therein alleged, and the same are true to the best

30 of deponent's knowledge and belief; that the said Thomas McGuinness has treated your oratrix, this deponent, with great and premeditated oppression, humiliation and cruelty during the entire period of his married life with deponent; that during all that time he has not provided your oratrix, this deponent, with proper food and clothing; that deponent, at the present time, is, and has been for a long period, in a state of high nerv-

ous tension and poor health as a result of the conduct of her said husband towards her; that the said Thomas McGuinness spends his money freely on himself and his hobbies, but is miserly and penurious in the extreme when deponent would request him to provide sufficient clothing and food for deponent and her said children; that the said Thomas McGuinness has constantly abused deponent so that at this time, and for a long time past, she has been and is now in great fear of bodily injury from him; that by a studied course of cruelty he has endeavored to alienate deponent's children from her and has often forbidden them to go near deponent; that the said children have always been in great fear of their father, because of his constant overbearing, domineering, abusive conduct towards them and towards deponent; that when deponent was first married to the said Thomas McGuinness he took her on a trip to Europe and it was understood that the said trip was not to last longer than three months, but was protracted by the said McGuinness to two years, most of the period being spent with the relatives of the said Thomas McGuinness in Ireland; that the said Thomas McGuinness, while in Europe as aforesaid, would frequently go away and spend the day leaving deponent without food or means with which to purchase food, so that deponent became weak and hungry; that during this stay in Europe a baby was born to deponent which lived only a short time; that by reason of improper nourishment at the time of this baby's birth deponent was taken with a fever sickness, and was three months in bed at Dublin, Ireland; that shortly after the return of this deponent and her said husband to this country, the girl, Mary Irene, was born; that she is now of the age of seventeen years and by reason of her spinal trouble is greatly deformed and crippled and needs the constant care and attention of an attendant, her spine being very weak and her body being heavily bandaged to prevent

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injury thereto; that about three months before the birth of this girl, deponent's husband brought deponent to her father's house, at the city of Newark aforesaid, in a carriage and left deponent there, telling her that he would return in a few days, but her said husband did not return until the said child was born and was six months old; that during this period deponent's husband deserted deponent and did not contribute in any manner to her support or the support of her said child; that

10 when her said husband returned he took deponent to a boarding house, in New York City, where deponent lived with him for about a month, during which time he treated deponent with such extreme cruelty that she was compelled to institute proceedings against him for a separation; that this was in the year eighteen hundred and eight-two (1882), and upon her husband begging and promising to treat deponent with conjugal kindness deponent relented and discontinued said suit; that

20 with the exception of about a year after returning from New York, deponent and her said husband have lived since that time on Clinton avenue, near Grand street, in Jersey City, where four more children were born to them; that during the past few years deponent's said husband has insisted on depriving deponent of the society of her children by sending them to and having them maintained at a convent at Merion, near Philadelphia, in the State of Pennsylvania; that when the youngest child was less than two years old deponent's said husband took him away forcibly from deponent and placed him in the convent with the said other children; that

30 the said child was so taken away and placed in the said convent without the knowledge or consent of deponent; that during the time this baby was so away from deponent, his mother, and in need of deponent's care and love, he being then about two years of age, he was taken with pneumonia, and was near the point of death, but deponent was never notified of his condition; that this

child was afterwards, and when about five years of age and strong and healthy, again taken away from the custody of deponent and placed in the said convent with the said other children, surreptitiously, and without the knowledge or consent of deponent, and for no reason except the desire and plan of deponent's said husband to distract and cruelly treat deponent; that deponent's said husband refused to give her the necessary money with which to travel to the said convent to see her said children, and would not even allow them to be returned to Jersey City during the Christmas holidays, and the said youngest child of deponent was then seized with a lingering illness, and deponent was not informed of it, and the said child died, and deponent only saw him again when he was in his coffin ready to be buried; that the said child, at the time of his death, had been away from the care and view of deponent for more than nine months; that about two years ago deponent's said husband flew into a violent rage, as had been his daily habit, and without any cause or provocation cursed at deponent, seized her violently and threw her on the bed and choked her until she was black in the face; that in the early part of last winter deponent's said husband flew into a violent fit of passionate temper, and because deponent objected to his bringing an old stable man into the house to eat with her, he seized a tea kettle filled with boiling hot water and poured the water over the left arm and side of deponent, in the presence of deponent's children, causing deponent to scream with agony; that it was necessary for deponent to have the attendance of doctors to dress the wounds caused by this scalding, and she was confined to her bed because of it; that the said Thomas McGuinness would frequently take deponent by the arm and pinch her until her arms were black and blue, this being a favorite method of punishment with him; but that while the said McGuinness would frequently abuse deponent in her body in the

manner above specified and in a great many other ways, he seemed to have a planned course of treatment towards this complainant, the very essence of cruelty; he was constantly criticising, cursing at, humiliating and distracting deponent, and it made no difference who was present; that from May the 13th to June 28th, of the present year, deponent and her said husband and her said oldest daughter boarded at No. 3814 Spruce street, Philadelphia; that during this period the treatment of the said McGuinness of deponent was especially

10 cruel and noticeable, so much so that people boarding there and the proprietor thereof advised deponent for her own safety to leave the said Thomas McGuinness, and this deponent did; deponent's said husband preceded deponent to Philadelphia, and when deponent arrived at the said boarding house there she found that she was looked upon by most of the boarders and the proprietor and wife as a common drunkard and an immoral person, because of the misrepresentations of deponent's husband concerning her; that deponent has

20 read the affidavits of Cathryn McCarthy, and of her husband, and the affidavit of deponent's daughter, made by them, in behalf of deponent in this cause, and that the representations which deponent's said husband made to those parties of and concerning deponent were utterly false and without any foundation whatever; that deponent has never indulged in any intoxicating liquors except when once or twice at her own home at Jersey City, in the presence of her husband, she drank a glass of

30 beer, never more than one glass at any one of these occasions; that while in Philadelphia her husband would at great intervals send out in the evening for some beer, of which deponent would never take more than one glass; that deponent was never intoxicated and has never been untrue to her said husband in thought or deed; that deponent is in constant fear and dread of her said husband; that when deponent married him she was in robust, vig-

orous health, and the said cruel treatment to which she had been subjected, the constant worry which she has been caused by the action of her said husband towards her and her children, have resulted in deponent's becoming a physical wreck; that when deponent would ask her husband to provide her with clothing he would go to second-hand stores to purchase it; that on one occasion, a few months ago, when deponent asked him to buy her a skirt he returned home with a dirty, worn, filthy and greasy garment, and told her to wear that, that it was good enough for deponent; that time and time again he called her vile names, such as bitch, drunkard, and prostitute, and this he would do in the presence of strangers and of deponent's children; that deponent's said husband, during her life with him in Jersey City, compelled deponent to do all the house work most of the time, and would not provide a servant for this purpose until deponent would become so ill that she could not any longer perform the work; that the said husband of deponent would for days at a time keep her confined a prisoner at her own home; he would not allow her to leave the house and when she attempted to go out of the house he would take her forcibly by the arm and lead her back into the house; that he would not allow her to talk to any of the neighbors and if he caught her talking to any of them, would take deponent away; that when lady friends of deponent would call on her he would compel deponent to go up stairs to bed and would send deponent's friends home; that deponent's said husband will frequently run his hands through his hair and stand in front of her and jump up and down and cry "My God! My God!"; that he weighs about two hundred pounds, is fierce in looks, words and manner, and greatly frightens deponent by his actions; that when deponent would attempt to play the piano at her home in the evening her said husband would sneak up behind her and turn the gas out and say that he could not afford gas for any such

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purpose; that he would accuse deponent frequently of being a thief, and although he has a large and extensive library at the said home in Jersey City, and although deponent is fond of reading, her said husband would always carry the key to the library, and would never allow deponent to select any book for herself, but would insist on taking down the book himself that she wished and returning it when she was through with it, saying that he thought she would keep it; that although her said husband goes to places of amusement himself, he has always denied deponent company, entertainment and recreation of any kind; that the said husband of deponent would instruct the servant, when any servant was employed in the house, to disregard any orders which deponent would give them, and only take orders from him, so that the said servants would have no respect for deponent; that the said Thomas McGuinness would not allow deponent to order the necessaries for the consumption of the family; that he would not allow deponent and family to be supplied with sufficient food, and deponent has frequently gone hungry for days at a time; that the said Thomas McGuinness would not allow deponent but one dollar per week, out of which she was expected to provide suitable clothing and pin money for herself, and he was so penurious that she would have to take part of this dollar a week to buy necessaries for her said children; and the result has been that deponent is at all times without suitable clothing to go out of the house with; that the said husband of deponent has been extremely brutal in his marriage relations with deponent, and during the last five years has frequently charged deponent with "Being played out," meaning that deponent was incapable of bearing him any more children; that when deponent went to Philadelphia in May last it was for the purpose of attending her said oldest daughter who was then about to undergo an operation for her said spinal trouble and with no intention of taking up a residence in the said city of Philadelphia, but that when de-

ponent returned to Jersey City, with her said children, on June 28th last, she found that her said husband had placed his sister in charge of deponent's home, and that deponent and her said children could no longer live there, and a few days later when deponent called at her said home to obtain her trunk, she was informed by her said husband's sister that her said husband had taken the trunk away and she could not have it; that the said trunk contains about all of the clothing of deponent and at present she is without hardly a change of raiment; that the clothing of her said children are still at the said convent and the parties in charge there refuse to give up the said clothing because they say that as Mr. McGuinness placed the said children in the said convent, he must be the one to whom the clothing is delivered; that deponent has not received any communication and is wholly unaware of the present whereabouts of her said husband; that he placed the following notice or caused it to be published in the Newark *Advertiser*: "Notice—All persons are hereby notified not to trust my wife, Mrs. Mary Ellen McGuinness, as I will pay no bills from her contracting from this date. Thomas McGuinness, Philadelphia, June 30th, 1899."

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MARY ELLEN MCGUINNESS.

Sworn and subscribed before me this thirteenth day of July, 1899.

CLARENCE KELSEY,  
Master in Chancery of New Jersey.

Filed August 11th, 1899.

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## IN CHANCERY OF NEW JERSEY.

Between

MARY E. MCGUINNESS,

Complainant,

ON BILL, &amp;c.

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AND

ORDER.

THOMAS MCGUINNESS,

Defendant.

Upon the filing of affidavits and upon notice, and upon the motion of Marshall Van Winkle, solicitor and of counsel with complainant, whereby it appears that the *subpoena ad respondendum* herein has been returned by the Sheriff of the county of Hudson as served upon the said defendant by serving the same at his usual place of abode; and it appearing upon the affidavits presented doubtful whether the place at which these affidavits were served was the then usual place of abode of the defendant; and it also appearing that the defendant cannot, on due inquiry, be found within this State, it is, on this seventh day of August, eighteen hundred and ninety-nine, ordered, that the said defendant, Thomas McGuinness, show cause at the Chancery Chambers, in Jersey City, on Monday, the fourteenth day of August instant, at ten o'clock in the forenoon of that day, why an order should not be made for the payment of alimony and counsel fee as prayed for; and that a copy of this order be posted in the office of the clerk of this court; and that a copy of this order, together with a copy of the affidavits which have not already been served upon or left at the alleged residence of the defendant, in Jersey City, being the place of abode of the defendant, as

claimed by the complainant, be also left at said Jersey City residence, and that the originals be filed in the office of the clerk of the court, and copies thereof left either at the Chancery Chambers, in Jersey City, or at the office of the solicitor of the complainant for inspection; that the said copies need not be certified, and that said copies shall be served or deposited and this order posted or served, as hereby directed, by August tenth, 1899 (including that day).

Respectfully advised.

JOHN R. EMERY,  
Vice Chancellor.

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Filed August 10th, 1899.

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IN CHANCERY OF NEW JERSEY.

Between

MARY E. MCGUINNESS,

Complainant,

AND

THOMAS MCGUINNESS,

Defendant.

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AFFIDAVIT.

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

MARSHALL VAN WINKLE, being duly sworn, on his oath doth depose and say, that he is the solicitor of the complainant herein; that on the fourth day of August, instant, deponent went with the complainant to the house

lately occupied by the said complainant, and belonging to the said defendant, situated on Clinton avenue, in Jersey City. That the said house is a large private residence situated in the middle of somewhat extensive grounds in the block bounded by Grand street and said Clinton avenue, and there are outhouses and a barn appertaining to the said residence and located on the said grounds; that the said complainant went to the said house to procure therefrom, if possible, a certain trunk containing wearing apparel belonging to the said complainant urgently needed by her for present use; that the trunk containing the said wearing apparel was in the said house at the time that the said complainant was taken by her said husband, the said defendant, to Philadelphia, as alleged in the bill of complaint herein; that the said house at the time of this said visit was closed and all doors and windows thereof shut and locked; that deponent rang the front door bell several times, but nobody responded from the house; that deponent thereupon knocked many times at the rear door of the said house, but nobody appeared therefrom; that while thus employed an old man named Thomas Walters, or Brown, who has been for some time the gardener of the said defendant appeared, and upon being questioned said that nobody was in the house, and that he himself was in charge of the grounds, etc. That the said Brown is the person upon whom was served the application and affidavits in connection with the request for alimony heretofore made herein; that while the said Brown was so stating that there was nobody in the said house a window thereof was opened and a certain Mrs. Murphy appeared thereat; the said Mrs. Murphy stated that she was a sister of the said defendant, Thomas McGuinness, and that she was in charge of the said house under a certain lease that had been granted to her by the said defendant; upon request the said lease was exhibited to this deponent from the said window and deponent says that the said lease bears no date, and is made between the said Thomas Mc-

Guinness and the said Mrs. Murphy and runs for the term of one year from the first of May, 1899, at the yearly rent of \$60; that the said Mrs. Murphy ordered the said complainant away from the said house and the said grounds many times during the course of the said conversation; that at the request of deponent there was present during all of this time a policeman from the nearest police station; that the said Mrs. Murphy stated that her grandchild resided in the said house with her, but that as nearly as deponent could gather from the excited conversation with the said Mrs. Murphy the rest of her family is elsewhere; that the said Mrs. Murphy stated that the trunk of the said complainant had been removed from the said house on July 28th or July 29th, at whose request and by whom she did not know; that this removal was subsequent to the hearing of the application for alimony herein.

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MARSHALL VAN WINKLE.

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Sworn and subscribed to before me at Jersey City, this fourth day of August, 1899.

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DENNIS B. RYAN,  
Master in Chancery of New Jersey.

Filed August 7th, 1899.

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## IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,

Complainant,

ON BILL, &amp;c.

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AND

AFFIDAVIT.

THOMAS MCGUINNESS,

Defendant.

STATE OF RHODE ISLAND, }  
COUNTY OF WASHINGTON. } ss.

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CLARENCE KELSEY, being duly sworn according to law, on his oath says, that he is an attorney at law of the State of New Jersey; that on the twentieth day of July, last, deponent, acting under the instructions of Marshall Van Winkle, Esq., the solicitor for the complainant in the above entitled cause, visited Philadelphia, in the State of Pennsylvania, for the purpose of serving the above named defendant, Thomas McGuinness, with a notice of a motion to be made by the said Marshall Van Winkle before the Chancellor of the State of New Jersey, on Monday, the twenty-fourth day of July, 1899, at ten o'clock in the forenoon, at the Chancery Chambers, in Jersey City, for alimony for the above named complainant, pending the

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above entitled suit, and for a counsel fee; also for the purpose of serving the said Thomas McGuinness with the affidavits of the said complainant, and of May Irene McGuinness, Kathryn McCarthy, John F. McCarthy, and William Maxon, to be used at the hearing of the said motion; deponent further says that he called at the residence of John F. McCarthy, No. 3814 Spruce street, in

the said city of Philadelphia, and was there informed by him that the said Thomas McGuinness had been at his said McCarthy's residence the Saturday, Sunday and Monday previous, and that although he and his wife had requested the said McGuinness to give them his then place of residence, the said McGuinness refused to do so, and would not assign any reason for such refusal; deponent also learned from the said McCarthy that the said McGuinness, when he removed his trunk from their house a few weeks previously, employed a milkman instead of an expressman to make such removal, and refused to inform said John F. McCarthy of his future place of residence; that said McCarthy informed deponent that he lit a match however and examined said milkman's wagon and procured in that way the said milkman's name and address; and that the said night on which the said milkman removed the said trunk was the same day on which the above named complainant removed with her daughter from the said No. 3814 Spruce street to Newark, New Jersey; that said McCarthy supplied deponent with the name and address of the said milkman, and deponent visited said milkman and was informed by him that said trunk was removed on said occasion to the home of the niece of said McGuinness, on Sampson street, in said city of Philadelphia; that deponent then called on said niece, but could obtain no information from her concerning the then whereabouts of the said McGuinness or his then place of residence; that deponent then next inquired for the said McGuinness at a livery stable on Forty-seventh street, in the said city of Philadelphia, and the man in charge refused to give deponent any information concerning said McGuinness's place of abode, but informed deponent that said McGuinness was endeavoring to sell his, McGuinness' fast horse, "Gertrude G." for \$5,000, and had removed his other fast horse from said stable; that deponent next visited the home of Samuel Huey, the attorney for said McGuinness, in Philadelphia, at

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- No. 4812 Chestnut street, and was informed there that the said Huey was at Spring Lake, New Jersey, but had his office in the Drexel Building, in said city of Philadelphia; being unable to serve said papers, that deponent then instructed the said John F. McCarthy, and he promised to serve said notice and affidavits on the said McGuinness, personally, by the following day, Friday, at four o'clock P. M., and failing in that to serve the said papers as near after said hour as possible on said
- 10** Huey at his said office; that deponent was at Philadelphia, on the same errand, the week previously, with the said affidavits and a similar notice returnable Monday, July seventeenth, at the Chancery Chambers, in Jersey City, and made diligent search for McGuinness at the said No. 3814 Spruce street and other places where deponent was reliably informed said McGuinness might be, but failed to find him and returned to Jersey City with said papers, and copies of same were then served at the house of the said McGuinness, in Jersey City, as
- 20** were also copies of the papers on the last occasion; that on the occasion of these two visits to Philadelphia, deponent was at work continuously from 4 to 12 o'clock P. M. endeavoring to find said McGuinness; and deponent believes and is convinced, from the information which deponent has received in said cities of Philadelphia and Jersey City, that the said McGuinness is trying to avoid service of said papers.

CLARENCE KELSEY.

- 30** Sworn and subscribed before me this fifth day of August, A. D. 1899, at Narragansett Pier, Rhode Island.

CARL G. A. SCHUMANN,  
Master in Chancery of New Jersey.

Filed August 7th, 1899.

## IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,

Complainant,

AND

THOMAS MCGUINNESS,

Defendant.

ON BILL, &amp;c.

NOTICE.

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*To the above named defendant, Thomas McGuinness:*

Take notice, that I shall apply to the Chancellor of this State, on Monday, the twenty-fourth day of July, instant, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, at the Chancery Chambers in the city of Jersey City, for an order requiring you to pay to the above named complainant a weekly allowance for the support of herself and children, pending the above entitled cause, and also a counsel fee; which motion will be founded on affidavits, copies of which were also served on the custodian in charge of your home, in Jersey City, on Friday, the fourteenth day of July, instant, and which copies are now in the possession of William Brinkerhoff, Esq., your general counsel in Jersey City.

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MARSHALL VAN WINKLE,  
Solicitor for Complainant.

Dated at Jersey City, N. J., July 20th, 1899.

## IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,

Complainant,

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AND

THOMAS MCGUINNESS,

Defendant.

ON BILL, &amp;c.

AFFIDAVIT.

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

20 GEORGE V. DREW, being duly sworn according to law, on his oath says, that on Thursday, the twentieth day of July, instant, he served true copies of the annexed affidavits upon the above named defendant, Thomas McGuinness, by leaving them with William Isham, the custodian in charge of the house and grounds of the said defendant, at Jersey City, and informing the said William Isham of their contents.

GEORGE V. DREW.

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Sworn and subscribed before me this twenty-fourth day of July, A. D. 1899.

CLARENCE KELSEY,  
Master in Chancery of New Jersey.

## IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,

Complainant,

AND

THOMAS MCGUINNESS,

Defendant.

ON BILL, &amp;c.

AFFIDAVIT. 10

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

MARY ELLEN MCGUINNESS, being duly sworn according to law, on her oath says, that she is the above named complainant; that since June 28, last, she has been living with her three daughters at her father's home, in Newark, New Jersey; that deponent's said father is poor and not able to support deponent and her daughters; that deponent is at present without any means of support whatever for herself and said children, and is entirely dependent upon her said father; that deponent's husband, the above named defendant, is very wealthy, a conservative estimate of his wealth, in deponent's opinion, being five hundred thousand dollars; that deponent is not acquainted with the location of some of her said husband's real and personal property, and her husband has considerable property about which he has never informed her, but deponent knows that he is the owner of the houses and premises Nos. 1, 7, 9, 11, 25, 27, 29 and 31 Clinton avenue, Jersey City, No. 786 Grand street, Jersey City, two brick houses on Harmon street,

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Jersey City, two building lots on Arlington avenue, and four lots on Clinton avenue, in the said city of Jersey City; he is the owner of real estate in New York City, viz., a house and store on Third avenue, near Seventy-second street, two stores on the Bowery, property at the corner of Park avenue and Eightieth street, which is a large and expensive private house, also tenement property on one of the two streets, Fifty-sixth or Fifty-eighth streets; that deponent's said husband is and has been, since the marriage of her said husband to deponent, in receipt of a steady income from this property; that the said Thomas McGuinness has not been engaged in business during the last thirty-four years, he having retired on his income; that the said Thomas McGuinness is the owner of three race horses, named respectively Zano, Gertrude G. and Bernaline; also the owner of a large amount of personal property of great value, some of it consisting of a number of very valuable oil paintings, which he frequently loans to different clubs and institutions for the purposes of exhibition; that deponent's said husband spends most of his time and a large amount of money in speeding and maintaining race horses; that deponent filed her bill of complaint in the above entitled cause on the seventh day of July, instant, for a separation from her said husband, because of his having treated her with extreme cruelty during the entire period of their married life; that deponent has read her said bill of complaint and knows the contents thereof and the allegations therein alleged, and the same are true to the best of deponent's knowledge and belief; that the said Thomas McGuinness has treated your oratrix, this deponent, with great and premeditated oppression, humiliation and cruelty during the entire period of his married life with deponent; that during all that time he has not provided your oratrix, this deponent, with proper food and clothing; that deponent at the present time is, and has been for a long period,

in a state of high nervous tension and poor health as a result of the conduct of her said husband towards her; that the said Thomas McGuinness spends his money freely on himself and his hobbies, but is miserly and penurious in the extreme when deponent would request him to provide sufficient clothing and food for deponent and her said children; that the said Thomas McGuinness has constantly abused deponent so that at this time, and for a long time past, she has been and is now in great fear of bodily injury from him; that by a studied course of cruelty he has endeavored to alienate deponent's children from her, and has often forbidden them to go near deponent; that the said children have always been in great fear of their father, because of his constant overbearing, domineering, abusive conduct towards them and towards deponent; that when deponent was first married to the said Thomas McGuinness he took her on a trip to Europe and it was understood that the said trip was not to last longer than three months, but was protracted by the said McGuinness to two years, most of the period being spent with the relatives of the said Thomas McGuinness in Ireland; that the said Thomas McGuinness while in Europe as aforesaid would frequently go away and spend the day leaving deponent without food or means with which to purchase food, so that deponent became weak and hungry; that during this stay in Europe a baby was born to deponent, which lived only a short time; that by reason of improper nourishment at the time of this baby's birth deponent was taken with a fever sickness, and was three months in bed, at Dublin, Ireland; that shortly after the return of this deponent and her said husband to this country, the girl Mary Irene was born; that she is now of the age of seventeen years, and by reason of her spinal trouble is greatly deformed and crippled, and needs the constant care and attention of an attendant, her spine being very weak and her body being heavily bandaged

to prevent injury thereto; that about three months before the birth of this girl, deponent's husband brought deponent to her house, at the city of Newark aforesaid, in a carriage and left deponent there, telling her that he would return in a few days, but her said husband did not return until the said child was born and was six months old; that during this period deponent's husband deserted deponent and did not contribute in any manner to her support or the support of her said child; that

10 when her said husband returned he took deponent to a boarding house, in New York City, where deponent lived with him for about a month, during which time he treated deponent with such extreme cruelty that she was compelled to institute proceedings against him for a separation; that this was in the year eighteen hundred and eighty-two (1882) and upon her husband begging and promising to treat deponent with conjugal kindness deponent relented and discontinued said suit; that with the exception of about a year after returning from New

20 York, deponent and her said husband have lived since that time on Clinton avenue, near Grand street, in Jersey City, where four more children were born to them; that during the past few years deponent's said husband has insisted on depriving deponent of the society of her children by sending them to and having them maintained at a convent at Merion, near Philadelphia, in the State of Pennsylvania; that when her youngest child was less than two years old deponent's said husband took him

30 away forcibly from deponent and placed him in the convent with the said other children; that the said child was so taken away and placed in the said convent without the knowledge or consent of deponent; that during the time this baby was so away from deponent, his mother, and in need of deponent's care and love, he being then about two years of age, he was taken with pneumonia and was near the point of death, but deponent was

never notified of his condition; that this child was afterwards, and when about five years of age and strong and healthy, again taken away from the custody of deponent and placed in the said convent with the said other children, surreptitiously, and without the knowledge or consent of deponent, and for no reason except the desire and plan of deponent's said husband to distract and cruelly treat deponent; that deponent's said husband refused to give her the necessary money with which to travel to the said convent to see her said children, and would not even allow them to be returned to Jersey City during the Christmas holidays, and the said youngest child of deponent was then seized with a lingering sickness and deponent was not informed of it, and the said child died, and deponent only saw him again when he was in his coffin ready to be buried; that the said child, at the time of his death, had been away from the care and view of deponent for more than nine months; that about two years ago deponent's said husband flew into a violent rage, as had been his daily habit, and without any cause or provocation cursed at deponent, seized her violently and threw her on the bed and choked her until she was black in the face; that in the early part of last winter, deponent's said husband flew into a violent fit of passionate temper, and because deponent objected to his bringing an old stable man into the house to eat with her, he seized a tea kettle filled with boiling hot water and poured the water over the left arm and side of deponent, in the presence of deponent's children, causing deponent to scream with agony; that it was necessary for deponent to have the attendance of doctors to dress the wounds caused by this scalding, and she was confined to her bed because of it; that the said Thomas McGuinness would frequently take deponent by the arm and pinch her until her arms were black and blue, this being a favorite method of punishment with him; but that while the said McGuinness would frequently abuse deponent in her body in the

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manner above specified and in a great many other ways, he seemed to have a planned course of treatment towards this complainant, the very essence of cruelty; he was constantly criticising, cursing at, humiliating and distracting deponent, and it made no difference who was present; that from May the 13th to June the 28th, of the present year, deponent and her said husband and her said oldest daughter boarded at No. 3814 Spruce street, Philadelphia; that during this period the treatment of the said McGuinness of deponent was especially cruel and noticeable, so much so that people boarding there and the proprietor thereof advised deponent for her own safety to leave the said Thomas McGuinness, and this deponent did; deponent's said husband preceded deponent to Philadelphia, and when deponent arrived at the said boarding house there she found that she was looked upon by most of the boarders and the proprietor and wife as a common drunkard and an immoral person, because of the misrepresentation of deponent's husband concerning her; that deponent has read the affidavits of Cathryn

10 McCarthy and of her husband, and the affidavits of deponent's daughter, made by them in behalf of deponent in this cause, and that the representations which deponent's said husband made to those parties of and concerning deponent were utterly false and without any foundation whatever; that deponent has never indulged in any intoxicating liquors except when once or twice at her own home, at Jersey City, in the presence of her said husband, she drank a glass of beer, never more than one glass at any one of those occasions; that while in Philadelphia her husband would, at great intervals, send out

20 in the evening for some beer of which deponent would never take more than one glass; that deponent was never intoxicated and has never been untrue to her said husband in thought or deed; that deponent is in constant fear and dread of her said husband; that when deponent married him she was in robust, vigorous health, and the said cruel treatment to which she had been subjected, the

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constant worry which she has been caused by the action of her said husband towards her and her children, have resulted in deponent's becoming a physical wreck; that when deponent would ask her husband to provide her with clothing, he would go to second-hand stores to purchase it; that on one occasion, a few months ago, when deponent asked him to buy her a skirt he returned home with a dirty, worn, filthy and greasy garment, and told her to wear that, that it was good enough for deponent; that time and time again he called her vile names, such as bitch, drunkard and prostitute, and this he would do in the presence of strangers and of deponent's children; that deponent's said husband, during her life with him in Jersey City, compelled deponent to do all the house work most of the time, and would not provide a servant for this purpose until deponent became so ill that she could not any longer perform the work; that the said husband of deponent would for days at a time keep her confined a prisoner at her own home; he would not allow her to leave the house and when she attempted to go out of the house he would take her forcibly by the arm and lead her back into the house; that he would not allow her to talk to any of the neighbors and if he caught her talking to any of them would take deponent away; that when lady friends of deponent would call on her he would compel deponent to go upstairs to bed and would send deponent's friends home; that deponent's said husband will frequently run his hands through his hair and stand in front of her and jump up and down and cry "My God! My God!"; that he weighs about two hundred pounds, is fierce in looks, words and manner and greatly frightens deponent by his actions; that when deponent would attempt to play the piano at her home in the evening her said husband would sneak up behind her and turn the gas out and say that he could not afford gas for any such purpose; that he would accuse deponent frequently of being a thief, and although he has a large and extensive

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library at the said home in Jersey City, and although deponent is fond of reading, her said husband would always carry the key to the library, and would never allow deponent to select any book for herself, but would insist on taking down the book himself that she wished and returning it when she was through with it, saying that he thought she would keep it; that although her said husband goes to places of amusement himself, he has always denied deponent company, entertainment and recreation of

10 any kind; that the said husband of deponent would instruct the servant, when any servant was employed in the house, to disregard any orders which deponent would give them, and only take orders from him, so that the said servants would have no respect for deponent; that the said Thomas McGuinness would not allow deponent to order the necessaries for the consumption of the family; that he would not allow deponent and family to be supplied with sufficient food, and deponent has frequently gone hungry for days at a time; that the said

20 Thomas McGuinness would not allow deponent but one dollar per week, out of which she was expected to provide suitable clothing and pin money for herself, and he was so penurious that she would have to take part of this dollar a week to buy necessaries for her said children and the result has been that deponent is at all times without suitable clothing to go out of the house with; that the said husband of deponent has been extremely brutal in his marriage relations with deponent, and during the last five years has frequently charged deponent "With being played out," meaning that deponent was incapable of bearing

30 him any more children; that when deponent went to Philadelphia, in May last, it was for the purpose of attending her said oldest daughter, who was then about to undergo an operation for her said spinal trouble and with no intention of taking up a residence in the said city of Philadelphia, but that when deponent returned to Jersey City with her said children, on June 28th last, she

found that her said husband had placed his sister in charge of deponent's home, and that deponent and her said children could no longer live there, and a few days later when deponent called at her said home to obtain her trunk, she was informed by her said husband's sister that her said husband had taken away the trunk and she could not have it; that the said trunk contains about all of the clothing of deponent and at present she is without hardly a change of raiment; that the clothing of her said children are still at the said convent and the parties in charge there refuse to give up the said clothing because they say that as Mr. McGuinness placed the said children in the said convent he must be the one to whom the clothing is delivered; that deponent has not received any communication and is wholly unaware of the present whereabouts of her said husband; that he placed the following notice or caused it to be published in the Newark Advertiser: Notice—All persons are hereby notified not to trust my wife, Mrs. Mary Ellen McGuinness, as I will pay no bills from her contracting from this date. Thomas McGuinness, Philadelphia, June 30th, 1899." 10

MARY ELLEN MCGUINNESS. 20

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Sworn and subscribed before me this 13th day of July, 1899.

CLARENCE KELSEY,  
Master in Chancery of New Jersey.

Filed August, 1899.

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## IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,

Complainant,

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AND

THOMAS MCGUINNESS,

Defendant.

ON BILL FOR

DIVORCE.

AFFIDAVIT.

