

New Jersey Court of Errors and Appeals

Between

EDNA G. IRWIN,
Complainant-Respondent,

and

JAMES W. IRWIN,
Defendant-Appellant.

On Bill, &c.

Brief on Behalf of Defendant.

This is a suit brought by a wife for separate maintenance. She is twenty-eight years of age, in good health, and was a business woman prior to her marriage. There are no children, the only child having died within a few days of its birth. The husband and wife after about a year and a half of married life are now living apart. The husband was the one to leave the home. He did so because of the treatment he received from his wife, which, he asserts was of such a cruel character as to justify his leaving. If he proves his case there is no doubt of his legal right to leave.

Smithkin v. Same, 62 N. J. Eq. 161.

Vogler v. Same, not reported (Docket No. 31-576, by Vice-Chancellor Stevenson).

The evidence as to the conduct of the parties and their home life is not very contradictory. The defendant is a mild mannered man of forty-seven who was living at Oradell, New Jersey, with his widowed mother and his sister, who ever since the death of the father some eight years previous, depended upon him in part for their support. He owned the Oradell home and

brought his bride there to live, with full knowledge on her part as to the situation and of the fact that the mother and sister made up part of the family (p. 40, 64-5). The mother is eighty years of age and in failing health.

Things went well for a short time, but trouble soon began. The difficulty seemed to be that the wife did not get on well with the mother and sister, particularly the latter. The wife says that the husband talked over affairs with his mother and sister and not with her. This is denied, but it is evident that there was friction.

At last there was a quarrel over some unimportant matter—the removal of a silver plate—which brought things to a head with the result which the wife tersely describes as follows:

“I simply put my foot down that night and said it was either a case of his mother and sister or myself.” * * *

“Q When you objected and said that either they would have to go or you would have to go, what happened?

“They went.” (P. 20.)

The husband had the old lady and his sister leave the home and go to live at Riveredge, New Jersey, where he continued to help support them. Their own income brought them in about \$300 a year all told and he supplied the rest.

The removal of the mother and sister, however, did not end the trouble, although the husband seems to have tried to do everything he could to please the wife. This was illustrated by the case of the pet dog which he had owned prior to the marriage and which the wife knew he kept when she married. The dog annoyed her in the house and the husband finally had the dog killed.

After the death of the dog and removal of the mother and sister matters grew still worse. The wife said the husband called her common. He denies this (p. 74), but says that he did characterize some of her remarks as "common talk" (p. —). Whatever term of that nature he may have used seems to have had some justification, for it is sworn to and not denied that she made improper remarks about some of the neighbors (p. 70) and about her own person (p. 74); that she unnecessarily did the housecleaning on Sundays (p. 76); that she frequently called the aged mother a liar (p. 162); that she used the slang phrase "Smile, damn you, smile," in the presence of her husband and a young lady (p. 47).

Such conduct on her part is not to be exaggerated into too great an offense, but would and did bring forth criticism from a husband of refinement such as the record in this case proves the husband to be.

A source of irritation to the wife appears to have been a desire on her part to have the Oradell house sold so that the couple could remove to New York. The husband acceded to her wish in this matter, too, and put the house up for sale at approximately cost value.

Fairly considered there is nothing in the testimony to show that the husband was to blame for the domestic trouble. The wife says he was a coward, and she frequently called him a brute, but the evidence fails to show any ground for such epithets. Her own father when asked to explain her bad temper testified as follows (p. 156):

"Q Can you recall anything beside the two things that you have just mentioned, namely, his crying and his conduct in this

case, as you call it, anything which would drive your daughter into a bad temper; you said she would not have a bad temper unless she was driven to it; now, what will you say occasioned her to have a bad temper besides such things as you have already mentioned—anything that Mr. Irwin did or did not do; what would you say?

“A I don’t know.

“Q Well, now, did you hear your daughter testify that she did pound his arm?

“A Yes, sir.

“Q Do I understand that that was one of the occasions when you think she was driven to that temper?

“A Yes, sir.

“Q Now, what drove her to do that?

“A Well, my son was there; in fact, I was down to Asbury Park at the time; she invited my son there.

“Q You heard her state what your son said about Mr. Irwin being too old; your son told Mr. Irwin in his own house that he was too old?

“A Yes, sir.

“Q Then there followed the incident about the pounding of Mr. Irwin’s arm by your daughter?

“A Yes, sir.

“Q Now what was there that drove your daughter to the temper?

“A I was not there.”

There can be no reasonable doubt but that the real cause of the trouble between the complainant and the defendant was the bad temper of the wife. The husband ascribes it to his wife’s “uncontrollable temper.” (P. 95.)

She admits that she is "very excitable," (p. 41) and that her temper gets away with her sometimes, (p. 41) and her own explanation of the trouble is rather damaging to her case.

(P. 43.) "Q So that you did make the request that he sell the house?

"A Yes, sir.

"Q He offered to do it?

"A Yes, sir.

"Q That is after he had got rid of the dog and his mother and sister?

"A Yes, sir.

"Q What was the trouble all the time; you kept having rows, didn't you?

"A Mr. Irwin kept me away from everywhere where I could get any pleasure; I could not go to any of the church entertainments; I could not go anywhere except he snubbed my family.

"Q Did he tell you you could not go?

"A I did not want him snubbed any more than I wanted my own family snubbed, and to avoid any trouble I stayed at home.

"By the Court. You just said you could not go to church entertainments; did he tell you you could not go?

"A No, sir. * * *

"Q Now, Mrs. Irwin, (p. 45) from one cause or another, there was a great deal of quarrelling and bad temper on your part toward your husband, wasn't there?

"Well, I cannot say that; I cannot admit that, Mr. Whiting.

"Q Isn't it true, that night after night you would scold him and get into one of your tempers that you have spoken of, and keep it going until one or two or three o'clock in the morning?

"A Positively not.

"Q That is not true?

"A That is not true.

"Q And then, after the storm of your passion had wasted itself, you would then come around and ask to be forgiven?

"A *I would ask to be forgiven, and I would put my arms around him and kiss him.*

"Q *That would be after the storm?*

"A Yes, sir; and I also asked him on several occasions, when he knew I was angry at him, *I asked him why he answered me back, and why he did not keep still, why he did not control himself instead of antagonizing me.*"

It is respectfully submitted that it would require a remarkable species of control on the part of a husband to give a satisfactory reply to the query of his angry wife as to "why he answered her back, and why he did not keep still." The evidence is that when compelled to grasp either horn of the dilemma Mr. Irwin "kept still" or else he escaped to another room and locked himself in.

Such action on his part was at least discreet. On one occasion his wife in anger pounded his arm black and blue (p. 41). Another time she tried to push him down stairs (p. 51). Again she tried to throw a chair at him but failed because it was too heavy (p. 46). Once she threw a carving knife at him (p. 73) which he managed to dodge, and repeatedly in anger she came toward him with the knife threatening to kill him as well as herself, and he took the knife from her. She threatened him with a nail file and in his struggle to take it from her the file was broken. She got possession of his revolver

several times and threatened to end the lives of both. She admits the pounding, the pushing on the stairs and the attempt to throw the chair. She admits taking up the carving knife, the nail file and also the revolver, but says it was her life and not his that she threatened. Her own story of the revolver, however, is rather disconcerting, to say the least, and is susceptible of another interpretation.

(P. 62.) "Q He did not like this business about the revolver?

"A No, sir.

"Q (*By the Court.*) What did you say when you took the revolver out of the drawer?

"A As I recall it, *I did not say anything, I just went to the drawer and took it out and turned around.*"

Now it is submitted that a woman who is "very excitable," who pounds her husband's arm black and blue, who tries to push him down stairs, who throws a carving knife at him, who repeatedly threatens suicide, who, when angry, asks her husband in one breath why he answers back and why he doesn't keep still, presents rather a formidable appearance when in a quarrel she goes to a drawer, takes out a revolver, turns around and says nothing.

Does not the scene with a high-tempered and capricious woman taking the leading role offer a clear explanation of the causes which finally led a patient and conciliatory man to conclude that he could not live with her any longer? The Court is respectfully reminded of the proof that these violent acts were committed by the wife in rage, the accompaniment of which was a tongue lashing that frequently lasted until the small hours of the night; that the provocation, if any,

was often the most trivial, and that in most cases the husband was quite free from fault.

Take for example the case of the wife pounding her husband on the arm. She offers a long explanation (pp. 24-28) which does not explain except that it reveals that her smart young brother of twenty-three, addressing himself to Mr. Irwin, his senior by nearly twenty-five years, and in Mr. Irwin's own house, told him that he was too old, (p. 27) and when, after the insulting remark, Mr. Irwin told him to leave, said that if Mr. Irwin wanted him to go he would have to put him off the porch (p. 190). Naturally the husband was angered, but he did not vent any wrath upon his wife or even complain to her. She, on the contrary, after the scene with the brother had been over for an hour (p. 27), went up to her husband and struck him so violently as to leave his arm black and blue.

(P. 28) "Q And what did he do?

"A He did not do anything.

"Q Did he say anything?

"A No, sir; I don't remember that he did."

Yet the bruised arm was subsequently seen by the doctor (p. 111), and it was serious enough for Mrs. Irwin to write to her husband asking him not to show it to anyone (p. 41).

The conduct of his wife affected Mr. Irwin deeply (p. 72). The frequent outbursts of passion with their accompaniment of scolding, racing up and down, pounding on his door when he retreated to another room, the fear of personal injury, all prevented his sleep and injured his health.

The wife herself testifies that Mr. Irwin was always afraid of her (p. 51), and that when she

had the carving knife he acted as if he was very much afraid of her (p. 52). Mr. Irwin says (p. 101):

"When we would go to bed and she would be in a good humor, then I would sleep, but if there was any temper, I would not dare to sleep, and after that, when I could not keep my eyes open any longer and was afraid to sleep, I would go into another room."

"Would she follow you? She would come and pound on the door."

The doctor's description of Mr. Irwin is significant: "I thought he was in a run-down condition and needed toning up; he looked like a man who had suffered from insomnia" (p. 110). He further testified that defendant had appeared to be a very well man before the marriage and that he was much improved after the separation (p. 110).

Asked to describe defendant's arm which the wife had struck, he said: "I looked at it and saw a very sharp welt, and it was very bright red, due to an injury" (p. 111).

As a result of his wife's treatment of him, defendant became nervous and run down and frequently cried. He could not attend to his business with his usual efficiency and he required the services of his doctor more than he had ever done before. Finally, when he had made every concession possible, done all that she requested, vainly endeavored to reason with his wife and make her realize that her conduct must ultimately lead to a separation; when he had turned out his mother and sister, killed his dog, and put up his house for sale, and still his wife's conduct grew worse; when his health was failing and his business suffering, he took the only course left and separated from her. This he did, openly,

with notice to her and her father, and with a moderate provision for her maintenance (\$7.50 per week, p. 17).

The wife asked him to return and he refused. She then took out all the furniture in the house (most of which she has since sold) and left, and the couple have since lived apart. Her husband's income averages about \$3,000 a year, and pending determination of this suit she has been enjoying one-third of it, at the rate of \$20.00 per week (reduced after final hearing to \$18.00 per week). She asks that this comfortable arrangement be made permanent.

Now, it seems that if ever the Court is to justify a husband in leaving a wife on account of her cruel treatment of him it should do so in this case. The wife's ungovernable temper, the serious extremes to which she was won't to go in her fury, noticeably affected Mr. Irwin's health and he feared for his personal safety.

The facts are clearly proved and not very seriously denied. The husband's case does not rest upon his own testimony alone, but is amply corroborated. The pounding of his arm is proved by the admission of Mrs. Irwin, the testimony of Mr. Black and of Dr. Levitas. The throwing of the carving knife is shown by Mrs. Irwin's admission to Mr. Black, likewise the attempt to throw the chair. The incident of the revolver occurred once at least, on the admission of the wife and Mr. Irwin says that it happened frequently. The scolding at night was heard by Mr. Irwin's sister, and she and Dr. Levitas testified as to Mrs. Irwin's temper. Mr. King told of the time when he was engaged to her and how in a temper she started to strike him and was prevented only by the interference of her father.

The woman has a dangerous and violent temper which is aroused upon the slightest pretext or no pretext at all and no concession or persuasion on Mr. Irwin's part seems to have had any effect upon it. The proof and corroboration are convincing, and the denial either wanting or at best weak.

The proof as to the injury to Mr. Irwin's health is likewise abundantly sustained. His own testimony is fair and reasonable, and his relatives, neighbors and business associates corroborate him. Sleeplessness caused by his wife's conduct, depression over the hopelessness of the situation when he had done everything she demanded, followed by an increasing ill temper on her part rendered him nervous and unstrung; his appetite was affected; he had a tendency to cry easily; his memory began to lapse; he could not attend properly to his business; he required the services of his doctor; he feared for his personal health and safety.

The good standing of Mr. Irwin has not been questioned. His neighbors liked him and petitioned him to return to the Oradell home. Nobody seems to have addressed such a call to Mrs. Irwin, and this piece of evidence may not be very material. It may perhaps tend to show that Mr. Irwin was a good man. His helping to support his mother and sister indicate that—as does his patience and conciliatory attitude in the face of the capricious and violent conduct of his wife.

There is convincing evidence of the manliness of Mr. Irwin in his treatment of his wife after her outbursts of passion. It appears that she would spend the force of her wrath upon him and then ask to be forgiven. The forgiveness seems to have been ready for her at first, but

naturally with a gradual decline in the ardour of her husband's affection. The time finally came when he could bear the abuse no longer and he left and refused to return.

Then followed the wife's attempt to get him to come back. If there had been a reasonable hope for a discontinuance of his wife's cruelty and a real mending of her ways he should have returned. Experience had shown, however, that her temper was entirely unreliable and dangerous and that if he had come back the old abuse would have begun again. Under the circumstances as proved it would be putting too much of a strain upon human nature to insist that Mr. Irwin return to his wife simply because she requested it. The law does not require a spouse to respond to advances, even though made in good faith, if the character of the one making them is such that a reunion based thereon could be only temporary. See *Marsh v. Marsh*, 99 Atl. at p. 410. That the excitable, capricious and violent nature of Mrs. Irwin's temper gave her just such a character must appear from a fair and careful perusal of the record in this case.

At the argument upon the hearing below and also in his brief counsel for the petitioner urged that there had been condonation of the wife's alleged cruelty, saying "It must be apparent to the Court that having settled their differences and having gone back to live peaceably and no evidence appearing of any cruelty thereafter. that the husband could not with good grace come into court and give that as a reason or justifiable cause for leaving his wife * * *."

The first answer to this suggestion is that the defense of condonation is not available unless pleaded.

Delaney v. Same, 3 Robbins, 602.

There is no word or suggestion of condonation in the proceedings in this case.

Assuming that the question of condonation can properly be raised, the burden of proof is with the party who attempts to set it up.

Hann v. Same, 13 Dick., at p. 214.

If the testimony of the wife on this point indicates to the Court evidence of condonation it still remains that it is the evidence of one of the parties to this matrimonial cause and is entirely without corroboration. On the other hand the husband's description of the wife's temper and abuse on the occasion of their last night under the same roof strongly rebuts any suggestion of condonation and he testified that for two months preceding the separation there had been no sexual intercourse between them.

If, however, the Court finds that Mr. Irwin ought to return to live with his wife and take his chances with the carving knife, the revolver, the furniture, the nail file, the paper cutter, the pounding, the nocturnal ravings, and if he will not—he says he cannot—return to her, how much must he pay for her maintenance?

Deducting a fair amount for depreciation he has an annual income of \$3,000 a year. He has his mother and sister to help. He has done no substantial wrong to his wife and she has certainly caused him pain, sorrow, loss of health and has disrupted his entire plan of life. Shall she be rewarded with the full measure of compensation which the Court awards to a good wife to be paid by a deserting husband who was entirely to blame? Such a determination would tend not to strengthen but to weaken the institution of marriage. The opinion of the Court below is silent on this point.

The determination of this case should not be reached without a careful consideration of the Vogler case (*supra*) where the husband was allowed a divorce for constructive desertion caused by the wife's cruelty. The facts are no stronger than those in the case at bar and as found by the Court are as follows:

"This is a petition by the husband against the wife for a divorce on the ground of desertion. The facts to which the proper principles of equity should be applied are, briefly stated, these parties were married in 1889, and lived together down to June, 1906. The man is a musician who has been constantly employed in various theatre orchestras in the City of New York. They lived in the City of New York during most, if not all, of their married life, down to the period when the difficulty occurred. She, constantly, during the latter years, at least, of their married life, after they had three children, complained that he did not supply her with sufficient means to properly maintain herself and the house and the children. She, at various times, undertook to increase the family income, or her own income by taking lodgers or boarders, or both. At least she was not successful in this. She testifies that she was unsuccessful to a greater degree than she admits; but she herself does not show that she succeeded, and does admit that there were some debts arising out of that business which he was forced to pay. He, from his earnings, invested in some real estate. Among other properties owned by him, there was one here in Jersey City; and at the termination of one unsuccessful boarding house enterprise carried on by her,

he determined to move the family to this Jersey City house which was owned by him. This was extremely distasteful to her, and she showed it by her language and conduct. She undoubtedly was discontented, did not wish to come to this place, and behaved throughout in accordance with that feeling. After they had been here some time, as I recall the testimony, she separated herself from him and went up to a part of the house where her daughters were or where her daughter was, and slept with this daughter and no longer slept in the same room with her husband. The troubles culminated in the month of June, 1906. The wife endeavored to show that the husband abandoned her in June—deserted her without any cause on her part—and that he returned in August, and that the incidents shortly to be related, occurred in August. I find, as a fact, that this is not so, and that the incident occurred in June of that year. In June of 1906 a quarrel over the husband's conduct toward her, in staying out at nights when she thought he should not, and in not giving her as much money as she thought she ought to have, terminated or culminated in her throwing a spittoon of considerable weight either at him or toward him, so that it was smashed, and upon his leaving the room where this occurred, and going into his bedroom, she followed him and pulled out one of the drawers of the bureau and hurled that either at him or toward him, and it broke by the force of the impact against the furniture or floor. At the same time she told him that if he ever came about her

again she would shoot him. He thereupon left and has never returned or offered to return, or offered to make a home elsewhere for her; and, after the statutory period of two years, brought this suit.

Now, the questions which suggest themselves to my mind are, first, whether or not a husband, under these circumstances, is entitled to leave the wife, not return to her or seek to get her to come to him, and, after the statutory period, obtain a divorce on the ground of desertion; if not, whether he may obtain the statutory relief accorded to one upon whom extreme cruelty has been visited. If the latter requires an amendment of the paper, of course the court, on proper application, would permit that."

Upon the foregoing state of the case Vice-Chancellor Stevenson advised a decree of divorce in behalf of the husband.

The Vogler case is apt and sufficient precedent to sustain the defendant in the case at bar and should result in relieving him from the obligation to support a woman whose nature and conduct made life with her unbearable.

Respectfully submitted,

COLBY, WHITING & MOORE,
Solicitors of Defendant-Appellant.

BORDEN D. WHITING,
Of Counsel.

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Bill of Complaint.

Bill of Complaint.

Filed February 10, 1916.

In Chancery of New Jersey.

10

Between

EDNA G. IRWIN,

Complainant,

and

JAMES W. IRWIN,

Defendant.

On Bill, &c.

20

To his Honor, Edwin Robert Walker, Chancellor
of the State of New Jersey:

Humbly complaining, sheweth unto your Honor
your oratrix, Edna G. Irwin, of the Borough
of Delford, in the County of Bergen and State
of New Jersey:

1. That she was lawfully joined in the bonds
of matrimony to her present husband, James W.
Irwin, at Oradell, in the Borough of Delford,
in the County of Bergen and State of New
Jersey, on the 9th day of June, 1914, by the
Rev. Dr. Berry, a minister of the gospel.