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

20 MARY IRENE MCGUINNESS, being duly sworn, on her oath according to law, saith, I am at present living with my mother, at her father's home, in Newark, New Jersey; we came there together with my other sisters from the boarding house, No. 3814 Spruce street, Philadelphia, where my father and my mother and myself had boarded since May 13th, 1899, and until June 28th, 1899; before going to No. 3814 Spruce street I had been, for about seven weeks, in the hospital in Philadelphia, where I had undergone an operation; during our residence at No. 3814 Spruce street, aforesaid, my

30 father's treatment of my mother was such, and she was losing health and strength through it so fast, that she had to leave him and come home to New Jersey; I remember my mother for a good many years back, although five or six years of my life have been spent in a convent, at Merion, Pennsylvania, and I remember her first as a very healthy person; she has become poor in health, nervous and hysterical, through the life which

she has been compelled to lead with my father; my father is of an irascible, tyrannical disposition; he is very eccentric in his actions, always going to extremes; he would at times rush through the house like a mad man, tearing his hair, and cursing at my mother and the children; he would do this without any apparent cause or provocation whatever; I remember when he scalded my mother; she had hold of the tea kettle on the stove with the spout from her; he grabbed it from her, and turned the spout toward her, and poured the boiling hot water from the tea kettle over my mother's left side and arm, scalding her so that she screamed and cried, and had to have a doctor dress the wounds on her arm and side caused by the scalding; my father scalded my mother because she resented my father bringing in a stableman to eat in the house; after he had scalded her he said, "Now will you let him come in" (meaning the old stableman), "Now will you let him come in;" I have never seen my mother drink anything except once in a very great while when my father would bring a little beer into the house; I have never seen her drink anything such as whiskey or wine; she was never inintoxicated in my presence, and I was always with her when I was home; while in Philadelphia, my father would once in a great while send out and get some beer for himself, and I never saw my mother, on any of these occasions, take more than one glass, although my father would repeatedly request her to drink a second glass; my father has a number of times told me that my mother was a bad woman—that he had a detective follow my mother and saw her meet men; my mother I love dearly and respect; her teachings always remain with me because she has been a good, true mother and wife; I have never seen her act unladylike; my mother was always a very hard working woman; frequently my father would not provide her with any servants and she would do all the work until she was sick and could not work any

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longer, and then he would hire a servant and only then; he is a man of great wealth, but he is very penurious and close; for a long time back he has only allowed my mother one dollar per week, which was supposed to be pin money, but he made her buy her hats and other paraphernalia out of this one dollar; in Philadelphia, when my mother and I would go down town, he would compel us, on our return, to account for every penny and turn over any little balance we had to him; he would  
 10 always try to turn us children against her by talking mean about her; he is always threatening to cut us off in his will unless we would turn against my mother and uphold him in his wicked plans against her; he seems to have adopted a regular system of abuse towards my mother; he is constantly insulting and harassing my mother no matter who is present; I have seen him take her violently by the arms and push her about the room roughly, and order her from one room to the other and upstairs and when she would refuse to go he would drive her, threatening and cursing; he would frequently  
 20 address my mother in my presence as a "dirty vagabond" and other names equally as vile, a choice collection of which he always had ready to apply to her; my father's conversation directed to my mother was always in a commanding, tyrannical tone, never respectful or in any way affectionated; my mother, I know to be at present without any means of support whatever; she depends for the support of herself and us children upon her aged father, in Newark, and her said father is not able to provide the means.

30 MARY IRENE McGUINNESS.

Sworn and subscribed before me this twelfth day of July, A. D. 1899.

CLARENCE KELSEY,  
 Master in Chancery of New Jersey.

## IN CHANCERY OF NEW JERSEY.

Between

MARY ELLA MCGUINNESS,

Complainant,

AND

THOMAS MCGUINNESS,

Defendant.

ON BILL FOR

DIVORCE.

AFFIDAVIT.

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STATE OF PENNSYLVANIA, }  
COUNTY OF PHILADELPHIA, } ss.

JOHN F. MCCARTHY, of full age, being duly sworn, on his oath deposes and says, that he is acquainted with the above named complainant and defendant; that deponent resides at No. 3814 Spruce street, in the city of Philadelphia; that some time in the month of March last the said Thomas McGuinness applied to deponent for board for himself and wife; that he preceded his wife to deponent's house by about three days and remained about one week, his said wife remaining about three days only; that when the said Thomas McGuinness had been at deponent's house one day he began talking disparagingly concerning his wife; he by repeated inuendo and remarks led deponent to believe that the said Mrs. McGuinness was a common drunkard and unchaste and unfaithful to him; that from the remarks of the said Thomas McGuinness deponent thought that Mrs. McGuinness would be an improper person for him to allow in his house; he told deponent that an old "bum" that he had taken in out of consideration, an old tramp that he hired as a stableman, he had seen hugging and kissing his said wife, the said

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Mrs. McGuinness; that a large amount of groceries were charged on the grocer's book and that they were charged wrongly; that instead of being groceries it was liquor that should have been charged, and which his said wife was using on the sly; that deponent should be glad that he, deponent, had a good wife, because he, McGuinness's, wife was unfaithful to him; that all the remarks which the said McGuinness made concerning his wife were very derogatory and degrading and painted her character in the blackest color; that the said McGuinness advised deponent not to allow the said Mrs. McGuinness to be introduced to any of the relatives or friends of either deponent or deponent's wife, because he explained that the said Mrs. McGuinness would contaminate the said friends and relatives; that the reason why he took the children of the said McGuinness from his said wife was because she was making drunkards of them and used all sorts of vile language in the presence of the said children and was unfit to care for said children; that the said McGuinness often spoke of obtaining a divorce from his said wife; that from the description which the said McGuinness gave deponent of the said Mrs. McGuinness deponent was surprised when he met Mrs. McGuinness, and after a short conversation with her and taking notice of her actions around deponent's house, was led to believe that the representations of the said McGuinness concerning her must have been false; that deponent was strengthened in this belief before they left deponent's house as aforesaid; that the said Mrs. McGuinness always acted and behaved as a lady and a good wife while she remained at deponent's house; that the said McGuinness told deponent before his said wife arrived at deponent's house that his said wife taught the said children nothing but immorality; and that on one occasion the said McGuinness told deponent that his said wife, one night, when certain of the said McGuinness's male friends visited him, took her children and undressed them from their feet up to

their waists, except a short skirt on each, and made the said children dance and expose their person indecently for the benefit of the said male visitors; that the said McGuinness also spoke very disparagingly of his said daughter; that when deponent was introduced to the said Mrs. McGuinness he saw at once that she was not dissipated or fast looking; that during this stay of the said McGuinness and Mrs. McGuinness at deponent's house the said McGuinness used every effort to harass, annoy, criticise and vex the said Mrs. McGuinness, and would do this openly at the table or in the presence of other boarders; that the said McGuinness and Mrs. McGuinness left deponent's home for the space of about eight weeks and returned, but not together; that Mr. McGuinness preceded his wife on this second visit about                      weeks, she coming May 13th last; that they then remained at deponent's home until about June 28th last, when the said Mrs. McGuinness and her three daughters left, the said Mr. McGuinness leaving on the same day but later; that during the second visit aforesaid the treatment of the said McGuinness towards his wife was also very cruel and annoying; that the said McGuinness would sometimes take almost all of the food prepared for the said Mrs. McGuinness away from her at the table and when said Mrs. McGuinness would attempt to get something to eat after meal times he would reprimand her and scold her and forbid her to eat; that the said McGuinness would not allow the said Mrs. McGuinness to go to the door or out walking alone or with her daughter or deponent's wife; that the said Thomas McGuinness also accused his said wife of being a thief; that he also accused his said wife of attempting to poison him continually; that her going to church in Philadelphia, while the said McGuinness and wife were at deponent's house was only a cloak, according to the story of the said McGuinness, because, as he explained or claimed, the said Mrs. McGuinness never went to church at home; that the said

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- Mrs. McGuinness and her said daughters were in constant fear and dread of the said McGuinness while at deponent's home; that the said McGuinness was continually scolding threatening and nagging at the said Mrs. McGuinness and the said children; that he would not give the said Mrs. McGuinness and the said children any money, not even car fares; that the said McGuinness would frequently leave with the avowed intention of going to Hartford, Connecticut, to attend to the racing of his horses, and would leave the said Mrs. McGuinness and children without means or money for days, so that they were compelled to borrow from deponent often to pay for necessities; that the said McGuinness compelled his said wife to do all the washing and ironing for herself and daughters; that the said McGuinness would compel his said wife to take off his shoes in the presence of deponent and others; that the said McGuinness would not allow the said Mrs. McGuinness to leave the house for days at a time; that the said McGuinness, one evening, in the presence of deponent, called his said wife "a damned liar"; that one day, while all were at the table eating, said McGuinness requested his said wife sign a deed for him to transfer some of his property, she replied that if he would give her her share she would sign; he said, "Well, what did you put into it?" she replied that she put herself in it, and he replied, "Well, you don't amount to anything," and "Where did I get you from? Your father is only a poor cobbler, and I have had to educate and bring you up."
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- That the said Mrs. McGuinness left her said husband, taking her three children with her, and deponent does not blame her, because the treatment of the said Mrs. McGuinness by her husband while they were at deponent's house was extremely cruel in the above and a great many other particulars.

JOHN F. McCARTHY.

Sworn and subscribed before me this seventh day of  
July, A. D. 1899.

CLARENCE KELSEY,  
Master in Chancery of New Jersey.

STATE OF PENNSYLVANIA, }  
COUNTY OF PHILADELPHIA, } ss.

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CATHRYN E. MCCARTHY, of full age, being duly sworn according to law, deposes and says, I remember when Mr. McGuinness first came to board at my house—his wife came a few days later—he informed deponent that he would have to buy the ticket for his wife to travel with from Jersey City to deponent's home, because if he sent her money instead she would not buy a ticket with it, but would spend it for liquor and get drunk; the said McGuinness requested deponent to watch his wife when she came to deponent's home, and make notes of her action and if he ever had a suit against his wife he could use deponent's testimony and would pay her well for it, and would bequeath a portion of his estate to deponent's baby in payment for deponent's help; the said wife of the said Mr. McGuinness always behaved properly while in deponent's house, but the said Mr. McGuinness acted brutally and with great cruelty towards his said wife while she was at deponent's house; that one day Mrs. McGuinness was very sick and was so for two days—she requested Mr. McGuinness to procure a doctor for her or get her some medicine; that she lay sick abed at that time, but the said Mr. McGuinness refused to do as she requested; that deponent's husband bought Mrs. McGuinness medicine without the knowledge of the said Mr. McGuinness and gave it to her, which helped her; that for days at a time deponent was afraid to address

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Mrs. McGuinness because the said Mr. McGuinness forbade her to do so; that the said Mr. McGuinness represented to deponent that his wife was untrue to him, of violent disposition and a common drunkard and unfit to associate with decent people or have the care of her own children; that deponent found the said Mrs. McGuinness was just the opposite; that she was a good, true wife and her children seemed to love her and cling to her and fear their father; that the action of the said

- 10 Mr. McGuinness towards his wife and his treatment of her was disgusting to deponent and evidently to all the boarders and inmates of deponent's home; that when the children of the said McGuinness would go out, or down town, he would compel them on their return to return any small change which they had left, and the case was the same with Mrs. McGuinness—he would never allow her to keep any money whatever; the said McGuinness warned deponent not to introduce his wife to any of the students who boarded with deponent,
- 20 because she was an immoral woman and it would ruin the good name of deponent's home; the said Mr. McGuinness would scold and threaten his wife in deponent's presence and in the presence of others; the said McGuinness would dress himself in good style, but his wife had very little of clothes and hardly anything fit to wear on the street; that he would spend money on himself, but little on his family.

CATHRYN E. McCARTHY.

- 30 Sworn and subscribed to before me this seventh day of July, A. D. 1899.

CLARENCE KELSEY,  
Master in Chancery of New Jersey.

## IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,

Complainant,

AND

THOMAS MCGUINNESS,

Defendant.

ON BILL, &amp;c.

AFFIDAVIT.

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

WILLIAM MAXON, of full age, being duly sworn according to law, on his oath deposes and says, that he has been engaged in the real estate business in Jersey City for the space of ten years; that his office is at corner Grand and Communipau avenue, in the said city of Jersey City, wherè deponent is engaged in real estate business with Charles A. Wells and Joseph Sperry, composing the firm of Wells, Maxon and Company; that he is familiar with the real estate of Thomas McGuinness in Jersey City, the greater portion of which real estate is within three blocks of deponent's said office; that deponent has been located in said real estate business at his present office for more than seven years last past; that the greater portion of the real estate of the said Thomas McGuinness is contained within the block bounded by Madison, Clinton and Bramhall avenues and Grand street, being houses and lots No. 1 Clinton avenue; a frame building business property, Nos. 7 and 9 Clinton avenue; brick dwelling house, No. 11 Clinton

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avenue, frame and brick dwelling house No. 25 Clinton avenue, Nos. 27 and 29 and 31 Clinton avenue being four frame dwelling houses, the large stone building formerly occupied by said defendant, and the large frame dwelling at present occupied by said defendant in the rear of the said last named building, and the large plot and curtilage surrounding these two buildings, also the double frame flats No. 786 Grand street, on all of which said real estate of the said Thomas McGuinness in the said block deponent places a valuation of \$58,500.00; that on two vacant lots claimed to be owned by the said Thomas McGuinness, located at the northeast corner of Clinton and Crescent avenues, deponent places a valuation of \$3,000.00; that on a plot of fifty feet frontage on the easterly side of Arlington avenue, being the property next north of the Central Railroad of New Jersey station, deponent places a valuation of \$3,000.00; and on two brick dwelling houses, located on Harmon street, deponent places a valuation of \$6,000.00; making a total in all of \$70,500.00; that deponent is informed and believes that all of the said real estate is owned by the said Thomas McGuinness, the above named defendant; that the foregoing valuations in my opinion are a fair market value of the said respective properties; that I have had numerous sales in the immediate vicinity of the said properties.

WM. MAXON.

Sworn and subscribed before me this thirteenth day of July, A. D. 1899.

CLARENCE KELSEY,

Master in Chancery of New Jersey.

Filed July 24, 1901.

## IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,

Complainant,

and

THOMAS MCGUINNESS,

Defendant.

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*To the above named defendant, Thomas McGuinness:*

Take notice, that on Monday next, the seventeenth day of July, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, I shall apply to his Honor, the Chancellor of New Jersey, at the Chancery Chambers, at Jersey City, for an order requiring you to pay to the above named complainant a weekly allowance for the support of herself and children pending the above cause, and also a counsel fee; and I will, on said application, read the affidavit of Mary Ellen McGuinness, Mary Irene McGuinness, Kathryn E. McCarthy, John F. McCarthy and William Maxon, copies of which affidavits are hereunto annexed, and herewith served upon you.

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MARSHALL VAN WINKLE,  
Solicitor for Complainant.

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Dated at Jersey City July 14th, 1899.

## IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,

Complainant,

AND

THOMAS MCGUINNESS,

Defendant.

ON BILL, &amp;c.

AFFIDAVIT OF

SERVICE.

10

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

20

GEORGE V. DREW, being duly sworn according to law, on his oath says, that on the fourteenth day of July instant, he called at the home of Thomas McGuinness and found no one at home but the custodian in charge of the house and grounds; that said custodian informed deponent that his name is William Irsham and that he had charge of the said house and grounds, and that no one was at home, and that Mr. McGuinness was away, and that he did not know whether the said Mr. McGuinness was in Washington or Philadelphia; and the said William Irsham also informed deponent that he had been employed by the said Thomas McGuinness as man servant for a number of months past; that deponent at the same time left with the said William Irsham true copies of the annexed notice and affidavits and instructed him to get them to Mr. McGuinness as soon as possible.

30

GEORGE V. DREW.

Sworn and subscribed before me this 17th day of July,  
A. D. 1899.

CLARENCE KELSEY,  
Master in Chancery of New Jersey.

Filed August 11, 1899.

## IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,

Complainant,

and

THOMAS MCGUINNESS,

Defendant.

ON BILL, &amp;c.

AFFIDAVIT.

10

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

GEORGE V. DREW, being duly sworn according to law, on his oath says, that on Thursday, the tenth day of August instant, he served a true copy of the order to show cause herein dated the seventh day of August, 1899, and of the affidavits of Marshall Van Winkle and Clarence Kelsey, dated respectively August 4th, 1899, and August 5th, 1899, upon the above named defendant by leaving them with William Irsham, the custodian in charge of the house and grounds of the said defendant, at Jersey City; that the said William Irsham at first refused to take said order and affidavits, saying that he had been instructed not to take any papers.

20

GEORGE V. DREW. 30

Sworn and subscribed before me this 11th day of August, A. D. 1899, at Jersey City, N. J.

THEO. RURODE,  
Master in Chancery of New Jersey.

Filed August 14th, 1899.

## IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,

Complainant,

10

and

THOMAS MCGUINNESS,

Defendant.

ON BILL, &amp;c.

ORDER OF

REFERENCE.

20 This cause being opened to the Court by Marshall Van Winkle, of counsel with the complainant, and it appearing that process of subpoena for the appearance of the defendant has been duly issued and returned served upon the defendant; and it further appearing that the complainant has filed her bill of complaint and that the said defendant has not answered to the same within the time limited by law, but has wholly failed and neglected so to do;

30 It is, thereupon, on this eleventh day of September, A. D. eighteen hundred and ninety-nine, ordered that it be referred to Isaac H. Taylor, Esquire, one of the special masters of this court, to ascertain and report as to the truth of the allegations of the complainant's bill of complaint, and whether the custody of the children of the parties should be given to the complainant, and to inquire and report what is a reasonable and proper sum to be allowed to the said complainant as permanent alimony for her support and maintenance and that of her children, and his opinion thereon; and that the complainant proceed to take depositions and other evidence before said special master, to substantiate and prove the

allegations in said petition, and to bring on the hearing of the cause *ex parte*; and that the said master do return, together with his report, and as part thereof, such depositions and other evidence as may be taken before him in pursuance of this order; and the complainant may have leave, pending the hearing before the master, and in the proofs there taken or otherwise as she may be advised, to apply for further allowance for temporary alimony and counsel fees.

ALEX. T. MCGILL, **10**  
Chancellor.

Respectfully advised.

JOHN R. EMERY,  
Vice Chancellor.

Filed September 28th, 1898.

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IN CHANCERY OF NEW JERSEY. **20**

Between

MARY ELLEN MCGUINNESS,

Complainant,

and

THOMAS MCGUINNESS,

Defendant.

ON BILL FOR  
DIVORCE, AND AP-  
PLICATION FOR  
ALIMONY PEN  
DENTE LITE. **30**

The subpoena issued in the above cause for the appearance of the defendant having been returned duly served upon the defendant and the present application (being the hearing of the rule to show cause granted

August 7th, 1899) being made by Marshall Van Winkle, Esq., counsel for the complainant and in the presence of James Fielder, Esq., who appeared specially for the defendant for the sole purpose of objecting to the sufficiency of the service of notice of the present application; and it appearing to the court that the notice of this application has been served as directed in the said order made herein on the seventh day of August last, and that such service is good and sufficient for the purpose of this application, and good reason appearing therefor;

It is, on this eleventh day of September, A. D. 1899, on motion of Marshall Van Winkle, solicitor and of counsel with complainant, ordered that the said defendant pay to the said complainant the sum of ten dollars per week, at the termination of each and every week from the date of this order, and also the sum of ten dollars for each and every week from the fourteenth day of August, 1899, to the date of this order, for the maintenance and support of the complainant, and until the further order of the Court in the premises; and also that the said defendant pay to the solicitor and counsel of the complainant the sum of one hundred dollars as a counsel fee and for the expenses of the complainant in this proceeding, together with the costs of this order to be taxed.

ALEX. T. MCGILL,  
Chancellor.

Respectfully advised.

JOHN R. EMERY,  
Vice Chancellor.

Filed October 3d, 1899.

## IN CHANCERY OF NEW JERSEY.

Between

MARY E. MCGUINNESS,

Complainant,

AND

THOMAS MCGUINNESS,

Defendant.

AFFIDAVIT.

10

NEW JERSEY, }  
 HUDSON COUNTY, } ss.

N. P. WEDIN, JR., Special Deputy Sheriff of the county of Hunterdon, being duly sworn according to law, on his oath saith, that he has duly inquired for Thomas McGuinness, the defendant named in the within process, for the purpose of serving him therewith, and has not been able to find him in his county; and this deponent is credibly informed, and verily believes that the said Thomas McGuinness is out of the State and that he resides in the State of Pennsylvania, in the city of Philadelphia. 20

N. P. WEDIN, JR.,  
 Special Deputy Sheriff.

Subscribed and sworn to this fifteenth January, 1900, at Jersey City, N. J. 30

JOHN J. HEAVEY,  
 Notary Public of New Jersey.

NEW JERSEY, TO WIT:

The State of New Jersey to Thomas Mc-  
[L. s.] Guinness, Greeting:

We command you that you appear in manner and form required by law in our Court of Chancery, on the twenty-sixth day of January instant, at Trenton, to answer to a bill of complaint exhibited against you in our said Court by Mary Ellen McGuinness, and to do further and receive what our said Court shall have considered in that  
10 behalf; and this you are not to omit, under the penalty that may tall thereon.

Witness his Honor, ALEXANDER T. MCGILL, Chancellor of our said State, at Trenton, the fifteenth day of January, in the year of our Lord one thousand nine hundred.

L. A. THOMPSON,  
MARSHALL VAN WINKLE, Clerk.  
Solicitor.

20

[ENDORSED.]

IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,  
Complainant,

and

30 THOMAS MCGUINNESS,  
Defendant.

SUB. AD RESP.

Returnable January 26th, A. D. 1900.

MARSHALL VAN WINKLE,  
Solicitor.

Filed February 7th, 1900.

I hereby deputize N. P. Wedin, Jr., to serve the within writ. Witness my hand and seal this 15th day of January, 1900.

CARL H. RUEMLER,  
Sheriff.

By J. J. HEAVEY,  
Under Sheriff.

[L. s.]

Sheriff's fee, \$0.63.

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IN CHANCERY OF NEW JERSEY.

Between

MARY E. MCGUINNESS,

Complainant,

AND

THOMAS MCGUINNESS,

Defendant.

ORDER.

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Upon motion of William Brinkerhoff, solicitor and of council with the defendant (who appears specially for that purpose) and upon the consent of Marshall Van Winkle, solicitor and of counsel with the complainant;

It is, on this fifteenth day of January, nineteen hundred, ordered, that the subpoena *ad respondendum* herein, and the return of the Sheriff thereto, and the order for temporary alimony and counsel fee herein, and all proceedings based thereon, be set aside, and that the order of

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reference herein be vacated, without costs to either party.

ALEX. T. MCGILL,  
Chancellor

Respectfully advised.

JOHN R. EMERY,  
Vice Chancellor.

10 I consent to the making and entry of the above order.  
MARSHALL VAN WINKLE,  
Solicitor of Complainant.

I consent to the making and entry of the defendant.  
WM. BRINKERHOFF,  
Solicitor of the Defendant.

Filed February 7th, 1900.

20 IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,

Complainant,

and

30 THOMAS MCGUINNESS,

Defendant.

ON BILL, &c.

AFFIDAVIT.

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

MARY ELLEN MCGUINNESS, being duly sworn according to law, on her oath says, that she is the complainant

above named; that the above named defendant, Thomas McGuinness, is a resident out of the State of New Jersey, and together with his son, resides at No. 102 South Fortieth street, in the city of Philadelphia, in the State of Pennsylvania, and has resided in said city of Philadelphia for more than eight months last past.

MARY ELLEN MCGUINNESS,

Sworn and subscribed to before me this third day of February, A. D. 1900.

GEORGE W. FLAACKE, JR.,  
Master in Chancery of New Jersey.

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IN CHANCERY OF NEW JERSEY.

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*To Thomas McGuinness:*

By virtue of an order of the Court of Chancery of New Jersey, made on the day of the date hereof, wherein Mary Ellen McGuinness is complainant and you are defendant, you are required to appear, plead, answer or demur to the bill of said complainant on or before the ninth day of April next, or in default such decree will be taken against you as the Chancellor shall think equitable and just.

The said bill is filed against you to procure a divorce from bed and board for the cause of extreme cruelty.

MARSHALL VAN WINKLE,

Solicitor for Complainant,

No. 1 Montgomery street, Jersey City, New Jersey.

Dated February 7th, A. D. 1900.

30

## IN CHANCERY OF NEW JERSEY.

	Between	
	MARY ELLEN MCGUINNESS,	} ON BILL, &C. ORDER OF PUBLI- CATION.
	Complainant,	
10	and	
	THOMAS MCGUINNESS,	
	Defendant.	

20 The complainant having filed her bill of complaint in the above stated cause and process of subpoena having been issued and returned according to law; and it appearing by the affidavit of Mary Ellen McGuinness, the above named complainant, that the defendant Thomas McGuinness, is a resident out of the State of New Jersey, and cannot upon due inquiry be found in said State, and it appearing by the return of the Sheriff of the county of Hudson that process could not be served upon him;

30 It is, on this seventh day of February, nineteen hundred, on motion of Marshall Van Winkle, of counsel with the complainant, ordered, that the said absent defendant do appear, plead, answer or demur to the complainant's bill on or before the ninth day of April next, or that, in default thereof, such decree be made against him as the Chancellor shall think equitable and just.

And it is further ordered, that the notice of this order prescribed by law and the rules of this court, shall within ten days hereafter, be served personally on the said absent defendant by a delivery of a copy thereof to him,

or be published within said ten days in the Evening Journal, a public newspaper printed in Jersey City, in this State, for four weeks successively, at least once in each week, and in case of such publication, that a copy thereof be also mailed, within the same time, to the said absent defendant directed to his post office address, if the same can be ascertained, in the manner prescribed by law and the rules of this court.

ALEX. T. MCGILL,  
Chancellor. 10

Filed February 7th, 1900.

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IN CHANCERY OF NEW JERSEY. 20

*To Thomas McGuinness:*

By virtue of an order of the Court of Chancery of New Jersey, made on the day of the date hereof, wherein Mary Ellen McGuinness is complainant and you are defendant, you are required to appear, plead, answer or demur to the bill of said complainant on or before the ninth day of April next, or in default such decree will be taken against you as the Chancellor shall think equitable and just.

The said bill is filed against you to procure a divorce from bed and board for the cause of extreme cruelty. 30

MARSHALL VAN WINKLE,  
Solicitor for Complainant,

No. 1 Montgomery street, Jersey City, New Jersey.

Dated February 7th, A. D. 1900.

## IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,

Complainant,

10

and

THOMAS MCGUINNESS,

Defendant.

ON BILL, &amp;c.

AFFIDAVIT.

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

20 CLARENCE KELSEY, of full age, being duly sworn according to law, on his oath says, that on the seventh day of February, A. D. nineteen hundred, he called at No. 102 South Fortieth street, in the city of Philadelphia, in the State of Pennsylvania, and found there the above named defendant, Thomas McGuinness, and then and there served personally upon the said Thomas McGuinness the notice, of which the annexed is a true copy, by reading to and delivering to the said Thomas McGuinness a true copy of said notice.

CLARENCE KELSEY.

30

Sworn and subscribed to before me, at Jersey City, this twenty-fifth day of April, A. D. 1900.

THEO. RURODE,  
Master in Chancery of New Jersey.

Filed April 26th, 1900.

## IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,

Complainant,

and

THOMAS MCGUINNESS,

Defendant.

ON BILL, &amp;C.

ORDER OF

REFERENCE.

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Upon opening this matter to the Court, by Marshall Van Winkle, of counsel with the complainant, and it appearing to the Chancellor that notice of the order made in this cause, on the seventh day of February last past, directing the defendant to appear, plead, answer or demur to the complainant's bill on or before the ninth day of April then next, has been served personally upon the said defendant as in and by said order was directed, and that the said defendant has not appeared and pleaded, answered or demurred to the same within the time limited by law and said order, or at any other time; it is, on this fourth day of May, in the year nineteen hundred, ordered, that it be referred to Washington B. Williams, one of the special masters of this court, to ascertain and report as to the truth of the allegations of the complainant's bill of complaint, and his opinion thereon; and that the complainant proceed to take depositions and other evidence before said special master, and to bring on the hearing of the cause *ex parte*; and that the said master do return, together with his report, and as part thereof such depositions and other evidence as may be taken before him in pursuance of this order.

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30

W. J. MAGIE,  
Chancellor.

Filed May 4th, 1900.

Charles M. Vreeland,  
Counsellor-at-Law,  
No. 239 Washington Street,  
Jersey City, N. J.

2c. Postage    2c. Postage    2c. Postage  
Stamp.        Stamp.        Stamp.

10

Jer. c-1.        Jer., N. J., Oct. 10.  
10.30 A. M.     10.30 A. M.  
1900.            1900.

The Chancellor of the State of New Jersey,  
Trenton, N. J.

Received this packet sealed up from the Postmaster, at  
Trenton, and opened by me.  
October 13, 1900.

L. A. THOMPSON,  
Clerk.

20

(Trenton N. J., Oct. 10, 1 P. M., 1900, Rec'd.)

(Trenton N. J., Oct. 10, 1 P. M., 1900, Rec'd.)

30

I hereby certify that I have placed this letter in the  
principal post-office in Jersey City, N. J., on Wednesday,  
the 10th day of October, A. D. 1900, at 9.35 o'clock  
A. M.

CHAS. M. VREELAND,  
Master in Chancery of New Jersey.

## IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,

Complainant,

and

THOMAS MCGUINNESS,

Defendant.

ON BILL, &amp;C.

NOTICE OF EXAM-

INATION OF WIT- 10

NESSES.

*To Thomas McGuinness, the above named defendant:*

SIR: Take notice, that Kathryn McCarthy and Catharine Friel, of the city of Philadelphia, in the county of Philadelphia and State of Pennsylvania, will be examined as witnesses in this cause, *de bene esse*, at their home, No. 6405 Woodland avenue, in the said city of Philadelphia, on Monday, the eighth day of October, A. D. nineteen hundred, at four o'clock in the afternoon, before Charles M. Vreeland, Esq., one of the Masters in Chancery of the State of New Jersey; and that John F. McCarthy, of the said city of Philadelphia, will be examined as a witness in this cause, *de bene esse*, at his home, No. 1807 Stiles street, in the said city of Philadelphia, on the said eighth day of October, at 6 o'clock in the afternoon, before the said Master in Chancery. 20 30

Yours respectfully,

MARSHALL VAN WINKLE,

Solicitor for Complainant.

Dated at Jersey City, September 25th, A. D. 1900.

## IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,

Complainant,

10 and

THOMAS MCGUINNESS,

Defendant.

ON BILL, &C.  
AFFIDAVIT.

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

20 F. B. BILES, of full age, being duly sworn according to law, says, that on the twenty-sixth day of September, A. D. 1900, he set up in the office of the Clerk of the Court of Chancery of New Jersey the within notice.

F. B. BILES.

Sworn and subscribed to before me, at Trenton, this fifth day of October, A. D. 1900.

30 L. T. H. SHAFER,  
Notary Public of New Jersey.

## IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,

Complainant,

AND

THOMAS MCGUINNESS,

Defendant.

ON BILL, &amp;C.

NOTICE OF EXAM-

INATION OF WIT- 10

NESSES.

*To Thomas McGuinness, the above named defendant:*

SIR: Take notice, that Kathryn McCarthy and Catharine Friel, of the city of Philadelphia, in the county of Philadelphia and State of Pennsylvania, will be examined as witnesses in this cause, *de bene esse*, at their home, No. 6405 Woodland avenue, in the said city of Philadelphia, on Monday, the eighth day of October, A. D. nineteen hundred, at four o'clock in the afternoon, before Charles M. Vreeland, Esq., one of the Masters in Chancery of the State of New Jersey; and that John F. McCarthy, of the said city of Philadelphia, will be examined as a witness in this cause, *de bene esse*, at his home, No. 1807 Stiles street, in the said city of Philadelphia, on the said eighth day of October, at 6 o'clock in the afternoon, before the said Master in Chancery. 20 30

Yours respectfully,

MARSHALL VAN WINKLE,  
Solicitor for Complainant.

Dated at Jersey City, September 25th, A. D. 1900.

## IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,

Complainant,

10 AND

THOMAS MCGUINNESS,

Defendant.

ON BILL, &c.

AFFIDAVIT.

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

20 CLARENCE KELSEY, of full age, being duly sworn according to law, on his oath says, that on the twenty-fifth day of September, A. D. 1900, he placed in a United States mail box, in Jersey City, an envelope addressed to Thomas McGuinness, No. 102 South Fortieth street, Philadelphia, Pa., containing a notice, a copy of which notice is hereunto annexed; that before placing said envelope in said mail box deponent placed thereon a two cent United States postage stamp.

CLARENCE KELSEY.

30

Sworn and subscribed to before me at Jersey City, N. J., this ninth day of October, A. D. 1900.

JAMES F. CLARK,  
 M. C. C. of N. J.

## IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,

Complainant,

AND

THOMAS MCGUINNESS,

Defendant.

ON BILL, &amp;c.

AFFIDAVIT. 10

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

CHARLES M. VREELAND, a Master in Chancery of New Jersey, being duly sworn, on his oath says, that he resides at Jersey City, in the county of Hudson and State of New Jersey, and that he will well, fairly and impartially take the testimony of Kathryn McCarthy, Catharine Friel, and John F. McCarthy, or such of them as appear in pursuance of notice a copy of which is hereto annexed. 20

CHAS. M. VREELAND.