30

2. That after said marriage your oratrix and
her husband lived together at Third street, in
Oradell, in the Borough of Delford, in the County
of Bergen and State of New Jersey, until the
26th day of January, 1916, when he abandoned
your oratrix at Third street, Oradell, in the
borough, county and state aforesaid.

40

Bill of Complaint.

3. That he at that time went away from your oratrix and did not say anything to your oratrix about returning until he informed your oratrix by telephone that he was not going to return and live with her any longer, and on the same day, to wit: January 26th, 1916, he confirmed his telephone message by writing a letter to Mr. Edmund Maples, father of your oratrix, in which he stated that he has decided to live separately and apart from your oratrix, and also enclosed a check for \$7.50 payable to your oratrix.

Your oratrix also received a check for \$7.50 on February 2nd, 1916.

4. Your oratrix charges that ever since the 26th day of January, 1916, her husband, the said defendant, has abandoned your oratrix without justifiable cause and has refused and neglected and still refuses and neglects to maintain and provide for her in a proper manner according to his means, and that the said defendant has notified all the merchants in the vicinity that he will not be responsible for any necessities purchased by your oratrix or any other debts whatsoever contracted by her.

5. That said defendant is the proprietor of the Hoole Machine and Engraving Works at No. 29-33 Prospect street, Brooklyn, in the County of Queens and State of New York; that he is the sole owner of the said business and the owner of the buildings and premises on which the same is located, which building and premises your oratrix charges are very valuable, and are subject to a mortgage of \$35,000.00. That your oratrix verily believes that the defendant has an equity in the said premises of at least the sum of \$20,000.00 to \$25,000.00.

Bill of Complaint.

6. That the defendant is possessed of considerable stock, the amount of which your oratrix has been unable to fully ascertain, but she is informed that he has several shares in the Southern Railway Company; 25 shares of stock in the Oradell Building and Loan Association and 25 shares of stock in the Hackensack Building and Loan Association, besides numerous other companies or corporations, the amount of which your oratrix has been unable to ascertain. 10

7. Your oratrix further charges that the defendant is the owner of the premises occupied by your oratrix upon Third street, Oradell, in the Borough of Delford, in the County of Bergen and State of New Jersey, and that the same are worth between \$5,000.00 and \$6,000.00

Your oratrix further charges that the said defendant, when they were married, informed her that he was worth at least the sum of \$80,000.00, and that since they were married he paid your oratrix \$15.00 per week for household expenses, and since the month of October, 1915, he gave your oratrix \$20.00 per month additional for herself up to and including the month of January, 1916, and that your oratrix verily believes that the defendant is abundantly able to maintain and support your oratrix suitable to her station in life. 20 30

Your oratrix was a bona fide resident of the State of New Jersey when this cause of action arose and has lived continuously in the State of New Jersey since the time of her marriage aforesaid where she still resides.

In tender consideration whereof and for as much as your oratrix can only obtain relief in this Honorable Court. 40

Bill of Complaint.

To the end thereof that the said James W. Irwin may answer the premises but without oath that he may be ordered and decreed to provide such suitable support and maintenance to be paid and provided by him or made out of his property, for your oratrix, and for such
 10 times as the nature of the case and the circumstances of the parties render suitable and proper; and that the said defendant may be compelled to give reasonable security for such maintenance and allowance, and to pay the same from time to time under the compulsory order of this court, as provided by statute, and that she may have such further and other relief as may be equitable and just.

May it please your Honor, the premises considered, to grant unto your oratrix the state's
 20 writ of subpoena, issuing out of and under the seal of this Honorable Court, to be directed to the said James W. Irwin, commanding him by a certain day and under a certain penalty thereto to be expressed to be and appear before your Honor, in this Honorable Court, then and there to answer all and singular the said premises, and to abide by and perform such order and decree therein as to your Honor shall deem
 30 meet, and shall be agreeable to equity and good conscience.

And your oratrix will every pray, &c.

MACKAY & MACKAY,
Solicitors for and of Counsel
with Petitioner.

Bill of Complaint.

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

Edna G. Irwin, of full age, being duly sworn, according to law on her oath deposes and says that she is the complainant in the foregoing Bill of Complaint named, and that her complaint is not made by any collusion between her and the defendant for the purpose of dissolving their marriage, but in truth and good faith for the causes set forth in said bill.

10

Deponent further says that she was lawfully joined in the bonds of matrimony to her present husband at Oradell, in the Borough of Delford, in the County of Bergen and State of New Jersey, on the 9th day of June, 1914, as set forth in said Bill of Complaint; that deponent and her husband, the said James W. Irwin, lived and cohabited together at Third street, Oradell, in the borough, county and state aforesaid, as set forth in the said Bill of Complaint until the 26th day of January, 1916, when he abandoned her as therein set forth at Oradell, in the borough, county and state aforesaid, and has never since returned to her and that he has sent her two checks for \$7.50 each, one of the 26th day of January and the other on the 2nd day of February, 1916, which checks this deponent has not used.

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Deponent further says that since the said 26th day of January, 1916, her husband, the said James W. Irwin, has abandoned her without justifiable cause and has refused and neglected and still refuses and neglects to maintain and provide for her in a proper manner according to her station in life.

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Bill of Complaint.

Deponent further says that the said defendant has notified all merchants with which deponent formerly dealt that he will not be responsible for any necessities purchased by her or debts contracted by her.

Deponent further says that the said defendant
 10 is the proprietor and sole owner of the Hoole
 Machine and Engraving Works, at No. 29-33
 Prospect street, in the City of Brooklyn, County
 of Queens and State of New York. He is also
 the owner of the building and premises on which
 the said business is located and that the same is
 exceedingly valuable. This deponent verily be-
 lieves that the defendant has an equity in the
 said premises of at least the sum of from \$20,-
 000.00 to \$25,000.00. In addition to this, this
 20 deponent verily believes that the defendant is
 the owner of stocks and bonds as set out in the
 Bill of Complaint and that the said defendant
 informed this deponent when they were married
 that he was worth the sum of \$80,000.00 or more.

Deponent further says that since they were
 married, the defendant always gave this de-
 ponent \$15.00 per week for household expenses
 and that for the last four months, to wit: from
 October, 1915, to January, 1916, he gave this
 30 deponent \$20.00 per month additional for her
 own personal use. All as set forth in the said
 Bill of Complaint.

EDNA G. IRWIN.

Sworn and subscribed to before me
 this 8th day of February, 1916.

GEO. W. MACKAY,
Commr. of Deeds of N. J.

Answer.

Answer.

Filed May 8, 1916.

IN CHANCERY OF NEW JERSEY.

Between

EDNA G. IRWIN,

Complainant,

and

JAMES W. IRWIN,

Defendant.

On Bill, &c.

*Defendant's
Answer.*

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The answer of the defendant, James W. Irwin.

This defendant answering the bill of complaint, says:

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1. Paragraphs 1 and 2 are both admitted, except that defendant avers that he abandoned his said wife on January 26, 1916, upon justifiable cause as is hereinafter alleged.

2. Defendant on January 26, 1916, sent a letter to complainant, stating that he had decided not to live longer with her as his wife. At the same time he sent her a check for \$7.50 and he has since sent her, on Wednesday of each week, a further check for \$7.50. With the above additional facts, he admits paragraph 3.

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3. He denies that he has ever refused or neglected to maintain and provide for the complainant in a proper manner, according to his means. On the contrary he says that he has paid to her, weekly as aforesaid, \$7.50 both before and since this suit was begun, and that she has also, since January 26, 1916, continued to occupy and use the house in Oradell and all the furniture therein and furnishings thereof, which

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Answer.

belong to defendant and which, prior to January 26, 1916, was occupied and used by defendant and his said wife as their home. Defendant avers that his wife, before her marriage to him, was able to earn and did earn a good salary, that she is a young able-bodied woman, and can
 10 readily obtain employment at good wages: that it is unnecessary for her to continue, for any length of time, to occupy the dwelling house in Oradell, that she can readily obtain suitable and proper accommodations for her board and lodging so that, with her own reasonable exertions, the weekly sum of \$7.50 is entirely adequate for her comfortable support and maintenance.

4. Defendant was born August 4, 1869, his wife was born December 9, 1887. They were
 20 married, as stated, June 9, 1914. There are no living children of the marriage. One child, a boy, was born on May 15, 1915, and died May 25, 1915. Defendant is informed and believes that the cause of the child's death was congenital syphilis, which the child derived from its mother, and which defendant is prepared to prove, it did not derive, and could not have derived, from defendant.

5. From the time of the marriage, until
 30 January 26, 1916, at which time defendant determined to, and did, separate from his wife, defendant was constantly and increasingly disturbed by his wife's conduct. Defendant's sister and aged mother made their home with him at the time of his marriage, being dependent upon him. They were treated by defendant's wife with continued indifference, disrespect, and insult, and in many instances were denied by her the actual necessities of life, which defendant
 40 was paying for and was desirous they should

Answer.

have. By this conduct they were finally on April 9, 1915, compelled to leave defendant's home and live elsewhere, contrary to defendant's just wishes. Defendant's wife was lavish and extravagant in catering to her own wishes and the entertainment of her own family and friends, while she often neglected to prepare for defendant such meals as it was reasonable for him to expect, and such as he supplied her with ample means to provide. Defendant found it utterly impossible to attempt to reason or remonstrate with her over anything. The slightest opposition to her wishes, or the most considerate expression of his own, invariably provoked an exhibition of temper upon her part which usually ended in hysterics and often in acts of physical violence on her part. Thus, on one occasion she struck defendant violently on his arm, leaving black and blue marks; on another occasion she pushed him so that he saved himself, from a bad fall down the stairs, only by luckily catching the handrail; on another occasion she threatened to strike him with a chair; on one occasion she threw a carving knife at him; on several occasions she got a loaded revolver out of the dresser where defendant kept it and threatened to end her life and her husband's with it; and she frequently came toward him with a knife or other weapon in her hand under circumstances that led him to entertain the just fear that she might strike him with it, in her anger.

6. Defendant has never given his wife any just occasion or excuse for all and singular her conduct aforesaid, but, on the contrary, from the beginning of their married life, has always been faithful to his marriage vows and obligations;

Answer.

but, by reason of the premises, his domestic peace and happiness was entirely destroyed, and his ability to give his business the attention and energy it required was greatly also impaired; and defendant denies that he abandoned the complainant on January 26, 1916, without justifiable cause or that he then or at any time since has so abandoned her; but, on the contrary, he avers that he then separated from her, and has since continued such separation, upon justifiable cause, to wit, for the causes aforesaid.

7. As to the allegations of the fifth paragraph or the bill of complaint, defendant says that the Hoole Machine and Engraving Works is a corporation with capital stock issued consisting of 100 shares of the par value of \$100 each, of which defendant owns 10 shares, George H. Correll holds 1 share, and Octavia V. Irwin, sister of defendant, holds 89 shares, which defendant gave to her when the corporation was lately formed. Before said corporation was formed, defendant was sole owner of the business and assets which were transferred to said company for the 100 shares of stock issued, and defendant has since been the manager of said business at a salary of \$25 per week. Defendant is the owner of the land and buildings in the City of Brooklyn, in the County of Kings and State of New York, a part of which is occupied by said Hoole Machine and Engraving Works. Said building is encumbered by a mortgage, securing the principal sum of \$13,000 at five per cent. The assessed valuation of the building is \$11,000, and its actual valuation is not much more than the assessed valuation. After paying interest on the mortgage, taxes, repairs and other expenses, the net rental that this property will yield will not exceed \$800 or

Answer.

\$900 per year. The stock of the Hoole Machine and Engraving Works is not likely to pay any dividends at present. It is making no profits above its operating expenses at the present time. The stock of said company is not worth more than par. Except as otherwise above stated, defendant denies paragraph 5.

10

8. Defendant is the owner of 100 shares of the common stock of the Southern Railway which is worth about \$20 a share and pays no dividends; he also has 300 or 350 shares of the stock of the Pine Lawn Cemetery, which is worthless, said company having gone into the hands of a receiver. He formerly owned shares in the Oradell Building and Loan Association and in the Hackensack Building and Loan Association, but sold them all out during 1915 and used the proceeds to pay household expenses. Except as aforesaid, defendant owns no stocks and denies paragraph 6.

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9. Defendant admits paragraph 7 except that he says that the Oradell house and land is mortgaged for \$4,000 at 5 per cent, and would not sell readily at much over \$5,000.

10. Defendant denies that he ever said to plaintiff that he was worth at least \$80,000, but admits that he paid her for household expenses and for herself the sums mentioned in the last paragraph of the stating part of the bill of complaint. Defendant says that to the best of his knowledge and belief, apart from any interest he may have in the stock of the Hoole Machine and Engraving Works, the cash value of all that he possesses is not more than the sum of \$10,000.

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E. J. LUCE & W. A. KIPP,
EDWARD J. LUCE, *Solicitors.*
Of Counsel.

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*Order for Alimony.***Order for Alimony.**

Filed May 11, 1916.

IN CHANCERY OF NEW JERSEY.

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Between

EDNA G. IRWIN,

*Complainant,**and*

JAMES W. IRWIN,

*Defendant.**On Bill, &c.**Order.*

20 This matter being opened to the Court by Mackay & Mackay, of counsel with the petitioner, and in the presence of Messrs. Luce & Kipp, of counsel with the defendant, and it appearing that due notice of this application has been given to Messrs. Luce & Kipp, the solicitors of the defendant, and good cause being shown by the petition and affidavits of the petitioner that she is entitled to relief in the premises.

30 It is thereupon on this 8th day of May, nineteen hundred and sixteen, ORDERED that James W. Irwin, the above named defendant, pay to his wife, Edna G. Irwin, the sum of twenty dollars per week at the beginning of each and every week from the date of this order until the termination of this suit for her support and maintenance, and it is further ORDERED that the said James T. Irwin pay to the said Edna G. Irwin or to her solicitors, a counsel fee of one

Substitution of Attorney.

hundred dollars and costs of this application to
be taxed.

E. R. WALKER,
C.

Respectfully advised,

VIVIAN M. LEWIS,
V. C.

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Substitution of Attorney.

IN CHANCERY OF NEW JERSEY.

Between

EDNA G. IRWIN,

Complainant,

and

JAMES W. IRWIN,

Defendant.

On Bill, &c.

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We, Luce & Kipp, solicitors of record of James
W. Irwin, the above named defendant, hereby
consent to the substitution of Borden D. Whiting
as solicitor in our place and stead.

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Dated, May 19, 1916.

LUCE & KIPP,
Solicitors.

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Appearance.

Appearance.

Filed May 19, 1916.

IN CHANCERY OF NEW JERSEY.

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Between

EDNA G. IRWIN,

Complainant,

On Bill, &c.

and

Appearance.

JAMES W. IRWIN,

Defendant.

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Appearance is hereby entered in the above
stated cause on behalf of the defendant.

BORDEN D. WHITING,
Solicitor of Defendant.

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Order to Amend.

Order to Amend.

IN CHANCERY OF NEW JERSEY.

Between

EDNA G. IRWIN,

Complainant,

and

JAMES W. IRWIN,

Defendant.

On Bill, &c.

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*Order to
Amend.*

The defendant having moved to amend the answer in the above cause, it is on this day of _____, nineteen hundred and sixteen, on motion of Borden D. Whiting, Esq., solicitor for the defendant, solicitors for the complainant consenting hereto:

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ORDERED that the answer in said cause be amended by inserting in paragraph 6 thereof, after the words "also impaired," the following:

"And by reason of the aforesaid extreme cruelty of complainant, the defendant's health became impaired and he feared for his personal safety."

E. R. WALKER,
C.

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Respectfully advised,

VIVIAN M. LEWIS,

V. C.

We hereby consent to the above order.

MACKAY & MACKAY,
Solicitors of Complainant.

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Opening.

IN CHANCERY OF NEW JERSEY.

10	<i>Between</i> EDNA G. IRWIN, <i>Complainant,</i> <i>and</i> JAMES W. IRWIN, <i>Defendant.</i>	}	<i>On Bill for</i> <i>Maintenance.</i> <i>Testimony.</i>
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Transcript of testimony taken in the above-entitled cause, at the Chancery Chambers, Jersey City, New Jersey, on the ninth day of November, 1916, before HON. VIVIAN M. LEWIS, Vice-Chancellor.

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Appearances:

Mackay & Mackay, Esqs., for the complainant.
Borden D. Whiting, Esq., for the defendant.

Mr. Mackey. I offer in evidence two letters, the first addressed to "Mrs. James W. Irwin, Oradell, New Jersey," dated January 26, 1916, and signed "James."

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The second letter is addressed to "Mr. Edmund Maples," the father of the complainant, dated January 26, 1916, and signed "James W. Irwin." I will read them.

(Reads both letters) as follows:

"29 Prospect Street,
Brooklyn, N. Y.
January 26, 1916.

Dear Edna: I regret that I find that it is impossible for us to live together hereafter.

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Opening.

I have in the past pleaded with you to behave, and I told you, time and again, that things could not go on as they were but it did no good and I could stand it no longer.

Hereafter we will live apart and I advise you to go home to your father.

10

I am mailing a check for \$7.50 payable to your order to your father today. This is the amount that I have figured that I can afford and ought to pay for your support and I will mail a check for this sum weekly to your father unless you advise me in writing to send it elsewhere.

Please remove your personal belongings from the house as soon as possible, and I will take away my clothes and close up the house.

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Sincerely,

James."

"29 Prospect Street,
Brooklyn, N. Y.,
January 26, 1916

Mr. Edmund Maples,
Oradell, New Jersey.

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Dear Sir:

I hereby confirm my telephone message of last evening.

I advised Edna and yourself that I would not be home last night, and that I had decided to live separately and apart from my wife.

I enclose herewith check No. 1343 for Seven & 50/100 (\$7.50) dollars payable to Edna. This is the amount I have figured that I can afford to and ought to pay my

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Mrs. Edna G. Irwin, direct.

wife for her support and I will send a check for a like sum weekly.

Yours truly,

Jas. W. Irwin."

MRS. EDNA G. IRWIN, sworn in her own behalf, testified as follows:

Direct examination by Mr. Mackey.

Q Where do you live? A With my sister, Mrs. Smith, on Maple avenue, Oradell.

Q How long have you been living there?

A Since the 26th of March, 1916.

Q Before that where were you living? A In my home on Third street, Oradell.

Q And whose home was that? A I went there when I was married.

20 Q That is your husband's home? A Yes, sir.

Q And when were you married? A On June 9, 1914.

Q By whom were you married? A The Rev. Dr. W. K. Berry, of the Church of the Annunciation of Oradell.

Q After your marriage you lived where? A In Third street, Oradell, with my husband.

30 Q How did you get along with your husband after you started to live together? A Very well, for a time.

Q And when did you first begin to have trouble? A Not immediately with him, but I did with the family.

Q Who else lived at the house besides your husband and yourself? A His mother and his sister.

40 Q And what are their names? A Octavia and Mrs. James W. Irwin.

Mrs. Edna G. Irwin, direct.

Q And you did have trouble with them, did you? A Yes, sir.

Q In what way? A In the first place, everything that went on, went on behind closed doors.

Q You mean conversations between your husband and them? A Yes, sir.

10

Q You objected to that, did you? A Yes, sir.

Q Tell us something about the attitude and conduct of the parties when they had these conversations. A They would go into a room and close the door.

Q Did the conversations commence in your presence? A No, sir.

Q Did they shut the door when they went into a room? A Mrs. Irwin and Miss Irwin spent most of their time in their room, and at night when my husband would come home he would go to their room, after greeting me, and if anything happened during the day I thought it was usually gone over at that time.

20

Q Well, did you hear anyone? A He would tell me that.

Q He would come down and speak to you about that; tell us when that began. A It was before the baby was born, when there was trouble about them leaving the house; in the first place, Mr. Irwin had had a great deal of trouble with his sister, and on one occasion he put her out, but with my permission she came back again. Mr. Irwin was wholly against his sister until after they left the house; the reason they left the house was, because when I was getting ready for the arrival of the baby I had my mother to come over to arrange things for me in my room, and when Mr. Irwin put his sister out, he had a

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Mrs. Edna G. Irwin, direct.

very beautiful plate that was engraved, which had been given to his father by the Church of the Epiphany for being sexton, and the one thing that he wanted was this silver plate; before Miss Irwin had gone he got possession of the plate, and when we were fixing things for the
 10 arrival of the baby, I took this plate and showed it to my mother, and she said, "Well, Edna, if I were you, I would cherish this"; and I said, that I did, but that I was afraid that somebody would take it if I put it out where everybody might be able to look at it. With that I put the silver plate in on the bed in the spare room. I had not turned my back until Miss Irwin took the plate in her room; I protested very strongly, and when he came home
 20 at night I told him that we had had an argument, and I said, "In case you think that I am not giving it to you straight, you go to your mother and sister and get it," which he did, but he never told me what they said, and never told me what they referred to, or anything; but I simply put my foot down that night and said it was either a case of his mother and sister or myself. Right after we were married there was a good deal of trouble, as I said before, and Mr.
 30 Irwin was advised, in my presence, to put his mother and sister out, and he tried time and time again to do it.

Q When you objected and said that either they would have to go or you would have to go, what happened? A They went.

Q Do you recall the date that they went? A It was some time before the 15th of April, I believe.

Q When was the baby born? A The 15th
 40 of May.

Mrs. Edna G. Irwin, direct.

Q It was about a month before the baby was born that they left? A Yes, sir.

Q How was your husband's conduct up to the time the baby was born? A Well, evidently it was not what it was before that, because I noticed very strongly that he was being weaned away. 10

Q What was his conduct towards you that led you to believe that? A In the first place, he never discussed anything with me at all, which he did before we were married and right after we were married; he always had told me of the obligations he had to meet, and before we were married he said he wanted some girl who had some business ability, so that he might talk over these things with her, and immediately afterwards he stopped doing that. 20

Q You had been in business before you were married to him? A Yes, sir; I had been in business before I was married.

Q What business had you been connected with? A For seven years I was with an advertisement concern, and for two years I was with the firm of J. T. Riser and Son; they are in the iron and steel business.

Q What business was your husband in? A Iron and steel machinery. 30

Q You had had some experience in that line of work then? A Yes, sir.

Q After your marriage, and before his mother and sister moved away, just tell us what he said to you—show the difference afterwards and before. A He appeared to be very nice, and, of course, he did not treat me the same as he did right after our marriage.

Q How did he treat you right after your marriage? A Very well. 40

Mrs. Edna G. Irwin, direct.

Q What would he do when he went away?

A When he went away in the morning he usually put his arms around me and kissed me, and waved to me when he got to the corner.

Q When he came home at night how did he act? A Just the same; he seemed to want to

10 be with me continually.

Q If you went out of the dining room after dinner, did he follow you? A Yes, sir; and if I was washing dishes he would sit beside me; we usually went right up to our bedroom; that was the only place that I felt that we had any privacy.

Q After the baby was born, then how did he act towards you? A When he left in the morning he was very much colder than he was before; he would kiss me, but he would just bump up

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against my face.

Q And when he came home nights how would he act? A The same way.

Q Would he stay with you in the kitchen? A No, sir; he would take his paper and sit down in the parlor and read, or he would occupy his time up in the bathroom.

Q He was entirely different? A Yes, sir.

Q After the baby was born, did you have any quarrels or anything? A Yes, sir.

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Q Explain to the court what you did and what he did, if anything? A The first thing that happened after the baby was born, the first thing that I noticed where he seemed to not consider me equal with himself, was that he as much as told me that I was common, that people would not come to see me; he told me that thirty or forty of my friends had sympathized with him in reference to his mother and sister leaving, and he told me this before I was out of bed, after the

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Mrs. Edna G. Irwin, direct.

baby was born; then I felt very strongly that there was something wrong somewhere; and I told the nurse that if Dr. Levitas did not tell me what was the trouble, that I would call in another doctor who would tell me what the whispering and what all the trouble seemed to be about.

10

By the Court.

Q When he said this to you about what your friends had done, what did you say to him; didn't you say anything in reply? A I told him I did not believe it and I felt very badly, and I contradicted it, because my room was filled with flowers when I was sick, and my husband never offered me one single thing at the time I was sick, and he never brought me one flower, but he did bring me a small box of cherries, and that is all he brought me when I was sick.

20

Further direct.

Q How long were you in bed? A I was in bed about three weeks, or almost four; I was not out of my room on Labor Day.

Q After the birth of the baby, did you have any other sickness? A I had typhoid fever.

Q You had a nurse, did you? A Yes, sir.

Q When was that? A Several days after my husband left. 20

Q What date did he leave? A It was somewhere around the 20th or 25th of January.

Q How long after the baby was born? A Well, the baby was born in May, and he left me the following January.

Q What time after the baby was born did you have any quarrels or fighting? A When I received word from the doctor what the trouble was, I did have lots of trouble. 20

Mrs. Edna G. Irwin, direct.

Q You did? A Yes, sir.

Q Did you have any conversations with your husband about it afterwards? A Yes, sir.

10 Q What was that? A We had lots of conversations; the sum and substance of it was, that I did not know who was to blame for the trouble, as to what was the cause of the baby's death, who was to blame, but I told him that rather than have any trouble, I would take the blame, but I knew nothing of the disease whatever.

Q What did the baby die of? A Congenital syphilis; I have had my blood tested by Dr. McLaughlin.

20 Q What was the result? A It showed nothing at all; there was not anything in the test at all—showing negative.

Mr. Whiting. I think it will develop that this particular unfortunate phase of the case is not particularly important.

Q The child died? A Yes, sir; ten days after birth.

Q Was the physician constantly in attendance at that time? A Yes, sir.

30 Q Now, after this time that you have just spoken of, you say you had arguments with your husband; did you have any quarrels after that, any serious quarrels or any fighting or striking, or anything like that? A Yes, sir; we did.

By the Court.

40 Q Just tell us what trouble you had. A I struck Mr. Irwin on the arm; this was after the baby was born; I struck him on the arm in August.

Mrs. Edna G. Irwin, direct.

Q What was the trouble? A I had arranged with Mr. Irwin to allow my brother to spend Sunday with me, as the folks were away.

Q What folks? A My mother and father; my brother lives with them, and my brother was staying with my sister at the time, but I arranged to have him come over, and it was perfectly satisfactory to Mr. Irwin; I asked him about it first; and he came over, he came in very late that night.

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Q Who did? A My brother. On Sunday morning we had breakfast, and I was doing my own work at the time, and Mr. Irwin received a telephone call from River Edge; he was asked, I believe, to—

By Mr. Whiting.

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Q You did not hear what he was asked? A I was right there; this is only supposition; I heard his answers; I heard him say he would go up and get the medicine and be down.

Further direct.

Q Who was living at River Edge? A His mother and sister.

Q Is that where they moved to when they left your house? A Yes, sir.

30

Q Did he go out of your house that day? A He came downstairs, and I was putting the wash to soak, I was putting the wash to soak to get it ready to wash on Monday, and he came downstairs and asked me what time I was going to have dinner; I don't remember that he mentioned anything about going to River Edge, but in a roundabout way; and I remember I said I would have dinner any time he wanted it; he went out of the house; my brother was

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Mrs. Edna G. Irwin, direct.

on the porch; Mr. Irwin went out of the house, and just where he went I cannot say, although I believe he went over to Mr. Michael's; he came back and knocked on the cellar window and said, "I will be back in half an hour"; with that I ran out of the house to ask him how he
 10 was going, or how he intended to get there; I don't know whether he had a shirtwaist on or what, but it was a very warm day, and I wanted to know how he was going to get there and what time he would get back; so I ran out of the house and I called to him as hard as I could, and as many times as I could possibly call him; I went to the back, but there was no answer, and I knew he could not be very far away. Mrs. French, the woman next door, came out on the
 20 porch and said—

Q Never mind that—what about Mr. Irwin?

A In the course of time I learned that he had gone to Mr. Michael's; he came back and said nothing about it; I did not know how he had gone. In the course of dinner I said to him, "Did you hear me call you when you went out?" and he said, "Yes"; I said, "Why didn't you answer me?" and he said, "I did not think it was necessary."

30 Q Proceed. A I got dinner as I said, and, in the course of dinner I started to clear away the dishes, and Mr. Irwin, knowing that I was sick, did not attempt to help me; he knew I was all in from the heat; he never did help me, however.

Q Tell us what happened? A He went out on the lawn at the back of the house, and he sat down, and my brother with him, and my brother called out, "When you get ready, I will dry the
 40 dishes for you." I cleared away the dishes and

Mrs. Edna G. Irwin, direct.

lay down, and then Mr. Irwin came up; I don't remember the conversation that followed, but, anyhow, he knew that I was very upset about it and he never talked to me about it, or attempted to explain about his going away and not answering me, the way he did.

10

By the Court.

Q Did you speak to him about it? A I don't remember.

Q Well, he did not say anything to you about it; go ahead. A In the course of the afternoon I went out, and I intended sitting on the lawn, and Mr. Irwin sat there and saw me carrying down a heavy porch chair and he never attempted to get it or help me at all.

20

Further direct.

Q What happened? A I believe we had tea; in the evening we sat on the porch and just the conversation that followed I cannot remember, but anyway, my brother said, "Well, we all know that you are too old for her," and with that Mr. Irwin ordered him off the porch, and he turned on the electric light so that everybody might have the benefit of the incident, and he also raised his voice to such an extent that everyone on the block could hear him. He went out and stayed, I guess, for perhaps an hour, and when he came back he went upstairs, and I was very much afraid when he went out—he went upstairs before he went, and I was very much afraid that perhaps he was going to do something desperate, and I went upstairs after him; when he returned I went up with him, and I was terribly provoked at him, and he just stood there and let me hit him on the arm with my hand—

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Mrs. Edna G. Irwin, direct.

Q What led up to that? A I spoke to him about the way he had treated me during the day, and the underhand way that he had gone to River Edge.

Q Were you standing close together? A No, sir.

10 Q You hit him on the arm? A Yes, sir.

Q And what did he do? A He did not do anything.

Q Did he say anything? A No, sir; I don't remember that he did.

By the Court.

Q What did you do then; did both of you go to bed? A No, sir; I went downstairs and told my brother to go home; when I said on
20 the porch, when he went out, I was afraid of Mr. Irwin, and I sat on the porch just immediately in front of my brother, so that if he shot my brother he could shoot me, too.

Q Had he ever threatened to shoot him? A No, sir; but I knew how terribly angered he was.

Q Is that all that happened? A I don't believe that we roomed together that night; he
30 slept in one room and I slept in another.

Q Did you room together after that night? A Yes, sir; continually.

Q About what date was that that you say you struck him? A In August, 1915.

Q And you lived together after that and occupied the same room up until when? A Until the night before he left me—even the night he left me.

Q Lived together as husband and wife? A
40 Yes, sir.

Mrs. Edna G. Irwin, direct.

Q After you struck him on the arm in August, did you have any other quarrel, any other striking—was there any other striking?

A No, sir; none whatever.

Q How was his treatment of you during September and October and November and December? A Very cool; he did not have the slightest bit of affection for me. 10

Q Did he kiss you in the morning and evening then? A He just bumped up against my face.

Q How would he spent the evening? A We usually went to bed; we never went out; he did not like my friends.

Q Did you sit up and talk in the room? A Not to any extent; I would embroider and he would read the paper. 20

Q Just before he left you, before he wrote these letters, did you sit there in the room together? A Yes, sir.

Q You embroidered and he read the paper? A Yes, sir.

Q Then he left and then you received these letters? A Yes, sir.

By the Court.

Q The letters came after he left? A Yes, sir; I met Dr. Berry one morning in the post office, it was in reference to getting a preacher for the Lenten services. 30

Q Was your husband present? A No, sir.

Q What happened? A I told Mr. Irwin that Dr. Berry had asked me to have Dr. Crocker of the Church of the Epiphany, the clergyman where the Irwin family had originally belonged, to preach, and I said to him, "All that is necessary for you to do is to entertain him at 40.

Mrs. Edna G. Irwin, direct.

dinner, and Dr. Berry would issue the invitation." Mr. Irwin left me under the impression that he was going to invite Dr. Crocker up; he was to see Dr. Berry in church and tell him, but we did not go to church; we had company. On Monday evening he came and I asked him if
 10 he had done anything about it, and he said, "Yes," that he had, that he had written to Dr. Berry not to have Dr. Crocker come, and I asked him why he did it, and I told him it was a shame to do that after the treatment his father had received from the Church of the Epiphany, that his mother and sister should join the Dutch Reformed, and we did have quite an argument about it, and Mr. Irwin appeared not to want any of his friends to come in his home. I
 20 had empty rooms at the time. Before that, when he married me, when he asked me to marry him, he said he wanted a home that he could take his friends to. I invited friends of Mr. Irwin up, and I asked him to invite a young man from the office, and I have every reason to believe that he did, but he could not come, and never, except on two occasions that I can recall did I entertain any of Mr. Irwin's friends. Once when his sister was carrying on so that he
 30 could not do anything with her, and he bought Mr. and Mrs. a ticket in Brooklyn and gave it to them—

Q What about this church affair, this Dr. Crocker, did you finish that? A He said that it was not so, but Mr. Irwin, at the time, knew nothing of his mother and sister taking out letters from the Church of the Epiphany.

Q What did he say when you asked him about this letter he had written? A He said it was
 40 not so.

Mrs. Edna G. Irwin, direct.

Q What happened then; were there further words about it? A There were, but I cannot recall; when he got in bed that night I said to him, "You are ashamed to have Dr. Crocker come up," and he said he was not.

Q What else? A That led on to the argument, and he said I did not give his mother and sister enough to eat; he said when I gave them oyster stews I did not give his mother and sister any oysters, and that I specially counted his sister's; and in every instance I gave the mother and sister the very best to eat. 10

Q How about the church; do you think that had some bearing on his writing these letters?

A Yes, sir.

Q How soon after the incident did he leave?

A The next morning.

Q Did he kiss you good-bye that morning? 20

A I don't remember that he did; he started out in the morning and I called him back and did not want him to go away angry, and I kissed him and told him that I was going to New York, and I asked him for some money, I said I didn't have any, and he said, "That is too bad."

Q Did he give you any? A No, sir; he offered to, and he had, perhaps, two or three dollars in his pocketbook at the time, and I told him to keep it. 30

Q You did not go to New York then? A Yes, sir; I did, I borrowed money and went to New York.

Q And then he left? A He left and I went to New York that day; I had no idea, though, that he had left home. I went to New York and I called him up four times at his New York office, and he was not in. I asked a young man there, and he said he had left, but that he 40

Mrs. Edna G. Irwin, direct.

had not closed his desk and he would probably be back; I was taken very weak.

Q What time was this you called him up?

A All day, continually.

Q When was the last time? A About half-past three or four in the afternoon.

10 Q Where did you call him from? A I called him from Keith's, New York, 28th street, and I called him several times from Siegel-Cooper's; Mr. Correll said that Mr. Irwin had gone out.

Mr. Whiting. I object to that.

The Court. The objection is sustained.

Q Now, after you received the letter you were taken sick, you say? A Yes, sir.

20 *By the Court.*

Q What did you do when you made the last telephone call? A I went home and went to bed, and he telephoned me at six o'clock, and he said, "Edna, I am not coming home to-night"; and I said "Why not?" and he said, "You know why not"; and he said, "You go home to your father, and I will 'phone you at seven o'clock at their house."

30 Q Did you go? A I did not.

Q Did he call you at your house again? A Yes, sir.

Q When was the next time? A He 'phoned the house at seven o'clock and I was not there.

Q Where were you then? A I was home.

Q You mean he 'phoned to your papa's house? A Yes, sir; and I was not there; I was at my home; I was in bed when he 'phoned me, and I expressed to him very frankly that I

40 could not leave the house, that I was sick, and

Mrs. Edna G. Irwin, direct.

I had not even prepared any dinner for him I was so sick; I told him I was sick, and he told me to go home to my father, but I stayed at home; I guess I was up pretty nearly all that night; but I went to bed at perhaps twelve o'clock.

Q In the meantime, did he call you? A 10
No, sir.

Q Did you hear anything from him? A
Not a word.

Q Did you make any inquiry at all to find out where he was? A Yes, sir; the next day I called up the office to see if he had been there, and he had been there.

Q What time? A I called up at half-past four from my house in Oradell, and he had been there, and I said that was all right; I just 20
wanted to know if he was all right; two or three nights after that I called him up at his home in River Edge, and his sister said that she had no information; she said that over the telephone; and she said, "Who is this?" and I said, "His wife, of course"; he was there at the time.

Q You don't know that? A I think I saw him when I came home.

Q Then you got these letters? A Yes, sir; 30
that did not come for several days after.

Q Did you hear from him in the meantime?
A No, sir.

Q Did he send you any money? A Only in his letters.

Q This is the first money you received? A
Papa received the check.

Q That was for how much? A \$7.50.

Q Had you any money when he left? A I
had 26 cents. 40

Mrs. Edna G. Irwin, direct.

Q Did you have any food in the house? A Nothing to speak of much; I did have a little money in the house, about five dollars; it was in a dime bank that I had saved for the baby, but I could not get it out without some more to put in with it; when I returned from New York, I
10 had only 26 cents.

Q You got this letter from him? A Yes, sir.

Q After you got that letter, what did you do? A After I got that letter, I went down to New York to Mr. Varian; Mr. Irwin considered him a very particular friend, and also a legal adviser; and I asked him if he could not fix it up.

The Court. Strike that out.
20

Mr. Whiting. We don't object to the conversation from their point of view, and and we will put it in from our point of view; I think it is material.

Q You went down for the purpose of trying to effect a reconciliation? A Yes, sir.

By the Court.

Q You told Mr. Varian your story? A Yes,
30 sir.

Q Then, did you come home after that? A Yes, sir.

Q You did not see anything of your husband? A No, sir.

Q Now, what sort of a house did you live in? A He owned it.

Q How many rooms in it? A Nine rooms.

Mrs. Edna G. Irwin, direct.

Further direct.

Q Before you were married, and while you were keeping company with Mr. Irwin, did he say anything about his financial condition? A Yes, sir; he did; he told me he had \$80,000—the equivalent of \$80,000.

10

Q In property? A Everything.

Q What property was it that made up the \$80,000; what did he say that consisted of? A He said that consisted of the business and the building and loan; he told me how many shares he had in that; he told me he had 25 in Oradell and 25 in Hackensack.

Q That is two building and loan associations there? A Yes, sir; he told me he had stock; he had Southern Railway stock, and he also had other stock—Central something, I cannot just recall.

20

Q Did he put a value on these stocks? A No, sir; he did not; he had the house at Oradell with a \$4,000 mortgage on it.

Q Did he tell you what it was worth? A Yes, sir; he paid \$6,500 for it, he said.

Q What else did he tell you? A He told me that he might pay off the mortgage on the house in Oradell, if it was my wish; that he had \$4,000 at interest in Connecticut.

30

Q What was his business then? A Book-binder machinery.

Q Is he a manufacturer? A Yes, sir.

Q Is he in business alone? A Yes, sir.