Sworn and subscribed to before me at Jersey City, New Jersey, this sixth day of October, A. D. 1900. 30

CLARENCE LINN,  
Master in Chancery of New Jersey.

STATE OF PENNSYLVANIA, }  
 COUNTY OF PHILADELPHIA, } ss.

Be it remembered, that on this eighth day of October, A. D. nineteen hundred, I, Charles M. Vreeland, a Master in Chancery of New Jersey, did proceed to take the testimony of the witness, John F. McCarthy, named in the notice hereto annexed under and pursuant to said notice and for use in the cause wherein said notice is entitled, said witness duly appearing before me at No. 1817 Stiles street, in the city of Philadelphia, in the presence of the solicitor of the complainant—no one appearing on behalf of the defendant, and I having first been duly sworn upon oath before Clarence Linn, Esquire, a Master in Chancery of New Jersey, and duly authorized by the laws of said State to administer an oath, to fairly and impartially take said testimony (which oath is hereto annexed) and the said witness having been first by me duly sworn on oath as follows: “You do

**10**

**20** solemnly swear, in the presence of the ever living God, that the evidence you shall give in this cause pending in the Court of Chancery of New Jersey between Mary Ellen McGuinness, complainant, and Thomas McGuinness, defendant, shall be the truth, the whole truth and nothing but the truth, so help you God,” he did thereupon testify as in the deposition hereto annexed is set forth, which testimony was reduced to writing by me, and the same subscribed by said witness in my presence after being read over to him.

**30** The other witnesses named in said notice declined to testify without compulsory process.

In witness whereof, I have hereunto set my hand at Philadelphia, in the State of Pennsylvania, this eighth day of October, A. D. 1900.

CHAS. M. VREELAND,  
 Master in Chancery of New Jersey.

JOHN F. McCARTHY, a witness produced on behalf of the complainant, being duly sworn, on his oath says: I reside at 1817 Stiles street, Philadelphia, Pa.; I know the parties, both complainant and defendant, in this cause; I became acquainted with Mr. Thomas McGuinness, the defendant in this suit, at No. 3814 Spruce street, Philadelphia, some time in the month of March, 1899, where I was residing at that time with my wife and her mother. Mr. McGuinness applied to me for board for himself—he said his wife would come on about a week later. He stayed with us that night and continued with us off and on until about July 1st, 1899. 10

Shortly after he came to board with us, and before his wife arrived, he started to talk disparagingly of her. He said she drank; that she neglected her house work, and cautioned my wife not to allow Mrs. McGuinness to meet anyone at the house, because, as he stated, she was fond of other men and unfaithful to him and would be pleased to meet the students who were also boarders at our house. These remarks were made by Mr. McGuinness to me and to my wife and mother-in-law in my presence before the arrival of Mrs. McGuinness, and he also continued this sort of language after her arrival. He also told me that Mrs. McGuinness had tried to poison him and that I should be glad that I had a good wife because his wife was unfaithful to him. He also told me that the reason he took his children from his wife was because she was not fit to raise children, and that she had used all sorts of vile language in the presence of her children. 20

After Mr. McGuinness had been at our house three or four days Mrs. McGuinness arrived at our house. She remained only two or three days when they both left. Shortly after this Mr. McGuinness brought one of his children, May McGuinness, to our house from the University Hospital, where she had been treated. Mrs. McGuinness returned again about the middle of May, 30

1899. From that time up to some time in June the two other daughters visited occasionally at our house.

That before Mrs. McGuinness arrived this second time Mr. McGuinness told me that he wanted to get her out in Pennsylvania so that he could claim a residence for the purpose of divorce, and he told me to procure a note-book and put down all of Mrs. McGuinness' actions, and that if I would act as a witness for him he would pay me well for it. This I declined to do. Mr. McGuinness told me that at one time when certain of his male friends visited him at his home in Jersey City that *he* took their daughters and undressed them from their feet up to the waist, except a short skirt on each and made them dance, which caused them to expose themselves indecently for the benefit of his male friends.

That during this stay of Mr. and Mrs. McGuinness at our house he used every effort to harrass, annoy, criticise and vex his wife, and would do this at the table in our and in the presence of other boarders; almost every meal he would take away a large portion of the food prepared for her, saying, "Mary Ellen you don't want this," and would eat it himself, and when she would ask the waiter to bring her something else, he would say, "Oh, never mind, you needn't go to that trouble—she's got plenty." He would also forbid her to eat anything between meals. She would frequently complain of being hungry and we would give her food on the sly without his knowledge. He would not allow his wife to go to the door or out walking alone. He would compel her at once after meals to go upstairs to her own room and make her stay. She was apparently in great fear of him. She would not dare to speak to us when he was about or smile or speak at the table. One breakfast time when she asked him for some change to make a few purchases for May he flew into a rage and cursed and swore at her in a shameful manner and so loud that it would be heard next door.

A few days afterwards we were awakened by a loud noise in the morning—coming from the room occupied by Mr. and Mrs. McGuinness. The bed was broken and also a small pitcher was broken. We could hear him swearing at her, and calling her a prostitute. I saw her escape from the room, which he tried to prevent by holding the door closed, but she finally succeeded in getting out of the room—she was in terror and evidently had been roughly handled.

During their stay at our house he was continually threatening her, and scolding her and said that he would throw her on the world penniless. He treated her in a most menial way—worse than a common servant. I have seen him make her take off his shoes and stockings. He would make her do all the washing and ironing for the family while at our house. He would not allow her to leave the house for days at a time, never alone. He told us not to loan her any money because she would go and buy liquor with it. He practiced no economy himself, and indulged himself extravagantly, owning and maintaining a fast horse for driving purposes while in Philadelphia, and drinking considerably. But he was exceedingly stingy with his wife and children. I often heard her ask him for a little change for necessaries for herself and child, but he always refused. That one night she was ill, and wanted him to get a doctor or some medicine. This he refused, and when I came home from work I obtained some medicine for her at my own expense and without his knowledge. She appeared to be in great pain and agony, and had been sick for two days.

During the stay of Mrs. McGuinness at our house she always acted as a lady, and in my estimation was as true as any woman could be to a man. I never saw her drink any intoxicating liquors, except once or twice, when Mr. McGuinness sent out and got a pail of beer and compelled her and the daughter to drink a glass of it.

Mr. McGuinness, towards the last part of their stay, told me that he would get a place in the country so that the place would not suit her, his object being, he said, that she would be apt to leave him so that he could get a divorce. He told me that the reason he brought her here was that he might dispose of the place in Jersey City, where they had been living, so that she could not go back there to live.

- 10 The reason Mrs. McGuinness left here was because herself and child were not receiving proper nourishment. The food prepared for them he would take. Also because of his continual cruel and inhuman treatment of her. The said McGuinness frequently told me that he intended to treat his wife in such manner that she would be forced to leave him, and then he would have her for desertion, and that he had fixed things at Jersey City so that it would be no home for her to return to. Mrs. McGuinness finally left us on or about June 28th, 1899. She took with her her daughter May and the other two daughters who had been at school here in Philadelphia.
- 20 Mr. McGuinness left the same night. She said she was going back to Jersey City. He did not say where he was going.

JOHN F. McCARTHY.

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30 Subscribed and sworn to before me, a Master in Chancery of New Jersey, this 8th day of October, A. D. 1900, at Philadelphia, Pa.

CHAS. M. VREELAND,  
Master in Chancery of New Jersey.

Filed October 13th, 1900.

## IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,

Complainant,

AND

THOMAS MCGUINNESS,

Defendant.

} MASTER'S REPORT. 10

In pursuance of an order of reference made in the above stated cause, bearing date on the fourth day of May, in the year nineteen hundred, whereby it was referred to me to ascertain and report as to the truth of the allegations of the complainant's bill of complaint and my opinion thereon, 20

I respectfully report to the Chancellor that I have been attended by the complainant and Mr. Clarence Kelsey, on behalf of Mr. Marshall W. Van Winkle, her counsel, and in his presence have taken the evidence of the complainant herself and of May Irene McGuinness and Marcella McGuinness, her two daughters; Dr. John E. Corrigan, Mrs. Blondina Sanders, Patrick Anderson, father of complainant; John B. Callard and Eloise C. Hicks, and as to the real estate and income of the defendant. 30  
Mr. Clarence Kelsey and Mr. William Maxon, all of whom appear to me to be credible and trustworthy witnesses; and there has also been submitted to me a deposition taken in this cause in Philadelphia, Pa., of Mr. John F. McCarthy, on file in the case, as to the conduct of the parties while at his house just before they ceased

to live together; and I have duly considered the matters so referred to me.

I report that the complainant, whose maiden name was Mary Ellen Anderson, was married to the defendant, Thomas McGuinness, on the nineteenth day of July, in the year eighteen hundred and seventy-nine, in the city of Newark, in this State—she being, as he said, his third wife.

10 That immediately after their marriage they went to Europe for about two years, then they traveled and lived in various places near New York for four or five years more, and then went to housekeeping in Jersey City, in this State, where they continued to reside together until about May, eighteen hundred and ninety-nine. At that time Mr. McGuinness directed the complainant to go to Philadelphia and took board for her at the house of Mr. John F. McCarthy so that she could be near her daughter, May Irene, who had undergone an operation at the hospital in Philadelphia. Their home in Jersey City remained as it was, not broken up, so far as appears.

20 On the twenty-eighth day of June, 1899, Mrs. McGuinness started for her home, in Jersey City, taking the invalid daughter with her and stopping to get the other two daughters at the school where they had been placed; and on arriving at Jersey City she found the house locked against her, and was not permitted to enter or resume her residence there. She then went to stay with her father, Patrick Anderson, at Newark, N. J., where she remained with her three daughters until recently, and is still residing near him in the city of Newark.

30 The defendant's whereabouts since he left Mr. McCarthy's house, at Philadelphia, is not known to the complainant or her witnesses. When complainant left Mr. McCarthy's house, he says she told him she was going back to Jersey City, but that Mr. McGuinness, who left the same night, did not say where he was going, nor has he, so far as appears, ever returned to their former house.

or at least he has never notified the complainant of his intention to do so, or that the home was open to her.

The bill prays a divorce from bed and board on the ground of extreme cruelty; that she may be awarded the custody of the children; that he may be decreed to provide suitable support for her and the children, and such other relief as may be necessary.

In my opinion, the ground on which the bill relies, that if extreme cruelty inflicted by the husband upon the wife is fully proved and in all important particulars is well corroborated, it will be unnecessary to repeat here the facts proved which will appear in the depositions; but I will make special reference to the testimony of May Irene McGuinness, the eldest daughter, a girl whose natural intelligence seems to have been sharpened by her affliction as is often the case, and to the deposition of John McCarthy, who is entirely a disinterested witness, and whose mind, while his statements are moderately phrased, is evidently full of disgust at the brutal conduct of this husband inflicted upon his wife in McCarthy's presence, and his brutal accusations against her which, so far as appears, were without the slightest foundation and are in every way inconsistent, not only with her oath, but with the testimony of her children and neighbors as to her mode of life. If personal violence is a requisite, it is proved and corroborated by the evidence given of his scalding her with hot tea in his passion, and seizing her by the throat and choking her in his rage; if persistent attempts to degrade her in the estimation of friends have any bearing, his conduct at McCarthy's table and his disgusting persistency of accusing his wife of drunkenness and immorality to his own children and against the evidence of their own eyes is abundantly proved. Apart from this, the picture presented of daily life with such a man, whose coming was a terror to his wife and children in their innocent amusement, and whose bursts of passion were so frequent and violent, would be enough

to lead us readily to believe the other testimony if not enough in themselves alone to bring the Court to judicial action.

But it is my belief, upon the testimony and reading between the lines, this violence and brutality was indulged in and aggravated by him with the deliberate intent of driving his wife to leave him that he might thereby be enabled, as he thought, to sue for a divorce for desertion, and Mr. McCarthy corroborates this view quite plainly.

10 Hardly any other reason can be thought of for his refusing to let her eat what she wanted at McCarthy's boarding house, where, of course, he paid the bill for her regular board.

20 But she did not leave him in the sense that he desired. Driven by his violence and excited by his degrading treatment of her and his attempts to poison the mind of those around her with base assertions and alarmed by the suggestion that he was contemplating putting her in some place in Pennsylvania away from her children, she made up her mind that it was time for her to "Make for home," as she says. Taking her children with her she fled to Jersey City to find her former home closed against her and she took refuge in the most natural place, her father's house. Since that time the defendant has never communicated with his wife at all, nor sought in any way to resume marital relations, nor contributed in any way to her support, nor to that of her daughters.

30 He has never directly communicated with the daughters; but two letters are produced received by his daughter, May Irene, one dated August 26th and one September 5th, 1900, written by Mr. G. M. Phillips, manager of a school in Westchester, Pa., evidently written at her father's direction and addressed to her at 334 Warren street, Newark, N. J., where her mother and herself and sisters were then residing with Mr. Patrick Anderson; this shows that Mr. McGuinness knew well enough where they were. These letters are additional proof of his determination to separate this mother from her daughters.

The teacher says that her father will pay the expenses of the children, not only for the schooling, but for traveling and clothing, and that he is entirely willing that their mother should come to see them as often as she likes. But he knew that this mother was left by him, a man of abundant income, destitute, to struggle with poverty and to earn a pittance to keep herself alive. Yet he does not offer to pay her expenses either in going to the school or having the children with her at any place or in making any provision for herself. He evidently imagined that he had successfully accomplished his object in inducing her, by his intimidation and abuse, to flee from the McCarthy house against his pretended wishes, thereby placing herself in the wrong as a woman deserting her husband, while he tempts her children to leave her by offers to support them in comparative luxury. 10

If such a chain of evidence as this testimony discloses cannot be redressed by this Court under the jurisdiction to deal with cases of extreme cruelty then its reach must be contracted indeed. I remember no case exhibiting such brutality, taking into account the fact that they are people of a middle rank of life among their associates and co-religionists, and that the complainant is a woman of delicate organization, now impaired by this mode of life, to whom the indignities inflicted on her by her husband's conduct to her and talk about her would be more grievous than the instances of personal violence. 20

In my opinion the complainant has established her right to a divorce from bed and board on the ground of extreme cruelty inflicted by her husband on her and a decree to that effect should be made with alimony, &c. 30

The only purpose of taking any depositions on the subject of the defendant's faculties was to inform the Court as far as might be concerning his property in this State, although that subject was not referred to me for action.

All which is respectfully submitted this nineteenth day of January, A. D. nineteen hundred and one.

WASHINGTON B. WILLIAMS,  
Master in Chancery.

IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,

Complainant,

and

THOMAS MCGUINNESS,

Defendant.

ON BILL FOR

DIVORCE.

CRUELTY, &c.

10 I

20

Depositions taken in the above cause under an order of reference therein, bearing date the fourth day of May, A. D. 1900, in presence of Mr. Marshall Van Winkle, of counsel for the complainant, before Washington V. Williams, Esq., Master in Chancery, at his office, No. 239 Washington street, Jersey City, commencing on Monday, the fourteenth day of May, 1900, at 2 P. M.

MARY E. MCGUINNESS, being duly sworn, on oath deposes and says:

30

I am the complainant, and am forty-one years of age, and am now, with my three daughters, staying with my father, Mr. Patrick Anderson, at his house, 334 Warren street, Newark, N. J. I was married on the nineteenth day of July, 1879, to the defendant, Thomas McGuinness, in the city of Newark, at St. Joseph's Church, Newark, by the Rev. John Callaghan, a priest of the Roman Catholic Church. Mr. McGuinness had been married, as he told me, twice before; when he married me both of said wives were dead. I do not know his age correctly,

WASHINGTON B. WILLIAMS,  
Master in Chancery.

but think he is about sixty-eight or sixty-nine years old.

Immediately after our marriage we sailed for Europe, and stayed four or five years; we did not keep house, but traveled around in the United States in the vicinity of New York, and then went to housekeeping in Jersey City, and have continued to live in Jersey City until about a year ago, since which time I myself have been living in Newark with my father.

Mr. McGuinness lived in Jersey City, where we were keeping house, until a year ago, when he went to Philadelphia, as he explained to me, to bring my daughter from the hospital where she was being treated. He took her out of the hospital and sent for me, and we boarded for about a month at 3814 Spruce street; two other daughters were at school at Merion, Pa., near Philadelphia, at that time. 10

In June, 1899, I came home to Jersey City with my sick daughter and the two others who had been at school; he stayed at the boarding house in Philadelphia. I had left my son, John, to take care of the home in Jersey City; when I got home to Jersey City I found the house locked the day I arrived, and no one there apparently but an old gardener; my son was not there. The next day I came again and could not get in, and so then I went to my father's. 20

I had by Mr. McGuinness six children; one died in infancy about 1880, and one died about three years ago, and the following are still living:

Mary Irene, now eighteen years old.

John E., now sixteen years.

Marcella, now fourteen years. 30

Anna, nearly twelve years old.

Mr. McGuinness has no living children by his former wives so far as I know.

Mr. McGuinness told me at the time of his marriage that he had retired from business about thirteen years before that; after the marriage he did not conduct any

business, but he has kept horses, three in number, and a good deal of his time was spent in speeding them on race tracks and attending to them.

10 Mr. McGuinness owned a good many houses in the neighborhood where we lived on Clinton avenue, Jersey City. The way I know this, is from what he said to me and from his having built them since our marriage, and from people coming to our house to speak about repairs and such matters. He owned property in New York at the time of our marriage, some very valuable property; he used to tell me he was a rich man, but he did not want any one to know it.

Five years ago we were keeping house at 19 Clinton avenue, Jersey City, a three-story and basement frame house; at that time we had five children; they lived with us there, and Eddie, the youngest, was born there.

20 About that time the doctor said that I was not well, and had enough to do to take care of the baby. Eddie was then about twenty months old, and I had only one girl, and he advised my going to the country for a few days to quiet my nerves. Mr. McGuinness took me to Newmarket, to stay as I supposed for about three days, leaving the baby in charge of the girl, but at the end of three days he did not take me home, and I was soon informed that he had put the children in a convent on Grand street, Jersey City, and the baby in charge of one of the Sisters. He would not bring me home and would not let me go home, although I begged him to let me see my children; he kept me there for three months, till Thanksgiving. I saw them only once during that  
30 time, for a few hours before that, and was then ordered back.

About Thanksgiving he brought me back to a boarding house in Jersey City, and left the children in the Convent till about Christmas, and then he brought us all to our home; the children only stayed home for the holidays.

Then the children were sent back to the Convent, and stayed there till the fall of next year, when Mr. McGuinness sent all of them to Merion, Pa., to a school, and I remained home with Eddie.

My son John remained there about two years, and my other children remained there about four years, until about a year ago, when my daughter Mary had to be taken to Philadelphia to have an operation performed.

During this three or four years that they were at Merion I would see them about twice a year during the holidays, perhaps a week or so at a time, they would come home. 10

I talked with Mr. McGuinness about having the children home with us, so that I could see them. He said that I was not a proper person, and when I would ask him to take me to see them, he would say, "I cannot afford it."

When Eddie got to be about four years old and about the time of the summer vacation, Mr. McGuinness told me that we would drive to Merion. We drove from Jersey City to Philadelphia, taking Eddie with us. While on the road he said to me we had better leave Eddie at Merion, and I said no, I did not want to part with my baby, and when we were about ready to return I found that he had made arrangements with the Superior to take Eddie; I objected to him, and he said the baby was better off there than with me; the result was I had to get into the carriage and drive off, leaving my baby behind. 20

Eddie stayed there and was there about a year, and then he died there of diphtheria and heart trouble, and I did not see him during that year but once. 30

He was only sick about three days; Mr. McGuinness got word and went there and sent for me, but it was too late; I found him dead and in his coffin.

About a year after that, that is, about a year ago last March, Mary had to be taken to the hospital in Philadelphia; her father took her there, and the other children stayed at Merion.

10 He took her on there, but did not tell me that any operation was to be performed, and he telegraphed me to come on; when I got there, my first visit, she was still in the hospital just recovering from ether administered for the operation; she was several weeks more in the hospital; I wanted to stay with her, but he sent me home. Then he sent for me to come to Philadelphia again, and said that he had taken Mary out of the hospital, and I went down; they had Mary at a boarding house.

20 He wrote me to come and take care of my child, saying, "I think a mother ought to take care of her child." He sent me a registered letter with one single ticket, and one dollar. I went there and took charge of her until she was able to come home; when I found she was able to come home, I asked my husband to bring us home; he said no, we would never go back to Jersey City again.

30 In the meantime I had found out by the family where we stopped, that he told them I was a drunkard and an improper woman, and that I was a prostitute, then I thought it was well for me to make for my home, especially as they told me also that he had gone down to the city of Philadelphia to a second-hand furniture store to buy some old furniture to furnish a home for me in an old building in the outskirts of Philadelphia,—Mrs. McCarthy told me this; she said he had told her husband this; and then out of dread and fear of my husband, of him trying to do away with me, I grabbed my children and made for home. I had Mary with me and went to Merion for the other two. I took them to my father's at Newark, for protection; the next day I went to Jersey City and I found it all locked against me, and then I

saw there was trouble, and then I went to Mr. Van Winkle and stated my trouble to him.

John had left Merion about two years before this and had gone home to Jersey City, and had been living with me at Clinton avenue, so that when I went to Philadelphia I left John at home with the gardener; he was going to school here, and when I returned there was no son, only the gardener.

At this point the hearing was adjourned to Thursday, **10**  
May 17th, at 2 P. M., at same place.

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Thursday, May 17th, 1900, 2 P. M., hearing continued. Mrs. McGuinness proceeds.

By Mr. Kelsey:

Ques. Has Mr. McGuinness ever threatened to take **20**  
your life?

Ans. Yes, sir.

Ques. How many times?

Ans. It has occurred so often I cannot tell.

Ques. Can you specify by date within the last five  
years?

Ans. No special date. It was such a common thing  
during that five years.

Ques. Did you believe from his acts and words the  
last time he made these threats, that he would carry **30**  
them into execution?

Ans. Yes, sir.

Ques. And you were afraid that he would?

Ans. Yes, sir.

Ques. Did he ever treat you with violence?

Ans. Yes, sir.

Ques. Specify some of these acts on his part of vio-  
lence and give date, if you can?

Ans. I cannot remember any date as it was such a common thing and I never made any dates.

Ques. Do you remember the scalding incident?

Ans. Yes, sir; I remember it, but not the date; it was on a Sunday afternoon.

Ques. What month and year?

Ans. About two years ago.

By the Master:

10

Ques. In cold or hot weather.

Ans. In cold weather. We were living in my home in Clinton avenue, Jersey City. It arose from my not getting the gardener his supper as my husband had ordered me to do.

Ques. Why didn't you give him his supper?

20

Ans. Because just before that the gardener had called me a bat and a son-of-a-bitch and a damned ripp; and on other occasions before this the gardener had said this to me in my husband's hearing, and I asked my husband why he allowed that man to speak to me in such a manner, and he turned around and laughed at me.

Ques. After you refused to give him his supper, what happened?

30

Ans. This happened in the dining-room, and I walked out to the kitchen to avoid my husband, but he followed me out to the kitchen, and my three daughters came out with him. They were afraid of their father's anger; there and then he had taken the kettle of hot water off the stove and poured it over me; I was obliged to go to the doctor; my arm and side was scalded severely; the doctor dressed it.

Ques. The gardener and your husband were great friends?

Ans. My husband always regarded the gardener as an associate to his family; he would frequently bring out a bottle of whiskey and they would drink together.

One day, when my husband and the gardener were in the kitchen for a long time, I came down. I waited for a few minutes at the door, and when I listened I heard my husband say to the old gardener, "Tom, I am going away for a couple of days; my wife may have a man here while I am gone; that will be her father; she will take him into the barn to show him the horses, and when his back is turned towards you, Tom, I want you to strike him." The man Tom said, "What will I strike him with." "A hatchet or a good big, strong bale stick," said my husband. It so frightened me and made me so very nervous that I had to take to my bed for two or three days. This happened two or three years ago. He told Tom to put me out of the barn every time I went in; he used the word "pitch her out" of the barn. Tom said to me, "God damn you to hell, get out of here," and pinched me by the arm. **10**

Ques. What other acts of violence did your husband commit; if you know when, specify the time?

Ans. If I should be sitting up stairs, he would very silently come in and stand behind the chair, and I would give a scream when I noticed it, and he would take me roughly by the arm and put me in another room and tell me to stay in that room until he gave me orders to come out of it. It would make my arm black and blue at times; it was a common thing for him to come in and push me against the furniture. **20**

Ques. Would he be in a violent rage?

Ans. Yes, sir; and for what I don't know.

Ques. What were his actions?

Ans. He would come in to me and say, "My God, damn you to hell," pull his hair and slam the windows down; this was within the last five years. I never could say he was drunk that I could see, but he would come in right after enjoying his fast horses on the track, and treat me in that way. **30**

Ques. Did you and he for the last three or four years keep the same room?

Ans. I kept the same room and bed with him during these years, down to the time we went to Philadelphia, except times when he would put me out. He would come home perhaps of an afternoon, and rush up stairs where I was and go to the closet and throw my clothes out and send me to another room; and after that he would tell me to go back to my own room; and that is the kind of life I have been living with him. One time, about four years ago, he asked me to wash his feet and cut his toe-nails, and when I refused, he threw me on the bed and choked me, and my throat was black from the marks of his thumbs. He used to compel me to do this a good many times, and told me it was a wife's duty.

10

When I was not able to do this just near child-birth, I did it from fear.

Also when I was nursing my babies he would tell me that a glass of cold water and a piece of bread was good enough for me.

20

He has at times come into my room when I was lying on the bed nursing my baby—I might be in a doze with my child at my breast, and he might drop something heavy, like the soap dish, on the floor; this would startle me, and I would scream from fright, and the baby would cry very bitterly, and in its crying he would demand me to leave the child there and accomapny him to another room for marital purposes, and he would tell me that was the least he might have and that it was a wife's duty; I don't think he was tipsy at these times. He was a drinking man and always had his flask of whiskey in his pocket, but he knew what he was doing all the time.

30

He was very brutish in that way.

Ques. In what way?

Ans. In the way of sexual matters; and then if I did not have a child for two years he would be very ugly with me and tell me I was played out. I never was allowed any friends to come to my home nor I was never allowed to bid good-bye to a neighbor. I had some lady

friends come to spend an evening with me once about four years ago, and he opened the door for them and he asked them who they wished to see, and they said Mrs. McGuinness. He told them Mrs. McGuinness had no time to see friends, as she had her household duties and children to see to. He brought them into the parlor and received them himself for a while. I know this, because I heard their voices upstairs, and what he said at the hall door I could hear.

They were the Miss Daltons.

10

After I was through with my day's work and would step out into the garden to take a pear or peach, thinking he was not around, as I would not be allowed to touch them if he was there; on two or three occasions he caught me picking a peach off of the tree; he damned me and told me to leave them peaches down, and that they were not for me, but for his friends. It was his constant orders to me never to touch anything he planted. He would not let the children touch them, unless he ordered them to get some for himself. He has frequently told me that my home was not mine, but it was my duty to keep it in order, and when he died my children and myself would all go to the poor-house, and that all his money would go to outsiders; this was a common thing for him to say; also at the table, if I were to take an extra slice of bread or a potato, he would say, "Oh, my God, you all want to be in the poor-house."

20

Shortly after my confinement with Edward, the doctor was there and told Mr. McGuinness in my presence that I required a great deal of nourishment, and when the doctor went out he came to my bed and said, "To hell with the doctor, you will get no nourishment."

30

He has said to the servant girl that we had three or four years ago, "You had better sit down, you are tired; let Mrs. McGuinness wash the dishes."

While in Philadelphia, just the day before I came away from Philadelphia with my children, I asked him for a

little money to buy a few thing which I needed, and he said no, he had no money to give me; at the same time he had just returned from Connecticut, having a fast horse there on the track; he told me that. I very playfully went over to him and was putting my hand in his vest pocket when he turned around and struck me, and at the same time pushed me back against the bed and threw me with great violence on the bed. He done it with such force that his hand struck the soap dish and knocked it to pieces.

10 He at times during the last two or three years would say to me, "I am tired of you and you had better go back to your father; the children are mine and not yours, and I will do as I like about them."

If he was out driving with his horses the children would come to me and say, "Oh, mamma, come and play and sing for us, papa is out," and one child would stay at the door and watch. Then when they would see him come up the road with his horses, they would say, "Oh, mamma, let us run upstairs, here comes papa." He  
20 would then rush into the house and up the stairs and say, "My God, what are you all doing up here?"—the children would all be trembling and shaking, and say, "Papa, we are not doing anything at present," and then he would order them to go and dust and sweep. He would say to the children, "You must not love your mamma, but me. I pay for your schooling."

As to my clothing, I have not had a nice or respectable dress for eight or nine years; that is, I have on a green dress which I got about nine years ago he told  
30 me not to wear, but I could look at it; it is a dress that had been worn before; he got it in a pawn office in Paris as he told me.

During these eight years I have frequently asked him for money for clothing; except for the last five years he has given me a dollar a week, and thought I must clothe myself on that. When I would ask him to buy

me a house-dress he would bring home some crazy garment. I was always clothed with second-hand clothing. The black dress I have at home was the only other dress he has got me in the last nine years.

In presence of the children he often swore at me and damned me, making violent gestures and pulling his hair. He has often called me a bitch and a dirty low vagabond when we were alone together. Most of his cruelties and bad language to me were when we were alone.

Since I came from Philadelphia with the children I have had no communication from him nor any contribution to the support of myself or the children. 10

Among the persons present at my marriage with Mr. McGuinness were Mrs. Blondina Sanders; she was then unmarried and her name was Blondina Radell; also my father and mother.

Mr. McGuinness told me that he had retired from business some years after his marriage; I have never known him to be in any business since our marriage, unless it were owning and running fast horses. He kept three horses at the Jersey City residence, while I was living there; he called them thoroughbreds. He told me that one horse, called "Gertrude G.," he valued at from eight to nine thousand dollars; this was about two years ago. 20

The greater part of his cruelty was during the last few years and since the children were born; it seemed to run in great part towards starving me. He always complained about things to eat and refusing me and denying me assistance in housekeeping. I had often to do the washing and scrubbing. If even in doing this work I should make an extra cup of tea and he should happen to come, he would damn and curse me, saying that he could not afford it. 30

Ques. What effect had his conduct upon your health?

Ans. It made me very nervous and depressed. I was always latterly in dread and fear of him on account of

his violent language when he would meet me in the house, and his refusal to let me eat my meals in peace. From being a healthy woman in my youth I became very nervous and thin and much impaired in general health, and almost fell into a condition of nervous prostration from the dread and torture of this mode of life which I have described and from want of proper nourishment. I have become a great deal better now, since I have been living away from him, although I have had so little to live on.

**10** Ques. The bill charges that in the winter previous an old man in your husband's employ threw you down the embankment in the grounds of your residence, and when you remonstrated with your husband about it he only laughed and retained the man in his employ. What is the correct statement about that occurrence?

**20** Ans. That matter is not quite correctly stated in my bill. The old man was the gardener and hostler and the baby was out playing in the yard. I heard it scream and ran out and found the old man swearing at the child, and he had it by the arm and was pulling its toy out of its hand. I ran towards them and grabbed my child, and as I did so the man took hold of arm and threw me down the bank, which was full three or four feet high; I fell and rolled down and I was hurt and bruised. The old man at the same time was calling me vile names and swearing. When I told this to my husband that evening he laughed and treated it as a good joke, and did not say anything to the man about it when the man came in to his supper, and retained **30** him in his employ the same as before. The old man after that time has often cursed at me and called me the names I have mentioned before, the same as he had often heard my husband call me, and which I have stated above, and he did this in presence of my husband repeatedly. My husband never reprovved him for it, but merely smiled at it. This baby that I have just spoken

of was Eddie; he died the sixteenth of March a year before we went to Philadelphia, which would make it March, 1898, the year that Eddie died, and this garden occurrence took place the previous spring before he was taken to the convent, where he stayed several months and died there.

In regard to dresses I remember now that he brought me once, at the same time as the green dress, a blue silk dress which he called a reception dress, but which I could not of course wear on the street; it was also a second hand dress. 10

Several times when I would sit down in the yard to rest and he would come along, he would order me to go into the house and go to work, with an oath, and would take me by the arm and compel me to go in.

He had quite a library of books, and when I would ask him for a book to read between times of my work, if he let me have it he would give me only a certain time to read it in, when it would have to be returned and locked up.

I was a slight woman and am so still; my weight was when at home the last year or two before the separation about 110. My husband was a large and powerful man weighing about 200 pounds, and very coarse and loud in his manner besides his habitual profanity. 20

Mr. McGuinness never provided me with sufficient necessary food and clothing. It was his custom to buy what he wanted for his household use without consulting me, even down to thread to be used in sewing. Very often I and the children have been hungry and weak from having nothing but coffee and bread for breakfast, and from his allowing meat only once a day and not enough at that. 30

When I was nursing my children and was in need of some nourishing food or drink and was suffering great pain from lack of nourishment I would ask him for something. He would refuse them and say "drink

water, that is very good." This was of course a number of years ago, but was simply a part of his confirmed course not to allow sufficient food and nourishment for the family.