Q Manufacturing what? A Book-binder machinery and amateur book-binder tools; he has a three or four-story building over in Brooklyn on Prospect street, and the office is in

40

Mrs. Edna G. Irwin, direct.

another building; he owns the property in Brooklyn.

Q Is that mortgaged? A I believe so.

Q Did he say what that place was worth, or didn't he? A Well, he told me \$30,000.

Q Did he say what it was mortgaged for?
10 A Yes, sir; he did; but I cannot recall; I think he said about \$15,000 or \$18,000.

Q Mortgage? A Yes, sir.

Q And the rest was made up of the good will of the business? A The good will; he told me at the time he was married, that his office, his building, was stocked full of machinery and that the materials and the workmanship was all paid for; he told me he did not owe one cent; he told me he would give me \$200.00 a month to
20 run the house with, and \$100.00 a month he would put in the bank for a rainy day.

Q Did he tell you what his income was, net?
A That is what he said.

Q Now after your marriage, what did he give you; did he give you \$200.00? A He gave me \$100.00 a month for a few months, and I believe the month that I bought some extra things he gave me, perhaps, \$50.00 extra; he was giving me \$60.00 a month, \$15.00 a week,
30 when he left me, to run the house with, and \$20.00 a month for myself, which I used for household purposes.

Q When did the \$15.00 a week commence?
A That was after his mother and sister left.

Q And before that, you received \$100.00 a month? A Yes, sir.

Q Did you receive any extra over the \$100.00 a month? A I believe in one instance I did get an extra check; yes, sir; he did; in one
40 instance that I recall he gave me \$10.00 to buy

Mrs. Edna G. Irwin, direct.

a couch, and in another instance he found some gas bills and things on my dressing table that were not paid, and he gave me money to pay those.

Q On the \$15.00 a week that he gave you, were you supposed to pay all the household expenses? A He paid gas bills, electric light bills, and things like that. 10

Q How long did you have a maid? A At the time the baby was born he had a housekeeper—two nurses and a doctor in attendance.

Q And after he left you, do you know where he lived? A He lived in River Edge with his mother and sister.

Q For how long? A Continuously until he moved back to Oradell in the house, after I vacated. 20

Q Is he living in Oradell now? A Yes, sir.

Q How did you come to vacate your house? A I was living practically on \$7.50 a week, and he cut off everything that might give me any comfort, and there was no coal in the cellar and no food in the house; he notified everybody by letter, even the milkman, not to leave me any milk; and he cut off everything; before I was sick, I called up the different trades people in town and I asked them if they would give me credit until I was able to pay, which they all did. 30

Q On your own credit? A Yes, sir.

Q How long were you sick with the typhoid fever? A I was in bed for six weeks.

Q That was during what time? A From the 26th of January until March, after March.

Q That was after he left you? A Yes, sir. 40

Mrs. Edna G. Irwin, direct.

Q Did he come to see you? A No, sir; and he was advised that I was very ill, and he would not come.

Mr. Whiting. I ask to have that struck out.

10 *The Court.* Strike it out.

Q How long were you in bed? A Six weeks.

Q Did you have a nurse? A Yes, sir.

Q One or more? A One.

Q Did he pay the nurse? A He did not.

Q Do you know how much her bill was? A \$58.00.

Q Did you have a doctor? A Yes, sir.

Q How much was his bill? A About \$90.00.

20 Q Did he pay that? A No, sir.

Q He did not pay for anything, any of your sickness? A No, sir.

Q How much was the whole expense of your sickness? A I think that \$500.00, counting all the odds and ends, that is, running the house with the nurse, paying the nurse and the doctor, and the medicines and everything, and the coal and everything that I had to buy—

30 Q \$500.00 for the six weeks? A Yes, sir.

Q In round figures? A Yes, sir.

Q And he paid no part of that? A No, sir.

Q He sent nothing but the \$7.50 check? A That is all.

Q Did you hear from him directly or indirectly? A No, sir.

Q Did his people come to call on you? A No, sir.

Q You never heard one way or the other? A No, sir.

40

Mrs. Edna G. Irwin, cross.

Q That was your last sickness, the typhoid fever? A Yes, sir.

Q You have not been sick since? A No, sir.

Mr. Mackay. Now, on the question of the death of the child, the cause of it, that is not going to be an issue; it is not going to be raised; therefore, I will let Dr. McLaughlin go, inasmuch as it is not going to be raised. 10

Mr. Whiting. I am going to ask Dr. Levitas a few questions, but not about the alleged disease; the fact is, the child died; that is in the record.

Mr. Mackay. Then Dr. McLaughlin, you may go. 20

Cross examination by Mr. Whiting.

Q What is your sister's name with whom you now live? A Mrs. Ernest Smith.

Q Where does she live? A Maple Avenue, Oradell.

Q Is she here today? A No, sir, she is not.

Q Where does your brother live? A With our parents in Oradell.

Q Is he here today? A No, sir. 30

Q You spoke of some conversation that involved the name of Dr. Berry as being the beginning cause for one of your troubles with your husband? A Yes, sir.

Q Is Dr. Berry here? A No, sir.

Q Where does he live? A At Oradell.

Q Before you married Mr. Irwin where was he living? A In Oradell, Third Street.

Q That is the house where you went to live after you were married? A Yes, sir. 40

Mrs. Edna G. Irwin, cross.

Q Was he living there alone? A No, sir, he was with his mother and sister.

Q You knew that at the time when you became engaged to him? A Yes, sir, he explained that to me.

10 Q His mother is an elderly lady? A Yes, sir.

Q Her health is getting feeble? A Yes, sir.

Q She depends very largely on her son for her support? A I don't think so.

Q Are you prepared to swear that that is not the truth? A I can only swear to what Mr. Irwin told me.

20 Q Now, I have not asked you what Mr. Irwin told you, but, perhaps, your counsel will. Things went pretty well with you after you were married, for a little while? A Yes, sir.

Q Then they began to go wrong? A Yes, sir.

Q It was not Mr. Irwin's fault entirely, was it? A No, sir, I did not blame him entirely.

Q You rather blamed the sister at the time? A Yes, sir.

30 Q And it seemed to be a source of irritation that the sister was living there? A Yes, sir.

Q And it resulted in quarrels with your husband, between yourself and your husband? A Yes, sir.

Q And now and then you had a little tiff yourself with the sister? A Yes, sir.

Q You have some temper, haven't you? A Yes, sir, a little.

Q A pretty hot one? A I have a temper.

40 Q A good strong temper? A When it is necessary.

Mrs. Edna G. Irwin, cross.

Q And when the temper gets to going, it is a pretty strong thing, isn't it? A I don't think it is very violent.

Q Now, your temper gets away with you sometimes, doesn't it? A Yes.

Q Was your husband black and blue where you punched him? A He said so. 10

Q Didn't you write to him, asking him not to show it to anyone? A Yes, sir.

Q It was black and blue? A Yes, sir.

Q So your temper gets pretty strong sometimes, doesn't it? A Yes, sir.

Q That is not the only time your temper got away with you? A That is the only time I exhibited any violence; I am very excitable.

Q When you do get in a temper and throw yourself on the floor and wriggle your feet, is not that violent? A No, sir. 20

Q It is only when you punch your husband's arm until it is black and blue that that is violent? A I was agitated up to that point.

Q Were you never so agitated before? A No, sir, I don't think so.

Q You are not just sure? A No, sir, I was not.

Q Now, you are sure? A I don't recall any incident. 30

Q Where did you punch him? A Here (indicating the biceps).

By the Court.

Q Were the muscles black and blue? A Yes, sir.

Further cross.

Q Mr. Irwin finally had his sister go? A Yes, sir. 40

Mrs. Edna G. Irwin, cross.

Q That was to make peace in the family, wasn't it? A Yes, sir, but not on my account only.

Q But it was to bring about a more easy situation? A Yes, sir.

Q So he had his sister go? A Yes, sir.

10 Q She went for a short time and you asked her to come back? A I did not ask her to come back, Mr. Irwin came home this night. When his sister left the house, she said that she would not have any meals in the house; I sent her meals up to her, and she left the house, and she met him in the street and would not speak to him.

20 Q The fact is, that you were finally willing to have her come back? A She was taken very sick, she said, and he asked me if she might come back, and I said, "Yes;" and he telephoned her there that night.

Q And she came back? A Yes, sir; things however, went worse.

Q Things went worse? A But, Mr. Whiting, bear in mind the fact that he had had it understood with her that she would behave herself and do anything that was necessary.

30 Q Then afterwards he put her out for good? A They had been continually asking him for their money, so that they might go and live by themselves, and they finally did so.

Q And the mother went too? A Yes, sir.

Q Now, wasn't there some other source of irritation there; wasn't there early in your married life a dog that used to make you pretty mad? A Yes, sir.

40 Q Mr. Irwin was pretty fond of him? A Yes, sir, but he wanted to get rid of him.

Mrs. Edna G. Irwin, cross.

Q He finally had the dog killed? A Yes, sir; I would not allow the dog to be under my bed clothes.

Q The upshot was, that he had to have the dog killed? A It was Miss Irwin's wish that it be killed.

Q What kind of a dog was it? A It was a 10
fox terrier.

Q Mr. Irwin had it at the time you married him? A Yes, sir.

Q You knew the dog was there at the time you went there to live? A Yes, sir, but I did not know that he was vicious.

Q Did you ever kick him? A No, sir.

Q Did you ever try to? A No, sir.

Q You never lost your temper over the dog? 20
A Not to my knowledge.

Q But the fact is, the dog was done away with after a time? A Yes, sir.

Q Now, after a time, you came to the conclusion that you wanted Mr. Irwin to sell the house and go to live in New York? A I never heard that suggestion until after the baby was born—

Q I ask you if you ever made that suggestion about Mr. Irwin selling the house and going to New York to live; answer that "Yes" or "No." 30
A I don't recall that I did, Mr. Whiting.

Q Don't you recall going down to Mr. Black's with him? A Yes, sir.

Q So that you did make the request that he sell the house? A Yes, sir.

Q He offered to do it? A Yes, sir.

Q He put it in the hands of the real estate people? A Yes, sir.

Q That is after he had got rid of his dog and his mother and sister? A Yes, sir. 40

Mrs. Edna G. Irwin, cross.

Q What was the trouble all the time; you kept having rows, didn't you? A Mr. Irwin kept me away from everywhere where I could get any pleasure; I could not go to any of the church entertainments; I could not go anywhere except he snubbed my family.

10 Q Did he tell you you could not go? A I did not want him snubbed any more than I wanted my own family snubbed, and to avoid any trouble, I stayed at home.

By the Court.

Q You just said you could not go to church entertainments; did he tell you you could not go?

A No, sir.

Further cross.

20 Q Why do you say that you could not go, then? A I could not go under the existing circumstances.

Q What prevented you from going to church or the church entertainments; tell us one circumstance. A I could not have both of them snubbed; I did not want my mother and father snubbed, and I did not want Mr. Irwin snubbed; the town is very small, and do you suppose,
30 under those circumstances, that I could go and feel comfortable?

Q I don't see how that would affect you and Mr. Irwin. A Well, before the folks had any trouble at all he was very intimate—

Q The family? A Yes, sir, it made me feel very badly when I came out of church that I had to hurry along.

Q What was the cause of the trouble between your family and Mr. Irwin? A The death of
40 the baby.

Mrs. Edna G. Irwin, cross.

Q They resented it? A Yes, sir.

Q Therefore, they would snub him when they met him? A Yes, sir.

Q They did not come to your house then? A They came on one occasion when I was sick.

Q So that is the reason you did not go to church? A Yes, sir. 10

Q Proceed. A I want to say that mamma and papa were the instigators of the Episcopal Church at Oradell.

Q Now, Mrs. Irwin, from one cause or another, there was a great deal of quarreling and bad temper on your part towards your husband, wasn't there? A Well, I cannot say that; I cannot admit that, Mr. Whiting.

Q Isn't it true, that night after night you would scold him and get into one of your tempers that you have spoken of, and keep it going until one or two or three o'clock in the morning? A Positively not. 20

Q That is not true? A That is not true.

Q And then, after the storm of your passion had wasted itself, you would then come around and ask to be forgiven? A I would ask to be forgiven, and I would put my arms around him and kiss him.

Q That would be after the storm? A Yes, 30 sir, and I also asked him on several occasions, when he knew that I was very angry at him, I asked him why he answered me back, and why he did not keep still, why he did not control himself instead of antagonizing me.

Q Was not one of the things that irritated you because he would not answer you—the fact that he would not argue with you? A He would not answer my questions; he would not give me any information at all, he would just 40 consider me his housekeeper.

Mrs. Edna G. Irwin, cross.

Q Didn't you sometimes say to him "Give me an argument?" A What is that?

Q You never said to Mr. Black that the trouble with your husband was that you had to use the furniture on him to give you an argument? A On one occasion I picked up the
10 chair, but it was too heavy for me; on every occasion he would say that I was common and he told me that it said in the Bible to take care of your mother before you did your wife, he told me that if I went to court it would be mother before wife, and these things irritated me; they just agitated me up to just what I did.

By the Court.

20 Q Was he continually telling you that he should take mother before wife? A Yes, sir, every time we had an argument.

Q Would the argument start with some remark of that kind, or by something that you had done? A Well, I am perfectly willing to be criticised.

Q The question is for you to answer; he said you were common, did he? A Yes, sir.

30 Q And you resented that? A Yes, sir.

Further cross.

Q When did he use such an expression that you were common? A He considered me not as good as himself in every way.

Q How did he come to say that? A Well, on one occasion he told me that people would not come to see him because he had married in the Maples family.

40 Q You say that he had frequently told you that you were common; can you give any occa-

Mrs. Edna G. Irwin, cross.

sion when he did that; perhaps I can refresh your memory a little bit; wasn't it on one or two occasions where you used the expression, "Smile, damn you, smile;" wasn't it in reference to that that he used the expression "common?" A Once when I was taking a photograph, and I wanted the young lady to smile, I used that expression; it is a saying. 10

Q Wasn't that one of the times that he said it was common to talk like that? A No, sir.

Q He did not like it? A He was surprised, of course.

Q On another occasion when he used the word "common," may it not have been when you were at the theatre? A I don't recollect.

Q Didn't he sometimes use the expression "common;" if you would be walking on the street and you would reach up and put your arms around his neck in public? A No, sir. 20

Q That never happened, did it? A It happened the Sunday before I was married—the Sunday before Mr. Irwin left, I mean.

Q In New York? A No, sir, out in a country road where there was not a house in a mile.

By the Court.

Q Did he say you were common for doing that? A I don't recall it. 30

Q That was the week before he left? A Yes, sir.

Further cross.

Q Can you give us any occasions when he said you were common, or would he come home and merely say, "Madam, you are common;" how did it happen, that is what I am trying to get at; was it frequent or infrequent that he 40

Mrs. Edna G. Irwin, cross.

charged you with being common? A After the baby was born he acted it in every respect; I remember when he said it; he was in the dining-room when he said it.

Q What were you doing? A I was in the kitchen and he was in the dining-room.

10 Q He called out to you that you were common? A No, sir, he did not call it out, it was in the course of conversation, and I cannot recall the conversation.

Q What had you said; it is not fair to give just one part of the conversation. A I am perfectly willing if I can recall it.

Q Was that one of the occasions that you had a carving knife in your hand? A No, sir.

20 Q Did you ever have a carving knife in your hand when you were arguing with him? A Yes, sir.

Q Did you ever pick up the carving knife when you were arguing? A I don't understand you.

Q Was there ever any carving knife that figured in your quarrels with your husband? A Yes, sir.

30 Q Tell us about that. A I often tried to take my own life; I never tried to take Mr. Irwin's life; I say I often tried to take my own life. I think on three occasions I did try to kill myself.

Q With what? A Once Mr. Irwin took a carving knife away from me.

Q That was during one of these quarrels? A It was either preceding it or afterwards.

Q What did you say to him? A That I was going to kill myself.

40 Q What did he say? A He said that I was foolish; I told him I did not see any other way out of it.

Mrs. Edna G. Irwin, cross.

Q And then right after that, in one of these violent fits of passion, and after the passion had spent its force, then the feeling of remorse came over you, and you wanted to kill yourself with the carving knife? A No, sir, it was not that; I said it was either preceding or after.

Q So you began to kill yourself before the quarrel; is that the idea? A Yes and no. 10

Q You never came towards your husband in a threatening attitude, towards your husband, with this carving knife? A Not towards him; I never took any vengeance on Mr. Irwin.

Q Was it or wasn't it during one of these violent fits of temper that you would come in contact with the carving knife? A No, sir, it was on one occasion.

Q Only one? What caused it, what did you do? A Well, I was very unhappy. 20

Q Who was there? A No one was there.

Q Go on; do you mean your husband was not there? A He was there.

By the Court.

Q Where was it and what provoked you to take the carving knife and threaten to take your life; where did it start? A In our home. 30

Q What was the trouble? A I just felt that I could not face the life that I was living.

Q What was the trouble? A I was very much infatuated with Mr. Irwin, and it was the things that he was doing.

Q What? A The treatment that he was giving me, the way that he was ignoring me, and the way he just considered me his house-keeper, and I was very much annoyed; and he told me before he was married that he did not want to marry unless his wife was going to 40

Mrs. Edna G. Irwin, cross.

- do the right thing by him; he acted as if he was the best man in the world for months; I could not conceive of living with a man who was acting as though he was perfectly satisfied, tickled to death, hugging and kissing me all about, and then for him to tell me afterwards that he had not had a happy day since he was married.

By the Court.

Q After that talk about these things, one day you took the carving knife, eh? A I don't just recall what instant it was that I took the carving knife.

Q Where did you take it? A Out of the serving table drawer.

- 20 Q What did you do with it? A I told him I was going to take my life, and he told me I was foolish, and he took it away from me and did not want me to do it.

Q Was anyone else around at the time? A Not that I remember.

Further cross.

- Q He did take the knife away from you? A Yes, sir, and told me not to do it.

- 30 Q Did he ever take his revolver away from you? A Yes, sir.

Q Why? A I wanted to take my life.

Q You never mentioned taking his life? A Never.

Q It was always your life? A Yes, sir.

Q Did he ever take this nail file away from you? (Showing witness a nail file.) A Yes, sir.

- 40 Q It got broken in this trouble? A Yes, sir.

Mrs. Edna G. Irwin, cross.

Q You were trying to take your life then, were you? A I don't know that I particularly was.

Q Were you going after him? A No, sir.

Q You never did go after him with any file?

A No, sir.

Q You never threw a chair at him? A No, sir. 10

Q You never tried to push him downstairs?

A In going downstairs back of him I may have—

Q You may have; now, tell us the story, Mrs. Irwin? A (No answer.)

By the Court.

Q Did you deliberately push him down? A I cannot say that it was deliberately, we were both angry. 20

Further cross.

Q You happened to touch him? A I don't recall that I did.

Q I asked you something about the time you say you pushed him downstairs; now, just what did happen? A Well, Mr. Irwin was always very much afraid of me— 30

Q Why? A That is what I want to know.

Q You are a small woman? A I don't know that he is afraid of me; I always considered him a coward.

Q Is that why you married him? A I did not know it until afterwards.

Q He would not argue with you, would he? A No, sir.

Q And when you punched his arm, he just stood there and let you do it? A Yes, sir. 40

Mrs. Edna G. Irwin, cross.

Q And you considered that evidence of cowardice? A No, sir.

Q And when you had the carving knife there, he merely took it away from you, didn't he? A He acted as if he was very much afraid of me.

A And a little thing like a carving knife did
10 not occur to you would frighten anyone? A No, sir, he knew that I thought too much of him.

Q And the same thing with the revolver? A Yes, sir.

Q How about the nail file? A He took that up and threw it on the floor.

Q Is that a hardwood floor? A No, sir, that happened to hit something—that broke it when it hit the floor.

Q Was there any carpet or rug there? A
20 Yes, sir.

Q It bounded on to the hard floor? A Yes, sir.

Q You were not angry at the time? A We had just finished a very heated argument.

Q Who had done the arguing? A He had done as much as I had.

Q Is that one of the angry spells when you threw yourself on the floor? A I never threw myself on the floor.

30 Q I had a contrary impression from what you testified before; didn't I understand you to say you now and then got in such a temper that you threw yourself on the floor? A I did not say so; I never threw myself on the floor.

Q Well, you got down there somehow on the floor? A Yes, sir.

Q In your rage? A No, sir, in my weakness.

40 Q And in your weakness you go on the floor, slowly? A You will recall that I was in a

Mrs. Edna G. Irwin, cross.

very nervous condition when these things happened.

Q All the times you got down on the floor—

A You are making it a common occurrence.

Q Isn't it true, that more or less through your life it has been one of your weaknesses to get into these passions, and one manifestation of the passion is your getting down somehow on the floor? A No, sir. 10

Q That has never happened before you were married?

Mr. Mackay. Objected to.

The Court. Objection sustained.

Mr. Whiting. I should think it would be a proper inquiry to get at the nature of this temper; we think the whole trouble is based on her temper. 20

Q Did it or didn't it ever happen after your marriage, that you got into such a violent temper that you finally got down on the floor? A Yes, sir, but I did not throw myself down.

Q How did you get down? A Well, I just seemed to weaken, caved in; I fell down on the floor; I did not throw myself down.

By the Court.

Q When was this first occurrence that you did this, that you recall? A On one occasion before the baby was born. 30

Q When was the next time, if there was a next time? A I cannot recall; I know it happened.

By the Court.

Q Was this the result of temper that you fell on the floor this time? A No, sir, I don't believe it was. 40

Mrs. Edna G. Irwin, cross.

Q Who was present when you fell down on the floor just before your baby was born? A There was not anyone in the room except Mr. Irwin.

Further cross.

10 Q Were you quarrelling at the time; had you had any words? A Yes, sir, I was standing at the mirror, combing my hair, and his mother sat back of me; he sat here and his mother sat there, in my bedroom; I saw her say something about me, I saw her in the mirror; I could see all by her face, and I asked Mr. Irwin what she said, and he said that she said nothing.

20 Q What happened next? A And that was the cause; I don't just remember what did happen—what took place after that; we had words; he denied it, and I knew it was so; anyway, I know that I fainted there and he took it very much to heart.

Q You fainted? A Yes, sir, I was pregnant then.

Q That is the first time that you have told us that you fainted? A That is the first time that I recall.

30 Q And that is what you mean to say you do when you have the kind of tempers that you describe? A That was not temper.

Q So that you are not telling me anything about the occasions when temper caused you to do that; did you ever, in a temper, throw yourself on the floor? A No, sir.

Q Now, you say that the mother and the son were talking behind your back there in the room? A Yes, sir.

40 Q And didn't you tell us that there was no one there, and then you were asked if your

Mrs. Edna G. Irwin, cross.

husband was not there, and you said "Yes?"

A Yes, sir.

Q Now it proves the mother was there? A No, sir, she was not.

Q Then am I right in this, that when you get worked up you sometimes faint? A After it. 10

Q After what? A After I have had trouble with Mr. Irwin I was usually in a very crushed state of mind.

Q Why? A I did not like it, I felt terrible to see that Mr. Irwin was taking things from the standpoint that he did.

Q Because he would not argue with you? A No, sir.

Q Will you state whether or not Mr. Irwin, on the whole, treated you kindly? A He did at first. 20

Q I say, on the whole, on the whole he treated you kindly? A It all depends on a person's sensitiveness, I should say; I don't consider that he did, because of the things he said before he was married; he promised to give me \$200 a month.

Q How did he come to say that? A He talked to me; we were out walking one day, we were on Grove street, and it happened we were not anywhere near anyone, we were just walking, and he told me he would give me \$200 a month, and that he would put \$100 a month in the bank; he said he felt he could give me \$200 a month and \$100 a month for a rainy day. 30

Q Now, after you left the house there finally, you took away all the furniture? A Yes, sir.

Q You took away the gas stove? A Yes, sir.

Q It was not yours? A Yes, sir, it was. 40

Mrs. Edna G. Irwin, cross.

Q Was the gas stove there when you were married? A No, sir.

Q Was all this furniture new at the time you were married? A No, sir.

10 Q But that which had been there before belongs to you? A He paid the mortgage on a house that he owned in Mt. Vernon, and he paid off the mortgage on it, which was \$2,000, and his mother signed it over to his sister, so that she would be perfectly satisfied to turn everything over to me.

Q We are speaking now of the furniture which had been accumulated in Mr. Irwin's family before you were married? A Yes, sir.

Q And that was turned over to you? A Yes, sir.

20 Q You don't know whose furniture that was? A He told me he had been supporting the family for a long time, and he had virtually bought everything in the house.

Q Didn't you say that he told you that his mother was not supported by him— A Yes, sir.

Q Now, you say that he had been supporting them for a long time? A Yes, sir.

30 Q Now, which statement is correct? A Well, I think virtually both of them are correct.

Q Now, Mrs. Irwin, what did you do with this furniture when you took all of it from the house? A I sold some of it; I had to have some money.

Q When did you sell it? A I sold it right along.

Q When did you begin to sell it? A Well, I sold a bedroom suite.

40 Q When did you begin to sell it? A Right after I left.

Mrs. Edna G. Irwin, cross.

Q When was the first sale? A The first sale outside of the home—

Q I asked you when was the first sale? A About three weeks ago.

Q That is not just as soon as you were left, is it? A No, sir.

Q So the first sale was about three weeks ago? A Yes, sir. 10

Q At a time when you were receiving, under the court's order, \$20.00 a week from your husband? A Yes, sir.

Q And you deemed it necessary to sell some of the furniture? A Yes, sir, I did.

Q Whom did you sell it to? A Lots of people.

Q The first sale? A No, sir.

Q Whom did you sell the first sale to? A I sold the first sale—I believe I sold the first sale— 20

Q Don't you know? A I sold my gas stove to Mrs. Bogert; she lives in Oradell; she changed her mind, and on Monday morning I sold it to Mrs. Conover. The gas stove was paid for by me.

Q And that you sold? A Yes, sir.

Q When was the second sale? A I continued to sell. 30

Q When was the next sale? A The same day.

Q To whom? A To Mrs. Conover.

Q Where does she live? A Oradell.

Q And what did you sell her? A A mattress.

Q Where did you get that rug? A I took it from the house.

Q When would it become yours? A When I walked in the house everything was turned over to me. 40

Mrs. Edna G. Irwin, cross.

Q You walked into the house, and just what did Mr. Irwin say? A He did not say it when I walked in the house; he said that to me when he was considering what would be mine, and he concluded that the house and everything in it would be turned over to me.

10 Q When was it turned over to you? A When I walked in the house I considered it mine.

Q That was your mental state? A Yes, sir.

Q Was there any other thing which gave you title to this property except that? A No, sir.

Q Now, what else did you sell? A (No answer.)

Q What did you get for them; what is that you have in your hand? A A little book that says what I sold.

20 Q When did you make this up? A As I went along.

Q Let us go back first to the rug that you sold, who bought that? A Mrs. Conover.

Q What did she pay you for it? A \$13.00.

Q What did you do with the money? A I bought a suit, a hat, furs; I went to New York and spent it.

30 Q Meanwhile, you were receiving \$20.00 a week? A Yes, sir.

Q What else did you sell? A A small desk chair; a straight backed chair.

Q Was that in the house when you were married? A Yes, sir.

Q You assumed that was yours? A I was told that it was mine when we were talking over just what I would be in the home when I went there.

40 Q Did he say he would give you the things in the house? A He told me he had given his sister the \$2,000 to pay off this mortgage on

Mrs. Edna G. Irwin, cross.

this house, and that she was perfectly satisfied; and he told me that when I went in the house, that the house and everything in it would be mine.

Q Is the house yours? A I claim a share in it; I certainly think some of it is mine.

Q What do you mean by that? A Well, I 10
really think the house is mine.

Q You never got a deed for it? A No, sir.

Q Tell us the total amount of the things you sold and what you got for them? A I have not collected all my money yet.

Q Did you buy any of these things? A Yes, sir.

Q Now, excluding what you bought, please tell us about the things you sold; what else did you sell? A I sold the dining room rug. 20

Q What did you get for it? A \$4.00 for the rug.

Q When did you do that? A The next day.

Q Have you spent all the money? A I did not get very much; I have spent most of the money.

Q How much did you get in all? A Well, I might say that I had about \$50.00.

Q All together? A Yes, sir.

Q Is any of the furniture left? A Yes, sir. 30

Q Much of it? A Not much, no, sir.

Q You have sold most of it? A I have a list here of what I sold.

Q Tell me if that is most of the furniture that you took out of the house? A Yes, sir, excluding what I am using; I am using a good part of it.

Q You are using most of it? A Yes, sir.

Q You mean that you are using most of it, and that most of what you are not using you 40

Mrs. Edna G. Irwin, cross.

sold, is that right? A Of course, I had two rooms that were not furnished until I brought down the things out of the attic, and after the Irwins moved out and took what they wanted, the house was in very poor condition.

10 Q I am trying to find out, so as to inform the court, as to how much of the furniture you sold, as you tell me you sold most of it; now, it seems you have most of it; now, which is right? Have you sold most of the furniture or have you most of it left? A Here is a list of what I sold.

Q You know what you took out of the house? A Yes, sir.

Q The house was furnished? A Yes, sir.

Q You took all the stuff out? A Yes, sir.

20 Q Have you sold most of that, or have you got most of it? A I have got the biggest pieces; I have got my bedroom suit.

Q Have you sold have the stuff? A No, sir, I don't think so.

Q Have you sold one-quarter of it? A I might say "yes."

Q And you got about \$50.00 for it? A I said I had not collected everything.

30 Q How much in all will you collect, about, of what you have sold? A About \$100 more.

Q But the \$50.00 which you did get, you spent? A Yes, sir.

Q Now, I would like to ask you a question or two about the time which led up to your striking your husband; you spoke about your brother being there? A Yes, sir.

Q His name is what? A Harold E. Maples.

Q You heard him make the remark to your husband that your husband was too old for you?

A Yes, sir.

40 Q Why isn't your brother here today?

Mrs. Edna G. Irwin, cross.

Mr. Mackay. Objected to as irrelevant.

The Court. Objection overruled.

A Why, the man that he is working for is away; if it is very important, I might have him come up.

Q It did not seem important to have him here? A Yes, sir, but he said the man he is working with is away. 10

Q Did you talk over with your counsel about having him brought here on subpoena? A No, sir, it would not be necessary to have him subpoenaed; he will come if it is necessary.

Q May I ask what effect it had upon the situation when your brother in the house of your husband said to your husband that he was too old? A I don't just get your question.

Q How did it seem to affect your husband when your brother, in your husband's house, told him that he was too old, in your presence? 20

A It raised a great deal of temper on Mr. Irwin's part; he turned on all the lights so that everybody might hear him order my brother off the porch.

Q Did he strike your brother? A No, sir.

Q Did he tell him to go? A Yes, sir.

Q That was not one of the evidences of cowardice on your husband's part, to your mind? A I don't understand the question. 30

Q (Question read.) A No, sir, I did not think so.

Q But when your husband stood still and let you pound his arm, or do some of the things you told us about, that, you considered evidence of cowardice? A No, sir, not exactly.

Q What was the evidence of his cowardice?

A One night I went out to the Eastern Star, and I asked Mr. Irwin when he went out in the 40

Mrs. Edna G. Irwin, cross.

morning if he would be home to dinner, and he said that he would stay in River Edge for his dinner, and I had said to him before I was married about going to the Eastern Star; I held an office in it, and on this occasion he said that he would not be home to dinner, although he left
 10 me, as I understood it, under the impression, when he went out in the morning, that he would be home; and that night I came home from the Eastern Star and I did not get off at River Edge as I had on one or two previous occasions I came home alone; I was with mamma and papa, and I met Mr. Wier, and he took me home. When Mr. Irwin came in after that, I opened the door, and he seemed to be afraid to come in.

20 Q Did he seem a little nervous when you had this revolver in your hand? A I don't know that he did.

Q He did not seem to be cowardly then? A No, sir.

Q What were you doing with the revolver?
 A I just took it out of the drawer.

Q That didn't bother him any? A No, sir,
 30 I don't think that it did.

Q What did you do with it? A I don't remember that I did anything with it; I think he took it right away from me.

Q There was no evidence of cowardice there, was there? A Yes, sir.

Q On whose part? A He did not want me to do it any more than he did not want to do it.

Q He did not like this business about the revolver? A No, sir.
 40

James W. Irwin, direct.

By the Court.

Q What did you say when you took the revolver out of the drawer? A As I recall it, I did not say anything; I just went to the drawer and took it out and turned around.

Q Why did you go to the drawer and take it out? A Because I wanted to take my own life. 10

Q Now, come to the carving knife once more; I ask you if Mr. Irwin showed any nervousness or signs of fear when you had the carving knife in your hand? A I cannot just say that he did.

Q What happened; you were trying to take your own life again? A Yes, sir.

Q Always your life? A Yes, sir.

Q And so with the nail file? A Yes, sir.

Q That was broken by his dropping it on the floor? A Yes, sir. 20

Mr. Mackay. On the question of the desertion, of course, the letters are the corroborative evidence; and on the question of the income, why, the last time it came before your Honor on a temporary application, Mr. Irwin had his books here; I suppose he has them again.

Mr. Whiting. They are here if needed. 30

Mr. Mackay. I thought we would rest on Mrs. Irwin's testimony.

COMPLAINANT RESTS.

JAMES W. IRWIN, sworn in his own behalf,
testified as follows:

Direct examination by Mr. Whiting.

Q You are the defendant, Mr. Irwin? A Yes, sir. 40

James W. Irwin, direct.

Q And how old are you? —A 47.

Q You live where? A Oradell.

Q When were you married? A June 9, 1914.

Q Did you take a wedding trip? A Yes, sir.

Q How long were you off? A About two
10 weeks.

Q Did things go all right on the wedding trip? A Yes, sir.

Q You came back to live in Oradell? A Yes, sir.

Q Your business is where? A In Brooklyn.

Q What business is it? A Manufacture of book-binders' machinery.

Q Well, things did not go very well after a while in your family, did they? A No, sir.

20 Q When did you first begin to have any trouble in the home? A Well, shortly after we got back from our trip troubles began.

Q Who made up your household? A My wife, mother and sister.

Q You owned the house? A Yes, sir.

Q You had owned it for some years? A Yes, sir.

Q And who supports your mother and sister? A I do, partly.

30 Q How long have you been doing that—before you were married? A Yes, sir.

Q How long has your father been dead? A Eight years; he died in 1908.

Q They had been living with you ever since? A Yes, sir.

Q They were living with you at the time you were engaged, and at the time you were married? A Yes, sir.

40 Q Did you ever talk it over with your wife, that they were all part of your family, and that

James W. Irwin, direct.

that was the situation? A Yes, sir, she knew that.

Q How has your mother's health been in the last two or three years? A Mother is quite old and feeble.

Q How old? A 80, now.

Q Proceed. A She has weak spells, due to age, I might say.

Q You and your mother and sister had lived as a family ever since your father had passed away? A Yes, sir.

Q And you brought your bride into the home? A Yes, sir.

Q You say trouble began a few weeks afterwards; what do you mean by that? A There seemed to be trouble between my wife and my mother and sister.

Q Was it trouble with you? A I did not hear much of what was going on, but I could see that there were strained feelings and they grew and grew.

Q Well, at that stage, whose side did you take? A I took my wife's side.

Q How did you manifest that; what did you do? A Well, sometime afterwards, the first manifestation of that was when I told my sister she had better go, and she went away for about a week, I guess.

Q Did she come back? A She came to the office to see me; she said she had been very sick and wanted to know if she could come back.

Q Did your sister depend for her support partly on you? A Yes, sir.

Q What resulted from that conversation with your sister? A (No answer.)

James W. Irwin, direct.

By the Court.

Q What part of their support did you mother and sister depend upon you for? A They had a small private income.

10 Q How much did they have together, all told? A Their income would run about \$300 on an average for both of them, and the rest of it I supplied, and have done so since my father died.

Q You were the only boy in the family? A Yes, sir.

Further direct.

Q Now, your sister came to you? A Yes, sir.

20 Q Now, following that conversation she came back to the home? A Yes, sir.

Q Did you have any talk with your wife about your sister coming back? A Yes, sir, I talked with my wife about it, and she agreed to her coming back.

Q Well, she came back? A Yes, sir.

30 Q Did things go any better after that? A For a few days they were going along fairly well; I heard nothing; and then there was trouble about the dog.

Q Was that your dog? A Yes, sir.

Q You had him before you were married? A Yes, sir.

Q About how long? A Probably a year and a half or two years.

Q Were you fond of him? A Yes, sir.

40 Q What was the trouble about the dog? A My wife objected to him and said that he was snappy, and she did not want him upstairs;

James W. Irwin, direct.

she put him in the cellar and tied him out in the yard to a post.

Q What sort of a nature did the dog have?

A The dog was always very mild until after she came; he was the pet of the neighborhood; I did not like to let the dog go, but I finally took the dog to the pound and he was killed.

10

Q Why? A To make peace; the dog was the bone of contention; and I let him go.

Q Now, about your sister again, you say things were better for a few days; did they continue to be better? A No, sir, they continued to get worse.

By the Court.

Q Why did you take him down to the pound and have him killed; why didn't you give him away to someone? A I wanted to be sure he would not get bad treatment.

20

Further direct.

Q Coming back to the sister again, did you say the trouble started again? A Yes, sir.

Q What did you do with respect to your sister when the trouble started again? A Finally, one evening, when I came home, my wife stood up at the table at dinner, and when I sat down, she said, "James, I refuse to eat with your sister," and she turned and went upstairs and I stayed down and took part of a meal with them; and then they went out of the room and I went up to my wife and brought her down; I tried to get her to come down, but she would not; then I took the other part of the meal with her, and I told my mother and sister they had better go out; and two days after, they went for good, down to River Edge.

30

40

James W. Irwin, direct.

Q You made arrangements for them to live there? A Yes, sir.

Q Why did you do that? A Because I was willing to do anything to have peace; I wanted to have things go quietly.

10 Q Were you not having peace? A No, sir, I was very much upset.

By the Court.

Q Well, they went, didn't they? What happened then? A After that, matters got worse for me; things became more violent; my wife became more violent.

20 Q How did she exhibit her violence? A In various ways; she would throw herself on the floor and kick her heels on the floor; and on one occasion she took a carving knife and threw it at me; and on several occasions she would come towards me with her hand behind her back, and I would go up and find she had a carving knife behind her back, and I took it away from her several times; and on several occasions she took my revolver.

30 Q Did she ever point it at you? A She threatened me and herself, often; finally, I put the revolver up in the attic between the ceiling and the floor, so that she could not get it.

Further direct.

Q Why did you care whether she got it or not? A I did not want any shooting going on; I did not want her to kill herself or me either.

Q Had she threatened to kill herself? A She had threatened to kill both of us.

40 Q She was going to kill you both? A Yes, sir.

James W. Irwin, direct.

Q And then again, what was her state of mind? A Most of these occasions occurred by her making a statement about something that did not concern either her or me—

Q What was it about? A About the neighbors and people in the town.

Q You mean the occasions for quarrelling? 10
A Yes, sir.