Ques. The bill states an occurrence as happening about two years before it was filed, when he seized you violently and choked you; state what that occurrence was.

10 Ans. That was at a time about three years I think before we went to Philadelphia; he was lying in bed in the middle of the day, and I passed through the room and he ordered me to wash his feet or something of that kind, which was repulsive or degrading to me, and I refused; then he jumped out of bed and grabbed me and threw me on the foot of the bed and pressed his thumb on my throat until I was nearly suffocated, and then he got up and walked off.

Ques. Did you drink any beer or liquor as a habit or otherwise during your stay at Philadelphia, or before or since?

20 Ans. At Philadelphia I never drank any beer or liquor except when Mr. McGuinness, he requested me to take a glass of lager with the family where we boarded, and I never took a second glass at the same time. Since I came from Philadelphia, and at my father's house, I have followed the same course, very seldom taking a glass of beer, which my father would offer me when coming home from teaching, and when he thought I looked faint and tired. Before we went to Philadelphia I did not drink at all at my home or elsewhere, except as Mr. McGuinness would urge me occasionally to take a glass of lager; before retiring he would have liquor for himself, and would urge me to take it, and I would always refuse. I did not like it.

30

MARY ELLEN MCGUINNESS.

Subscribed and sworn to before me, at Jersey City,  
this seventeenth day of May, A. D. 1900.

W. B. WILLIAMS,  
Master.

Adjourned to May 22d, 1900.

MARY IRENE MCGUINNESS, being duly sworn, deposes **10**  
and says:

I am the daughter of Thomas and Mary E. McGuinness, parties to this suit, and am eighteen years old.

Ques. Your mother says in her testimony that your father poured hot water on her from a tea kettle; were you present on that occasion?

Ans. Yes, sir.

Ques. When was it, during the summer vacation?

Ans. When we were all home on a Sunday afternoon. This old man Tom, he was the gardener in my father's employ. He was always a heavy curser. He used to get his meals out, not at home. This afternoon it was the servant girl's day out, and my father commanded my mother to get 'Thomas' supper. Of course she said it was not usual, and she told my father that Tom called her out of her name, so finally he became very violent and angry, and my mother went into the next room, which was the kitchen, and he followed her, and then in his anger he took the kettle up which was on the range and poured the hot water over her arm, which scalded her side and arm. My mother screamed and went right out to the doctor's alone. It was about a block and my father did not go with her. He went somewhere, I think to the stable for the man. I could see the scalds on her arm and wrist before she went to the doctor's and she came back with her arm all bandaged up. **20**  
**30**

I took my first communion at St. Peter's Church, May 23d, 1895, and have been instructed in the doctrine of the Roman Catholic Church.

I have often seen my father shove my mother around the house in his angry moods.

Often when we would be home from school on a vacation she would ask him to let us stay home, and he would get up and leave the room and on his way out give her a push; that made him angry.

10 Ques. What, in your judgment, was the reason he wanted you children kept away at school?

Ans. I really think he was jealous of the affection we had for mamma. If we showed any affection when he was present he would send us to bed or do something.

My mother could play and sing, and often when he would be out she would entertain us with singing and music, but when he came we would leave all the enjoyment; we would have to stop because we knew it would arouse his anger, or if it was night he would come in and put the light out. We learned this, because very often  
20 when he did come in and find us enjoying ourselves he would be angry and tell us to see if we didn't have any work to do. He thought we had always to be working, washing dishes, sweeping or mending, some kind of work; he would say to us—he would command us to go to work in a commanding tone. Sometimes when he would be away on the race track, as we supposed, and would come home, he would be in a rage, as if something had not been right. He would go around rubbing his hands and putting his hands through his hair, and if we were sitting  
30 around he would say, "My God! have you nothing to do?" I have often seen him shove her by the arms around, and have seen her arms black and blue. He was always scolding and finding fault with her and the whole family.

I have heard him call her a damned liar, and he would tell her to go to hell, and call her a rip.

This would be when sometime she would ask him to keep us home from school, or if she would ask for money to go shopping with us. He always told us that when he died we would all go to the poor house, and somebody else would get his money. He would scold me as well as the others; I was not afraid he would strike me, but he often told me that if I did not do as he said he would put me in some institution "where you won't get back again."

I have been an invalid for the last eight years, sometimes not able to go out; just now I am much better. 10

While we were in Philadelphia there was a good deal of trouble between my father and mother in this way. He would tell her one day he was going some place with her and put the children away, and the next day he would tell her some other arrangement.

Most always he was talking about separating us, but finally he did say that he was looking for some lonely place in the country where he would take us for a while. His reason was, as far as I know, that he wanted to get us away from anyone else; he did not want us to see anyone. 20

In Jersey City he was always objecting to friends coming to see mother or ourselves; he did not want any friends to come. I cannot name any particular occasion, but he did not like up to have any company at any time; he would tell us not to bring anybody home. And if the children did bring any other children home he would always insult them or treat them roughly. Even when I was home at vacation he did not want any one to come to the house to see me or my mother. 30

When he would come to the convent and we would ask him to bring mamma he would say he cannot afford it.

This was at either convent where we were, both at Jersey City and Merion.

Ques. Do you remember as far back as the time when he took your mother out to Newmarket for several days,

and then took the children to the convent when she was away?

Ans. Yes, sir.

Ques. What was the matter with your mother?

Ans. General decline; she was working too hard.

Ques. Was she taking any stimulants?

Ans. No, sir; not that I know of; the doctor said she needed a change of air.

Ques. Did she take care of the children at that time?

10    Ans. Yes, sir; we had one girl, but mother was taking care of us. Edward was not then two years old. My mother had to take the whole care of him. When we had a girl she would be busy around the house.

I had hip disease, and just about then the spinal disease began to develop. The hip disease was cured, but although I was the oldest I could not do much of anything to help.

20    Both while we were at the Merion convent, and also before that, my father used to tell us that our mother was a bad woman; he used to tell me that my mother was out at nights and used to come home early in the morning with lots of men with her, and that she was a drunkard. I never saw her under the influence of liquor, and when I was at home I never saw anything of men visiting her or of her being out at night; what he told me never shook my faith in her in the least, for I could see that he grew more jealous of her as long as he lived. I knew he told me that to get me hostile to my mother. He would tell me that she used to get letters from men and answered them; I didn't believe it at all. I have heard him

30    speak ill of her to other persons; I heard him speak so to Mr. and Mrs. McCarthy, where we boarded at Philadelphia, before she came there. He used to tell them that she was a drunkard and that he was sorry that his children had such a mother, and he told them that she was out nights, too. He would be talking all the time when I was with him finding fault with her. He would

say these things about my mother in the presence of us children, including my brother John. We all heard him say these things but none of us believed them. He would tell me repeatedly that she was not fit to raise a family; that she could not cook or do anything, and was very ignorant. I knew different myself. I think he would repeat these things so often to me because he found he could not shake my faith in her. I can remember very well how my mother has been dressed for the last nine or ten years, and what she has said about it is strictly so: He has never got her anything but second-hand dresses, and only two of these in that time. 10

Since we came away from Philadelphia with my mother, as before stated, my father has not sent any letters to any of us children or my mother either, nor furnished us with any assistance towards our living.

MARY IRENE MCGUINNESS.

Suspended examination of this witness and adjourned to May 22d, 1900, 3 P. M. 20

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McGuinness vs. McGuinness, examination of witnesses continued, 3 P. M., May 22d, 1900.

DR. JOHN E. CORRIGAN, being duly sworn, on his oath saith: I have been a regular practicing physician in Jersey City for eight years last past; I know both parties to this suit and have rendered medical services to Mrs. McGuinness. In August, 1898, she called at my office, which is about a block and a half from their house, and showed me a scald on her arm and chest. It was a superficial scald; I treated it at the time, dressed it and prescribed for her. I only saw it that once. It covered about one third of the surface of the forearm, and about the size of the palm of your hand on the chest. I don't 30

10 recollect which arm it was—she told me at the time how it was caused. She said her husband had poured or thrown a teapot of scalding water over her because she would not make tea for the stable man—she seemed to be hysterical. About a year after I was attending her for an abscess at the house and her husband was present, and she accused him of this scalding amongst other cruelties which she alleged. He admitted that she had been scalded, but said that it was done by her trying to take away the tea pot from his hands. She flatly denied this to him and said that he had thrown the hot water at her.

In January, 1899, I attended her for an abscess several times, probably eight or ten times at the house—he objected to my continuing my visits to her, on the ground as he said that he was too poor—she needed medical attendance at the time and I informed him so. He would frequently speak ill of her to me; he has said that she drank and that she had improper relations with another man. I do not believe she was a drinking woman and have never seen her under the influence of liquor.

20

JOHN E. CORRIGAN, M. D.

Subscribed and sworn to before me, at Jersey City, May 22d, 1900.

W. B. WILLIAMS,  
Master.

Hearing before me was suspended at this point to November 16, 1900, at 11 A. M.

30

Hearing continued November 16th, 1900, 11 A. M.

CLARENCE KELSEY, being duly sworn as a witness on part of complainant, on oath saith: I am an attorney of the State of New Jersey, and reside in Jersey City, in said

State, and have had charge of this suit for Mr. Marshall Van Winkle, solicitor of complainant.

I have made a search of the records of Hudson county for the purpose of ascertaining the property of which Mr. Thomas McGuinness is seized.

I find by examining the records of conveyances to and from him, that it appears by the records that he was, on the eighth day of November instant, seized of the following parcels of land and premises in Jersey City, Hudson county, in this State, viz. :

A parcel of land conveyed by Andrew Reilly, single, to the said Thomas McGuinness by deed dated March 28th, 1888, recorded July 10th, 1891, in Book 532 of Deeds for Hudson county, page 600, and therein described as follows :

All those eight certain lots or parcels of land, situate, lying and being in Jersey City, in the county of Hudson and State of New Jersey, which on a certain map of property of James M. Borrows, Bergen, Hudson county, N. J., 1867, made by J. W. Soper, surveyed (being the second map filed by said Borrows), which map is on file in the office of the Clerk of said Hudson county, are known and distinguished as lots Nos. 20, 21, 22, 23, 42½, 41½, 40½ and 39, in block numbered 100, as laid down on said map, and being more particularly described as follows :

Beginning at a point in the southwesterly side of Clinton avenue, at its intersection with the northwesterly line of Grand (formerly Ocean) street, and from thence to run northwesterly, along said avenue, one hundred and fifty (150) feet to a point; thence southwesterly seventy-five feet and forty-two hundredths of a foot (75.42) to a point; thence westerly twenty-five (25) feet to a point; thence southerly eighty (80) feet to the northerly line of said Grand street; thence easterly, along said Grand street, one hundred and seventy-five feet to Clinton avenue, being the point or place of beginning.

10

20

30

The parcel of land conveyed by Judith Tormey to the said Thomas McGuinness by deed dated June 11th, 1885, recorded July 10th, 1891, in Book 532, page 598.

10 Beginning at a point on the southwest line of Clinton avenue, distant one hundred feet southeast from the corner of the same and Madison avenue; thence southwest and parallel with Madison avenue two hundred and ten feet; thence southeast at right angles to Madison avenue one hundred and twenty-five feet, more or less, to rear of lots fronting on Ocean street; thence easterly about ten-feet; thence south two feet; thence easterly one hundred and seventy-five feet, more or less; thence northeast at right angles to Clinton avenue seventy-five feet and forty-two hundredths feet to Clinton avenue; thence northwest along said avenue two hundred and forty-three feet one inch to place of beginning.

20 The two lots of land conveyed by Margaret G. Wood and James Wood to said Thomas McGuinness, deed dated July 3d, 1889, and recorded July 5th, 1889, in Book 482, page 412.

30 All those two certain lots or parcels of land and premises situate, lying and being in Jersey City, in the county of Hudson, and State of New Jersey, which on a certain map, entitled map of the estate of James Henderson, deceased, Jersey City, on the Jersey City and Bergen Point Plank road, made by Onderdonk & Digby, engineers, 1874, and filed in the office of the Register of Hudson county, are known and distinguished as lots numbered ninety-seven (97) and ninety-eight (98), excepting and reserving as much from the front of said lots as has been taken for the widening and extension of Arlington avenue, being a part of the same premises conveyed to said Margaret Wood by Margaret Henderson, et al., executors, &c., by deed dated April 1, 1875, and recorded in Lib. 2523 of deeds, for Hudson county, page 255, &c.

I find on said records of Hudson county no mortgages given by the said Thomas McGuinness on any of said property nor any judgment or other lien against him except an attachment to be mentioned.

Nor do I find any mortgages existing on said premises given by previous owners.

The records of said county show an attachment issued out of Hudson County Circuit Court, July, 1899, Thomas McLaughlin against said Thomas McGuinness as a non-resident debtor; the amount sworn was \$5,100. Thomas F. Bedle, attorney. No other creditors having entered any rule admitting them as applying creditors, three defaults have been entered but no judgment has been taken. John Dennin has been appointed auditor in said attachment. **10**

I find on the record sundry leases by said McGuinness for portions of said property as follows:

As to the first tract Thomas McGuinness to Frederick G. Glaser, of the corner of Grand street and Clinton avenue, dated May 26th, 1897, recorded May 28, 1897, book 672, page 368, for the term of four years eleven months, at the yearly rental of \$1,000. It covers the three-story frame building on this corner, with the bowling alley and pool room and fixtures extending under adjoining house. **20**

I have been informed that Glaser has moved out and that another tenant is occupying the premises and under what arrangement I do not yet know.

There are two large tenement houses fronting Grand street, adjoining above corner, the bowling alley and billiard room rented with the corner extend under these, but the upper two stories are rented separately. **30**

There are three other houses on the first tract above mentioned; they are small brick dwellings fronting on Clinton avenue; I do not find any lease by McGuinness for them.

As to the second parcel, I find on record a lease by Thomas McGuinness to Catharine Murphy, for the

whole of the second parcel above described, dated August 1, 1899, recorded August 18, 1899, book 732, page 112, for the term of twenty years, at the yearly rental of \$1,300. She is a sister of said defendant, McGuinness, and moved at the time said lease was given from Newark to Jersey City, with all her furniture.

10 This parcel is improved, having on it a number of dwellings. One of the dwelling houses fronting on Clinton avenue is stone and brick, and four fronting the same avenue are frame; these are rented to different families.

There is also a house in the rear of this tract, formerly occupied by McGuinness and his wife, the complainant, and his children, and it has a barn near it.

This Catharine Murphy moved into this house in the summer of 1899, shortly before the date of the lease to her, the defendant having gone away, but leaving his furniture there and his wife's clothes were also there.

CLARENCE KELSEY.

20 Sworn and subscribed before me at Jersey City, November 16, 1900.

W. B. WILLIAMS,  
Master.

WILLIAM MAXON, being duly sworn on part of complainant, on oath saith:

30 I reside in Jersey City, and am thirty-one years old, and my business is an agency for managing, selling, and renting real estate in Jersey City, and fire insurance, and am engaged in that business for over ten years. I am acquainted with the McGuinness property at Grand street and Clinton and Madison avenues, Jersey City, referred to in the deposition of Mr. Kelsey. My office is only a couple of blocks from there, and I am also well acquainted with the rentals and value of business and

dwelling property in that vicinity generally. I have in my business as agent had occasion to rent out both business and dwelling property of the general character of the McGuinness property, and have also acted in the sales and purchases of such property in the vicinity.

In regard to the value for sale of the property contained in the two first deeds referred to in Mr. Kelsey's deposition, which taken together would be bounded by Grand street and Clinton avenue, on two sides, and numbered one and two in the annexed diagram, I value this whole property at fifty-eight thousand five hundred dollars. My judgment is that this amount could be realized for the property within a reasonable time, say one year, by offering it in such parcels as might be considered saleable, and on usual terms, at public or private sale, as the case might be. 10

As to the two lots on Arlington avenue, contained in the third deed referred to by Mr. Kelsey, they are worth fifteen hundred dollars each.

I do not know what the several buildings on Grand and Clinton avenues are actually rented for, but I can give their rental value; that is, what I am satisfied could be obtained for them at the proper renting season if then offered for rent. 20

(1) For the corner building, including the bowling alley and billiard room, extending so as to include the basement and first floor of the adjoining buildings, the fair rental value is \$1,000 per year.

(2) The dwelling apartments in the two tenement houses on Grand street are arranged for eight families; that is, two families on each floor of each house, meaning the second and third stories. These eight apartments I think should bring in together at least twelve hundred dollars per year. 30

(3) The three dwellings on Clinton avenue, near the above, I would value as follows: No. 7 and 9 Clinton avenue are brick and should bring three hundred dollars per year for each.

No. 11 Clinton avenue is brick and frame and should bring three hundred and thirty-six dollars per year.

10 (4) Next the brick dwelling, with frame wing, Nos. 23 and 25 Clinton avenue, called the homestead and including with it a large front lawn on the southerly side and in the rear thereof, and also the small frame dwelling and barn at the rear of the tract, including all the land in tract 2 on the diagram, except the customary yards for the three small houses, I value at not over nine hundred dollars per year. Taking the large proportion of land with it, this rent is proportionately low for the actual selling value of the property, but the extra land does not count for much in the rent.

(5) The three frame dwellings No. 27, 29 and 31 Clinton avenue, with enough land for an ordinary yard for each, would rent for \$360 per year for each house.

20 As to the deductions from the gross income of this property, which was given above, amount to five thousand one hundred and sixteen dollars (\$5,116) per year, to cover taxes, water rents, insurance and current repairs on property of this class in order to ascertain the probable net income, our usual custom, based on the experience with such property, is to estimate that the owner can realize about or nearly five per cent net income on the valuation of the improved property, after paying these current charges. This property is fairly well situated for renting and is pretty well occupied, and see no reason why it should not produce that proportion of income which would be nearly three thousand dollars per year.

30

WM. MAXON.

Sworn and subscribed before me at Jersey City, December 9th, 1900.

W. B. WILLIAMS,  
Master.

ST.

70 ft.

CLINTON  
HALL

175

GRAND

(1)

LIB. 532 . 600

8

25

75.42

7 9 11

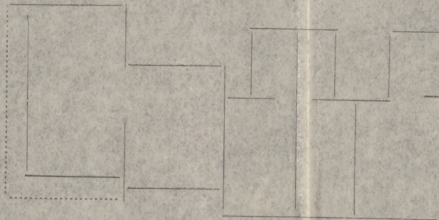
393 ft. 1 in.

(2)

LIB. 532 . 598

125 ft.

210 ft.



100 ft.

23 25 27 29 31

39

60 ft.

CLINTON

AVE.

60 ft.

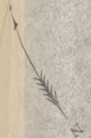
MADISON

(3)

2 Lots.

LIB. 482 . 412

AVE.



MADISON

AVA

AVA

CLINTON

GRAND

ST

HIGH  
CHURCH

132 ft

101 ft

P.M. 233 - 208

(S)

P.M. 233 - 000

(T)

51.5 ft

202 ft

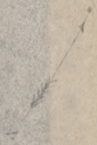
P.M. 488 - 413

(3)

100 ft

80 ft

60 ft



SCALE: HALF INCH

Hearing continued December 21st, 1900, at 10 A. M., in presence of Mr. Kelsey, appearing for Mr. Van Winkle, solicitor of complainant.

MRS. MARY MCGUINNESS, recalled by the Master, deposes and says:

I am now living at 73 South Seventh street, Newark, in an attic where I had to take three rooms for myself and three daughters, which was the best I could afford. When I testified before in this cause, last May, I was living at my father's house, in Newark, with my three daughters. He is a poor man, earns his living by keeping a small candy store and has an invalid wife and two small children, and was not able to continue helping me, and I had to move to where I now live last October, and I am receiving aid from the poor-master in Newark, in the shape of bread and coal, and am trying to earn my way by teaching music. I had to take Marcella and put her to work in Bamberger's dry goods store, where she earns \$2.50 a week, which helps to pay our rent. 10

I do not know where my son John is, but I suppose he is under his father's care somewhere. 20

In regard to the statement in the depositions of Mr. McCarthy, taken at Philadelphia, that Mr. McGuinness had told him, McCarthy, that he, McGuinness, had made the little girls dance for the amusement of his friends, I can only say that I know nothing of any such occurrence having ever actually taken place. It it ever did take place the children were a good deal of the time in such dread of him that they might not have told me about it. 30

As to Mr. McGuinness's assertions to Mr. McCarthy that I was in the habit of drinking or unfaithful to him or sought improperly the society of other men, or used vile language in the presence of my children, there is no truth whatever in these remarks of Mr. McGuinness.

What Mr. McCarthy testified to in his deposition in reference to the conduct of Mr. McGuinness at their

house, in Philadelphia, in refusing me sufficient food to eat at the table and countermanding my requests for it and refusing to get a doctor or medicine for me when ill and other course and violent conduct towards me is entirely correct.

MARY ELLEN McGUINNESS.

Sworn and subscribed to before me, at Jersey City, December 21st, 1900.

10

W. B. WILLIAMS,  
Master.

Adjourned to December 24th, 1900, 10 A. M.

December 24th, 10 A. M.

20 MRS. BLONDINA SANDERS, being duly sworn as a witness on part of complainant, on oath says:

I am the wife of John Sanders and reside at Vailsburgh, N. J. My maiden name was Blondina Radell. I was married about nine years ago to Mr. Sanders; I was then a widow; prior to that I was married to Edward H. Goeken about seventeen years ago. I was single at the time of Mrs. McGuinness's marriage to Thomas McGuinness in 1879. We were school girls together; I was then living in Newark, at 399 South Orange avenue, and was present as a witness at the ceremony of her marriage to Mr. Thomas McGuinness at St. Joseph's Church, a Roman Catholic Church, in Newark, and saw the ceremony performed according to the usages of the Roman Catholic Church.

30

So far as concerns their living as husband and wife after their marriage, I only know it from report and from the fact that he came with her to dine at my father's house after they returned from Europe, two or three years

after the marriage. I did not visit her at her home after their marriage, because after they returned from Europe he did not bring her to call at our house, and when they came to dine there the invitation for us to visit them was only from Mrs. McGuinness and he did not join in it.

Ques. What have you observed with regard to the comparative state of health of Mrs. McGuinness at the time of her marriage and at a time say two years ago?

Ans. At the time of her marriage she was a strong, healthy young woman. When I saw her about four years ago at the time of my father's death she looked much worse, nervous and broken down; in fact, we have always thought that from a time two or three years after her marriage she looked as though her health was being impaired, and looked unhappy, but she made very little complaint. 10

After she came away from Philadelphia, about a year and a half ago, she called at my husband's house. I saw her and thought she looked the picture of distress. On being questioned by me she told me some of her troubles at that time. 20

BLONDINA SANDERS.

Subscribed and sworn to before me, at Jersey City, this 24th day of December, A. D. 1900.

W. B. WILLIAMS,  
Master.

Adjourned to December 27th, 1900, 10 A. M.

30

PATRICK ANDERSON, a witness produced on behalf of complainant, being duly sworn, on oath says:

I am sixty-five years old, and reside at 334 Warren street, Newark, N. J., and am the father of the complainant in this cause. I was present at her marriage to

the defendant, Thomas McGuinness, on the nineteenth day of July, 1879, at St. Joseph's Church, in Newark, N. J., by the Rev. J. P. Callaghan, a priest of the Roman Catholic Church; I do not state the precise date from my own recollection, but from the certificate which my daughter has, but I remember that the marriage was twenty or twenty-one years ago.

10 I visited them at their house in Jersey City, where they were keeping house several years after their marriage, and I saw Mr. McGuinness there with his wife. One of the children had been born at the time I visited them, that is the oldest one, Mary Irene; she was born at my house. He left her at my house and went off and was gone eight or nine months; the child was born somewhere about two months or so after Mr. McGuinness left his wife there, and the child was several months old after he came. When he came back he did not tell me where he had been.

20 My daughter attended school at St. Vincent's Academy at Newark and graduated there.

I do not know of my own knowledge much about my daughter's life with her husband. She has told me her troubles but I have not seen Mr. McGuinness since about five years ago.

30 She was a healthy girl when she was married. When she came from Philadelphia back to my house about a year and a half ago, her appearance scared me, she looked so thin and weak, she was very much changed. She lived with me for fifteen months after she came from Philadelphia, she and the three daughters; Mr. McGuinness did not assist at all in supporting her and she had no means whatever. Then she got friends to help her to get rooms, where she now lives. She felt she was too much of a burden on me. I own the little house where I live with my wife and two children, and keep a small candy store; my wife is a cripple in the feet with rheumatism, and I could hardly afford to support my daughter and her children.

My daughter, Mrs. McGuinness, was properly brought up as a Christian girl, and she had always behaved herself before her marriage and since, so far as I have ever known or heard; during the last year and a half, since she came to Newark to my house, she has behaved herself with strict propriety, and has not had or frequented any improper company or hardly any company at all; none except her old friends.

She has not drank unless when I would offer her occasionally a glass of beer when I thought she was faint and tired. Her husband has never complained to me of her conduct in any respect. 10

During last winter she would go out in cold weather to give lessons with hardly a haporth to put on her shoulders. I have lived where I now do at 334 Warren street, Newark, for more than thirty years.

PATRICK ANDERSON.

Subscribed and sworn to before me at Jersey City, this twenty-seventh day of December, A. D. 1900.

W. B. WILLIAMS,

Master. 20

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MARCELLA MCGUINNESS, being duly sworn, on oath saith:

I was fourteen years old last March, and am one of the daughters of Mr. Thomas McGuinness metioned in this suit, and am living with my mother in Newark, as she has stated. I have been instructed in the religious doctrine of the Roman Catholic Church, and have been confirmed, and know that when sworn to testify I must tell the truth or suffer the consequence of evil doing. 30

Ques. What was the occurrence about your father making you dance, which Mr. McCarthy says your father told him about?

Ans. Well, it was one time when I was home on my vacation from the school at Merion with my sisters. My father one time wanted me and Anna, my younger sister to dance before some company at the house, a dance which I thought was shameful and I cried and would not do it, but the little sister did it; and when I cried about it the visitors did not want me to do it; this was a dance which we had seen the servant girl do, it was a funny high-kicking dance.

10 At another time my father took us two children to the race track, and took us into the bar room there and wanted us to do the dance in the bar room, and I cried, but he made us do it, and then he went out and treated some women on the stand to beer.

He used to try to force my mamma to drink, but I never saw her drink. He used to take me out in the carriage and tell me my mamma was a drunkard, and he told me if I did not say she was a drunkard he would throw me out, and he would stop the carriage as though he was going to throw me out to frighten me.

20 One time at home he tried to force mamma to take a glass of beer and when she wouldn't he got angry, and threw the beer down on the parlor carpet.

I have seen him push her around very roughly and I have seen him talking very roughly to her and she was crying.

Ques. More than once?

Ans. Oh, yes, sir.

30 My sister Anna is attending the public school in Newark. I went also to the public school; we commenced the fall of the year that we came from Merion to Newark, with my mother, and I continued till I got employment at Bamberger's, the latter part of this last October; I had to do that so as to help my mother, and I earn \$2.50 a week.

My mother is very kind and good to us children and we would like to be with her.

MARCELLA McGUINNESS.

Subscribed and sworn to before me at Jersey City,  
this twenty-seventh day of December, A. D. 1900.

W. B. WILLIAMS,  
Master.

MAY IRENE MCGUINNESS, continued.

I never knew of my mother ever keeping any bad company or conducting herself improperly in any way. What I have heard my father say about her and what he said to the McCarthy family about her in Philadelphia is entirely false. I can speak about this from my own recollection while we were home on vacations from the school at Merion, and for several years before we went there when I was constantly at home with my mother after we were at the St. Aloysius School and have been constantly with her for the last year and a half since we came from Philadelphia, during which time I have been constantly with her. 10

In saying that my father has not sent any letters to any of us children, I ought to say that I have received two letters, which I now produce, from Mr. George M. Philips, of Westchester, Penna. The first letter is dated August 26th, 1900, and the second September 5th, 1900. I showed them to my mother when I received them. No answer was sent to these letters. They are addressed to me at 334 Warren street, Newark, N. J., showing that Mr. Philips has received information of where my mother and us children are living with my grandfather. 20

(The letters with their respective envelopes are offered in evidence and marked Exhibits P1 and P2, respectively.) 30

The reason we did not answer the letters was that this suit was going on for one thing, and that we did not want as children to be in our father's control if we could stay

with our mother, and these letters were plainly written under his direction as part of the plan which he has always been pursuing of trying to separate us from our mother.

Ques. Why do you speak of his plan to separate you from your mother?

10 Ans. Because he often told me, when I was at home on vacations from Merion, and even before that, that it would be better if she would go home to her father's and we children stay with him we could get along better without her and she could make her living by teaching music, and also by sending us children away to school which she did not wish; she would beg him to keep us home.

MAY IRENE McGUINNESS.

Subscribed and sworn to before me this 27th day of December, A. D. 1900.

W. B. WILLIAMS,  
Master.

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JOHN B. CALLARD, being duly sworn on part of complainant:

30 I reside in Jersey City, and am seventy-two years of age; during the year, from May, 1898, and May, 1899, I resided with my daughter at a house on Clinton avenue near Grand street, which we rented from Thomas McGuinness, the defendant, through his agent, Mr. Van Winkle; it was on the same tract of land with the house occupied with Mr. McGuinness, and there was a gate in the fence dividing the yards from the grounds connected with McGuinness's grounds. I was acquainted with Mrs. McGuinness and with all the children and saw Mrs. McGuinness nearly every day during that year. I heard during that time that her husband had accused her of drinking to excess, which led me to take more notice per-

haps than I otherwise would have done; during that whole period I never saw her in any way under the influence of beer or liquor or the least suspicion of it. She has occasionally when in my house, where she was often, take a glass of beer or part of a glass with us at our invitation, but no other liquor; I never saw her take more than one glass at a time and she would hardly drink that.

As to his other statements about her improper conduct with regard to men, I don't think it was possible for her to have done it for her children was there most of the time and for myself I can only say that I never observed in her conduct or appearance anything but what was ladylike and well behaved. I was frequently in their house and have been there when Mr. McGuinness was there, but never saw anything objectionable to his wife at these times. 10

JOHN B. CALLARD.

Sworn and subscribed before me, at Jersey City, December 29th, 1900.

W. B. WILLIAMS, 20  
Master.

ELOISE C. HICKS, being duly sworn on part of complainant, on oath saith:

I am twenty-six years old, unmarried, and reside with my uncle and aunt, Mr. and Mrs. Clarence Collins, at No. 23 Clinton avenue, Jersey City, one of Mr. McGuinness's house, as I understand, which we rent through Mr. Van Winkle, his agent. We have lived there for the past seven years. It is next door but one to where Mr. Callard lived, and there was a gate in our yard also opening on to Mr. McGuinness's grounds; I knew Mr. McGuinness by sight well enough and was quite well acquainted with Mrs. McGuinness and the children, and saw her nearly every day in the grounds and very often went in- 30

to the house to see her, as much as two or three times a week any way, and I used to see the children when they were home on their vacation and see her with them. They were very fond of her and she acted towards them as any good mother would as to her care of and affection for them.

10 I heard from time to time that Mr. McGuinness had accused her of the habit of drinking and of improper conduct, which led me to notice her conduct perhaps rather more than I otherwise would have done. I never saw her in the least degree under the influence of liquor or beer; I know of her once taking a half of a glass of beer with my aunt, and that is all I ever saw. I never saw her conduct herself in any way improperly or in a giddy manner; indeed, I never saw her with any gentlemen or saw any calling on her; I never saw anything in her conduct or appearance or heard anything in her conversation to indicate anything other than that she was a lady of correct and refined habits and feelings and a faithful wife and mother.

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ELOISE C. HICKS.

Sworn and subscribed to before me, at Jersey City, December 29, 1900.

W. B. WILLIAMS,  
Master.

Filed January 23, 1901.

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## IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,

Complainant,

and

THOMAS MCGUINNESS,

Defendant.

ON BILL, &amp;C.

SUPPLEMENTAL

ORDER OF

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REFERENCE.

Upon opening this matter to the Court by Marshall Van Winkle, of counsel with the complainant, and it appearing to the Chancellor that the order of reference hereinbefore made herein on the fourth day of May last does not require the Master to ascertain and report the amount of alimony to be allowed and paid to the complainant or to whom the custody of the children should be awarded;

20

It is, on this nineteenth day of March, in the year nineteen hundred and one, as of the said fourth day of May last past, ordered, that Washington B. Williams, Esquire, the Special Master to whom the said reference was made herein, ascertain and report the location and value of the said defendant's real and personal property and the proper amount of alimony to be paid the said complainant for her support and maintenance and the support and maintenance of the children of the marriage and his opinion thereon and to whom the care and custody of the said children should be awarded.