Q What would she say about it? A The statements she made were everything to me.

Q What did she say? A They were statements that I did not approve of being said about anyone, and I do not think I can repeat them; and I told her that it was not right, that it was common talk, and I told her I did not like it.

Q What else did you say to her? A That 20
was sufficient to throw her into a temper, and on those occasions she would keep running up and down through the rooms at night until sometimes four o'clock in the morning.

Q Running around alone? A Racing up and down.

Q In anger? A Yes, sir; she would say I was a brute and anything that came in her head.

Q How long would this last with her? A 30
Until two and three and four o'clock in the morning, from whatever time we went to bed—say eight or nine or ten o'clock.

Q Would her temper last three or four hours, her temper? A Yes, sir; and sometimes she would get up and dress herself and say she was going out, and she would get to the door and say, "I am going," and then she would not go, and she would shut the door and come back. 40

James W. Irwin, direct.

Q What occasioned these things? A They were nothing that was serious; they were mere trifles, things that one can hardly recall.

Q How did you come to quarrel then? A I did not like these assertions about people; they were things that could not have happened.

10

By the Court.

Q What were these things that she said about people; did she say them every day? A It was a common occurrence.

Q What did she say about people, why did it annoy you? A Because they were things that you could not say about a respectable person.

20

Q Then it was not a trifle? A Not so far as those people were concerned; I said they were things that did not concern either her or me.

Further direct.

Q If you disagreed with her it would result in a temper on her part? A Yes, sir.

30

Q You have told us some of the manifestations of this temper; here is one here, this nail file? A She threatened to do herself and me with it, and I was taking it away from her when it snapped.

Q Had she threatened herself first? A No, sir; she said, "I will kill both you and myself."

Q So you grabbed it from her? A Yes, sir.

Q How did you get it away from her? A I took it out of her hands, and I snapped that in the scuffle.

40

Q Was the carving knife around then and the revolver? A The carving knife was downstairs.

James W. Irwin, direct.

Q What time of night was this? A Some time in the evening, probably seven or eight o'clock.

Q What provoked her to this remark that she was going to kill herself and you, too? A I don't remember that.

Q You remember breaking this instrument (indicating the nail file)? A Yes, sir. 10

Q You don't remember the cause? A No, sir.

Q What were the things that seemed to make her temper start? A I would not talk with her, and that seemed to make her more angry than ever; I tried to get her pacified, and I thought the best way was the quietest way; she would get worse and worse until about three or four o'clock, and then she would put her arms around me, and say, "Forgive me, I did not mean it"; and I would forgive her. 20

Q How often did this occur, this two or three o'clock business? A Many times.

Q Once a year—once a month— A That would occur twice a week, and maybe more.

Q After one of those nights where would you sleep? A On some of those occasions I went to another room. 30

Q What did she do then? A I would hear her racing up and down and she would pound on the door.

Q Could you sleep? A No, sir.

Q How did you feel the next day on those occasions? A I would feel tired out.

Q Well, after you got rid of the members of your family and the dog, did the quarrelling, or did her tempers increase or not? A They increased. 40

James W. Irwin, direct.

Q What seemed to be the trouble? A I say it was over things of this sort; the statements about people, things that she would say—I objected to some of her talk; the slang phrases that she would use.

10 Q What effect did this conduct of your wife have on you and your being kept up nights, etc.?

A I was tired out and unfit; I could not sleep; I begged her a number of times; I said, “Edna, I must have sleep”; she said, “It is too bad about you.”

Q Well, what had your health been before you married her? A Good.

20 Q Did you ever have a doctor? A Very rarely; I had not had a doctor in a long time, except once about two weeks before I was married; before that, I don’t remember when I had one.

Q Did you have to consult one after these troubles with your wife? A He attended me several times.

Q What did you go to a doctor for? A After I was married?

Q Yes. A I was not feeling well; I was run down.

30 Q How do you know? A From the way I felt.

Q How did you feel? A I felt weak and out of shape; I did not have any strength; I was nervous.

Q How about your appetite? A That was not very good; on one occasion she took a chair and attempted to throw it at me.

Q What did you care about that? A She could not lift it; but she said to me, “Hereafter, I will lead you a dog’s life.”

40 Q Why did she say that?

James W. Irwin, direct.

Mr. Mackay. Objected to, unless he knows from something she said.

A The night before she had been in a bad temper all night, and that morning, at breakfast, I said to her, "Edna, how long do you think things can continue like this?" and I said, "Do you realize that we are drifting further and further apart, and what this will lead to; and she got up and took the chair and said, "Hereafter, I will lead you a dog's life"; and I went out. 10

Q How did this conduct of your wife affect you? A Why, I was all broken up and nervous.

Q What made you nervous? A Continual nagging, and trouble like that would make anyone nervous.

Q What effect did these incidents about the carving knife and the revolver and the nail file have upon you? A Well, that would upset me greatly; I was never used to anything like that; and I did not want anything to happen that way. 20

Q You say she threw the carving knife at you? A Yes, sir; once.

Q Do you know the date when that was? A No, sir; she was coming out of the dining-room with her hand behind her back, and I went to go towards her the same as I had done on other occasions, and she threw it at me and I dodged it. 30

Q Had you had words before that? A Yes, sir; she was in a temper.

Q How long was that before you separated? A It was probably four or five months.

Q Now, state generally whether or not these tempers increased? A They did. 40

James W. Irwin, direct.

Q State generally whether or not the violence—what do you say about the violence of these tempers? A Her tempers were very strong; she would go into one of these tempers and throw herself on the floor and kick up her heels, and at first I would pick her up and take
10 her to a chair, something like that, but she would continue and call me a brute.

Q What had you done? A I had not done anything.

Q Haven't you got any temper? A No, sir; I don't think I have very much; I am very mild as a rule; I asked her on several occasions, I said, "Edna, let us reason"; but she would simply fly off and race up and down the room.

Q You heard her testify this morning that
20 you called her "common?" A The only thing I remember in regard to that was when she would make these statements, when she would say "Smile, damn you, smile"; that was one; I did not say anything about that, I merely frowned, but she made other statements in reference to her person that I objected to.

Q Which you characterized as common? A Yes, sir.

Q Was that the occasion for most of the
30 quarrels? A If I crossed her and did not agree with her, that was sufficient for one of these tempers.

By the Court.

Q When you used the word "common" to her, what did you mean about it? A I meant by the remarks she made; I did not say that she was common; I said that the remarks she
40 made were common.

James W. Irwin, direct.

Q Did you ever reflect on her family to her?

A No, sir.

Further direct.

Q You heard your wife's testimony about these tempers, where she said she fainted or did not throw herself on the floor; now, will you describe just what happened? A She would go racing about the room, and then come to a stop and throw herself down, and shake her hands and shake her heels, and then she would call me a brute. 10

Q Would she say this without any cause? A She would come to me at times when there was nothing said, and she would say, "Give me an argument"; most of her complaints were because I would not give her an argument, she said; I would say, "Let us reason together," and then she would start racing up and down the room. 20

Q Was it on such occasions as these that the incident occurred, these incidents about the carving knife and the revolver and the nail file? A Yes, sir; I asked her a number of times why she did not behave herself.

Q Tell us about the time when your arm was punched? A That was one evening; I was out in the hall; she was in the room, and she came racing towards me and pounded me several times on the arm. 30

Q What had been happening before that? A Oh, that was the day that I went down to Westwood and got some medicine and took it to my mother; Mr. Michaels took me to Westwood and took me down to my mother's; my wife was downstairs in the cellar, and I asked her how long it would be before dinner would be ready, and she said, "Any time that you say, probably 40

James W. Irwin, direct.

an hour"; I said, "I am going to Westwood to get some medicine for my mother and take it down." I went to Mr. Michaels and asked him if he could loan me his bicycle; Mr. Michaels took me down, and I was back in an hour; then after that she was angry about it, about my going, and later on in the evening, she rushed out at me and pounded me on the arm.

10

Q Was her brother there that day? A Yes, sir; and that afternoon we had tea, and it was after that that she struck me when we were upstairs.

20

Q What had you been arguing about that day? A The principal argument I had with her that day was that she was housecleaning; I objected to that; many times she would be housecleaning on Sunday, and I objected to that; we had a washer-woman to come in once a week—

Q Why did you object to cleaning up on Sunday? A I did not think it was right to do it on Sunday; she was out every other day in the week.

Q Did you use the word "common" in connection with doing housecleaning on Sunday? A No, sir; I did not think it was the proper thing—

Q What did you say to her? A I told her I objected to it, and there was no reason for it.

30

Q What did she say? A She said she had no other time to do it.

Q What did you say then? A I said I did not see that; I said she had all the rest of the week.

Q What did she say? A I don't remember anything further than that; it was simply talking back and forth.

Q Did she punch you then? A No, sir; it was later at night.

40

James W. Irwin, direct.

Q How many hours later, after you had this talk? A It was after tea, about seven o'clock, and these other things took place in the afternoon.

Q Were you or were you not in fear for your safety when these revolver incidents happened?

Mr. Mackay. Objected to as calling for a conclusion. 10

The Court. The objection is sustained.

Q Your house was furnished at the time you were married? A Yes, sir.

Q Whose furniture was it? A Mine.

Q Your own? A In our family, as we lived, there was never any question as to who owned things.

By the Court.

Q Did you give them to your wife? A No, sir. 20

Q Why not? A That never entered my mind; I considered when I married my wife and we were living together, that it was ours, I should say.

Q It belonged to both of you then, you would think? A Yes, sir.

Q Who bought it? A I did; the furniture that was there, some of it, I bought, and some of it my mother and sister bought; I bought some before we were married, just previous to our marriage. 30

Q That which had accumulated before you bought in contemplation of marriage, did you understand that belonged to your wife? A We were married, and I would say that it was our property.

Q Your understanding of the ceremony was, that you endowed each other with your worldly goods? A Yes, sir. 40

James W. Irwin, direct.

Q But you never told her that you gave them to her? A I never gave them to her.

Q And of the furniture, except what had been bought and paid for by your mother and sister, you yourself had bought and paid for?

A Yes, sir.

10 Q There was something about a gas stove; did your wife buy that? A Yes, sir.

Q That was hers? A I should not say it was hers, she bought it with my money.

RECESS TO 2 P. M.

AFTER RECESS.

JAMES W. IRWIN, resumes the witness stand.

20 *Direct examination* (continued) by Mr. Whiting.

Mr. Whiting. It is stipulated that the statements in the record appertaining to an alleged case of congenital syphilis, that all portions of the record concerning that matter be stricken out without prejudice.

Q It was testified to by your wife, that you and she had sexual relations up to the time of your leaving; is that true? A No, sir.

30 Q How long prior to January 26, or whatever day it was you left, was it, since you had had relations, sexual relations with her? A About two months or thereabouts.

Q Coming to the matter of your leaving in January and the sending of the letters and the check for \$7.50 to her, or to her father, whichever it was, state what happened the night before you went away. A That night she spoke to me about Dr. Crocker not coming up to
40 preach, and she got angry over that and passed

James W. Irwin, direct.

a remark saying that my mother and sister had stuck to the church as long as the church was sending a check, and I said to her, "Edna, that is an insult to my father's memory, my mother, sister and myself"; and she said, "I intended it as such"; and then she got in a temper, and shortly after that I went in another room and locked myself in. 10

Q Why did you do that? A So that she could not get in there.

Q What did you care about that, whether she got in or not? A I did not want to have any further trouble; I knew what had happened on previous occasions.

Q Did you sleep that night? A No, sir; I could not.

Q Why not? A Because she was racing up and down outside and pounding on the door, and it was morning before I could get any sleep at all; probably I got about one hour or an hour and a half. 20

Q Did she speak to you when she pounded on the door? A Yes, sir; she said, "Open the door and come out."

Q Why didn't you open? A I did not want to get into trouble. 30

Q Were you afraid of her; did you see her in the morning? A Yes, sir.

Q What did she say to you at breakfast? A She did not speak to me; we did not speak, either of us.

Q After you had locked yourself in the room as you said, didn't you consider that it was your duty to speak to her? A No, sir; after breakfast I went out.

Q Without speaking to her? A Yes, sir. 40

James W. Irwin, direct.

Q Without saying "Good morning" or anything else? A Yes, sir.

Q You went out? A Yes, sir.

Q And you had locked yourself up that night? A Yes, sir; she called me back; I was out on the sidewalk as far as the edge, and she told me then she was going to New York, and she kissed me and I went off.

Q You did not kiss her? A No, sir.

Q Why didn't you kiss her? A I did not feel like it.

By the Court.

Q You were mad at her, were you not? A No, sir.

Further direct.

20 Q Why didn't you give her a kiss or something, and show some affection for her? A I could not after the way she treated me; she would often kiss me and say she was sorry; this time she did not say she was sorry.

Q In her tempers what was her usual conduct? A Towards morning, towards three or four o'clock, she would come up to me and say, "Forgive me, I did not mean it"; and I would say, "Yes, and it is all right and we will forget it."

30 Q You did not do it this final time? A No, sir; I did not.

Q Something has been said about your being in a temper; did you ever use violent language to her? A No, sir.

Q Did you ever race up and down the house and pound on her door? A No, sir.

Q Did you ever threaten to kill yourself or to kill her? A No, sir.

James W. Irwin, direct.

Q Did you ever threaten her with any violence in any way? A No, sir.

Q Did you ever use any violence to her in any way? A No, sir.

Q You never struck her? A No, sir; I did not.

Q You never asked her to give you an argument? A No, sir. 10

Q Your wife stated that while your mother and sister were there, everything seemed to go on behind closed doors, and she seemed to be left out of things; is that true? A No, sir.

Q What is that story about trying to prevent Dr. Crocker from preaching; is that true? A She told me that Dr. Barry had asked her for me to invite Dr. Crocker up to preach at one of the Lenten services, and I did not do it. 20

Q Why not? A Because, after the way things were going on, I did not feel like having him come.

Q Why not? A Because of the trouble we were having.

Q What are you referring to? A Our general troubles.

Q To what general troubles are you referring? A These fits of temper and everything that brought me to such a state that I did not see fit, or did not care to have anyone come then; I was in no condition. 30

Q What was your condition? A I was nervous and feeling badly and all wrought up.

By the Court.

Q Were you fond of your wife when you married her? A Yes, sir.

Q Are you fond of her today? A No, sir; I am not. 40

James W. Irwin, direct.

Q And why not? A Because, after the treatment that I have received and things that I have gone through, I cannot have that feeling.

Further direct.

10 Q Did this come upon you all of a sudden of not being fond of her? A No, sir; it grew gradually.

Q You mean you gradually grew apart? A Yes, sir; one morning I said to her, "Edna, how long is this going to last—do you realize we are drifting further and further apart?" I tried to reason with her, but I could not, so I gave it up.

20 Q Now, was there anything that she wanted you to do, or anything you refused to do try to make things peaceable in the family? A I did almost everything; I cannot remember anything that I did not do to make peace in the family.

Q Did you ever tell her before your marriage, or at any time, that you would give her \$200 a month and put \$100 in the bank? A No, sir.

Q Did you tell her anything like that? A No, sir.

30 Q Did you ever make her any promise as to what you would do? A No, sir.

Q Can you tell the court approximately the value of the furniture in your home that was there at the time you went away? A I should say about ten or twelve hundred dollars; I had it insured originally for \$1,500.00.

Q Did you ever change it? A When my mother and sister went out they took their furniture from their bedrooms.

40 Q Then you reduced the insurance? A I did not reduce it; I let it go on; I bought other things.

James W. Irwin, direct.

Mr. Whiting. You gave me some furniture bills; I will put those in evidence.

Mr. Mackay. We have had it appraised, and maybe we do not differ.

Mr. Whiting. What is your appraisal?

Mr. Mackay. \$604.80. 10

Mr. Whiting. Let that go in the record that you had a valuation on it of \$604.80; that is the market value today.

Q What property do you own? A The house in Oradell.

Q What did that cost? A I paid \$5,800 for it.

Q How much mortgage on it? A \$4,000.

Q Anything paid off? A No, sir. 0

Q Do you own your business? A Yes, sir it is incorporated now.

Q You own the Hoole building? A Yes, sir.

Q Where your business is transacted? A The business where the manufacturing is done.

Q What is that assessed for? A \$11,000.

Q There is a mortgage on it? A Yes, sir.

Q How much is the mortgage? A \$13,000.

Q Has any of the mortgage been paid off? 30
A No, sir.

By the Court.

Q When were you incorporated? A This spring, February or March.

Further direct.

Q Take the first year that we are now in, what does the Hoole business make; it is all yours? A My income has averaged about \$3,000 a year. 40

James W. Irwin, direct.

Q You mean from the business alone? A From everything.

Q And that is your estimate of what your income is on the average? A On the average, yes, sir.

10 Q Is it up to the average this year? A No, sir; it is not.

Q How does it stand this year? A If it had not been for an extra expense, it would come up to that, but this year I had an order to put fire escapes on the building.

Q You mean from the city authorities? A Yes, sir.

Q And that cut down the income from the building? A Yes, sir.

20 Q What is your income approximately, for the last twelve months? A I go from the first of January—

Q All right. A The income, figuring the rents that I shall receive up to the end of this year, I figure I shall come out about \$2,200—

Q Everything that you get? A Yes, sir.

Q Now, the expenses of this fire escape is how much? A \$730.00.

30 Q So that you bring it about \$2,900 for this year, if you did not have that extra expense? A Yes, sir.

Q How much was it the year preceding? A I don't remember without the figures, but I know that the thing is around \$3,000.

Q That includes what you make from your building—from your business and from whatever you have? A Yes, sir.

40 Q Now, what proportion of that do you give to your mother? A In renting the house now I give them about \$75.00 a month.

James W. Irwin, direct.

Q They are living with you again now, are they not? A Yes, sir.

Q Could you tell the court then about how much you contribute out of your income to the support of your sister and mother; perhaps a gauge would be found from the expense you were under while they were living separately at River Edge; do you know about how much it cost you? A No, sir; I don't remember that. 10

Q How much rent did they have down there in River Edge? A \$15.00 a month.

Q Did they keep house? A Yes, sir.

Q How long was the period that they were there? A I guess a year and a half or over.

Q Can you give us a general idea of how much it cost you to take care of them there? A Oh, I don't know, probably I contributed \$30.00 a month, or something like that; no specific dates that I gave it to them. 20

Q Have you a memorandum concerning a letter opener; tell the court about that. A One night when I came into the room, I saw my wife draw her hand out from under the pillow, and I was suspicious, but I said nothing, but at the first opportunity I got, I put my hand under the pillow, and I found a letter opener there which was made of heavy metal, seven or eight inches long, in the form of a stiletto, and I asked what she was doing with that, and she said she intended to kill herself, and I took it away. 30

Q Was there a quarrel? A Yes, sir; she got angry over that.

Q Why did you take it away? A To prevent her from doing anything of that kind, and besides, I did not feel very comfortable to go to 40

James W. Irwin, cross.

sleep with anything like that around, after finding it under the pillow.

- 10 Q I have a memorandum about the wedding ring; what was there about that? A We had a quarrel over that; one day she said to me, "They say it is hard luck to take your wedding ring off," and she took it like this, with her finger and thumb, and she said, "Here goes," and she took it off; and then she put it on again and said, "Now, I suppose we shall have hard luck after this"; that was done in one of those fits of temper that she had.

Cross examination by Mr. Mackay.

Q You left your wife in the morning? A Yes, sir.

- 20 Q She kissed you but you didn't kiss her; is that right? A Yes, sir.

Q Now, how long before that date was it that you had made up your mind that you were going to leave her? A I had not made up my mind that morning when I left.

Q Just what time of the day did you make up your mind you were going to leave her? A No particular time.

- 30 Q Why didn't you go back and tell her you were going away? A Previous to this we had had talks, and I had asked her to reason with me, and she would not; and I asked her if she realized we were drifting apart, and she would say, "What are you going to do about it; you married me."

Q You never told her you were going to leave her? A No, sir.

- 40 Q And from what I gather, you never had any thought of leaving her? A I said to her,

James W. Irwin, cross.

“This will surely lead to a separation, how long do you think this will last?”

Q Then you had it in mind? A I knew it could not last.

Q And you knew you would be the one that would leave? A I don't know that I thought about that at all, but that would be natural. 10

By the Court.

Q Why would that be natural? A Under the conditions that were existing, I could not stand it.

Q And you wanted to get out? A I would have to; I could not live.

Further cross.

Q And after your mother and sister moved away, you visited them very often? A Yes, 20
sir.

Q Every evening? A Not every evening, three, four, maybe five times a week, on my way home; I took a train half an hour earlier and stopped off to see them.

Q And you always talked to your mother and sister every night before you went home? A Yes, sir.

Q Did you see them in the morning? A No, 30
sir; only occasionally when my mother was sick I would drop off the train, and I would have five or ten minutes between train times.

Q Then, after you left your wife, during the day you made up your mind you would not go back? A Yes, sir.

Q What date was that? A I think that was January 25th.

Q Was that the day before you wrote the letter? A Yes, sir; the day before I wrote the letter. 40

James W. Irwin, cross.

Q So then, having made up your mind, you had been informed by your office, that your wife had been calling you up? A Yes, sir.

Q They told you when you came in? A Yes, sir.

10 Q Where had you been that day? A I went over to Hasbrouck Heights to see my friend, Mr. Black, and I told him my troubles.

Q Did you see your mother and sister? A No, sir; I did not.

Q Not until later in the evening? A No, sir.

Q Then, after you talked with Mr. Black you went back to Brooklyn? A No, sir; I did not go back; I went to River Edge.

20 Q Went to your mother and sister? A Yes, sir.

Q And stayed with them that night? A Yes, sir.

Q And you telephoned to your wife? A Yes, sir.

30 Q You had received the message from the office that she had been calling you up? A No, sir; it was the next morning, I think, that I knew she had been there.

Q You called her up; what did you say to her? A I told her I would not be home tonight, and I advised her to go over to her father's, and that at seven o'clock I would call up at her father's house.

Q Seven o'clock that night? A Yes, sir.

Q And did you tell her that you were through with her, or were going to leave her? A No, sir.

40 Q She did not know that then? A No, sir.

James W. Irwin, cross.

Q Did she ask you why you could not get home? A She said, "Oh, James, come to me, come to me, where are you?"

Q What did you say? A I said, "No, I cannot, you go home to your father, and I will call up there at seven o'clock."

Q Is that all you said? A Yes, sir. 10

Q Nothing more? A No, sir.

Q Then you called up at seven o'clock? A I called up at seven o'clock.

Q And she was not there? A No, sir.

Q Did you call up your own house again? A No, sir; I got her father on the 'phone at her house.

Q Then you did not call to her again that night? A No, sir.

Q You did know where she was; did you know afterwards where she was? A I first called up her mother to tell her to go over to my wife. 20

Q To get her to go to the 'phone? A No, sir; so that she would be with her.

Q Then you did not call your wife up again? A No, sir.

Q And the next morning you wrote these two letters? A Yes, sir.

Q Then when was it you made up your mind to leave her? A It was that day; I told her father that night that we would not live together any more. 30

Q Then was it while you were talking to Mr. Black that you made up your mind to leave her? A Yes, sir.

Q Before that you had not decided? A I made up my mind that I could not go back, and I talked over my troubles with him; and he said, "Don't you think it is possible to agree?" 40

James W. Irwin, cross.

and I said, "No." Then he said, "I don't see what you can do."

Q After you wrote the letter to her, your wife was sick with typhoid fever and you knew she was very low? A I was told that.

Q And you did not bother going to see her?

10 A No, sir.

Q You did not communicate with her? A No, sir; I had nothing whatever to do with her.

Q You did not send a doctor or a nurse there? A No, sir.

By the Court.

Q Why did you maintain that attitude towards her when you knew she was very seriously ill; why didn't you do your duty in the matter?

20 A After what happened, I could not go back to her.

Q You did not care to go when she was sick in bed? A No, sir.

Further cross.

Q When did you notify the tradespeople not to trust her? A I sent a notice out to the tradespeople the same day or the next day after I wrote those letters.

30 Q Did you send out to each of them a letter?

A Yes, sir.

Q In writing? A Yes, sir.

Q Stating that they were not to trust her? A No, sir; I said that I would no longer be responsible for my wife's debts.

Q That was through some legal advice you had received? A Yes, sir.

Q From some lawyer? A Yes, sir.

Q You had consulted him to find out whether or not you were responsible for her support?

40 A He told me to send those letters out.

James W. Irwin, cross.

Q And did he tell you to send the other letters out with the check? A Yes, sir.

Q What date was it you saw the lawyer—the 26th? A The same day that I left; I went from Mr. Black's there to him, and then to River Edge.

Q You went from Mr. Black's house right to the lawyer's house? A Yes, sir. 10

Q That was on the 25th? A Yes, sir.

Q And then, on the 26th the letters were sent, and whom did you send them to? A One to my wife and one to Mr. Maples.

Q To the tradespeople I mean; what tradespeople? A All the merchants that we had been dealing with.

Q Did you advertise it in the papers at all? A No, sir. 20

Q What did you give your wife after you were married; how much a month did you give her? A At first I gave her a check book, and I don't remember the amount I gave her, but after a short time it was \$100 a month.

Q Afterwards, you gave her \$100? A Shortly after we were married.

Q What did you give her the first month? A The first month when we started she had a check book with an account there; there were several hundred dollars there of money that I had given her. 30

Q How much did you give her? A I think it was somewhere around \$350.00.

Q And then the following month you gave her how much? A After that, I gave her \$100.00 a month; I don't know whether it started in the next month or not.

Q You said you gave her \$200.00 a month for a while? A No, sir; I never did. 40

James W. Irwin, cross.

Q When did you cut it from \$100.00 a month down to \$15.00 a week? A After my mother and sister went, I think it was.

Q After they left? A Yes, sir.

10 Q When did you get rid of the maid? A I don't remember when she went; that was about August or September that she went; some time in the late summer; I should think it was August.

Q After your marriage you were quite happy for a while? A Yes, sir.

Q Very happy? A Yes, sir.

Q You were very affectionate? A Yes, sir.

20 Q You put your arms around her and kissed her and called her your "little darling?" A Things to that effect, yes.

Q And you sat in the kitchen while she washed and dried the dishes? A Yes, sir.

Q And used to go upstairs and talk and chat with her? A Yes, sir.

Q She was quite talkative then and pleasant? A Yes, sir.

Q And you were pleasant? A Yes, sir.

30 Q That continued up until about the time your mother and sister left? A Oh, no, not up to that time; that did not continue very long; there was trouble while my mother and sister were there.

Q How long did that continue? A I should think about one month or two months before things began to change.

Q And you were married what day? A We were married June 9, 1914.

40 Q And during July and August of that year things were all right, eh? A Yes, sir; things went along fairly well.

James W. Irwin, cross.

Q And then the trouble began in September? A I would not say as to what date, I don't know.

Q Well, you were still very affectionate during that whole year of 1914, were you not? A Yes, sir; we had this trouble, these troubles, and we would make it up and we would go out, but it was no use; I tried to reason with her, and the more I did the worse things got, so I stopped that. 10

Q To what do you attribute the change in her attitude towards you? A I don't know, it is that uncontrollable temper of hers.

By the Court.

Q How did she come to change; what do you say was the cause of her change in attitude towards you? A Her first attitude was on account of my mother and sister; she objected to them, and there was trouble; the next cause of trouble was the dog; then after my mother and sister went away things got worse for me than they were before. 20

Further cross.

Q Your sister left what time—I mean the first time? A I don't know what date that was. 30

Q What year, 1914 or 1915? A I think that was in 1915, if I am not mistaken, in the early part of the year.

Q Where did your sister go to? A To New York.

Q Who sent her out of the house? A I did.

Q Whose fault was it that she had to leave? A I told her to go. 40

James W. Irwin, cross.

Q It did not have anything to do with your wife, did it? A Yes, sir; the trouble was that, but I took my wife's side of it—the trouble was over the dog.

Q And you sent your sister away? A Yes, sir.

10 Q Where did you send her? A I did not send her to any place in particular; she went down to New York and got a room.

Q How long was she there? A I think about a week.

Q And you spoke to your wife about having her come back? A Yes, sir.

Q And didn't your wife go down there? A No, sir.

Q Who brought her back? A She came back herself about 10 or 11 o'clock at night.

20 Q You asked your wife's consent? A Yes, sir.

Q And she gave it? A Yes, sir.

Q She was perfectly willing to have her come back? A Yes, sir; she was very sick.

Q And your wife helped her when she came back on account of her illness? A No, sir; she was not in bed or anything like that.

Q Well, she was very good to her? A No, sir; I cannot say that she was; she treated her coldly.

30 Q Then your mother and sister lived there up until April, 1915? A About April, 1915.

Q Your wife testified about this plate? A Yes, sir.

Q You heard your wife's story about it? A Yes, sir.

Q And that was true? A No, sir; it was not true as she stated it; I was going up the road at night, and my wife and her mother were

40

James W. Irwin, cross.

going down the road, and her mother said to me, "James, you are going to have trouble when you get home"; and I said, "I guess not"; and I went on. My wife and I went home.

By the Court.

Q Why didn't you ask "About what?" Your 10
wife was right there; why didn't you ask your
wife; she was the nearest to you? A I did ask
her; as we walked up the street, I asked her
what the trouble was, and she said, "Never
mind, you will find out when you get home."

Further cross.

Q And you did find out? A When I got 20
home I asked my mother and sister what was
the trouble; and they said that this silver plate
they found in the other room, and my mother
had taken it; it was a plate presented to my
father by the Church of the Epiphany—en-
graved.

Q Then you decided that you would send
your mother and sister away? A Yes, sir.

Q And did you still have your affection for
your wife at that time? A Yes, sir; that is why
I did; I tried to do everything I could to have
peace so that we could live together; I did not 30
want us to separate.

Q After the baby was born, did you still
have the same affection for her? A Not to
the same degree, no, sir; it was cooling.

Q So it was after the baby was born that
you lost your affection? A Yes, sir; it kept
growing—

Q And from that time on you gradually got
colder towards her? A We were drifting
apart. 40

James W. Irwin, cross.

Q I say you got colder towards her; your affection cooled off? A Yes, sir.

Q And then she said, instead of your kissing her, you kind of bumped her? A No, sir; I did not feel the same towards her, though.

Q And it gradually got colder and colder?

10 A Yes, sir.

Q And your feeling was that you did not want her really? A No, sir; I begged her to change.

Q How could she change if her feeling had cooled? A It was the way she had acted.

Q I thought you said it dated from the death of the child? A No, sir.

Q Wasn't it from the talk you had with the doctor? A No, sir.

20 Q Didn't that change you? A No, sir; I agreed with the doctor that she should never know that. Before the child was born I treated her just as nice as I could, no matter what I felt towards her.

Q But after the child was born, then you were different? A We gradually got cooler towards each other.

30 Q The coolness began from about the birth of the child? A No, sir; I did all I could for her then.

Q When did it begin? A I don't know any particular date; it came up gradually.

Q Why did you cool off? A On account of the way she acted.

Q I thought she acted the same way before the birth of the child as she did after—she was in bed for about a month? A I should think about that.

40 Q And during that time you never brought her any flowers or anything? A I think I did, I was continually bringing her things.

James W. Irvin, cross.

Q Did you sit in the bedroom at night with her? A Yes, sir.

Q And talked to her? A Yes, sir. And at the time when the baby was born, when she could not get any sleep—she had not slept for quite some time, I stayed there two hours with her. 10

Q When she got out of bed were you getting cooler towards her; did you have the same feeling that you had when you were married? A No, sir.

Q Well, you were getting colder? A Yes, sir; I did not have the same feeling a few months afterwards that I did when we were married; I noticed a change in her.

Q You said that you gradually got colder? 20
A Yes, sir; we were drifting apart.

Q You said that up to the birth of the child you were very affectionate; that you had affection for her; and you said after the birth of the child you began to get colder? A No, sir; I cannot say, I cannot pick the time; that thing gradually grew.

Q Did it date from the time your mother left? A No, sir; it was even before that; I let them go thinking things would change then. 30

Q You still had affection for your wife then? A Yes, sir.

Q Then it happened after that date? A I could not set a date on it.

Q But you say it must have been after your mother left, or you would not have sent your mother away? A I sent mother and sister away to try to better things, hoping that things would go better. 40

James W. Irwin, cross.

Q At the time you sent your mother and sister away, you still had affection for your wife? A Yes, sir.

Q So your coldness began from that date? A I could not set any date.

10 Q It must have been after that time? A I could not state that.

Q You said if you had not had the same affection you would not have sent your mother and sister away? A I thought we would grow back again.

Q When did you get it into your head that you would eventually have to leave your wife? A The first talk we had about that was at the breakfast table one morning.

20 Q How long before January 25, 1916? A I could not fix that date.

Q Well, you had a talk at the breakfast table? A Yes, sir.

Q Was it three months before you vent away? A It was probably three or four months.

Q What did you say? A That was the morning when I asked her how long she thought things could continue like that.

30 Q What things? A The way she was carrying on, throwing carving knives—

Q Did she throw it that day or the day before? A No, sir.

Q What had she done that day that brought up the conversation? A The night before she was in a bad temper all night, and at breakfast time she would not talk to me, and I said, "Edna, how long do you think things will continue this way"; I said, "Do you realize we are drifting further and further apart?" and she said, 40 "Yes"; and she said, "What are you going to

James W. Irvin, cross.

do about it—you married me''; and that would wind up any arguments we had.

Q And that was about three or four months before you left? A Yes, sir.

Q And that put the idea into your mind that some day, perhaps, you would have to leave her?

A I realized that I could not continue that way. 10

Q So that, during the month of August and September and October and November and December, you gradually were colder and colder?

A I should say so.

Q So that the night you locked yourself in your room you really did not care a rap for her; you did not care whether she knocked, or pounded, or kicked, or whatever she did? A I did that because I could not stand it any longer; I did not dare to go to sleep. 20

Q Did you have any dinner that night? A Yes, sir.

Q You sat at dinner with her? A Yes, sir.

Q You slept with her nights right along? A Yes, sir.

Q You cohabited with her? A Yes, sir.

Q Right up, she says, within a week? A No, sir.

Q Then how long do you say? A The night I left I did not have the same room with her; probably the night before I was there with her. 30

Q The night before that? A Yes, sir.

Q That would be January 23rd? A Yes, sir; I probably was not away from her in another room more than ten or fifteen nights during our married life.

Q So that you slept with her on the night of January 23rd? A Yes, sir; and the 24th also. 40

James W. Irwin, cross.

Q And practically every night? A Practically every night with those exceptions.

Q With just a few exceptions? A Yes, sir.

Q So that from August, 1915, to January, 1916, to the night before you left you slept with her almost every night? A Yes, sir.

10 Q As husband and wife, cohabiting? A Not during the last two months.

Q You slept with her? A Yes, sir.

Q When was it she put her arms around you? A That was after the quarrels.

Q How often would that happen? A Sometimes twice a week, they were very frequent.

Q And other times you would both go to bed and go to sleep? A Yes, sir; as near as I could go to sleep; I would try to keep awake
20 with one eye open; it is not very comfortable to sleep with a stiletto under your pillow as I found one time.

Q What date did you find the stiletto? A I don't know the date.

Q Do you remember the date? A No, sir.

Q Do you remember the occasion? A No, sir; but I saw her pulling her hand out from under the pillow; it was a letter-opener about seven or eight inches long, and about half an
30 inch wide; it was in the shape of a stiletto.

Q What was it made of? A I think it was made of iron; it was enamelled white; it was metal; it was one of her wedding presents; it came with a desk set; the whole set was very heavy.

Q Where had that been kept before that? A It was on her dressing table.

Q And you still slept in that bed after that? A Yes, sir.

40 Q And fell asleep there, too? A Certainly.

James W. Irwin, cross.

Q You were not frightened after that? A No, sir; when we would go to bed and she would be in a good humor, then I would sleep, but if there was any temper, I would not dare to sleep; and after that, when I could not keep my eyes open any longer and was afraid to sleep, I would go into another room. 10

Q Would she follow you? A She would come and pound on the door.

Q She would not break the door in? A No, sir.

Q And would not try to push the door in? A No, sir.

Q She just knocked on the door? A She would pound with her fist on it, and she would call to me to come out.

Q And you would not come out? A No, sir. 20

Q How often did that happen? A Ten or fifteen times.

Q When was the last it happened; did it happen in January, 1916? A That night—

Q That was the only one that month? A I don't know that it was the only one, but it happened that night.

Q It is the only one you recall? A Yes, sir.

Q You told your wife about your earnings before you were married? A No, sir; I don't think we discussed that at all. 30

Q You knew she was a business woman? A Yes, sir.

Q You knew she understood your line of business? A I don't think she did; we were not in the same line of business.

Q You knew that she knew something about steel? A That would not enter into it at all; I knew that she was in the office of a steel house. 40

James W. Irwin, cross.

Q And you talked about your affairs and your responsibilities and your liabilities, etc.?

A She knew what line of business I was in.

Q She knew you owned the house you lived in? A Yes, sir.

Q She knew you had shares in a building and loan association? A Yes, sir.

Q She knew you owned the place in Brooklyn? A Yes, sir.

Q She got that information from you? A Yes, sir.

Q So that you did talk it over? A Well, in that way; there was not any set thing to make the statement to her; we may have discussed those things in talking.

Q She said you discussed them with her, so that you did? A That would be a natural thing to do.

Q After you left her you had 25 shares in the Oradell Building and Loan Association? A Yes, sir.

Q And 25 shares in the Hackensack Building and Loan Association? A Yes, sir.

Q And after you left her and after an application was made for alimony, you sold those shares? A No, sir; I sold those long before that.

Q What date did you sell those? A I did not know the date, but several months before; some time in the fall or summer of the previous year.

Q Did you sell them after you left her? A No, sir; before I left her.

Q Whom did you sell them to? A I cashed them in from the building and loan association.

Q What did they give you in return, what money? A I don't remember the correct

James W. Irwin, cross.

amount, somewhere about \$4,000; my recollection is, that it was in the fall.

Q October, 1915, do you think it was? A About that.

Q That you sold the Oradell Building and Loan shares, and received in cash how much?

A About four thousand for the two. 10

Q Did you sell them both at the same time?

A Yes, sir; probably not the same day—as the date came due for them to make their settlement.

Q Whom did you sell them to? A I cashed them in.

Q What for? A Because I wanted to use the money.

Q What for? A My expenses were running so very heavy that I used most of it up that year. 20

Q What expenses—your household? A Everything, my business had run down, and I had to use the money.

Q There was no maid in the house. Your expenses were higher when you had the maid in the house? A I had been drawing on the principal and everything to get along.

Q How much did you give your wife? A \$100.00 a month. 30

Q You were making \$3,000? A Yes, sir; then there were things—I don't know how it went, but \$100.00 was the stated sum that I was giving her.

Q How did you get rid of \$4,000 in October? A I did not do so; the business had run down.

Q You put it in your business, then? A Yes, sir; I did not use it all; I bought 100 shares of Southern Railway stock with it; \$1,500 I used up. 40

James W. Irwin, cross.

Q Have you that Southern Railway stock now? A I sold that when it went up about a month or six weeks ago.