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W. J. MAGIE,

C.

Filed March 19th, 1901.

## IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,

Complainant,

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and

THOMAS MCGUINNESS,

Defendant.

REPORT AS TO ALI-  
 MONY UNDER SUP-  
 PLEMENTAL ORDER  
 OF REFERENCE.

In pursuance of a supplemental order of reference made in this cause, of the nineteenth day of March last, as of the fourth day of May, nineteen hundred, directing me to ascertain and report the location and value of the said defendant's real and personal property, and the proper amount of alimony to be paid the said complainant for her support and maintenance and that of the children of said marriage, and my opinion thereon, and to whom the care and custody of the said children should be awarded, I respectfully report to the Chancellor that regarding the said supplemental order of reference as an amendment to the previous order, I have considered for the present purpose the depositions taken under the previous order of reference and have taken the further deposition heretò annexed, and considering the matters referred to me.

And I report that no testimony has been offered before me as to the value of the defendant's personal property.

And I report that the defendant is seized of real estate in Jersey City, in this State, situated at the westernmost corner of Grand street and Clinton avenue, and also

fronting on Grand street and Clinton avenue; that a diagram of the said property is annexed to the deposition under the previous order of Mr. William Maxon, a real estate expert, who was sworn in this cause and testified upon the subject matter now under consideration; that the complainant has produced before me proper evidence of the seizin of the defendant being certified copies of the records of the deeds to him marked Exhibits C10, C11 and C12, as appears in the deposition of Mr. Kelsey hereto annexed; that the said real estate and premises, describing them and the improvements in a general way, consist of the following: 10

A large corner building at the corner of Clinton avenue and Grand street, comprising a corner building with saloon, bowling alley and billiard room, lodge rooms and dwelling apartments for eight families.

1. The rental value of the corner building the bowling alley and billiard room and lodge rooms .....	\$1,000	20
2. The rental value of the dwelling apartments for eight families fronting on Grand street and adjoining the last mentioned building	1,200	
3. Three dwellings on Clinton avenue, near the corner above mentioned, per year.....	936	
4. A brick dwelling with wing called the Homestead, Nos. 23 and 25 Clinton avenue and small frame dwelling and barn in rear, per year.....	900	
5. Three frame dwellings Nos. 27, 29 and 31 Clinton avenue, per year.....	1,080	30
	<hr/>	
Gross income as above estimated....	\$5,116	

The valuation of the said premises for sale is sixty-one thousand five hundred dollars (\$61,500); that is to say, the improved property on Grand street and Clinton

avenue, fifty-eight thousand five hundred dollars (\$58,500); and the two lots on Arlington avenue, three thousand dollars (\$3,000).

The net income for such property after deducting a proper estimate for taxes, water rents, insurance and current repairs, is, according to the evidence, about five per centum of the valuation of the improved property, which would make the net rental in this case about three thousand dollars per year (\$3,000).

10 In view of the facts that the defendant, McGuinness, has been and is able to work and earn his living if he chooses; that his style of living and expenses for many years before his abandonment of his wife indicates with sufficient clearness that his income was much larger than what was derived from the above real estate alone; and that his wife has had and will have their three daughters to support, one of whom is an invalid, and the others are too young to earn more than a trifle; it is my opinion, and I hereby report, that alimony should be  
 20 allowed to the complainant for the support of herself and her said daughters at the rate of one thousand dollars per year upon the making of a degree of limited divorce in this cause, the same to be computed from the twenty-eighth day of June, in the year eighteen hundred and ninety-nine, being the time when the defendant abandoned his wife and ceased to support her or the three daughters.

And I report that the arrears of such alimony down to the eighteenth day of May instant would amount to  
 30 eighteen hundred and ninety dollars and forty cents (\$1,890.40), and should be decreed to be paid to her forthwith upon the making of such decree.

And that the continuing alimony from the present time, that is, May eighteenth, A. D. 1901, should be decreed to be due and payable to her weekly, being nineteen dollars and twenty-three cents per week (\$19.23) so long as she shall continue to take care of said children, and until the further order of this Court.

And I find and report that the care and custody of the said three daughters should be awarded to the said complainant until the further order of this Court.

All of which is respectfully submitted this eighteenth day of May, A. D. nineteen hundred and one.

WASHINGTON B. WILLIAMS,  
Master in Chancery.

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IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,

Complainant,

AND

THOMAS MCGUINNESS,

Defendant.

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Deposition taken under the supplemental order of reference made herein on the nineteenth day of March last, as of the fourth day of May, 1900.

CLARENCE KELSEY, being duly sworn as a witness on part of complainant, on oath saith:

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I beg leave to refer to my former deposition in this cause, taken on the sixteenth day of November, nineteen hundred, before the present Master, in which I stated the result of a search made by me in the Register's office of Hudson county to ascertain the property of which the defendant is seized.

In support of the statements in said depositions as to his acquisition of real estate I now produce before the Master certified copies of the record of the following deeds referred to in said deposition.

1. Deed by Andrew Reilly to Thomas McGuinness, dated March 28th, A. D. 1888, recorded in Book 532 of Deeds for said county, page 600, for eight lots at the corner of Clinton avenue and Grand street by the description given in said deposition (which copy is marked Exhibit C10).
2. Deed by Judith Tormey to Thomas McGuinness, dated June 11th, A. D. 1885, recorded in Book 532 of Deeds for said county, page 598, for property on Clinton avenue, Jersey City, by the description given in the said deposition (which copy is marked Exhibit C11).
3. Deed by Margaret G. and James Wood to Thomas McGuinness, dated July 3d, 1889, recorded in Book 482 of Deeds for said county, page 412, for two lots on Arlington avenue, Jersey City, by the description given in said deposition (which copy is marked Exhibit C12).

I have to-day continued the examination of the records of this county in the name of the said Thomas McGuinness and from that examination together with my former examination shortly before the making of the said former deposition can say that no conveyance by the said Thomas McGuinness for any of said property appear of record to the present time, nor any mortgages by him or judgments against him except that the attachments mentioned in the said former deposition which has been perfected in judgment in favor of the plaintiff therein for a little over six thousand dollars (\$6,000).

The buildings on the property remain in about the same as they were when the former depositions of Mr. William Maxon and myself were taken in this cause. I have visited the premises to-day and find that they are all occupied by tenants, excepting one small store fronting Grand street, which I should judge would not have

a rental value for more than \$12 per month and which is at present vacant.

CLARENCE KELSEY.

Sworn and subscribed before me at Jersey City, this 17th day of May, 1901.

W. B. WILLIAMS,  
Master.

Filed May 21st, 1901.

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IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,

Complainant,

AND

THOMAS MCGUINNESS,

Defendant.

ON BILL, &C.

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ORDER.

A final decree having been entered in the above entitled cause on the thirty-first day of May, A. D. 1901, and it appearing that a certified copy of said decree and of the taxed bill of costs in said suit were, on the ninth day of July instant, served upon the above named defendant and that a demand was at the same time made upon him to pay the costs and the other amounts in said final decree ordered to be paid by him, and that the said defendant refused to pay the same or any part thereof;

30

It is, on this tenth day of July, A. D. nineteen hundred and one, ordered, upon motion of Marshall Van Winkle, of counsel with the said complainant, that a writ of *feri facias* do issue for the said taxed costs and the sum of eighteen hundred and ninety dollars and forty cents and the further sum of seven hundred and fifty dollars by said decree ordered to be paid.

W. J. MAGIE,  
C.

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IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,

Complainant,

ON BILL, &C.

20

AND

AFFIDAVIT.

THOMAS MCGUINNESS,

Defendant.

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

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CLARENCE KELSEY, being duly sworn according to law, on his oath says, that on the ninth day of July, A. D. 1901, he served a certified copy of the final decree and of the bill of taxed costs in the above cause upon the defendant, Thomas McGuinness; and that acting under and by virtue of the annexed power of attorney demanded of said defendant payment of the said taxed costs and of the sums of money ordered by said final decree to be paid; and that said Thomas McGuinness refused to pay the same or any part thereof.

CLARENCE KELSEY.

Sworn and subscribed to before me at Jersey City, N. J., this tenth day of July, A. D. nineteen hundred and one.

FRANCIS V. MANY,  
Master in Chancery of New Jersey.

JERSEY CITY, N. J., July 8th, 1901.

*To Thomas McGuinness:*

You are hereby notified that we do hereby make, constitute and appoint Clarence Kelsey our true, sufficient and lawful attorney for us and in our name to demand and receive of and from you the amount of taxed costs in the case in the Court of Chancery of New Jersey, between Mary E. McGuinness, complainant, and you, the said Thomas McGuinness, defendant, and also the alimony and counsel fees ordered to be paid by you to us or either of us by the final decree in said cause; and we hereby demand payment of the same and authorize the said Clarence Kelsey to receive the said sums from you for us.

MARSHALL VAN WINKLE, [SEAL.]  
MARY ELLEN MCGUINNESS, [SEAL.]

Witness as to Marshall Van Winkle.

GEO. W. RURODE.

Filed July 11th, 1901.

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## IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,

Complainant,

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and

THOMAS MCGUINNESS,

Defendant.

ON BILL, &amp;c.

FINAL DECREE.

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This cause coming on to be heard in the presence of Martin Van Winkle, of counsel with the complainant, no one appearing for the defendant; whereupon and upon reading the pleadings and proofs in the cause, and the reports of Washington B. Williams, Esquire, one of the special masters of this Court, to whom by previous orders herein it was referred to take the depositions and other proofs offered by the said complainant in support of the allegations of the bill of complainant, and as to the location and value of the said defendant's personal and real estate, and to whom the care and custody of the children of the said marriage should be awarded, and the amount of alimony which should be paid by the said defendant to the said complainant for her support and maintenance, and the support and maintenance of the said children of the said marriage, and to report the same, together with his opinion thereon; from all which it now appears satisfactorily to the Chancellor that the marriage between the complainant and the defendant was solemnized and took place in the State of New Jersey on the nineteenth day of July, A. D. eighteen hundred and seventy-nine; and that the said

complainant was an actual resident of and inhabitant in this State at the time of the injury complained of and at the time of exhibiting the said bill of complaint, and ever since her said marriage; and that the said defendant has been guilty of extreme cruelty toward the same complainant, as charged against him in the said bill of complaint, and without any justifiable cause, and separated himself from the said complainant and neglected to maintain and provide for her;

It is, thereupon, on this eighteenth day of May, A. D. nineteen hundred and one, by his Honor William J. Magie, Chancellor of the State of New Jersey, by virtue of the power and authority of this Court and of the acts of the legislature in such case made and provided, ordered, adjudged and decreed, that the said complainant and defendant be divorced from bed and board forever. **10**

And it is further ordered and decreed, that the said complainant have the care and custody of Mary Irene McGuinness, Marcella McGuinness and Ann McGuinness, three of the children of the said marriage, until the further order of this Court. **20**

And it is further ordered and decreed, that the defendant pay to the complainant, or to her order, the sum of eighteen hundred and ninety dollars and forty cents, being an amount equal to the payment of nineteen dollars and twenty-three cents per week, from the twenty-eighth day of June, A. D. eighteen hundred and ninety-nine, the time when the defendant abandoned and ceased to support the complainant and said three children, to the date of the making of this decree.

And it is further ordered and decreed, that the said defendant pay to the complainant, or to her order, the further sum of nineteen dollars and twenty-three cents per week at the termination of each and every week from the date of this decree, until the further order of this Court, for the support and maintenance of the complainant and the said three children. **30**

And it is further ordered and decreed, that the said defendant do, within ten days from the date of service upon him of a copy of this decree, give bond to the said complainant, in the sum of two thousand dollars, to be approved as to form and security thereof by William A. Lewis, Esquire, one of the special masters of this Court, for the punctual payment of said weekly sums; and upon the neglect of said defendant to give such security within the time so limited, or upon his default and that of his surety (in case such surety shall be given) to pay the amount herein ordered to be paid, that the complainant be at liberty to apply to this Court for relief in the premises according to law and the course of this Court.

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And it is further ordered and decreed, that the defendant pay to the said complainant, or her solicitor, the costs of this suit to be taxed, and a counsel fee of seven hundred and fifty dollars, and that execution issue therefor according to the practice of this Court, and that the said complainant be at liberty to further apply to this Court as she may be advised.

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W. J. MAGIE,  
Chancellor.

Filed May 31st, 1901.

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## IN CHANCERY OF NEW JERSEY.

Between

MARY ELLA MCGUINNESS,

Complainant,

AND

THOMAS MCGUINNESS,

Defendant.

ON BILL, &amp;C.

PETITION FOR

RECEIVER, &amp;C.

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*To his Honor, William J. Magie, Chancellor of the State of New Jersey:*

The petition of the above named complainant, Mary Ellen McGuinness, respectfully shows, that on the ninth day of July last, the above named defendant, Thomas McGuinness, was served with certified copies of the final decree and bill of taxed costs in the above entitled cause; and that proper demand was at the same time made upon him for the payment of the alimony, counsel fees and costs which, in and by said final decree, he, the said defendant, was required to pay; also, that the said defendant refused and has neglected to give security for the payment of said alimony, as required in and by said final decree.

20

That upon the filing of an affidavit of one Clarence Kelsey, showing the service upon said defendant of said certified copies of the final decree and bill of taxed costs and showing the refusal of said defendant to pay the said alimony, counsel fees and taxed costs or any part thereof, a writ of *feri facias* issued out of this Honorable Court against the property of the said defendant, which has been placed in the Hudson county Sheriff's hands for service.

30

That in and by the report of the Special Master, Washington B. Williams, filed in this cause, it appears that the said defendant is the owner of real estate in the city of Jersey City, in the county of Hudson, of the value of \$61,500 and renting for about \$5,200 per year. That about one-half in value of said property is about to be sold on the foreclosure of a mortgage of \$7,000 covering said one-half of said property, from which sale a surplus will likely be realized which should be applied to the future payment of the alimony due and to become due since the making of said final decree.

10

Your petitioner therefore prays that a writ of sequestration may be issued out of this Honorable Court for the immediate sequestration of the said defendant's personal estate and the rents and profits of his real estate; that a receiver thereof be appointed; and that said personal estate and the rents and profits of said real estate, or so much thereof as shall be necessary, be applied towards the payment of such alimony as the same becomes due; and your petitioner will ever pray, &c.

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MARY ELLEN McGUINNESS,  
Petitioner.

By MARSHALL VAN WINKLE,  
Solicitor.

STATE OF NEW JERSEY, }  
30 COUNTY OF HUDSON, } ss.

MARSHALL VAN WINKLE, being duly sworn according to law, on his oath says, that he is the solicitor for and of counsel with the complainant in the above entitled cause; that he has read the foregoing petition, and that the matters therein set forth are true.

MARSHALL VAN WINKLE.

Sworn and subscribed to before me at Jersey City, N. J., this 12th day of September, A. D. 1901.

ALBERT C. WALL,  
Master in Chancery of New Jersey.

Filed September 27th, 1901.

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IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,

Complainant,

AND

THOMAS MCGUINNESS,

Defendant.

ON BILL, &C.

ORDER TO

SEQUESTRATE.

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On application of the complainant, it appearing that no part of the alimony, counsel fees or costs awarded by the final decree of this Court in this cause have been paid to the complainant or her solicitor, and that the defendant is in contempt for failing to obey the decree of this Court therein, it is, on this twenty-seventh day of September, A. D. nineteen hundred and one, on motion of Marshall Van Winkle, of counsel with complainant, ordered, that a writ of sequestration do issue against the said Thomas McGuinness, directed to John S. McMaster, of Jersey City, in this State, and a Master of this Court, to immediately sequenter the said defendant's per-

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sonal estate and the rents, issues and profits of his real estate, to satisfy the said decree and until the further order of this Court.

W. J. MAGIE,  
C.

Filed September 30, 1901.

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IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,

Complainant,

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and

THOMAS MCGUINNESS,

Defendant.

ON BILL FOR

DIVORCE.

PETITION OF DE-

FENDANT.

*To his Honor, William J. Magie, Chancellor of the State of New Jersey:*

30 The petition of Thomas McGuinness respectfully shows that he is the defendant named in above entitled cause; that he resides in and is a citizen of the State of Pennsylvania, and has continually been an actual resident and inhabitant of said State of Pennsylvania from and including the first day of May, in the year eighteen hundred and ninety-nine, to the present time; that since and including the first day of May, in the year eighteen hundred and ninety-nine, continuously to and including

this time his bona fide intention and purpose has been and now is to be and remain an actual resident, inhabitant and citizen of the said State of Pennsylvania; that prior to the first day of May, in the year eighteen hundred and ninety-nine, he, your petitioner, was a resident, inhabitant and citizen of the State of New Jersey, but since said last named day he has not been, directly or indirectly, a resident, inhabitant or citizen of the State of New Jersey, nor has he, since May 1st, 1899, had, or intended to have a domicile or place of abode of any character in said State of New Jersey, nor has he at any time since and including May 1st, 1899, to this time, had any intention to remain a citizen of, reside in or be in any wise domiciled in said State of New Jersey; that the complainant, prior to May 1st, 1899, consented and agreed to permanently reside with your petitioner in the State of Pennsylvania; he, the said petitioner, having determined to be a resident of the State of Pennsylvania on and after May 1st, 1899, and made known such determination to said complainant.

10

And your petitioner further shows, that on the seventh day of July, in the year eighteen hundred and ninety-nine, Mary Ellen McGuinness, the above named complainant, wife of your petitioner (your petitioner and said complainant being then both actual residents and inhabitants of the State of Pennsylvania and having no domicile in the State of New Jersey) filed her bill of complaint in above cause in the office of the Clerk of the Court of Chancery of New Jersey, praying therein that a divorce may be decreed between said complainant and your petitioner from bed and board forever, and that your petitioner, the defendant named in said bill of complaint, be ordered and decreed to provide suitable support and maintenance for the said complainant and certain of the children of complainant and this petitioner referred to in said bill; and that your petitioner should be required to pay to complainant a reasonable weekly allowance and proper counsel fee during said suit.

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That a subpoena *ad respondendum* was issued out of this court in said cause tested January 15th, 1900, directed to your petitioner, commanding him to appear in manner and form required by law in the Court of Chancery of the State of New Jersey on the twenty-sixth day of January then instant, at Trenton, to answer to the bill of complaint exhibited against him in said court by the complainant, Mary Ellen McGuinness; that said subpoena was filed with the Clerk of this court on the seventh day of February, in the year nineteen hundred.

10 That on the seventh day of February, in the year nineteen hundred, there was filed in the office of the Clerk of said court in said cause an affidavit made by Mary Ellen McGuinness, the complainant, sworn to by her February 3d, 1900, before George W. Flaacke, Jr., Master in Chancery of New Jersey, wherein it is set forth that your petitioner was then a resident out of the State of New Jersey, and together with his son resided at No. 102 South Fortieth street, in the city of Philadelphia, in the State of Pennsylvania, and had resided in said city of Philadelphia for more than eight months then last past.

20 That on the seventh day of February, in the year nineteen hundred, there was filed with the Clerk of said court, in the said cause, an order of this Court, bearing date February 7th, 1900, directing said absent defendant (your petitioner) to appear, plead, answer or demur to the complainant's bill on or before the ninth day of April then next, and that in default thereof such decree would be made against him as the Chancellor should think equitable and just, and that the notice of said order be served or mailed as therein set forth; that in said order and in the recital immediately preceding said order it is set forth that the complainant filed her bill of complaint in said cause and process of subpoena had been issued and returned according to law, and that it appeared by the affidavit of Mary Ellen McGuinness, the complainant therein, that the defendant (your petitioner) was a

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resident out of the State of New Jersey and could not, upon due inquiry, be found in said State, and that it appeared by the return of the Sheriff of the county of Hudson that process could not be served on him.

That on the twenty-sixth day of April, in the year nineteen hundred, there was filed in the office of the Clerk of this court, in said cause, an affidavit of Clarence Kelsey, sworn to April 25th, 1900, reciting that on the twenty-seventh day of February, in the year nineteen hundred, he, said Kelsey, called at 102 South Fortieth street, in the city of Philadelphia, in the State of Pennsylvania, and found there the above named defendant (your petitioner), and then and there personally served upon said defendant the notice of which the notice annexed was a true copy, by reading to and delivering to the said Thomas McGuinness (your petitioner) a true copy of said notice, a copy of which affidavit and the notice thereto annexed are hereto annexed and marked Schedule A. 10

That said notice last above referred to was the only notice served upon him, your petitioner, respecting said order of this Court, bearing date February 7th, 1900. 20

That on the ninth day of May, in the year nineteen hundred, it was ordered by your Honor that the complainant's bill in said cause be referred to Washington B. Williams, one of the special masters of the Court of Chancery of New Jersey, to ascertain and report as to the truth of the allegations of the complainant's bill of complaint, and his opinion thereon; and that the complainant proceed to take depositions and other evidence before said special master, and to bring on the hearing of the cause *ex parte*; and that the Master return, together with his report, and as part thereof such depositions and other evidence as may be taken before him in pursuance of such order. 30

That a notice of examination of witnesses dated September 25th, 1900, with affidavit of F. B. Biles, sworn to

October 5th, 1900, annexed thereto, and a notice of examination of witnesses dated September 25th, 1900, with affidavit of Clarence Kelsey, sworn to October 9th, 1900, annexed thereto, were filed in said Clerk's office in this cause, on or about September 25th, 1900.

**10** That on the thirteenth day of October, in the year nineteen hundred, the deposition of John F. McCarthy was filed in this cause in the office of the Clerk of this Court, annexed thereto, being a statement made and signed by Charles M. Vreeland, dated at Philadelphia, in the State of Pennsylvania October 8th, 1900.

**20** That on the thirteenth day of March, in the year nineteen hundred, an order of this Court, bearing date March 19th, 1900, was filed in this cause, wherein and whereby it was ordered that Washington B. Williams, the Special Master to whom a prior reference in this cause was made herein, ascertain and report as to the location and value of the defendant's real and personal estate, and to whom the care and custody of the children of the said marriage should be awarded, and the amount of alimony which should be paid by the said defendant (your petitioner) to the said complainant for her support and maintenance, and the support and maintenance of the said children of the marriage.

That on the twenty-first day of May, in the year nineteen hundred, the report of Washington B. Williams, Special Master in this cause, as aforesaid, as to alimony was filed with the Clerk of this Court.

**30** That on the thirty-first day of May, in the year nineteen hundred and one, the final decree in said cause was filed in the office of this court. A copy of which is hereto annexed and marked Schedule B.

That on the eleventh day of July, in the year nineteen hundred and one, a copy of an order of this Court and an affidavit of Clarence Kelsey, sworn to July 10th, 1901, and the notice directed to Thomas McGuinness (your petitioner) signed by Marshall Van Winkle and

Mary Ellen McGuinness, were filed in this cause, in the office of the Clerk of said Court. Copies of which are hereto annexed and marked respectively Schedules C, D and E.

That on the twenty-seventh day of September, in the year nineteen hundred and one, the petition in behalf of said complainant for the appointment of a receiver, and that a writ of sequestration issue out of this Court for the immediate sequestration of the defendant's personal estate and the rents and profits of his real estate, and that said personal estate and the rents and profits of said real estate, or so much thereof as would be necessary, be applied toward the payment of the alimony theretofore ordered to be paid by your petitioner, in said cause, as the same became due, was filed in this cause in the office of the Clerk of said Court. A copy of which is hereto annexed and marked Schedule F. 10

That on the thirtieth day of September, in the year nineteen hundred and one, an order in said cause was filed with the Clerk of this Court, directing that a writ of sequestration issue against your petitioner, directed to John S. McMaster, of Jersey City, in this State, and a Master of this Court, to immediately sequester your petitioner's personal property and the rents, issues and profits of his real estate, to satisfy the said decree and until the further order of this Court. A copy of which is hereto annexed and marked Schedule G. That a copy of said writ of sequestration is hereto annexed and marked Schedule H. 20

Your petitioner further shows unto your Honor that on or about the second day of October, in the year nineteen hundred and one, he, the said John S. McMaster, in his said representative capacity, served a notice on D. Van Winkle and Company, agents of your petitioner, notifying and requesting them to pay to him, John S. McMaster, Master in Chancery of New Jersey, forthwith, any rents that there were in their hands already 30

collected or which might thereafter be by them collected as the agents of your petitioner for any of your petitioner's real estate in Jersey City or elsewhere in the State of New Jersey, and that they, said D. Van Winkle and Company, must not pay said rents, or any portion thereof, to any person except to him, the said Master in Chancery, and that upon making such payments to him as said Master, he thereby agreed, as such Master, to indemnify and save them harmless. A copy of which notice is hereto annexed and marked Schedule I.

10 That said D. Van Winkle and Company were, when said notice was served upon them, in charge of the collection of all rents from tenants of all of your petitioner's real estate in Jersey City, in this State, excepting so much thereof as was leased by your petitioner to Catharine Murphy.

20 That your petitioner has caused demand to be made upon D. Van Winkle and Company for the payment of said rents received by them and remaining unpaid to your petitioner, and that said D. Van Winkle and Company refuse to pay the same to your petitioner because of said writ of sequestration and the notice served upon them by said John S. McMaster in his said representative capacity, and the said D. Van Winkle and Company have paid the said John S. McMaster some of the said rents, the amount thereof being unknown to your petitioner, and threaten to pay the balance of the rents now in their hands and which they may hereafter collect from the tenants of your petitioner, to the said John S. McMaster, Master in Chancery of New Jersey, pursuant to said order of this Court.

30 That your petitioner did not and has not appeared, pleaded, answered or demurred to the complainant's said bill of complaint nor otherwise entered any defence in said cause.

Your petitioner further shows, that in the month of October, 1901, his present counsel, William Brinker-

hoff, received a certified copy of the proceedings in above cause and subsequently to the time when said notice was served by the said John S. McMaster, Master in Chancery aforesaid, upon the said D. Van Winkle and Company, being also subsequently to the issuing of said writ of sequestration; that prior to the receipt of said certified copy of the proceedings by said counsel, he, your petitioner, had not seen, nor was he in anywise informed of any of the proceedings in said cause, or of the contents of the bill of complaint, affidavits, order or other proceeding, nor was he aware till October, 1901, that the complainant's bill of complaint prayed for a decree or order for counsel fees or alimony,—he being only aware of the contents of such orders and other papers as had been served upon him, as appears by affidavits on file in said Clerk's office in said cause. 10

Your petitioner refers to the bill of complaint, subpoena, affidavits, notices, orders, decrees and proceedings in above cause, hereinbefore referred to, on file in the office of the Clerk of the Court of Chancery of New Jersey, for greater certainty as to their entire contents. 20

Your petitioner respectfully insists that at the time of the filing of the bill of complaint in this cause, and long prior thereto, and ever since, he has been an actual resident and inhabitant of the State of Pennsylvania, of which State he is a citizen, with all the rights of citizenship, and during no part of that time has he been a citizen of the State of New Jersey, or been in any wise domiciled or had any right of domicile in the State of New Jersey; that he has not been served with a subpoena in said cause, has not been advised or notified nor had he any knowledge that the said bill of complaint in this cause prayed for a permanent alimony or counsel fee till after the decree had been signed in said cause, and that the said final decree should not have been made, nor should said writ of sequestration been issued. 30

Your petitioner therefore prays that the enrollment in said cause be opened; that the final decree and all orders

therein be opened and vacated and that said subpoena *ad respondendum*, and the service thereof, together with the writ of sequestration, be set aside, and that the complainant's bill of complaint be dismissed, and for such other and further relief in the premises as may be agreeable to your Honor.

And your petitioner will ever pray, &c.

THOMAS MCGUINNESS,  
Petitioner.

- 10 BRINKERHOFF & FIELDER,  
Solicitors for and of Counsel with said Petitioner,  
Thomas McGuinness.
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STATE OF PENNSYLVANIA, }  
COUNTY OF PHILADELPHIA, } ss.  
CITY OF PHILADELPHIA, }

- 20 THOMAS MCGUINNESS, being duly sworn according to law, on his oath says, that he is the petitioner named in and who signed the petition hereto annexed; that his counsel, William Brinkerhoff, has read said petition to him, and that he, this deponent, knows the contents thereof, and that the same is true of his own knowledge excepting the matters therein stated to be on information and belief, and as to those matters he believes them to be true.

- 30 This deponent further says, that he is a citizen of the State of Pennsylvania, and resides in the borough of West Chester, in said State; that he has been an actual resident of and inhabitant in the State of Pennsylvania since and including the first day of May, in the year eighteen hundred and ninety-nine, and that since May 1st, 1899, he has not had, or intended in any sense to thereafter have, a domicile or residence of any kind in any other State.

That when he moved to Philadelphia May 1st, 1899, it was and has since continuously remained his honest, bona fide purpose to become a citizen of the State of Pennsylvania, there to reside permanently May 1st, 1899, and immediately thereafter, which purpose, without any mental reservation whatever, has to this time remained unchanged, and in line with that purpose he became, May 1st, 1899, an actual resident and inhabitant of the State of Pennsylvania, and has continued to be such resident and inhabitant to this time, of which State he is now a citizen and became entitled to such citizenship so soon after May 1st, 1899, as he was entitled to such by the statutes of the State of Pennsylvania with respect thereto, and it is his present intention, as it has been his bona fide intention ever since he moved to the State of Pennsylvania, as aforesaid, to remain such resident, inhabitant and citizen for the future, and with no intention or purpose since May 1st, 1899, of ever returning to the State of New Jersey to reside therein. 10

That prior to the year eighteen hundred and ninety-nine, he had for many years been a resident and inhabitant of the city of Jersey City, and a citizen of the State of New Jersey. That immediately prior to May 1st, 1899, he resided at street No. 19 Clinton avenue, in said city of Jersey City, but in the month of May, 1899, he, in good faith, leased said premises to Catharine Murphy from May 1st, 1899, for the term of one year, a copy of which lease is hereto annexed and marked Schedule J; that on or about August 1st, 1899, this deponent entered into another lease with said Catharine Murphy, which included premises 19 Clinton avenue, Jersey City, which lease is hereto annexed and marked Schedule K; that said Catharine Murphy has paid to this deponent all the rent pursuant to said lease till about the first day of October, nineteen hundred and one, when, as this deponent has been informed and verily believes, she did not receive the rents from her sub-tenants (which rents due to her she 20 30

depended upon to pay her rent to this deponent), because D. Van Winkle and Company, her agents, were notified by John S. McMaster, Master in Chancery of New Jersey, under certain sequestration proceedings in above cause, to pay the rents to him, said McMaster. That said leases were made, delivered and are continued in absolute good favor.

10 That on or about the thirteenth day of May, in the year eighteen hundred and ninety-nine, the said Catharine Murphy moved to, in and upon said premises, 19 Clinton avenue, and has since continued to live there, maintaining a boarding house on her own account; that this deponent has been upon said premises only about two or three times since May 1st, 1899, and then in said month of May or June, 1899, for the sole purpose of receiving and shipping, or taking his personal effects, such as contents of trunks, and his personal property, such as horses, wagons, harness and things of that character, which were about that time taken to Philadelphia, and have been 20 in his possession in the State of Pennsylvania ever since, excepting such personal property as he may have sold or otherwise disposed of.

That on or about the first day of August, eighteen hundred and ninety-nine, this deponent sold to said Catharine Murphy all, or about all, his furniture and household effects, which before May 1st, 1899, were in the premises, 19 Clinton avenue, Jersey City; that she, the said Catharine Murphy, has paid him the purchase price therefore.

30 That this deponent, on or about May 1st, 1899, discharged his household servants and his gardener, who were then at 19 Clinton avenue, Jersey City, no other servants, laborers or employes being in anywise retained or connected with him on his said premises, and has not since rehired them, or others, in connection with said premises, nor has he since had any control over or connection with any other individual on or con-

nected with said premises, excepting Catharine Murphy, as tenant aforesaid.

This deponent further says, that on May 1st, 1899, two of his daughters were in a convent in or near Philadelphia, while his third daughter was in a hospital in the State of Pennsylvania aforesaid, and that his son John Edward was at school, at "No. 12 School," in Jersey City, and that he, the said son, John Edward, remained with Catharine Murphy, who, when she took possession of 19 Clinton avenue, kept and still keeps a boarding house at 19 Clinton avenue, till about the middle of June, 1899, when his school closed, and then joined this deponent, and who in September of the same year went with him, this deponent, to the city of Philadelphia, where he, John Edward, entered a school and remained at such school till September, 1901, when he, John Edward, entered the State Normal School, at West Chester, in the State of Pennsylvania, where continuously he has remained to this time. 10

That in the month of March, in the year eighteen hundred and ninety-nine, Mary Irene, one of the daughters of this deponent, became ill and was placed in a hospital in Philadelphia, Pennsylvania, for treatment and care, and it then became necessary to perform an operation upon said daughter, which was done by Doctor Willard, a specialist in spine diseases; at this time deponent wired (by telegraph) for the complainant to come to Philadelphia, which she did; this deponent and said complainant then boarded at street number 3814 Spruce street, in said city; that during the first week of her (complainant's) arrival in Philadelphia she and this deponent agreed to make Philadelphia their permanent residence so soon as their daughter, Mary Irene, was discharged from the hospital. The said complainant and this deponent both expecting, intending and desiring to make a permanent home in Philadelphia, where, or near where, their said children were located and entirely give up their residence in Jersey City. 20 30

That upon the first day of May, in the year eighteen hundred and ninety-nine, or perhaps one day before or after, this deponent took his daughter, Mary Irene, from the hospital to this deponent's residence or boarding place, 3814 Spruce street, city of Philadelphia, at which place the complainant went on the thirteenth day of May, eighteen hundred and ninety-nine, for the purpose of living with this deponent, and making Philadelphia their permanent residence,—which was expressly understood and agreed to by the said complainant and your petitioner; that said complainant remained until June 28th, 1899, when she left Philadelphia without the knowledge or consent of this deponent and went to Newark, in the State of New Jersey, at which latter place she has since remained, taking with her, without the consent or knowledge of this deponent, his valuable minute repeating quarter second gold watch, and also taking with her this deponent's daughters, Mary Irene, Marcella and Anna.

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That from the time in May, when the complainant went to Philadelphia, this deponent was kind to and considerate of her, said complainant, notwithstanding her inconsiderate and unkind treatment toward him; that on May 18th, 1899, he had his own horse and carriage in Philadelphia, and this deponent and complainant almost daily went driving from place to place in and about the city of Philadelphia, and much of the time they were occupied in looking for a suitable house in which to be permanently domiciled; that in the evenings at Philadelphia this deponent often took the complainant to musicales, theatres or the grand opera; that on Thursday of the week before she deserted this deponent he, this deponent, took her, the complainant, with one of his daughters to the opera of "Faust," and on the following night he took the complainant to the opera of "Il Trovatore," and the following night the complainant and this deponent went to look at a house which

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this deponent desired to rent or purchase for a home for himself and his entire family. That the night before the complainant left Philadelphia as aforesaid, she played upon the piano and sang with evident contentment and happiness till eleven o'clock. The following morning the complainant told this deponent that Doctor Willard wanted to see him, this deponent, about Mary Irene, whereupon this deponent called upon Doctor Willard, who advised this deponent that Mary Irene should be taken without delay to the country or seaside, for her health, whereupon this deponent went immediately to a beautiful country location in Pennsylvania and engaged board for the complainant, Mary Irene and himself; upon returning to his residence he found that the complainant had left her home in Philadelphia, as above stated; that said complainant took the two daughters, Marcella and Anna, from the Convent upon the representation to the nuns that this deponent had taken a house and was busy furnishing it and had sent for the children. That at the time complainant took Mary Irene from Philadelphia, June 28th, 1899, she, their daughter, was under treatment by Doctor Willard, and because of the want of such treatment and proper care it became necessary to amputate the hand of said Mary Irene.

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This deponent further says, that he remained an actual resident and inhabitant of Philadelphia from May 1st, 1899, till September, 1900, and remained there continuously during that time, excepting the summer months of 1899,—July, August and part of September, at Berwyn, in the State of Pennsylvania, for a change of climate and the benefit of this deponent's health. That in September, 1900, this deponent moved from Philadelphia to the borough of West Chester, in the State of Pennsylvania, where he has since, the present time, resided; that while in Philadelphia for the years 1899 and 1900 his name appeared on the assessor's

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list of voters and taxpayers of Thirteenth Division, Twenty-seventh Ward, of the city of Philadelphia, and as a resident of 3814 Spruce street, in that city; that in the month of February, in the year nineteen hundred and one, he was an elector of the State of Pennsylvania, and as such elector at that time he voted at the borough of West Chester election in said month of February, 1901, and in the county and State (Pennsylvania) elections in the fall of 1901, and again at the borough of West Chester election held January 22d, 1902, and again at the borough of West Chester election on Tuesday, February 18th, 1902.

10 This deponent further says, that while he was a resident of Jersey City the intemperate and indecent conduct of the complainant and her false representations to the neighbors and friends of your petitioner, of the conduct of your petitioner with and toward her, made such residence undesirable to this deponent, which was an additional reason for changing his residence to the State of Pennsylvania, believing that by such change the complainant might form new associations and environments which, with nearness to their children, would become more conducive to the happiness and welfare of the entire family,—particularly so because she, said complainant, sometimes complained of the absence of her children and the distance she was from them and expressed a desire to reside near where they were.

20 This deponent further says, that he is not aware of any of the contents of the bill of complaint filed in above cause excepting that the prayer of said bill is for a partial divorce and allowance of counsel fee and permanent alimony, which was not known by him until the latter part of October, 1901, about which time the Philadelphia counsel of this deponent communicated with William Brinkerhoff requesting him to obtain a copy of the proceedings in said cause, and then such knowledge first came to this deponent.

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This deponent further says, that he has in this affidavit assigned every reason why he ceased to be a resident, inhabitant and citizen of the State of New Jersey, and why he became a resident, inhabitant and citizen of the State of Pennsylvania, and that he never assigned any other reason to any individual, and particularly that he never in substance or effect told John F. McCarthy that he wanted to get the complainant out in Pennsylvania so that he, this deponent, could claim a residence for the purpose of divorce or that he told said McCarthy to procure a note-book to put down all of complainant's actions, and that if he, McCarthy, would act as a witness for him, this deponent, he would pay him well for it, or that he, this deponent, told said McCarthy that he, this deponent, intended to treat his, this deponent's wife, in such manner that she would be forced to leave him, this deponent, and that he, this deponent, would have her, said complainant, for desertion, or that he, this deponent, had fixed things at Jersey City so that it would be no home for her. That such statements, or any of them, if made or testified to in said cause by said McCarthy, were wholly false.

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That this deponent did not and has not appeared, pleaded, answered or demurred to the complainant's said bill of complaint, nor otherwise entered any defense in said cause.

And this deponent further says, that he did not employ or authorize any attorney, solicitor or other individual to defend said suit for divorce or permanent alimony, nor did he, this deponent, interest himself therein, except to protect himself from any order to pay alimony during the pendency of said suit, or counsel fees should any proper proceeding to that end be commenced or proceeded with, against him.

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THOMAS McGUINNESS.

Subscribed and sworn to before me, in the city of Philadelphia, in the State of Pennsylvania, this 21st day of February, A. D. 1902.

SAMUEL L. TAYLOR, [L. S.]  
Notary Public, Philadelphia, Penna.  
Term expires April 1st, 1903.

10 STATE OF PENNSYLVANIA, }  
CITY OF PHILADELPHIA, } ss.

JOHN EDWARD MCGUINNESS, being duly sworn, on his oath saith: I am the son of Thomas McGuinness, the individual named in the petition hereto annexed. I lived with my father and mother at 19 Clinton avenue, Jersey City, New Jersey, until May 1st, 1899, on which day I was attending "Number 12 School," in Jersey City, and I continued to remain at school, in Jersey City, until the summer of 1899, when I joined my father in the State of Pennsylvania, and in the month of September of the same year I returned to Philadelphia, Pennsylvania, from Berwyn, Pennsylvania, with my father, and there went to school until my father went to reside at West Chester, Pennsylvania, in September, 1900, at which time I entered the Normal School, at West Chester aforesaid, and have remained there to this time.

My father and mother moved to Philadelphia aforesaid, in the month of May, 1899. My father came to the house, 19 Clinton avenue, either two or three times within the month of May, 1899, and took or caused to be taken from there all his trunks, his horses, wagons, harness and property of that character not sold by him to Catharine Murphy. My father went to Philadelphia to live May 1st, 1899, and my mother went there about two weeks later.

My father leased his former residence, 19 Clinton avenue, Jersey City, to my aunt, Catharine Murphy, and I signed the lease as a witness,

My father made another lease to Catharine Murphy, dated August 1st, 1899. Catharine Murphy, who is my aunt, moved in the house on Clinton avenue about ten days after my father moved to Philadelphia and she has continued to reside there until the present time. My aunt, Catharine Murphy, prior to May 1st, 1899, maintained a boarding house in Newark, New Jersey; she leased said premises on Clinton avenue for boarding house purposes, and has kept a boarding house there since about May 13th, 1899. I have been in the care and maintained by father since my mother left my father in Philadelphia, about the last day of June, in the year eighteen hundred and ninety-nine. I have not seen her since.

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JOHN E. MCGUINNESS.

Subscribed and sworn to before me this 21st day of February, A. D. 1902, at Philadelphia, Penna.

SAMUEL L. TAYLOR, [L. S.]  
Notary Public, Philadelphia, Penna.  
Term expires April 1st, 1903.

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STATE OF PENNSYLVANIA, }  
COUNTY OF PHILADELPHIA, } ss.

Affidavit (Notary).

I, M. RUSSELL THAYER, Prothonotary of the county of Philadelphia and Clerk of the Court of Common Pleas of said county, which are Courts of Record, having a Common seal, being the officer authorized by the laws of the State of Pennsylvania to make the following certificate, do certify that Samuel L. Taylor, Esquire, before whom the annexed affidavit was made, was, at the time of so doing, a Notary Public for the Commonwealth of Pennsylvania, residing in the county of Philadelphia, duly commissioned and qualified to adminis-

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ter oaths and affirmations and to take acknowledgments and proofs of deeds or conveyances for lands, tenements and hereditaments in said State of Pennsylvania and to all whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere; and that I am well acquainted with the handwriting of the said Notary Public and verily believe his signature thereto is genuine, and that the said oath or affirmation purports to be taken in all respects as required by the laws of the State of Pennsylvania.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, this 21st day of February, in the year of our Lord one thousand nine hundred and two (1902).

[L. s.]

M. RUSSELL THAYER,  
Prothonotary.

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

CATHARINE MURPHY, being duly sworn according to law, on her oath saith: I reside at street No. 19 Clinton avenue, Jersey City, in the State of New Jersey, and have resided there continuously from about May 15th, 1899, when I moved there for the purpose of making the same my permanent residence, and that remains my present intention. I leased the said premises from Thomas McGuinness, for the term of one year from May 1st, 1899, by a printed and written lease, prepared by D. Van Winkle and Company, real estate agents, of 585 Communipaw avenue, Jersey City, New Jersey, signed by Thomas McGuinness and me, a copy of which is hereto annexed and marked Schedule J.

This lease was signed by me on or about May 13th, 1899, and I was not aware that it was not dated until some months after I had signed the lease. The date of

said lease was not omitted through any agreement or understanding between Thomas McGuinness or his agent or myself.

Thomas McGuinness also made to me another lease, dated August 1st, 1899, for premises adjacent to No. 19 Clinton avenue, and also included 19 Clinton avenue, a copy of which lease is hereto annexed and marked Schedule K.

Since I went into possession of said premises, 19 Clinton avenue, as aforesaid, I have had the sole and absolute possession thereof and the said Thomas McGuinness has not to my knowledge been in or upon or about the said premises since I moved there, except two or three times within two weeks after May 13, 1899, when he came there for his trunks, his harness, his horse and wagons, which he took or caused to be taken from the premises at that time and shipped to Philadelphia. I have paid Thomas McGuinness all the rent as required in and by said lease till about the first week in October, when D. Van Winkle & Company, who had been my agents for the collection of my rents from my sub-tenants, refused to pay the same to me because they had been served with a notice from John S. McMaster, Master in Chancery, with reference to some sequestration proceedings which were had in this cause.

I moved to said premises, 19 Clinton avenue, direct from my former residence, 139 Norfolk street, Newark, in the State of New Jersey, where I had resided continuously for thirty years before moving to Jersey City as aforesaid, where I kept a boarding house. I owned said premises in Newark, and when I moved to Jersey City I leased the same. Such of my household goods and effects as I desired to use at 19 Clinton avenue, Jersey City, I moved to that place, and the remainder thereof I stored in the city of Newark in a building other than the house I had vacated. I took the premises, 19 Clinton avenue, Jersey City, for the purpose of keeping a

boarding house there, and which I have done and still continue to do.

10 In the month of April, 1899, Thomas McGuinness, who is my brother, called at my residence in the city of Newark, and told me that he intended to move to Philadelphia, in the State of Pennsylvania, to live there permanently. I asked him if he did not intend to live in Jersey City again; he replied "never." He said he had endeavored to lease his residence in Jersey City, but could not find a desirable tenant, and he had come to see if I would not take a lease of the house in which he lived; that I could keep boarders there and with the rents I received from my Newark houses I could maintain myself; that he would make the rent very small provided I would agree to interest myself about his other property, such as keeping the buildings in repair, at reasonable price; watching the kind and conduct of tenants and generally superintending his affairs in and about his property interests; we finally agreed to this, whereupon the lease, of which Schedule J is a true copy, 20 was prepared and executed by us.

That prior to May 1st, 1899, the said Thomas McGuinness and his family moved from the premises, 19 Clinton avenue, excepting his son, John Edward, who was at No. 12 school, in Jersey City, and who remained with me till about the middle of June, when his school closed, and then he went to his father in Philadelphia.

30 In the month of August, 1899, I purchased from Thomas McGuinness all his furniture and carpets, kitchen utensils, crockery and the lumber that was about the barn, and a few stable implements and paid him for them.

Thomas McGuinness, before moving from Jersey City, as aforesaid, discharged his house servants and his gardener.

her  
CATHARINE x MURPHY.  
mark.

Subscribed and sworn to before me this twenty-third day of January, A. D. 1902, at Jersey City.

WILLIAM J. DAVIS,  
Master in Chancery of New Jersey.

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

GEORGE F. HYETT, being duly sworn according to law, on his oath says, that he is a clerk in the office of D. Van Winkle and Company, real estate agents, having an office at 585 Communipaw avenue, Jersey City; that on or about the first day of May, in the year eighteen hundred and ninety-nine, Thomas McGuinness called at said office and requested deponent to draw for him, in proper form, a lease of the premises, situate in the rear of Nos. 27 and 29 Clinton avenue, in said city, known as 19 Clinton avenue, and the contents thereof, between said Thomas McGuinness, as landlord, and Catharine Murphy, as tenant, from May 1st, 1899, to May 1st, 1900; and in accordance with said request, and the directions then given, deponent drew a lease, "Schedule J," hereto annexed, being a copy thereof, upon one of the usual blank forms kept in said office for use in such cases. 10

That the omission of a date to said lease was by no direction or desire of the said Thomas McGuinness, but was unintentional upon deponent's part; that said lease was executed by said Thomas McGuinness and Catharine Murphy about May 10th, to May 13th, 1899. 20

GEORGE F. HYETT. 30

Subscribed and sworn to before me, at Jersey City, this twenty-third day of January, A. D. 1902.

JAMES E. PYLE,  
Master in Chancery of New Jersey.

## SCHEDULE A.

## IN CHANCERY OF NEW JERSEY.

*To Thomas McGuinness:*

10 By virtue of an order of the Court of Chancery of New Jersey, made on the day of the date hereof, wherein Mary Ellen McGuinness is complainant and are defendant, you are required to appear, plead, answer or demur to the bill of said complainant on or before the ninth day of April next, or in default such decree will be taken against you as the Chancellor shall think equitable and just.

The said bill is filed against you to procure a divorce from bed and board for the cause of extreme cruelty.

MARSHALL VAN WINKLE,  
Solicitor for Complainant.

No. 1 Montgomery Street, Jersey City, New Jersey.  
Dated February 7th, A. D. 1900.

20

## SCHEDULE A.

## IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,  
Complainant,

and

30 THOMAS MCGUINNESS,  
Defendant.

ON BILL, &c.

AFFIDAVIT.

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

CLARENCE KELSEY, of full age, being duly sworn according to law, on his oath says, that on the seventh day

of February, A. D. nineteen hundred, he called at No. 102 South Fortieth street, in the city of Philadelphia, in the State of Pennsylvania, and found there the above named defendant, Thomas McGuinness, and then and there served personally upon the said Thomas McGuinness the notice of which the annexed is a true copy, by reading to and delivering to the said Thomas McGuinness a true copy of said notice.

CLARENCE KELSEY.

Sworn and subscribed to before me, at Jersey City, this twenty-fifth day of April, A. D. 1900. 10

THEO. RURODE,  
Master in Chancery of New Jersey.

Filed April 26th, 1900.

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SCHEDULE B.

IN CHANCERY OF NEW JERSEY. 20

Between

MARY ELLEN MCGUINNESS,

Complainant,

and

THOMAS MCGUINNESS,

Defendant.

ON BILL, &c.

FINAL DECREE. 30

This cause coming on to be heard in the presence of Marshall Van Winkle, of counsel with the complainant, no one appearing for the defendant; whereupon and upon reading the pleadings and proofs in the cause, and

the reports of Washington B. Williams, Esquire, one of the Special Masters of this Court, to whom, by previous orders herein, it was referred to take the depositions and other proofs offered by the said complainant in support of the allegations of the bill of complaint, and as to the location and value of the said defendant's personal and real estate, and to whom the care and custody of the children of the said marriage should be awarded, and the amount of alimony which should be paid by the said

10 defendant to the said complainant for her support and maintenance and the support and maintenance of the said children of the said marriage, and to report the same, together with his opinion thereon; from all which it now appears satisfactorily to the Chancellor that the marriage between the complainant and the defendant was solemnized and took place in the State of New Jersey on the nineteenth day of July, A. D. eighteen hundred and seventy-nine, and that the said complainant was an actual resident of and inhabitant of this State at

20 the time of the injury complained of and at the time of exhibiting the said bill of complaint, and ever since her said marriage; and that the said defendant has been guilty of extreme cruelty toward the said complainant, as charged against him in the said bill of complaint, and without any justifiable cause, and separated himself from the said complainant and neglected to maintain and provide for her;

It is thereupon, on this eighteenth day of May, A. D. nineteen hundred and one, by his Honor, William J. Magie, Chancellor of the State of New Jersey, by virtue

30 of the power and authority of this Court and of the acts of the Legislature in such case made and provided, ordered, adjudged and decreed, that the said complainant and defendant be divorced from bed and board forever.

And it is further ordered and decreed, that the said complainant have the care and custody of Mary Irene McGuinness, Marcella McGuinness and Ann McGuinness, three of the children of the said marriage, until the further order of this Court.

And it is further ordered and decreed, that the defendant pay to the complainant, or to her order, the sum of eighteen hundred and ninety dollars and forty cents, being an amount equal to the payment of nineteen dollars and twenty-three cents per week, from the twenty-eighth day of June, A. D. eighteen hundred and ninety-nine, the time when the defendant abandoned and ceased to support the complainant and said three children, to the date of the making of this decree.

And it is further ordered and decreed, that the said defendant pay to the complainant, or to her order, the further sum of nineteen dollars and twenty-three cents per week at the termination of each and every week from the date of this decree until the further order of this Court, for the support and maintenance of the complainant and the said three children. 10

And it is further ordered and decreed, that the said defendant do, within ten days from the date of service upon him of a copy of this decree, give bond to the said complainant, in the sum of two thousand dollars, to be approved as to form and security thereof by William A. Lewis, Esquire, one of the Special Masters of this Court, for the punctual payment of said weekly sum; and, upon the neglect of said defendant to give such security within the time so limited, or upon his default and that of his surety (in case such surety shall be given) to pay the amount herein ordered to be paid, that the complainant be at liberty to apply to this Court for relief in the premises according to law and the course of this Court. 20

And it is further ordered and decreed, that the defendant pay to the said complainant, or her solicitor, the costs of this suit to be taxed, and a counsel fee of seven hundred and fifty dollars, and that execution issue therefor according to the practice of this Court, and that the said complainant be at liberty to further apply to this Court as she may be advised. 30

W. J. MAGIE,  
Chancellor.

Filed May 31, 1901.

## SCHEDULE C.

## IN CHANCERY OF NEW JERSEY.

	Between		
	MARY ELLEN MCGUINNESS,	}	
10	Complainant,		ON BILL, &C.
	and		ORDER.
	THOMAS MCGUINNESS,	}	
	Defendant.		

10 A final decree having been entered in the above entitled cause on the thirty-first day of May, A. D. 1901, and it appearing that a certified copy of said decree and of the taxed bill of costs in said suit were, on the ninth day of July instant, served upon the above named defendant, and that demand was at the same time made upon him to pay the costs and the other amounts in said final decree ordered to be paid by him, and that the said defendant refused to pay the same or any part thereof;

20 It is, on this tenth day of July, A. D. nineteen hundred and one, ordered, upon motion of Marshall Van Winkle, of counsel with the said defendant, that a writ of *feri facias* do issue for the said taxed costs and the sum of eighteen hundred and ninety dollars and forty cents and the further sum of seven hundred and fifty dollars by said decree ordered to be paid.

W. J. MAGIE,  
C.

## SCHEDULE D.

## IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,

Complainant,

and

THOMAS MCGUINNESS,

Defendant.

ON BILL, &amp;c. 10

AFFIDAVIT.

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

CLARENCE KELSEY, being duly sworn according to law, 20  
 on his oath says, that on the ninth day of January, A. D.  
 1901, he served a certified copy of the final decree and  
 of the bill of taxed costs in the above cause upon the de-  
 fendant, Thomas McGuinness; and that acting under and  
 by virtue of the annexed power of attorney, demanded  
 of said defendant payment of the said taxed costs and  
 of the sums of money ordered by said final decree to be  
 paid; and that said Thomas McGuinness refused to pay  
 the same or any part thereof.

CLARENCE KELSEY. 30

Sworn and subscribed before me, at Jersey City, N.  
 J., this tenth day of July, A. D. nineteen hundred and  
 one.

FRANCIS V. MANY,  
 Master in Chancery of New Jersey.

## SCHEDULE E.

JERSEY CITY, N. J., July 8th, 1901.

*To Thomas McGuinness:*

10 You are hereby notified that we do hereby make, constitute and appoint Clarence Kelsey our true, sufficient and lawful attorney, for us and in our name, to demand and receive of and from you the amount of taxed costs in the case in the Court of Chancery of New Jersey, between Mary E. McGuinness, complainant, and you, the said Thomas McGuinness, defendant, and also the alimony and counsel fees ordered to be paid by you to us or either of us by the final decree in said cause; and we hereby demand payment of the same and authorize the said Clarence Kelsey to receive the said sums from you for us.

20

MARSHALL VAN WINKLE, [SEAL.]  
 MARY ELLEN MCGUINNESS, [SEAL.]

Witness as to Marshall Van Winkle.

GEO. W. RURODE.

Filed July 11th, 1901.

30

## SCHEDULE F.

## IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,

Complainant,

and

THOMAS MCGUINNESS,

Defendant.

ON BILL, &amp;c.

PETITION FOR

RECEIVER, &amp;c.

10

*To his Honor, William J. Magie, Chancellor of the State of New Jersey:*

The petition of the above named complainant, Mary Ellen McGuinness, respectfully shows, that on the ninth day of July last, the above named defendant, Thomas McGuinness, was served with certified copies of the final decree and bill of taxed costs in the above entitled cause; and that proper demand was at the same time made upon him for the payment of the alimony, counsel fees and costs which, in and by said final decree, he, the said defendant, was required to pay; also, that the said defendant refused and has neglected to give security for the payment of said alimony as required in and by said final decree.

20

30

That upon the filing of an affidavit of one Clarence Kelsey, showing the service upon said defendant of said certified copies of the final decree and bill of taxed costs and showing the refusal of said defendant to pay the said alimony, counsel fees and taxed costs or any part there-

of, a writ of *feri facias* issued out of this Honorable Court, against the property of the said defendant, which has been placed in the Hudson county Sheriff's hands for service.

10 That in and by the report of the Special Master, Washington B. Williams, filed in this cause, it appears that the said defendant is the owner of real estate in the city of Jersey City, in the county of Hudson, of the value of \$61,500 and renting for about \$5,200 per year. That about one-half in value of said property is about to be sold on the foreclosure of a mortgage of \$7,000 covering said one-half of said property, from which sale a surplus will likely be realized which should be applied to the future payment of the alimony due and to become due since the making of said final decree.

20 Your petitioner therefore prays, that a writ of sequestration may be issued out of this Honorable Court for the immediate sequestration of the said defendant's personal estate and the rents and profits of his real estate; that a receiver thereof be appointed; and that said personal estate and the rents and profits of said real estate, or so much thereof as shall be necessary, be applied towards the payment of such alimony as the same becomes due, and your petitioner will ever pray, &c.

MARY ELLEN McGUINNESS,  
Petitioner.

By MARSHALL VAN WINKLE,  
Solicitor.

30 Filed September 27th, 1901.

## SCHEDULE G.

## IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,

Complainant,

and

THOMAS MCGUINNESS,

Defendant.

ON BILL, &amp;C.

10

ORDER TO

SEQUESTRATE.

On application of the complainant, it appearing that no part of the alimony, counsel fees or costs awarded by the final decree of this Court in this cause have been paid to the complainant or her solicitor, and that the defendant is in contempt for failing to obey the decree of this Court therein; 20

It is, on this twenty-seventh day of September, A. D. nineteen hundred and one, on motion of Marshall Van Winkle, of counsel with complainant, ordered, that a writ of sequestration do issue against the said Thomas McGuinness, directed to John S. McMaster, of Jersey City, in this State, and a Master of this Court, to immediately sequester the said defendant's personal estate and the rents, issues and profits of his real estate to satisfy the said decree and until the further order of this Court. 30

W. J. MAGIE,  
C.

Filed September 30, 1901.

## SCHEDULE H.

NEW JERSEY, TO WIT:

The State of New Jersey to John S. Mc-  
[L. S.] Master, one of the Masters in Chancery of  
New Jersey, Greeting:

- 10** Whereas, on the twenty-seventh day of September, A. D. nineteen hundred and one, by a certain order made in our Court of Chancery, before our Chancellor, at Trenton, in a certain cause therein pending, wherein Mary Ellen McGuinness is complainant, and Thomas McGuinness is defendant, it was ordered that process do issue from and out of this court, directed to John S. McMaster, one of the Masters in Chancery of New Jersey, for the immediate sequestration of the personal estate of the said Thomas McGuinness, and of the rents, issues and profits of his real estate until the further order of this Court;

- 20** Therefore you are hereby commanded, that you do forthwith enter upon all the messuages, lands, tenements and real estate whatsoever of the said Thomas McGuinness, in the State of New Jersey, and that you do take, collect, recover and sequester into your hands, not only all the rents, issues and profits of the said messuages, lands, tenements and real estate, but also all his goods, chattels and personal estate whatsoever, and that you de-
- 30** tain and keep the same under sequestration in your hands and pay the same in such manner as the said Court shall appoint until the further order of this Court; and you are to make return of your proceedings by virtue of this writ to our Court of Chancery on the third Tuesday of October next, together with this writ.

Witness his Honor, WILLIAM J. MAGIE, our Chancellor, at Trenton, this thirtieth day of September, in the year of our Lord nineteen hundred and one.

E. C. STOKES,  
Clerk.

MARSHALL VAN WINKLE,  
Solicitor.

Writ of sequestration, returnable October term, 1901.

10

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SCHEDULE I.

Between

MARY ELLEN MCGUINNESS,

Complainant,

and

THOMAS MCGUINNESS,

Defendant.

ON BILL, &c.

NOTICE, &c.

20

*To Daniel Van Winkle and Stephen H. Olin, partners,  
trading as Daniel Van Winkle & Co.:*

SIRS: You and each of you are hereby notified that on September 30th, 1901, a writ of sequestration issued out of and under the seal of the Court of Chancery of New Jersey in the above entitled cause, commanding me, the undersigned, one of the Masters in Chancery of New Jersey, with my office at No. 1 Exchange place, Jersey City, New Jersey, to forthwith enter upon all the mes-  
sages, lands, tenements and real estate whatsoever of the said Thomas McGuinness in the State of New Jer-

30

sey and to take, collect and recover and sequester into my hands not only all the rents, issues and profits of the said messuages, lands, tenements and real estate but also all his goods, chattels and personal estate whatsoever and that I detain and keep the same in sequestration in my hands and pay the same in such manner as said Court shall appoint and until the further order of said Court.

10 Now, therefore, in pursuance of the writ of sequestration above, you are hereby further notified and requested to pay to me forthwith any rents now in your hands already collected or which may hereafter by you be collected as the agents of said Thomas McGuinness for any of his real estate situate in Jersey City or elsewhere in the State of New Jersey, and that you must not pay said rents or any portion thereof to any other person except to myself, the Master in Chancery in said writ described, and that upon making such payments to me, as such Master herein, I hereby agree as such Master to indemnify and save you harmless.

20

(Signed) JOHN S. McMASTER,  
Master in Chancery of New Jersey.

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#### SCHEDULE J.

30 This agreement, between Thomas McGuinness, landlord, by D. Van Winkle & Co., of the first part, and Catharine Murphy, of the second part, as tenant, witnesseth, that the said landlord has agreed to let, and hereby does let, and the said tenant has agreed to take, and hereby does take, all that certain two-story mansard roof and cellar frame dwelling house, including stable and grounds as now enclosed, together with the furniture, beds, bedding and hangings now in said house, excepting piano, sewing machine and music, sit-

uate in the rear of Nos. 27 and 29 Clinton avenue, in Jersey City, N. J., known as No. 19 Clinton avenue, in Jersey City, for the term of one year to commence on the first day of May, 1899, and to end on the first day of May, 1900, at 12 o'clock noon, at the yearly rent of sixty (60) dollars and other consideration, to be paid in equal monthly payments in advance in sums of five (5) dollars each, on the first day of each and every month, at the office of D. Van Winkle & Co., 585 Communipaw avenue, Jersey City, N. J., until the end of the term hereby granted.

10

This agreement is upon the following conditions and covenants, which are mutually agreed to by and between the parties hereto:

1st. That the tenant will pay the rent as aforesaid, as the same shall fall due, and shall also pay to the landlord, or the agent, any additional water tax that may be assessed against the property in consequence of the nature of the business carried on in said premises, or in any manner caused by the said tenant, said additional water tax to be added to the rent, and shall become due and payable as rent on the first day of July in each year during the term.

20

2d. That the tenant will not, without the landlord's consent in writing, assign this agreement, or underlet the premises, or any part thereof, or make any alterations in the building or premises or occupy the same for any other purpose than as..... or occupy, or permit the same to be occupied for any business or purpose deemed extra-hazardous, on account of fire under the penalty of forfeiture and damages, and will promptly comply with and execute all lawful orders and regulations of the Board of Health, Police Department and City Corporation relating to said premises, under the like penalty and damages.

30

3d. That the tenant will, in case of fire, give immediate notice thereof to the landlord, who shall thereupon

cause the damage to be forthwith repaired, unless the premises be so damaged as to become untenable, in which case the term of this lease shall cease, and the landlord will return a ratable proportion of any rent which may have been paid for any portion of the term not yet concluded.

4. That in case of default in any of the covenants, or in case the whole or any part of said premises shall become vacant, the landlord may, at his option, resume possession of the premises, either by force or otherwise, without being liable to any prosecution therefor, and relet the same during the remainder of the term at the best rent he can obtain for account of the tenant, who will make good any deficiency, together with the cost and expense of re-entering.

5th. That the landlord, or his agent, shall have liberty, after the first day of February, 1900, to put upon some conspicuous part of the said premises a notice "For Sale" or "To Let" and to be allowed to remain thereon without hindrance or molestation, and applicants shall be admitted at reasonable hours of the day to view them until rented.

And the landlord shall be permitted, at any time during said term, to visit and examine the premises at any reasonable hour of the day.

6th. That she will take good care of the property and its fixtures, and suffer no waste; and at the end or expiration of the term, the tenant shall deliver up the aforesaid premises and its fixtures in as good order and condition as the proper use thereof will admit, damage by the elements excepted; and that the landlord may recover immediate possession of the premises "for holding over after the expiration of the term" without any other than his notice of his intention to re-enter.

7th. And it is further understood and agreed, that the covenants and agreements contained in the within lease are binding on the parties hereto and their legal representatives.

8th. It is hereby further agreed upon, by and between the parties hereto, in case of any of the goods or chattels shall be removed from said premises by said tenant or otherwise during the term above granted, the said tenant shall be held liable for all damages and shall at once deliver possession of said premises to said landlord.

In witness whereof, the parties to this agreement have hereunto interchangeably set their hands, this  
day of 18

Landlord T. McGUINNESS, [SEAL.] 10  
By Agent.  
Tenant CATHERINE MURPHY, [SEAL.]

Executed and delivered in the presence of  
JOHN McGUINNESS.

25-cent Documentary stamp attached.

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SCHEDULE K.

This indenture, made the first day of August, one thousand eight hundred and ninety-nine, between Thomas McGuinness, of the first part, and Catharine Murphy, of the second part, witnesseth,

That the said party of the first part has letten, and by these presents does grant, demise, and to farm let, unto the said party of the second part, all that certain plot, piece or parcel of land and premises, situate, lying and being in Jersey City, in the county of Hudson and State of New Jersey, described as follows: Beginning at a point in the southwesterly line of Clinton avenue, distant one hundred (100) feet southeasterly from the corner of the same and Madison avenue; thence southwesterly and parallel with Madison avenue two hundred and ten (210)

30

feet; thence southeasterly, at right angles to Madison avenue, one hundred and twenty-five (125) feet, more or less, to rear of lots fronting on Ocean street; thence easterly about ten (10) feet; thence southerly two (2) feet; thence easterly one hundred and seventy-five (175) feet, more or less; thence northeasterly, at right angles to Clinton avenue, seventy-five and forty-two hundredths (75.42) feet to Clinton avenue; thence northwesterly, along said avenue, two hundred and forty-three feet one inch (243 ft. 1 in.) to the beginning. Being the same

**10** premises conveyed to the party of the first part hereto by Judith Tormey, by deed dated June eleventh, eighteen hundred and eighty-five, and recorded in the Hudson county Register's office in Book 532, page 598, on July tenth, eighteen hundred and ninety-one, with the appurtenances, for the term of twenty years, from the first day of August, one thousand eight hundred and ninety-nine, at the yearly rent or sum of thirteen hundred dollars (\$1,300), to be paid in equal monthly payments.

**20** And it is agreed that if any rent shall be due and unpaid, or if default shall be made in any of the covenants herein contained, then it shall be lawful for the said party of the first part to re-enter the said premises, and to remove all persons therefrom. And the said party of the second part does covenant to pay to said party of the first part the said yearly rent as herein specified, and also to keep all the buildings upon the demised premises in a complete state of repair, it being distinctly understood that the party of the first part shall not be liable for any repairs whatever thereto, unless ordered by party of the

**30** first part in writing.

And that at the expiration of the said term, the said party of the second part will quit and surrender the premises hereby demised in a complete state of repair.

And the said party of the first part does covenant that the said party of the second part, on paying the said yearly rent and performing the covenants aforesaid, shall

and may peaceably and quietly have, hold and enjoy the said demised premises for the term aforesaid.

It is understood and agreed between the parties hereto that the lease heretofore given by the party of the first part to the party of the second part for the premises known as street number nineteen (19) Clinton avenue, being a part of the hereby demised premises, shall merge in this lease.

In witness whereof, the parties hereto have hereunto set their hands and seals the day and year first above written. **10**

THOMAS MCGUINNESS, [SEAL.]  
her  
CATHARINE X MURPHY.  
mark.

Signed, sealed and delivered in the presence of  
THOMAS E. MCGUINNESS.

\$1.00 documentary stamps attached. **20**

STATE OF NEW YORK,  
CITY AND COUNTY OF NEW YORK, } ss.

Be it remembered, that on this fifteenth day of August, in the year eighteen hundred and ninety-nine, before me, the subscriber, a notary public in and for said county, personally appeared Thomas McGuinness, who, I am satisfied, is the lessor named in and who executed the foregoing lease; and I having first made known to him the contents thereof, he did thereupon acknowledge that he signed, sealed and delivered the same as his voluntary act and deed for the uses and purposes therein expressed. **30**

ISAAC HATTENBACH, 39,  
[SEAL.] Notary Public.

County Clerk's certificate attached.



and now is and has been a resident of Chester county, Pennsylvania, since early September, 1900.

JOS. H. BALDWIN.

Affirmed and subscribed before me this 28th day of October, A. D. 1901.

[SEAL.]

NORRIS S. INGRAM,  
Notary Public.

Commission expires February 23, 1905.

10

IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,

Complainant,

and

THOMAS MCGUINNESS,

Defendant.

ON BILL FOR

DIVORCE.

20

STATE OF PENNSYLVANIA, }  
COUNTY OF CHESTER, } ss.

E. M. GATCHELL, of full age, being duly affirmed according to law, declares and says, that he is the proprietor of the boarding stables adjacent to the Mansion House Hotel, situate in the Seventh Precinct of the Borough of West Chester, county and State aforesaid; that he is acquainted with Thomas McGuinness, the above named defendant; that Mr. McGuinness brought his horses to his stables about September 1st, 1900, and that the said McGuinness has since been a resident of said borough; that to the knowledge of the affiant, the

30

said Thomas McGuinness voted at the borough election in said borough held in February, 1901, and that the said Thomas McGuinness is at the present time a qualified elector in said precinct in said borough.

E. M. GATCHELL.

Affirmed and subscribed before me this twenty-eighth day of October, A. D. 1901.

NORRIS S. INGRAM,  
Notary Public.

10 [SEAL.]

Commission expires February 23, 1905.

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THE COMMONWEALTH OF PENNSYLVANIA.

CHESTER COUNTY, SS.

20 [L. s.] I, GEO. R. NORTH, Clerk of the Court of Quarter Sessions in and for the county of Chester, in the Commonwealth aforesaid, do hereby certify that Norris S. Ingram, Esquire, before whom the foregoing affidavits were taken, and who has thereunto subscribed his name, was at the time the same bears date, and now is, an acting Notary Public in and for said county, duly commissioned and qualified, to all whose official acts, as such, due faith and credit are, and of right ought to be given accordingly, and that the above is his genuine signature as I verily believe.

30 In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court, at West Chester, in the county aforesaid, the 4th day of November, in the year of our Lord one thousand nine hundred and one.

GEO. R. NORTH,  
Clerk.

Per H. M. RUTH,  
Deputy.

## IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,

Complainant,

and

THOMAS MCGUINNESS,

Defendant.

ON BILL FOR

DIVORCE.

10

STATE OF PENNSYLVANIA, } ss.  
COUNTY OF CHESTER, }

GEORGE M. PHILIPS, of full age, being duly affirmed according to law, declares and says, that he is principal of the West Chester State Normal School, situate at West Chester, Pennsylvania, and is well acquainted with Thomas McGuinness. Mr. McGuinness brought his son, John, to our school about the 1st of September, 1900; he also requested me to write his elder daughter informing her that it was her father's desire that she and her sisters attend our school, and that upon their expressing their willingness to comply with this request money would be forwarded them to make the necessary preparations and car fare, and in said letter I personally urged that the father's proposition be accepted. John McGuinness is now and has been since September, 1900, a student in our school, and Thomas McGuinness has, since September, 1900, been a resident of Chester county, Pennsylvania.

GEORGE M. PHILIPS.

Affirmed and subscribed before me this 25th day of October, A. D. 1901.

[SEAL.]

NORRIS S. INGRAM,  
Notary Public.

Commission expires February 23, 1905.

IN CHANCERY OF NEW JERSEY.

10 Between

MARY ELLEN MCGUINNESS,

Complainant,

and

THOMAS MCGUINNESS,

20

Defendant.)

ON BILL FOR  
DIVORCE.

STATE OF PENNSYLVANIA, }  
COUNTY OF CHESTER, } ss.

JAMES C. MILLHIZER, of full age, being duly affirmed according to law, declares and says, that he is proprietor of the Mansion House Hotel, situate in the Seventh precinct of the borough of West Chester, Pa., and that he is well acquainted with Thomas McGuinness, the above named defendant; that the said Thomas McGuinness has, since September, 1900, been a continuous boarder at his hotel, excepting a few weeks in the summer of 1901, during which time Mr. McGuinness boarded in the country, about four miles from said borough. During whole of said time Mr. McGuinness has been a resident of said county and State.

J. C. MILLHIZER.

Affirmed and subscribed before me this 28th day of October, A. D. 1901.

NORRIS S. INGRAM,  
Notary Public.

[SEAL.]

Commission expires February 23, 1905.

IN CHANCERY OF NEW JERSEY.

10

Between

MARY ELLEN MCGUINNESS,

Complainant,

and

THOMAS MCGUINNESS,

Defendant.

ON BILL FOR  
DIVORCE.

20

STATE OF PENNSYLVANIA, }  
COUNTY OF CHESTER, } ss.

FREDERICK A. WOODWARD, of full age, being duly affirmed according to law, declares and says, that he is election assessor of the Seventh Precinct of the Borough of West Chester; that he is acquainted with Thomas McGuinness, defendant above named; that the said Thomas McGuinness has been a resident of the Seventh Precinct of said Borough since September, A. D. 1900, and that the said Thomas McGuinness is a qualified elector in said precinct, and during the whole of said period Mr. McGuinness has been a resident of said county and State.

30

F. A. WOODWARD.

Affirmed and subscribed before me this eighteenth day of October, A. D. 1901.

[SEAL.] NORRIS S. INGRAM,  
Notary Public.  
Commission expires February 23, 1905.

IN CHANCERY OF NEW JERSEY.

10 MARY ELLEN MCGUINNESS, }  
vs. }  
THOS. MCGUINNESS.

STATE OF PENNSYLVANIA, }  
CITY OF PHILADELPHIA, } ss.

MRS. MARTHA LEMON, being duly affirmed, says: I have been in the real estate business for several years. 20 I know the defendant in this suit. He and his wife came to my office in May, 1899, several times to rent a house that I had vacant on Haverford avenue, near Seventy-second street. Mr. McGuinness was anxious to hire the house; it was near where his children were at school. His wife said she did not want to keep house, so I recommended them to a boarding house, kept by Colonel William Setford, 121 North Sixty-third street, Philadelphia. Mr. McGuinness was very respectful to his wife and reasoned with her the necessity of having 30 the daughter within reach of Dr. Willard, a specialist in spine disease, from which she was suffering.

MARTHA LEMON.

Affirmed and subscribed to before me this second day of November, A. D. 1901.

[SEAL.] GEORGE W. BOYER,  
Notary Public.  
Commission expires February 26th, 1905.

STATE OF PENNSYLVANIA, }  
 COUNTY OF PHILADELPHIA, } ss.

Acknowledgment (Notary).

I, M. RUSSELL THAYER, Prothonotary of the county of Philadelphia and Clerk of the Courts of Common Pleas of said county, which are Courts of Record, having a common seal, being the officer authorized by the laws of the State of Pennsylvania to make the following certificate, do certify, that George W. Boyer, Esquire, whose name is subscribed to the certificate of the acknowledgment of the annexed instrument and thereon written, was at the time of such acknowledgment a Notary Public for the Commonwealth of Pennsylvania, residing in the county aforesaid, duly commissioned and qualified to administer oaths and affirmations and to take acknowledgments and proofs of deeds or conveyances for lands, tenements and hereditaments to be recorded in said State of Pennsylvania, and to all whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere; and that I am well acquainted with the handwriting of the said Notary Public and verily believe his signature thereto is genuine, and I further certify that the said instrument is executed and acknowledged in conformity with the laws of the State of Pennsylvania.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, this seventh day of November, in the year of our Lord one thousand nine hundred and one.

[SEAL.]

M. RUSSELL THAYER,  
 Prothonotary.

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## IN CHANCERY OF NEW JERSEY.

MARY ELLEN MCGUINNESS,  
 Complainant,  
 vs.  
 10 THOMAS MCGUINNESS,  
 Defendant.

STATE OF PENNSYLVANIA, }  
 COUNTY OF DELAWARE, } ss.

20 Be it remembered, that on the thirty-first day of October, A. D. 1901, before me, the subscriber, a Notary Public in and for the State of Pennsylvania, residing in the city of Chester, personally appeared Sarah E. Cain, to me personally known, who being duly sworn according to law, deposes and says that she is a resident of the township of Neither Providence, county of Delaware, and State of Pennsylvania; that on the twenty-first day of June, A. D. 1899, and for some time prior thereto she was residing in the county aforesaid; that she is personally acquainted with Thomas McGuinness, the defendant above-named, having become acquainted with him on or about the date above set out, on which date he, together with his wife and daughter, applied to her house for rooms and board for himself and family; that 30 after looking at the rooms the said defendant left it to the said complainant to say whether or not they were suited with them; that the said complainant promised to return and let your said deponent know; that after the above conversation the said deponent drove the said complainant and the said defendant and their daughter to Kirk's drug store, in the city of Chester aforesaid,

where the said defendant bought refreshments for the said complainant and daughter; that the said defendant treated the said complainant and daughter with the utmost curtesy, respect and kindness, and that they all seemed to enjoy the day; that no unkind words were spoken, and that the said defendant could not have been more kind and fatherly to the said complainant and daughter.

Your deponent further says, that she has been acquainted with the whereabouts of the said defendant from the date above set out, to wit, June 21st, 1899, to the present time; that she has seen him frequently within the above dates; and that he was then and is now a resident of the State of Pennsylvania. 10

MRS. SARAH E. CAIN, [SEAL.]

Sworn and subscribed to, the thirty-first day of October, A. D. 1901.

J. C. TAYLOR,  
Notary Public. 20

[SEAL.]

My commission expires February 27, 1905.

STATE OF PENNSYLVANIA, }  
COUNTY OF DELAWARE, } ss.

I, W. L. MATHUES, Prothonotary of the Court of Common Pleas, in and for said county of Delaware, in said State, do certify that J. C. Taylor, before whom the affidavit hereto annexed was made, and who has heretofore subscribed his name, was at the time of making the same, and still is a Notary Public in and for said county, duly commissioned and qualified to administer oaths, and take acknowledgments of deeds, etc., to all of whose official acts full faith and credit are due and ought to be given, as well in Courts of Judicature or elsewhere; that I am well acquainted with the handwriting 30

of the said J. C. Taylor, and verily believe his signature thereto to be genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court, this thirty-first day of October, Anno Domini one thousand nine hundred and one (1901).

W. L. MATHUES,  
Prothonotary.

Per A. J. DALTON,  
Deputy Prothonotary.

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IN CHANCERY OF NEW JERSEY.

MARY ELLEN MCGUINNESS,  
Complainant,

vs.

THOMAS MCGUINNESS,  
Defendant.

20

STATE OF PENNSYLVANIA, }  
COUNTY OF DELAWARE, } ss.

30 Be it remembered, that on the thirty-first day of October, A. D. 1901, before me, the subscriber, a notary public in and for the State of Pennsylvania, residing in the city of Chester, personally appeared Jennie Burk, to me personally known, who, being duly sworn according to law, deposes and says, that she is a resident of the township of Neither Providence, county of Delaware and State of Pennsylvania; that on the twenty-first day of June, A. D. 1899, and for some time prior thereto, she was residing in the county aforesaid; that she is personally acquainted with Thomas McGuinness, the defendant

above named, having become acquainted with him on or about the date above set out, on which date he, together with his wife and daughter, applied to her mother's house for rooms and board for himself and family; that after looking at the rooms the said defendant left it to the said complainant to say whether or not they were suited with the rooms; that the said complainant replied that she would return and let her mother know; that after the above conversation the mother of the said deponent drove the said complainant and the said defendant and their daughter to Kirk's drug store, in the city of Chester aforesaid, where the said defendant bought refreshments for the said complainant and daughter; that the said defendant treated the said complainant and daughter with the utmost courtesy, respect and kindness, and that they all seemed to enjoy the day; that no unkind words were spoken, and that the said defendant could not have been more kind and fatherly to the said complainant and daughter. 10

The deponent further says, that she has been acquainted with the whereabouts of the said defendant from the date above set out, to wit, June 21st, A. D. 1899, to the present time, and that he was then and is now a resident of the State of Pennsylvania. 20

MRS. JENNIE BURK.

Sworn and subscribed to the 31st day of October, A. D. 1901.

[SEAL.]

J. C. TAYLOR,  
Notary Public.

My commission expires February 27, 1905. 30

STATE OF PENNSYLVANIA, }  
COUNTY OF DELAWARE, } ss.

I, W. L. MATHUES, Prothonotary of the Court of Common Pleas in and for said county of Delaware, in said State, do certify that J. C. Taylor, before whom the

affidavit hereto annexed was made, and who has hereunto subscribed his name was at the time of making the same, and still is, a notary public in and for said county, duly commissioned and qualified to administer oaths and take acknowledgments of deeds, etc., to all of whose official acts full faith and credit are due and ought to be given, as well in Courts of Judicature or elsewhere; that I am well acquainted with the handwriting of the said J. C. Taylor, and verily believe his signature thereto to be genuine.

10

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court, this thirty-first day of October, Anno Domini, one thousand nine hundred and one (1901).

W. L. MATHUES,  
Prothonotary.  
Per A. J. DALTON,  
Deputy Prothonotary.

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IN CHANCERY OF NEW JERSEY.

MARY ELLEN MCGUINNESS,  
Complainant,

vs.

THOMAS MCGUINNESS,  
Defendant.

30

STATE OF PENNSYLVANIA, }  
CITY OF PHILADELPHIA, } ss.

HENRY HEINE, being duly sworn, says: I reside in the city of Philadelphia, and have lived there for a number of years. I have had and now have charge as fore-

man of Mr. Simon Bennett's livery stable, on South Fortieth street.

Mr. Thomas McGuinness, living then at No. 3814 Spruce street, came to the stable in the early part of May, 1899, and hired a horse and wagon to take his daughter out driving. She had just come out of a hospital. After that he took her out very often. On the 18th of May, 1899, he brought his own horse and wagon to the stable.

He subsequently asked me if I knew of any nice house to rent with a stable attached. I told him that I knew of one on Haverford avenue, and he took his wife to look at it several times. They both told me they were very much pleased with it, especially as it was near the Convent of Mercy, at Merion, Pennsylvania, where his children were attending school. Mr. McGuinness seemed very anxious to be near the children, and was especially pleased with the idea that if they lived in the neighborhood of the Convent they could come home and spend Sunday with their parents. 10

I was almost uniformly at the stable when they came for their horse and wagon, and when they returned. They were always most courteous and polite to each other. 20

I have kept up my acquaintance with Mr. McGuinness ever since that time, and know that he has lived continuously in Pennsylvania and that he is now a resident of and voter in the town of West Chester.

HENRY HEINE. 30

Sworn to and subscribed before me this second day of November, A. D. 1901.

[SEAL.]

ARTHUR B. HUEY,  
Notary Public.

Commission expires January 19, 1903.

STATE OF PENNSYLVANIA, }  
 CITY OF PHILADELPHIA, } ss.

Affidavit (Notary).

I, M. RUSSELL THAYER, Prothonotary of the county of Philadelphia and Clerk of the Courts of Common Pleas of said county, which are Courts of Record, having a common seal, being the officer authorized by the laws of the State of Pennsylvania to make the following

**10** certificate, do certify, that Arthur B. Huey, Esquire, before whom the annexed affidavit was made, was at the time of so doing a Notary Public for the commonwealth of Pennsylvania, residing in the county of Philadelphia, duly commissioned and qualified to administer oaths and affirmations and to take acknowledgments and proofs of deeds or conveyances for lands, tenements and hereditaments in said State of Pennsylvania, and to all whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere; and

**20** that I am well acquainted with the handwriting of the said Notary Public and verily believe his signature thereto is genuine, and that said oath or affirmation purports to be taken in all respects as required by the laws of the State of Pennsylvania.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, this seventh day of November, in the year of our Lord one thousand nine hundred and one.

M. RUSSELL THAYER,  
 Prothonotary.

**30** [SEAL.]

## IN CHANCERY OF NEW JERSEY.

MARY ELLEN MCGUINNESS,

Plaintiff,

vs.

THOMAS MCGUINNESS,

Defendant.

10

STATE OF PENNSYLVANIA, }  
CITY OF PHILADELPHIA, } ss.

WASHINGTON MURPHY, being duly sworn, says: I reside in Philadelphia. I got acquainted with Mr. Thomas McGuinness in May, 1899, at Mr. Simon Bennett's boarding and livery stable, on South Fortieth street. Mr. McGuinness then lived at No. 3814 Spruce street. I have known him to live in this State ever since.

20

He is a member of a social organization of which I am a member, and I have done business with him from time to time ever since May, 1899, and I know that he has been and is a resident and voter in Pennsylvania.

I assisted him in May, 1899, in his efforts to find a house for himself and family before Mrs. McGuinness went back to Jersey City, but his objection to the one I showed him was that it was not a large enough house, or handsome enough, to suit his family.

30

WASHINGTON MURPHY.

Sworn to and subscribed before me, this second day of November, A. D. 1901.

[SEAL.]

ARTHUR B. HUEY,  
Notary Public.

Commission expires January 19, 1903.

OFFICE OF THE CITY COMMISSIONERS,  
CITY HALL, BROAD AND MARKET STS.,  
PHILADELPHIA, 10-30, 1901.

This is to certify the name of Thomas McGuinness, No. 3814 Spruce street, appears on the assessor's list of voters of Thirteenth Division, Twenty-seventh Ward, for the year 1899.

J. H. WINTERS, [SEAL.]  
Chief Clerk for City Commissioners.

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IN THE COURT OF CHANCERY FOR THE  
STATE OF NEW JERSEY.

	MARY ELLEN MCGUINNESS,	}
20	Plaintiff,	
	vs.	
	THOMAS MCGUINNESS,	}
	Defendant.	

CITY AND COUNTY OF PHILADELPHIA, SS.

30 WILLIAM E. SHAW, of the city of Philadelphia and State of Pennsylvania, being duly sworn, deposes and says, that he is now and has been for the past seven years assessor in the Thirteenth Division of the Twenty-seventh Ward, of the City of Philadelphia; and that in May, of the year 1899, he duly assessed Thomas McGuinness, of No. 3814 Spruce street, as a resident of the city at that address.

WILLIAM E. SHAW.

Sworn to and subscribed before me, this second day  
of November, A. D. 1901.

[SEAL.]

ARTHUR B. HUEY,  
Notary Public.  
Commission expires January 19, 1903.

10

IN CHANCERY OF NEW JERSEY.

MARY ELLEN MCGUINNESS,

Plaintiff,

and

THOMAS MCGUINNESS,

Defendant.

20

STATE OF PENNSYLVANIA, }  
CITY OF PHILADELPHIA, } ss.

SIMON BENNETT, being duly sworn, says: I am  
years of age. I have lived in Philadelphia all my life  
until quite recently, when I moved to a farm which I own  
just outside the city limits, but I am, as for many years  
past, engaged in the business of "Livery Stable" in Phil-  
adelphia, on Fortieth street, below Walnut street.

30

On or about the tenth day of May, in the year  
eighteen hundred and ninety-nine (1899), Thomas Mc-  
Guinness, defendant in above cause, who was then resid-  
ing at No. 3814 Spruce street, came to my stable and

hired a horse and carriage to take his daughter, apparently in bad health, for a drive. About the same time he brought his own horse and carriage to my stable, and thereafter took his wife and daughter out driving almost daily. After some little time, in the presence of his wife, he commenced to talk about going to housekeeping, and of desiring to purchase a place with a stable, and while the wife was present I gave him the addresses of different real estate agents and also named one or two places that perhaps might suit. Mrs. McGuinness said she liked Philadelphia, but liked New Jersey better as a place of residence, while Mr. McGuinness said he was so pleased with Philadelphia that he intended to live in the city of Philadelphia or its vicinity, to which his wife replied that she would also prefer to be in or near the city, as then they would be near their children. They talked pleasantly and cheerfully about their home arrangements.

10 In September, 1900, Mr. McGuinness sent his boy to the State Normal School at West Chester, in the State of Pennsylvania, and he went to West Chester, where he registered as a voter, where he voted, and where to my knowledge he is registered to vote again this fall.

Said Thomas McGuinness is a member of a political organization of which I am a member, and has been such for about two years last past. He and his son have frequently called at my house, and I know of my own knowledge that he has been a resident of the State of Pennsylvania ever since May 1, 1899.

30

SIMON BENNETT.

Sworn to and subscribed before me, this second day of November, A. D. 1901.

[SEAL.]

ARTHUR B. HUEY,  
Notary Public.

Commission expires January 19, 1903.

## IN CHANCERY OF NEW JERSEY.

MARY ELLEN MCGUINNESS,

Plaintiff,

vs.

THOMAS MCGUINNESS,

Defendant.

10

STATE OF PENNSYLVANIA, }  
CITY OF PHILADELPHIA, } ss.

NETTIE MARKWARD, being duly sworn, says: I know Mr. Thomas McGuinness, his wife and his children. While his daughters were at the Convent of Mercy, at Merion, Pennsylvania, I made dresses for them. I also called on the family at their home, No. 3814 Spruce street, Philadelphia, and spent an evening with them in June, 1899. Mrs. McGuinness that night was playing the piano, and the family were present. Subsequently Mr. McGuinness, in the presence of his wife, invited my sister and myself to accompany his wife and daughter and himself to a musical performance in Philadelphia. We went, and on our way home he took us all to a restaurant for supper, which he paid for. I saw Mr. and Mrs. McGuinness together at other times, and noted that he always treated his wife most respectfully and was a very affectionate and devoted husband and father.

20

30

NETTIE MARKWARD

Sworn to and subscribed before me this fourth day of November, 1901.

ARTHUR B. HUEY,  
Notary Public.

[SEAL.]

Commission expires January 19, 1903.

IN THE COURT OF CHANCERY FOR THE  
STATE OF NEW JERSEY.

IN RE MARY E. MCGUINNESS, )

vs. )

THOMAS MCGUINNESS. )

10

Before me, a Notary Public in and for the State of Pennsylvania, personally appeared Jane Friel, who being duly affirmed, deposes and says: I live at 117 South Thirty-fourth street, in the city of Philadelphia, Pa., with my husband and my daughter, Kathryn McCarthy. I know Mary E. McGuinness and Thomas McGuinness, the above named parties. I knew them first when they came to reside at 3814 Spruce street, Philadelphia, Pa. They came there to reside in the Spring of 1899, on or about the first of May, and resided there until about the last of June, 1899, when Mrs. McGuinness went away, taking her daughter, Mary Irene, with her.

20

Mr. and Mrs. McGuinness had two rooms in the house; they occupied one by themselves; the room occupied by them was the best room in the house. Mr. McGuinness and his wife got along well together. Mr. McGuinness was always kind and attentive to his wife and children; I never saw him abuse or ill-treat his wife or children in any way. Mrs. McGuinness played the piano and sang and had a good time. She went to the operas and theatre with Mr. McGuinness and members of my family, and oftentimes she and Mr. McGuinness went out driving together while they resided at our house.

30

I know John F. McCarthy; I have known him for many years. He is both meddlesome and worthless; I could not believe him under oath.

JANE FRIEL.

Affirmed and subscribed before me this twenty-third day of January, A. D. 1902.

[SEAL.]

R. S. REED,  
Notary Public.

Term expires March 7th, 1903; in continuous commission 20 years.

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STATE OF PENNSYLVANIA, }  
COUNTY OF CHESTER, } ss.

THOMAS MCGUINNESS, being duly affirmed according to law, declares and says, that the within named Jane Friel is the mother-in-law of John F. McCarthy.

T. MCGUINNESS.

Affirmed and subscribed before me this 19th day of February, A. D. 1902. 20

[SEAL.]

NORRIS S. INGRAM,  
Notary Public.

Commission expires February 23, 1905.

A true copy.

VIVIAN M. LEWIS,  
Clerk.

Filed February 24, 1902.

30

## IN CHANCERY OF NEW JERSEY.

Between		}	ON BILL, FOR
	MARY ELLEN MCGUINNESS,		DIVORCE.
	Complainant,		ON PETITION, &C.
<b>10</b>	and		ORDER TO SHOW
	THOMAS MCGUINNESS,	}	CAUSE.
	Defendant.		

On reading the petition and affidavits annexed thereto, presented to the Court on behalf of the above named petitioner, Thomas McGuinness;

**20** It is, on this twenty-fourth day of February, in the year nineteen hundred and two, on motion of William Brinkerhoff, of counsel with said petitioner, ordered that the complainant, Mary Ellen McGuinness, show cause before this Court, at the Chancery Chambers in Jersey City, on Monday, the third day of March next, at ten o'clock in the forenoon of that day, or so soon thereafter as the Court can attend to the same, why the enrollment in the above entitled cause should not be opened and the final decree and all orders therein should not be opened and vacated and the subpoena ad *respondendum* and the service thereof, together with the

**30** writ of sequestration issued herein should not be set aside and the complainant's bill of complaint be dismissed and the other relief prayed for in said petition should not be granted.

And it is further ordered, that a true copy of the said petition and affidavits and of this order, which need not be certified, be served on the said complainant, or on her solicitor, within five days from the date hereof.

And it is further ordered, that John S. McMaster, to whom a writ of sequestration in this cause was directed as one of the Masters of this Court, desist and refrain until the further order of this court, from paying to the complainant, or to any other person, any of the rents received by him from the tenants or occupants of the defendant's real estate.

W. J. MAGIE,  
C.

Respectfully advised.

101

EUGENE STEVENSON,  
V. C.

A true copy.

VIVIAN M. LEWIS,  
Clerk.

Filed February 26th, 1902.

203

IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,

Complainant,

and

THOMAS MCGUINNESS,

Defendant.

ON BILL, &c.

ORDER.

30

It appearing to the Court that John S. McMaster, the sequestrator appointed in the above entitled cause, has entered upon the messuages, lands, tenements and real

estate of said defendant in this State and has sequestered into his hands the rents, issues and profits of said real estate, in pursuance of the direction to him in the writ of sequestration herein contained, and now has remaining in his hands a balance of one thousand one hundred and twenty-three dollars and ninety-three cents subject to the order of this Court. And it further appearing that there is now due to the complainant for alimony and counsel fees, in the above entitled cause, the sum of thirty-five hundred dollars and upwards;

- 10 It is, on this sixteenth day of May, A. D. one thousand nine hundred and two, on motion of Marshall Van Winkle, solicitor for and of counsel with said complainant, ordered, that said John S. McMaster, sequestrator, pay over to said Marshall Van Winkle, out of the moneys in his hands as aforesaid, the sum of one thousand dollars, to be by him applied toward the payment and satisfaction of the amount due said complainant under the final decree herein.

W. J. MAGIE,  
C.

- 20 Respectively advised.

S. M. DICKINSON,  
Adv. Master.

A true copy.

VIVIAN M. LEWIS,  
Clerk.

Filed May 16, 1902.

30

## IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,

Complainant,

and

THOMAS MCGUINNESS,

Defendant.

ON BILL, &amp;C.

ORDER.

10

It appearing to the Court that John S. McMaster, the sequestrator herein, has received herein the sum of three thousand and ninety-seven dollars and ninety-seven cents, and has disbursed the sum of two thousand one hundred and eight dollars and sixty-eight cents, and that there now remains in his hands a balance amounting to nine hundred and eighty-nine dollars and twenty-nine cents, and that said sequestrator has heretofore been paid nothing on account of his services herein, and that there are unpaid taxes and other city liens against the property now in his charge herein, and that said property is about to be advertised for sale for certain of these unpaid city liens, and upon further good cause shown;

20

It is, on this October 1st, 1902, on motion of Marshall Van Winkle, of counsel with the complainant herein, ordered that said John S. McMaster, sequestrator herein, pay to himself, on account of his services herein, the sum of one hundred and fifty dollars, and that he apply the remainder of said unexpended balance in his hands, and so much of his further receipts herein, toward the payment of so much of said unpaid city liens.

30

for which said property is now or is about to be advertised for sale.

W. J. MAGIE,  
C.

A true copy.

VIVIAN M. LEWIS,  
Clerk.

Filed October 2d, 1902.

10

IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,

Complainant,

ON BILL, &C.

20

and

ORDER.

THOMAS MCGUINNESS,

Defendant.

30

An order having been heretofore made in the above entitled cause, on May sixteenth, A. D. one thousand nine hundred and two, that John S. McMaster, Esq., the sequestrator appointed therein, pay to the said complainant the sum of one thousand dollars, to be applied toward the satisfaction of the amount due under the final decree herein; and it appearing that the sequestrator has further moneys in his hands derived from the issues and profits of the real estate of said defendant;

It is, on this fifth day of January, A. D. one thousand nine hundred and three, on motion of Marshall Van Winkle, solicitor for and of counsel with said complainant, ordered, that said John S. McMaster, sequestrator,

pay over to said complainant, or her counsel herein, out of the moneys in his hands as aforesaid, the sum of one hundred and twenty-five dollars to be applied toward the payment and satisfaction of the amount due said complainant under the final decree herein.

W. J. MAGIE,  
C.

Jan. 5, 1903—Received check of John S. McMaster for one hundred and twenty-five dollars, and endorsed same to the order of M. E. McGuinness, Compl't. **10**

MARSHALL VAN WINKLE,  
Sol.

A true copy.

VIVIAN M. LEWIS,  
Clerk.

Filed March 17, 1903.

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IN CHANCERY OF NEW JERSEY. **20**

Between

MARY ELLEN MCGUINNESS,

Complainant,

and

THOMAS MCGUINNESS,

Defendant.

ON BILL, &c.

ORDER. **30**

Orders having been heretofore made in the above entitled cause, on May sixteenth, one thousand nine hundred and two, and on January fifth, one thousand nine

hundred and three, directing the sequestrator therein to pay to the said complainant, or her counsel, the sums of one thousand and one hundred and twenty-five dollars, respectively, to be applied toward the satisfaction of the amount due said complainant under the final decree herein; and it appearing that the said sequestrator has further moneys in his hands derived from the issues and profits of the real estate of the said defendant;

10 It is, on this seventeenth day of March, A. D. one thousand nine hundred and three, on motion of Marshall Van Winkle, solicitor for and of counsel with said complainant, ordered, that said John S. McMaster, the said sequestrator, pay over to the said complainant, or her counsel herein, out of the moneys in his hands, as aforesaid, the sum of three hundred dollars, to be applied toward the payment and satisfaction of the amount due said complainant under the final decree herein.

W. J. MAGIE,  
C.

20 A true copy.  
VIVIAN M. LEWIS,  
Clerk.

Filed March 17, 1903.

30

## IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,

Complainant,

and

THOMAS MCGUINNESS,

Defendant.

ON BILL, &amp;c.

ORDER.

10

It appearing to the Court that the sequestrator herein now has in his hands a balance of one thousand three hundred and seventy-three dollars and seventy-nine cents, and upon good cause shown;

It is, on this twentieth day of October, A. D. nineteen hundred and three, on motion of Marshall Van Winkle, of counsel with the complainant herein, ordered, that said sequestrator herein, John S. McMaster, pay to said complainant, Mary Ellen McGuinness, the sum of five hundred dollars on account of the alimony due her under the decree herein.

W. J. MAGIE,  
C.

A true copy.

VIVIAN M. LEWIS,  
Clerk.

30

Filled October 20, 1903.

## IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,

Complainant,

and

THOMAS MCGUINNESS,

Defendant.

ON BILL, &C.  
ORDER FOR DIS-  
BURSEMENTS.

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It appearing to the Court that John S. McMaster, the sequestrator herein, has received the sum of six thousand six hundred and sixty-eight dollars and sixteen cents, and has disbursed the sum of five thousand five hundred and thirty-five dollars and sixty-two cents, and that there now remains in his hands the unexpended balance of one thousand one hundred and thirty-two dollars and fifty-four cents, and that taxes and water rents against the property in his charge remain unpaid for the years 1900, 1901, 1902 and 1903, and that said property is about to be advertised for sale for said taxes and water for 1900, and that said taxes and water for 1900 amount as of December 20, 1903, to one thousand three hundred and nineteen dollars and fifty-four cents, and upon further good cause shown.

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It is, on this eighteenth day of December, nineteen hundred and three, on motion of John S. McMaster, the sequestrator herein, ordered, that said John S. McMaster forthwith disburse said balance in his hands of one thousand one hundred and thirty-two dollars and fifty-four cents toward the payment of said taxes and water for 1900, and that out of the next receipts coming into his hands he pay the balance due for said taxes and water of 1900, and also pay to himself the further sum of one hundred and fifty dollars on account of his fees and charges as such sequestrator, and also pay to Walter J. Knight fifty-two dollars and ten cents in full

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for his bill for copies of notes of evidence taken on October 26, 1903, before the Chancellor of New Jersey in the case of McGuinness vs. McLaughlin concerning a portion of the above property.

W. J. MAGIE,  
C.

I hereby consent to the above order.

CLARENCE KELSEY,  
Of Counsel with Complainant.

A true copy.

VIVIAN M. LEWIS,  
Clerk.

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Filed December 21, 1903.

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IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,  
Complainant,  
and  
THOMAS MCGUINNESS,  
Defendant.

ON BILL FOR  
DIVORCE.

20

We hereby consent that Howard Carrow be substituted in our place and stead as the counsel of and solicitor for the above named defendant.

Jersey City, March 24, 1905.

BRINKERHOFF & FIELDER,  
Solicitors for and of Counsel for Defendant.

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A true copy.

VIVIAN M. LEWIS,  
Clerk.

Filed April 3, 1905.

## IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,

Complainant,

10

and

THOMAS MCGUINNESS,

Defendant.

ORDER FOR SUB-  
STITUTION.

This cause being opened to the Court by Brinkerhoff & Fielder, of counsel with the defendant, and it appearing that the solicitor of record in this cause has filed his consent that Howard Carrow be substituted in his place and

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stead;

It is thereupon, on this third day of April, nineteen hundred and five, ordered, that Howard Carrow be substituted as solicitor for the defendant in the place and stead of the said Brinkerhoff & Fielder.

W. J. MAGIE,  
C.

A true copy.

VIVIAN M. LEWIS,

Clerk.

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Filed April 3, 1905.

## IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,

Complainant,

and

THOMAS MCGUINNESS,

Defendant.

ON BILL, &amp;c.

ORDER.

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It appearing to the Court that on the twenty-fourth day of February, A. D. nineteen hundred and two, the above named defendant filed a petition (with affidavits thereto annexed) praying that the order for alimony, final decree and the order of sequestration be set aside, whereupon this Court, on the day and year last aforesaid, made an order returnable on the third day of March then next, requiring the complainant to show cause why the enrollment in this cause should not be opened and the final decree and all orders made herein should not be opened and vacated and the order of sequestration set aside;

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And it further appearing that said order has not been brought to a hearing nor otherwise disposed of;

It is thereupon, on this third day of April, A. D. nineteen hundred and five, on motion of Howard Carrow, solicitor of the defendant (whose appearance is specially entered for the purpose of this application only) ordered that the said order, made as aforesaid on February twenty-fourth, A. D. 1902, be brought to a hearing at the Chancery Chambers, Camden, on the first day of May next, at the hour of eleven o'clock in the forenoon, or as

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soon thereafter as counsel can be heard thereon; and that the said complainant, on the day and year and at the place last aforesaid, do show cause why the enrollment in the above entitled cause should not be opened and the final decree and all orders therein should not be opened and vacated and the subpoena *ad respondendum* and the service thereof, together with the writ of sequestration issued herein, should not be set aside and the complainant's bill of complaint be dismissed and the other relief prayed for in said petition should not be granted.

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And it is further ordered, that a true copy of the said petition and affidavits and of this order, which petition, affidavits and order need not be certified, and a copy of said order of February 24th, 1902, which need not be certified, be served on the solicitor of the complainant within five days from the date hereof.

W. J. MAGIE,  
C.

20 Respectfully advised.

LINDLEY M. GARRISON,  
V. C.

A true copy.

VIVIAN M. LEWIS,  
Clerk.

Filed April 3, 1905.

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## IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,

Complainant,

and

THOMAS MCGUINNESS,

Defendant.

ON PETITION.

ORDER.

**10**

The Court, of its own motion, hereby adjourns the hearing upon the rule to show cause, heretofore allowed in this cause on April third last, to May ninth instant, before the Chancellor, at the State House, Trenton.

W. J. MAGIE,

C.

**20**

Respectfully advised.

LINDLEY M. GARRISON,

V. C.

A true copy.

VIVIAN M. LEWIS,

Clerk.

**30**

Filed May 5, 1905.

## IN CHANCERY OF NEW JERSEY.

MARY ELLEN MCGUINNESS,

Complainant,

and

THOMAS MCGUINNESS,

Defendant.

OPINION.

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A wife filed a bill against her husband, praying a divorce from bed and board for his extreme cruelty, and also praying the custody of children of the marriage, and alimony, &c. The subpoena issued thereon was returned without service, and an order of publication was made, notice of which was served on defendant in an adjoining State. Defendant not having appeared, nor made defence, the cause was referred to a Special Master, who reported that the complainant had established by proofs the allegations of her bill. Thereupon a decree was made for the divorce sought, awarding the custody of the children, and fixing the amount of alimony. Property of defendant in this State was afterward sequestered to enforce the decree. Defendant thereafter filed a petition in the cause, praying that the whole decree should be vacated and set aside and that the complainant's bill should be dismissed, on the ground that he had not been served with process within this State.

Held, that he is not entitled to any relief upon his petition.

On order to show cause.

Argued by briefs finally submitted June 15, 1905.

MR. CLARENCE KELSEY, for Complainant.

MR. HOWARD CARROW, for Defendant.

### OPINION.

MAGIE, Chancellor :

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On July 7, 1899, Mary Ellen McGuinness filed her bill in this Court against her husband, Thomas McGuinness, praying for a divorce, *a mensa et thoro*, on the ground of extreme cruelty; for the custody of three of the four children of the marriage; and for the support of herself and the children whose custody she sought.

A subpoena was issued upon the bill, returnable August 1, 1899, and was returned served by the Sheriff of Hudson county.

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On the 7th of August, 1899, an order returnable on August 14th, 1899, was made, to show cause why an order should not be made for alimony *pendente lite* and counsel fees. On the hearing of that order a solicitor of this Court appeared specially for the defendant, for the purpose of objecting to the sufficiency of the service of the notice of that application. Upon the proofs it was found that the service was good and sufficient for the purpose of the application for alimony and counsel fees, and an order was made directing payment. That order was made on September 11, 1899.

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On January 15, 1900, an order was made upon the motion of a solicitor and counsellor of this Court, appearing for the defendant specially for that purpose, and upon the consent of the solicitor and counsel for the complainant, that the subpoena and return of the Sheriff, and the order for temporary alimony and coun-

sel fees, and all proceedings based thereon should be set aside.

Thereupon a new subpoena was issued, tested January 15, 1900, which was returned by the Sheriff of Hudson county, with an affidavit of non-residence, and on February 7, 1900, the usual order of publication was made.

Notice of this order was shown to have been personally given to the defendant on February 7, 1900, in the manner required by the statute and the rules of court.

- 10** The defendant having interposed no defence, the matter was referred to a Special Master. He reported on January 20, 1901, that the complainant had established her right to the relief she sought. On another and supplemental order, the same Master made an additional report, on March 19, 1901, upon the faculties of the defendant. Thereupon, on May 18, 1901, a final decree was made, decreeing a divorce from bed and board, giving the custody of the children to the complainant, and fixing the sum which should be paid for the future support of complainant and the three children. A certified copy of the final decree, and of the taxed bill of costs, was served on the defendant personally, on July 9, 1901, and a demand was made upon him for the payment of the costs and the amounts ordered to be paid by the decree, and he refused to comply therewith. Thereupon, on September 27, 1901, an order of sequestration was made, and John S. McMaster, one of the Masters of this Court, was appointed sequestrator.

- 30** It appears from the records and files of this Court that he has taken charge of some of the defendant's real estate, and has received the rents thereof under the authority of his appointment.

On February 24, 1902, the defendant filed a petition in the cause. It was signed by him and a firm of solicitors of this Court. The petition set forth the proceedings, the final decree and order of sequestration, and

averred that the defendant was not, when the bill was filed, a resident of the State of New Jersey, and had not been served with process within this State, and for that reason charged that not only the order for sequestration, but also the final decree should be vacated and set aside. Its prayers were that the enrollment in the cause be opened; that the final decree and all orders in the cause be opened and set aside; that the subpoena and service, and the writ of sequestration be set aside; that the complainant's bill be dismissed, and that the petitioner should have further relief. The petition was accompanied by affidavits. 10

Upon this petition, an order to show cause why its prayers should not be granted was advised by a Vice Chancellor, upon the motion of defendant's solicitor and counsel. The order was returnable on March 3, 1902, and service of the order was directed to be made. For some unexplained reason, this order was not brought to hearing, and no service, as required, appears.

The matter remained in this condition until April 3, 1905, when the present solicitor of defendant applied for, and obtained, an order substituting him for the firm of solicitors previously appearing for defendant, and thereupon, on his motion, another order to show cause why the prayers of the petition of February 24, 1902, should not be granted, was advised by another Vice Chancellor. That order was returned on May 1, 1905; the hearing was adjourned to May 9, 1905, and it was then agreed by counsel that it should be heard by briefs, which were furnished about July 1st, 1905. On the part of the defendant no affidavits, other than those appended to the petition, have been presented. On the part of the complainant no affidavits have been presented. 20 30

From these recitals, it is obvious that the prayers of defendant's petition are altogether too broad. In respect to some of them, there is not disclosed any ground on which they can be granted. By the files and records

in the cause, as well as by the admissions of defendant's petition, it appears that the defendant was notified of the pendency of his wife's suit for divorce on the ground of extreme cruelty, in the manner which, under our statute and rules, gave jurisdiction to this Court to decree a divorce from bed and board for that cause. He was afforded an opportunity to contest her claim if he desired to do so. He failed to present any defense. Thereupon adjudication was made that the cause alleged was proved, and the divorce asked was decreed.

10. There can be no question of the power of this Court to make such a decree. (*Felt vs. Felt*, 59 Eq., 14 Dick., 606.) The jurisdiction has been exercised in innumerable cases, from the time of the earliest divorce laws, and no serious question has ever been raised thereon. The power to make such decrees, upon such notice to a defendant, has been declared by our Court of Errors to be conferred upon this Court, and it has been recognized as the public policy of the State on the subject of divorce. A resume of the legislation on the subject is contained
20. in the opinion of Vice Chancellor Pitney in *Wallace vs. Wallace*, 62 Eq., 17 Dick., 509. When that case came before the Court of Errors it was there declared that, upon our statute, and service of notice of the suit out of the State of New Jersey, a decree of divorce could be made having extra-territorial force.

*S. C.*, 67 Eq., 20. Dick., 361.

30. Nor do I think there is any possible doubt as to the jurisdiction exercised in this case in making a decree respecting the children of the marriage. When Courts are empowered to separate husband and wife and to break up the family, in my judgment it necessarily follows that power is given to make provision for the custody of the offspring of the marriage thus interfered with.

By section 19 of the Divorce act of 1874 (2 G. S. 1269), the Legislature empowered this Court, when it

decreed a divorce, to take order adjudicating upon the care and maintenance of the children, and still broader powers are now conferred by section 19 of the present Divorce act. (Laws 1902, page 507.) Jurisdiction to decree a divorce *a mensa et thoro* was invoked by complainant's bill, and, in my judgment, a decree respecting the custody of children of the marriage may be supported upon the jurisdiction to decree the divorce, and as an incident thereto.

Since the decision of *Pennoyer vs. Neff* (95 U. S., 714), it has been frequently held that a decree awarding alimony cannot be effectually made against a defendant not served with process within the jurisdiction of the Court making the decree. It has been declared in this court that while a decree for alimony, which was purely a decree *in personam*, would be subject to the doctrine of *Pennoyer vs. Neff*, yet it might be otherwise as to such a decree if based on the control of the matrimonial status by a Court having jurisdiction over that status. (*Hervey vs. Hervey*, 56 Eq., 11 Dick., 166.) That was a case in which a wife sought a decree against a husband for support and maintenance, under the 20th section of the Divorce act, and an interlocutory order had been made for temporary alimony. The defendant, not having been served with process, entered a special appearance to move, and did move, to set aside that order. That motion was denied. Upon an appeal from such denial the order therefor was reversed upon the ground that, as the defendant had not been brought in by process served, nor proceeded against by publication and notice as a non-resident, no jurisdiction had been conferred by the 20th section to make order for alimony *pendente lite*, on the ground that the defendant owned property in New Jersey. (*S. C.*, 56 Eq., 11 Dick., 424.) In a subsequent case, a decree for divorce and alimony had been made upon service of a notice of an order or publication upon the defendant, in the State of his residence,

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and the defendant, having come into this State, had been seized and held to bail on a *ne exeat*. The defendant, having moved to discharge the writ and vacate the order for bail, the motion prevailed, on the ground that the decree in such case was purely *in personam*, and fell within the doctrine of *Pennoyer vs. Neff*.

*Elmendorf vs. Elmendorf*, 58 Eq., 23 Dick., 113.

10 It will be observed that the case last referred to is one in which the relief primarily sought was the complete abolition of the marriage relation between the parties. Alimony was sought as an incident of that kind of relief. Among the numerous cases in which the subject I am now considering has been discussed, and in which the doctrine of *Pennoyer vs. Neff* has been applied to judgments or decrees for alimony, I have failed to find any in which the primary relief did not involve the complete severance of the marriage relation.

20 The case before me is of a different character, and the relief sought by this bill of a less stringent nature. It seeks a divorce from bed and board for extreme cruelty. Under the Divorce act then in force, this Court was empowered, for such a marital offence, to decree a divorce from bed and board either forever thereafter, or for a limited period, as should seem just and reasonable. Upon such decrees, jurisdiction is conferred on the Chancellor to make orders for the maintenance of the wife and children, and to enforce such orders upon the husband's property, which can be reached by sequestration.

30 Decrees of divorce from bed and board do not involve any severance of the marital relation. The parties remain husband and wife. The wife retains her right of dower in the lands of the husband. The husband will not thereby be deprived of curtesy in his wife's lands. Alimony upon such a separation is merely the enforcement of the duty which the husband owes, to support her who is still his wife, and his family. Mr. Nelson declares that an al-

lowance on a decree of separation is equivalent to the award of alimony by the Ecclesiastical Courts of England upon a decree of divorce *a mensa et thoro*. (2 *Nelson on Divorce*, No. 902.) The distinction between alimony in the two cases seems recognized in the opinion of Mr. Justice Pitney in *Lynde vs. Lynde*, 64 *Eq.*, 19 *Dick.*, 736 and 750.)

In the case of *Bunnell vs. Bunnell*, 25 *Fed. Rep.*, 214, which is recognized as a leading case on the subject of the application of the doctrine of *Pennoyer vs. Neff* to decrees for alimony, Mr. Justice Brown suggested that if the State permitted the wife to proceed in her claim for alimony as upon an inchoate lien, the proceeding might be considered as one *in remand* a decree upon a service by publication might be sustained.

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If it were necessary to the decision of the present motion, I should hold that, considering the peculiar character of this proceeding, which leaves the marital relation unbroken and recognizes the right to enforce the husband's duty of support of his wife and family, and the provision of our statute for enforcing a decree which fixes the amount of such support upon the husband's property in this State, this decree for alimony, although perhaps not enforceable in another State, is enforceable here.

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There is another ground, however, upon which the relief sought by defendant's petition must be denied.

It is well settled doctrine that if a defendant, who claims that the Court in which the suit is pending has not acquired jurisdiction over him, attacks the jurisdiction, even under a special appearance, he will be held to have submitted himself to the jurisdiction, if under such appearance he seeks some relief upon the merits. The doctrine is recognized by the text-books and illustrated by many cases, the leading case being that of *Livingston's Exr. vs. Story*, 11 *Pet.*, 351. It was adopted and applied by our Court of Errors to a case where the

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defendant answered in full on the merits, although he had attempted to reserve an objection to the jurisdiction, which he presented by a plea to the jurisdiction, which had been overruled.

*Polhemus vs. Holland Trust Co.*, 61 Eq., 16 Dick., 654.

The reason of this doctrine is equally applicable to proceedings to challenge the validity of a judgment on the ground that jurisdiction of the defendant had not been acquired. If, under such proceedings, he ask other relief

10 against the judgment on the merits, he will be held to have submitted himself to the jurisdiction. In *Crane vs. Perry*, 2 Fed. Rep., 187, Judge Choate, in dealing with an application of a defendant to vacate a judgment taken by default, which included other relief and a stay pending the application, held that the defendant had thereby submitted himself to the jurisdiction, so that all defects therein were cured. In *Burdette vs. Corgan*, 26 Kan., 102, Judge Brewer held that when a party against whom a judgment has been entered files a motion to vacate it as void, and the motion is based on non-jurisdictional as well as jurisdictional grounds, he thereby enters a general appearance. The doctrine is illustrated by many other cases.

*Grantier vs. Rosecrance*, 27 Wis., 488.

*Anderson vs. Coburn*, 27 Wis., 558.

*Alderson vs. White* (per Dixon, C. J.), 32 Wis., 308.

*Blackburn vs. Sweet*, 38 Wis., 578.

*Dikeman vs. Struck*, 76 Wis., 332.

*Henry vs. Henry*, 87 N. W. Rep., 522.

*Curtis vs. Jackson*, 23 Minn., 268.

*York vs. York*, 55 N. W. Rep., 1095.

*Pry vs. Han. & St. Jos.*, 73 Mo., 123.

30 Defendant's application, which is to vacate, not merely the decree for alimony and its incidents, but the whole

decree, although it appears that under the order of publication and service of notice thereof the Court acquired jurisdiction to decree divorce and custody of children, must be denied.

I come to this conclusion more readily because the case shows that, while the matrimonial domicile was in this State, defendant was guilty of such extreme cruelty as justified his wife seeking the relief afforded by our statute; that although defendant left the State in time to avoid service of process, yet he went only to an adjoining State and was served there with notice of the pendency of her suit; that although he thus knew of complainant's claim, he made no defence, and after decree and sequestration waited nearly a year before he filed this petition and procured a rule to show cause, which for three years he failed to bring to hearing, although his property in this State, ample to afford a support for the wife he had ill-treated and the children she has to support, was under sequestration, and has only after this lapse of time and the changed circumstances come forward to interpose this technical defence. 10

As I think defendant is not entitled to any relief, his rule to show cause will be discharged, and his petition will be dismissed. 20

A true copy.

VIVIAN M. LEWIS,  
Clerk.

Filed February 13, 1906.

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## IN CHANCERY OF NEW JERSEY.

	Between	}	
	MARY ELLEN MCGUINNESS,		
	Complainant,		ON BILL, &c.
<b>10</b>	and		ORDER.
	THOMAS MCGUINNESS,	}	
	Defendant.		

**20** The above-named defendant, having filed his petition herein containing a prayer that the enrollment in this cause be opened, that the final decree and all orders in the cause be opened and set aside, that the subpoena and service thereof and the writ of sequestration herein be set aside, that the said complainant's bill be dismissed and that the said defendant have further relief on his said petition; and an order having been made thereon for the said complainant to show cause why the prayer of said petition should not be granted, which order to show cause was returnable on March 3, 1902; and a further order to show cause why the prayer contained in said petition should not be granted having been made on said petition, returnable May 1, 1905; and the said

**30** orders to show cause having been brought on for hearing, and counsel for the respective parties having been heard thereon; and no cause being shown why the said defendant should have any relief on his said petition;

It is, on this second day of March, A. D. nineteen hundred and six, on motion of Marshall Van Winkle, counsel for the said complainant, ordered, that the said

orders to show cause be discharged and the said petition be and the same hereby is dismissed with costs.

W. J. MAGIE,  
C.

A true copy.

VIVIAN M. LEWIS,  
Clerk.

Filed March 27, 1906.

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IN CHANCERY OF NEW JERSEY.

Between

MARY ELLEN MCGUINNESS,

Complainant,

and

THOMAS MCGUINNESS,

Defendant.

ON BILL, &c.

NOTICE OF AP-

PEAL.

20

The defendant hereby appeals from an order made in this cause, dated the second day of March, nineteen hundred and six, discharging two orders made in this cause, one returnable on March third, nineteen hundred and two, and the other returnable on May first, nineteen hundred and five, and dismissing the petition upon which said two orders were allowed; and from the whole and every part of said order of March second, nineteen hun-

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dred and six, to the Court of Errors and Appeals in the last resort in all causes.

Dated March 27th, 1906.

HOWARD CARROW,  
Solicitor for and of Counsel with Defendant.

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

Dated March 27th, 1906.

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HOWARD CARROW,  
Of Counsel with the Defendant.

March 28, 1906, service of a copy hereof acknowledged.

CLARENCE KELSEY,  
Solicitor of Respondent.

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NEW JERSEY COURT OF ERRORS AND APPEALS.

MARY ELLEN MCGUINNESS,

Complainant and Respondent,

vs.

THOMAS MCGUINNESS,

30

Defendant and Appellant.

ON BILL, &c.

PETITION OF AP-

PEAL.

*To the Honorable Court of Errors and Appeals in the last resort in all causes:*

The petition of Thomas McGuinness, the appellant in the above stated cause, respectfully shows that your petitioner finds himself aggrieved by an order made in

the Court of Chancery by his Honor, William J. Magie, Chancellor of the State of New Jersey, bearing date the second day of March, nineteen hundred and six, wherein the said Thomas McGuinness was defendant and the said Mary Ellen McGuinness was complainant, in this respect, to wit, that the said order adjudges and orders that two orders to show cause, one returnable on March third, nineteen hundred and two, and the other returnable on May first, nineteen hundred and five, be discharged and that the petition upon which said two last mentioned orders were allowed be dismissed. 10

And your petitioner humbly appeals from that part of said order of March second, nineteen hundred and six, which discharges said two orders, one returnable on March third, nineteen hundred and two, and the other returnable on May first, nineteen hundred and five, and dismisses the petition upon which said two orders were allowed, on the ground that the same is erroneous and contrary to law and equity and that the evidence and law do not warrant such order.

Your petitioner therefore prays that the said order may in the particulars aforesaid be reversed, set aside and for nothing holden, and that your petitioner may have such relief in the premises as to this honorable court may seem meet. 20

HOWARD CARROW,  
Solicitor for and of Counsel with Appellant.

March 28, 1906, service of a copy acknowledged.

CLARENCE KELSEY,  
Solicitor of Respondent. 30

NEW JERSEY COURT OF ERRORS AND AP-  
PEALS.

Between

MARY ELLEN MCGUINNESS,

(Complainant) Respondent,

and

THOMAS MCGUINNESS,

(Defendant) Appellant.

ON APPEAL FROM

ORDER OF COURT

OF CHANCERY.

ANSWER OF

RESPONDENT.

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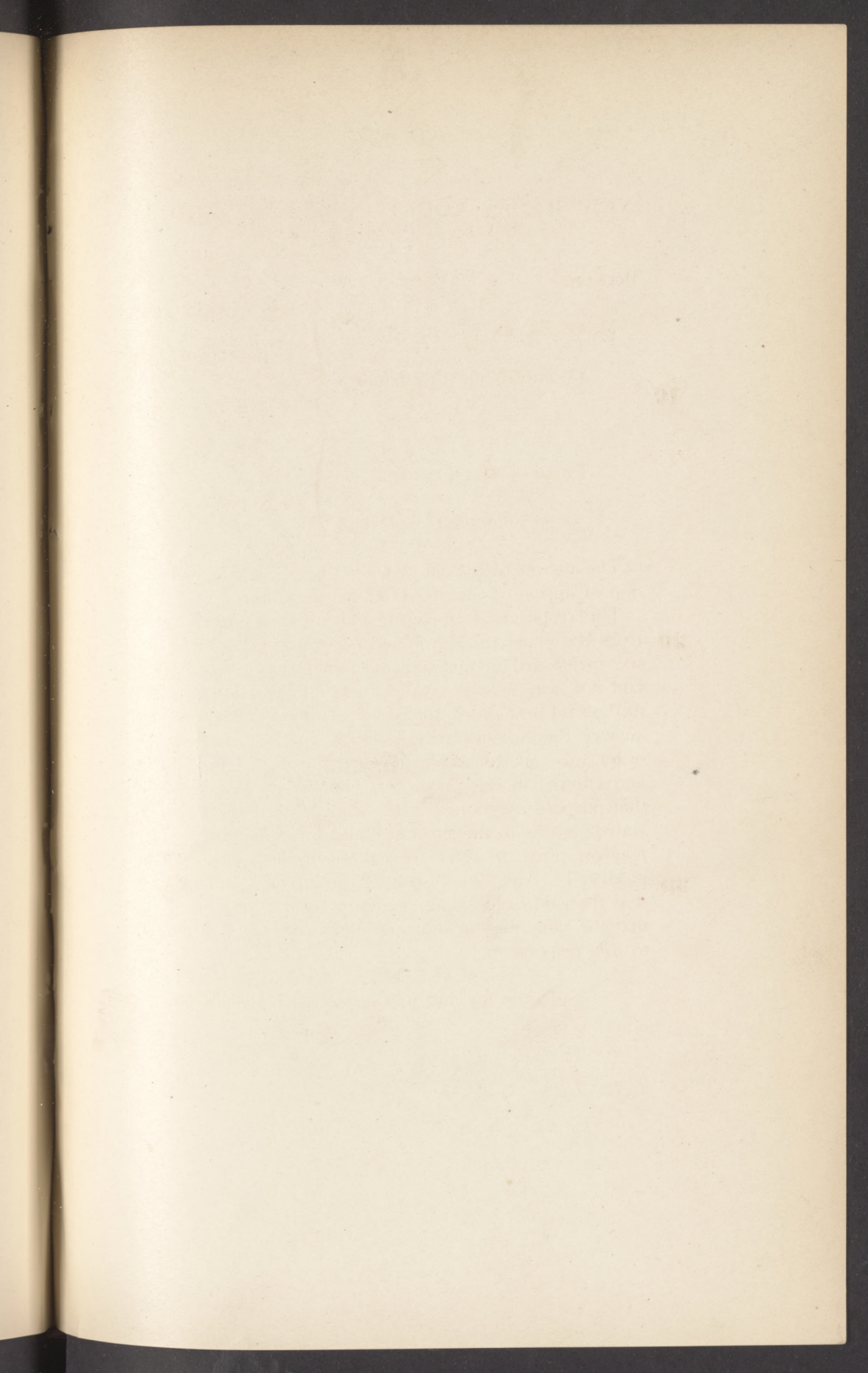
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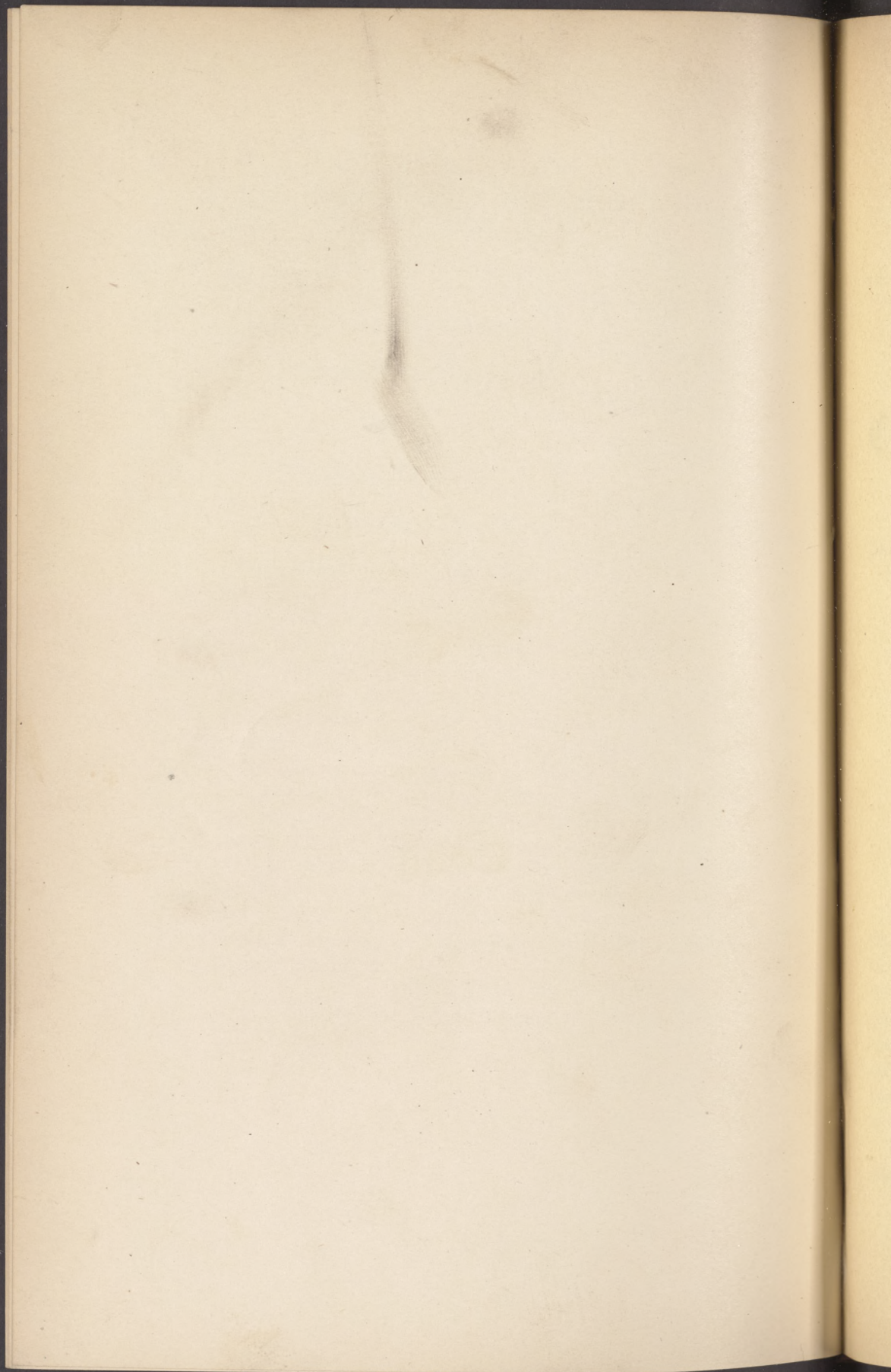
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The answer of the above named respondent to the petition of appeal of the above named appellant:

This respondent, objecting that an appeal does not lie from the order of March second, nineteen hundred and six, mentioned in the said appellant's petition of appeal, and not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits, that an order was, on the second day of March last past, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes that the said order is agreeable to equity, and she prays that the same may be affirmed with costs to be adjudged to this respondent.

MARSHALL VAN WINKLE,  
Solicitor for and of Counsel with Respondent.





NEW JERSEY

WATER COURTS AND RECORDS

1820-1825

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