Q What did you sell it at? A I sold it at 26½.

10 Q What did you pay for it? A 25 plus the commission.

Q You had some other stock, didn't you, of some kind? A No, sir; the Southern Railway is all that I had; I had Pine Lawn Cemetery stock.

Q You still have that? A It is in the hands of a receiver.

Q Has it paid any dividends? A It has not for a number of years.

20 Q It is in the hands of a receiver? A Yes, sir.

Q Has the receiver paid anything? A No, sir.

Q And this building in Brooklyn that you own, that you bought from Mr. Black? A No, sir; I built it.

Q When? A In 1905, I think, or 1906, 1905 or 1906.

Q What did it cost you? A \$15,000.

Q To build? A Yes, sir.

30 Q Have you added to it since? A No, sir; except things like this fire escape proposition.

Q What is the land worth on which the building is situated? A I paid either \$3,000 or \$3,100 for it.

Q So it stood you in about \$18,000? A Yes, sir.

Q And that increased in value? A The assessment valuation went down.

40 Q Did it increase in value, that is, the market value? A No, sir; I don't think so, be-

James W. Irwin, cross.

cause the rental value went down. In that neighborhood that is what they call the Concrete City; I was getting \$65.00 a floor; now I am getting \$40.00 for one floor and \$50.00 for another.

Q How many floors are there? A There are four floors.

10

Q So you are taking in how much money a month? A Two of those floors I occupy for business, and the other two I rent out, and I get \$50.00 for one and \$40.00 for the other.

Q You take in \$90.00 a month from them? A Yes, sir; and the Hoole business, I charge them up with rent, that is, you might say—it is like taking money out of one pocket and putting it into the other.

Q So, as a matter of fact, you have rent free really, don't you? A About that.

20

Q You don't pay any rent? A No, sir.

Q And you have two floors? A Yes, sir.

Q How much help do you employ? A We have got six men and a boy now.

Q You have had them right along, have you? A They were working on half time for about a year; previous to that, I used to have twelve, but business has been going downtown.

Q The men have been working steadily? A For about a year they were working half-time.

30

Q But this year they have been working steadily? A Yes, sir.

Q Business is picking up today? A It is better; we cannot do much business with six or seven men; I am paying them more money than I did before.

Q What stock have you on hand? A I have a general stock, the numbering machines were put out.

40

James W. Irwin, cross.

Q What is the value of your machinery? A The plant account?

Q Yes; what is the plant worth? A The figures are in there; I think it is about \$4,500.00 or \$4,700.00.

10 Q And what is the value of your stock on hand? A I don't know what it is at this time; we took our inventory in January.

Q What is it about at this time? A I don't know.

Q Are you pretty well stocked up? A No, sir; we have been using it; we cannot manufacture enough to pay expenses with six or seven men.

Q You have been disposing of your stock? A Yes, sir.

20 Q Taking money in on sales? A Yes, sir.

Q You have outstanding accounts? A Yes, sir.

Q Amounting to what? A The books will show that, they are right here.

Q Do you recall? A No, sir.

Q You don't know? A No, sir.

Q Can't you give us an estimate of it? A I guess I would say about \$1,200 or \$1,500.

30 Q And what is the stock on hand worth? A I don't know, probably \$5,000; that is, making an estimate out of it.

Q Well, that is based on what you know of the business and the fact that you are there every day? A Yes, sir.

Q You knew, of course, that you were going to be asked these questions today? A I supposed I would.

40 Q Have you any other property in Brooklyn, any other than what you have mentioned? A No, sir.

James W. Irwin, cross.

Q Have you any other stocks or property of any kind? A No, sir.

Q Any other property in New York? A No, sir, none anywhere.

Q How much money have you in the bank? A I think my balance is about \$900.00.

Q Where do you bank? A At the Brooklyn Trust Company, Brooklyn. 10

Q Have you any bank account in New Jersey? A No, sir.

Q None at all? A No, sir.

Q Have you anything in New Jersey other than your house? A No, sir, that is all.

Q That you paid how much for? A \$5,800.

Q How many years ago? A 1906 or 1907.

Q Have you added to it at all? A I took out the old heating plant and put a new one in; before I got married, I put down concrete borders around the house, put up a trestle works in the back, and things like that; that is all. 20

Q The mortgage is how much? A \$4,000.

Q The property has increased in value, I presume? A I don't know that it has, I don't think so; the two houses over there have been idle for quite a while; they have not been sold nor rented.

Q After you left home you went to live with your mother and sister? A Yes, sir. 30

Q You lived with the continuously until your wife left the Oradell house? A Long after that.

Q And then when you moved into the Oradell house, you took your mother and sister with you? A Yes, sir.

Q So that they have been with you continuously? A Yes, sir.

Q And after they left you and moved to River Edge, you gave them how much a week? A I 40

Dr. George M. Levitas, direct.

don't remember; I should judge about \$30.00 or \$40.00 a month; I think about \$30.00.

Q From \$7.50 to \$10.00 a week? A Probably about that.

Q What does their income amount to? A About \$300.00, the average.

10 Q That income is derived from what? A That is from a house they own in Mt. Vernon, and from some things that my father left them.

Q What is that? A His insurance money and some other money.

Q How much? A I think it was about \$4,500, something like that.

Q Insurance—where is that invested? A That is invested in some stock, Standard Oil; that pays them \$200 a year.

20 Q 5%? A No, sir, \$200 a year is what they get from it.

Q And from the Mt. Vernon place; what is the income from that? A That depends on the expense, but about \$200.00, if things go right, but every year there is something; last year there had to be painting, and I think the year before new leaders.

Q Have they anything else? A No, sir.

Q That is all? A Yes, sir.

30 (Witness withdrawn for the present.)

DR. GEORGE M. LEVITAS, sworn in behalf of the defendant, testified as follows:

Direct examination by Mr. Whiting.

Q You practice in Oradell? A Westwood.

Q And have for some years? A Very nearly eleven years.

Q You know Mr. and Mrs. Irwin, the parties
40 to this action? A Yes, sir.

Dr. George M. Levitas, direct.

Q You have known Mrs. Irwin since her marriage? A Yes, sir, and before.

Q Have you formed any conclusion as to the temper of Mrs. Irwin, "yes" or "no?" A Yes, sir.

Q Now, doctor, state to the court what has led you to that conclusion, and the facts that you know of in connection with Mrs. Irwin that would give you your idea as to her temper—since her marriage? A Personal experience in treating the case before and after child birth. 10

Q Now, state the incidents. A The last experience I had was one day Mrs. Levitas telephoned to me and said, "You are wanted at once at Irwin's;" when I came down there post haste, I found Mr. Irwin very much exercised, and it seemed that he had had one of the usual experiences. 20

The Court. Strike that out.

A And I went upstairs, and as I was mounting the stairs, Mrs. Irwin's mother shouted, "Eddie, Eddie, come up," and I could not imagine what I might have done to have exercised her so, and I went on upstairs to see the patient, and Mrs. Irwin got out of bed and said, "I don't want you, you get out of here. Dr. King is taking care of me;" and I was very much embarrassed and went downstairs and took my hat and coat and started to go out, and I said to Mr. Irwin— 30

Q You did notice Mr. Irwin? A Yes, sir.

Q What did you notice about him? A He was pale and very much excited; tears were in his eyes, etc.; I then prescribed for him at the time; I thought he needed it, and I gave him some bromide for his nerves. 40

Dr. George M. Levitas, direct.

Q Did you observe anything further as to Mrs. Irwin's temper on any other occasion? A Yes, sir, on several occasions, similar experiences.

Q Based upon the experience that you have had with Mrs. Irwin since her marriage, I will ask you what kind of a temper she has?

10

Mr. Mackay. Objected to.

The Court. Objection sustained.

Q Now, I will ask you a question or two about Mr. Irwin's health—if you noticed anything about it after his marriage? A I thought he was in a run-down condition and needed toning up; he looked like a man who had suffered from insomnia.

Mr. Mackay. I object to that.

20

The Court. Objection overruled.

Q I will ask you this: had you noticed that condition prior to his marriage? A No, I thought he was a very well man before his marriage.

Q Had you seen him frequently before his marriage? A Yes, sir.

Q And have you noticed his physical condition since January 26, 1916? A Physically?

30

Q Yes; state whether or not it has been improved. A Yes, sir, he is much better.

Q What was the trouble with him when you noticed his condition to be worse? A His mental trouble. Physically I saw evidence of contusions on his right arm, I believe; I was called down in a hurry to attend somebody; Mrs. Irwin was in bed, and I knew that it was the aftermath—

Q You concluded that? A Yes, sir.

40

The Court. Strike that out.

Dr. George M. Levitas, cross.

Q Describe his arm? A He complained of pain in his arm and I looked at it, and I saw a very sharp welt, and it was very bright red, due to an injury.

Cross examination by Mr. Mackay.

Q The day that Mrs. Irwin said that she had another doctor, was that the last time you visited their house? A It was the last time I called on them. 10

Q And after that she was ill? A I know nothing about it after.

Q You know she had another physician after that? A I heard so.

Q You never saw her except when she was ill? A I took care of her before the baby was born. 20

Q You went to see her to make professional calls? A Yes, sir.

Q What date was it that she told you she had another doctor? A It was on a holiday; I don't remember the date.

Q Was it just after she had had the child? A Yes, sir.

Q Was it the same illness, or was it a later illness? A It was entirely independent of the childbirth; it was later in the fall; I should say it was in November. 30

Q And then that was the last you called there? A Yes, sir.

Q She said she had another doctor? A Yes, sir.

Q Dr. King? A Yes, sir.

Q Is there a Dr. King? A Yes, sir.

Q Where does he practice? A In Oradell.

Q You know that Mrs. Irwin had typhoid fever? A I heard it. 40

James W. Irwin, cross.

Q And you know that Dr. King attended her?

A Yes, sir.

ADJOURNED TO NOVEMBER 16, 1916.

SECOND DAY.

10

Continuation of the taking of testimony in the above-entitled cause, at the Chancery Chambers, Jersey City, New Jersey, on the sixteenth day of November, nineteen hundred and sixteen, at ten thirty A. M., before HON. VIVIAN M. LEWIS, Vice-Chancellor.

Same appearances as before noted.

JAMES W. IRWIN, resumes the witness stand.

20 *Cross examination (continued) by Mr. Mackay.*

Q Mr. Irwin, do you recall having a conversation with Mr. Maples as to the amount of money you were earning? A No, sir.

Q Do you recall speaking about an insurance policy, taking out an insurance policy? A Yes, sir.

30 Q Do you remember saying to him that you were earning about five thousand a year? A Yes, sir; I stated that in the policy.

Q And what was the date of that policy? A It was taken out a few days previous to my marriage.

Q What date was that? A June 9, 1914.

Q On that date you stated that you were earning \$5,000 a year? A About \$5,000 a year.

Q And that was inserted in the policy? A Yes, sir.

40 Q Part of your statement on which the insurance was issued? A Yes, sir.

James W. Irwin, cross.

Q Did you ever say anything about having any money in Connecticut? A No, sir.

Q Have you ever told your wife that you had \$40,000 invested there? A No, sir.

Q In your affidavit, when the application came up for temporary alimony and counsel fees, you stated in your affidavit that you had other property in Brooklyn; do you recall what you mean by that phrase? A I have not any other property in Brooklyn. 10

Q You have none other than you have already stated? A No, sir.

Q This Southern Railway stock which you said you bought, where did you buy that? A The last I bought was after I drew my building and loan; I had some previous to that; when I sold, but I needed money, and then I bought the last after I withdrew my shares. 20

Q At the time of your marriage you had Southern Railway stock? A I don't know whether I had it then or not.

Q When did you sell your Southern Railway stock? A After I was married.

Q How long after? A Probably about a year; when I got hard up and had to have the money; I let it go.

Q Did you sell it at the same time you sold your building and loan stock? A No, sir; before that. 30

Q How long before? A Probably five or six months, I should think, about that. I have got the papers there that show about the date, I think—

Q What is that paper you have? A It is a statement from Henry Clews and Company.

Q Statement of what? A Statement of my transactions there. 40

James W. Irwin, cross.

Q That shows your dealings in what kind of stock? A That shows that on March 10, 1905, I had on hand and deposited with them 200 shares of Southern Railway, which cost me \$6,225.

10 Q What is the next transaction? A The next transaction shows that I sold that 200 shares on March 15, same year, at $14\frac{1}{2}$, \$2,867.00; I lost on it the difference—about \$3,338.00.

Q That was in 1915? A Yes, sir.

Q Was that the first you bought Southern Railway stock, in 1915? A I did not buy it then.

20 Q You bought it on margin? A No, sir; I had it on hand; I deposited it with them; I bought it outright and deposited it with them; it shows here.

Q You bought it March 10, what year? A I don't know; this shows I deposited it with them.

Q You don't know when you bought it? A No, sir.

Q When did you buy any after that? A Then after that I bought 100 Erie at $22\frac{5}{8}$, on March 24, 1915.

30 Q And you bought it for \$2,275.00? A Yes sir.

Q You sold it for how much? A I sold it on April 1st, at $24\frac{1}{4}$.

Q How many shares did you have? A 100 shares, that was on margin.

Q You made the difference? A Yes, sir.

Q Then, when did you buy after that? A 10% margin.

40 Q When did you buy after that? A I don't know.

James W. Irwin, cross.

Q When did you buy again? A On the 4th of May.

Q What did you buy? A The same thing, 100 Erie at $27\frac{3}{4}$.

Q That was in addition to the other? A No, sir; I had sold the other.

Q You sold that out when? A On May 7th. 10

Q What did you get for that? A 27.

Q You lost on that? A I lost $\frac{3}{4}$ of a point on that, and the commission; I lost a point on that, \$100.00.

Q You made about \$100.00 on your Erie, all told? A Yes, sir.

Q What did you buy after that? A It shows here that I drew out in cash from there various sums amounting to—well, it shows I had a balance of \$103.81 left, which I drew out on August 23, 1915. 20

Q When did you make the other withdrawals? A From time to time, beginning March 11, 1915.

Q And ending when? A And ending, the last one, August 23, 1915.

Q And the one prior to that? A What do you mean?

Q Ahead of August 23rd. A July 2nd.

Q That was how much? A \$400.00.

Q And previous to that? A May 10th, 30 \$1,000.

Q And previous to that? A May 8, \$500.00.

Q And previous to that you drew how much? A March 24, \$300.00.

Q And that money you drew from time to time for what purpose? A I drew it because I needed it; things were going against me from time to time.

Q You cannot state what you did with it? A No, sir; I deposited it in my bank. 40

James W. Irwin, cross.

Q What is this statement? A This is the last statement that I have, 100 Southern Railway, deposited August 11.

Q How much? A It does not show the price there; I paid 25 for it; I deposited it with them.

10 Q That shows what you sold it for? A Yes, sir; I sold it at $26\frac{1}{2}$; before I sold it I drew \$800.00 on it, that is why I deposited it, because I needed some money; I put it in my personal account.

Q And on October 7th you drew out the balance of the principal, did you? A October 7, yes, sir.

Q How much? A \$1,830.87.

By the Court.

20 Q Did you buy entirely on margin? A Not entirely.

Q Did they give you that statement? A Yes, sir.

Further cross.

Q Then you wrote on it afterwards in your own handwriting? A Yes, sir; "Balance drawn out by check" of such a date.

30 Q You wrote that on there? A Yes, sir.

Q How much was the sale of the Southern Pacific? A I did not have any Southern Pacific; it was Southern Railway; that was $14\frac{1}{2}$; I lost on that about \$3,300.00.

Q You drew that out, that \$2,800, in a period of what time? A Between March 11 and August 23, 1915.

40 Q What did you do with that money? A I deposited that in my bank and used it as I needed it; I have my check books here.

James W. Irwin, cross.

Q You used it against whatever you needed it for? A Yes, sir.

Q And then, after August 23, you sold your building and loan stock? A Yes, sir; I cashed that in.

Q 1915? A Yes, sir.

Q Then you bought Southern Railway? A 10
Yes, sir.

Q Do you still hold that? A No, sir; I sold it.

Q That is what you sold? A Yes, sir.

Q And that \$800 that you drew out; you drew that out on August 23, didn't you? A Yes, sir.

Q How much did you get out of your building loan? A I said \$4,000.

Q What did you do with the balance of the \$4,000? A I deposited it in my bank and 20
used the balance for my needs.

Q When was it you sold that Southern Railway stock, the last? A October 6, 1916.

Q When did you sell your building and loan stock? A I think it was along about October or so, October 28.

Q You bought and sold the Southern Railway stock before you got the money for the building and loan stock; how do you account for that? A This is the Hackensack Building and 30
Loan; there is another one at Oradell.

Q How do you account for that? A Another one that I sold previous to that, that I disposed of.

Q When did you withdraw the money from the building and loan association? A I drew that one in October, and the other was some previous meeting to that, two months previous to that, and I do not know what the date of the meeting was. 40

James W. Irwin, cross.

Q You can get that? A Yes, sir.

Q How much did you get from the Oradell Building and Loan? A \$2,042.30.

Q You did not receive that money until October 28, that Hackensack Building and Loan? A No, sir.

10 Q You bought the Southern Railway on August 11? A I deposited it on August 11.

Q When did you buy it? A I don't know what date it was.

By the Court.

Q Will you tell me why, when you needed so much money for your needs, you invested \$500 of your own funds in Southern Railway? A I was trying to make up.

20 Q If you needed so much money for your wants, why did you take \$500 and put it into Southern Railway stock? A I was trying to make some money.

Further cross.

Q Now, you had a \$5,000 paid-up policy in the Northwestern? A Yes, sir.

30 Q How long did you have that policy? A Nineteen years.

Q Do you still have it? A Yes, sir.

Q Still in existence, in force? A Yes, sir.

Q That was payable to your wife? A No, sir; that was payable to my mother at the time I took it out.

Q Was it ever changed? A Never changed except to make it payable to my mother or sister.

40 Q When did you do that? A I don't know what date.

James W. Irwin, cross.

Q Was it after you were married? A Yes, sir.

Q How long after? A Probably about a year after.

Q After you had had trouble with your wife? A It may have been.

Q And this other policy in which you said your income was five thousand a year, was that payable to your wife? A Yes, sir. 10

Q Did you change that? A I left that in her name until I left, and since then I have had it changed, and then; I had it changed to my mother and sister, and then permitted it to lapse.

Q You collect rents for Mr. Black in Brooklyn? A Yes, sir.

Q For how long a period have you done that? A 20 years. 20

Q Are you still collecting them? A Yes, sir.

Q Do you get a commission? A No, sir.

Q How much do you collect a month for him, approximately? A \$100 or \$125.00.

Q You don't get any pay for that? A No, sir; Mr. Black and I have had personal relations for 30 years, and I do that as a friendly act towards him. 30

Q So that you and Mr. Black are very close friends? A Yes, sir.

Q He would do anything for you? A I think he would.

Q You had an automobile? A Yes, sir.

Q When did you buy the automobile? A 1912, I think.

Q What did you pay for it? A I traded in another one and \$900 difference. 40

James W. Irwin, cross.

Q What was the automobile, what make, that you had? A The one I traded in was a Franklin.

Q And what did you get back? A There was about \$400 difference; I think the Mitchell was \$1,300.

10 Q When did you sell the Mitchell? A I have not sold it; it is up home in the barn where I am living.

Q Where you lived with your wife? A Yes, sir; I am living there.

Q You have a safe deposit vault? A Yes, sir.

Q Where is that? A At the Brooklyn Trust.

20 Q You have had that for how long? A I have had one for eight or ten years; I had it over on the corner of Broadway first, and then when the Brooklyn people opened one, I put it over there for convenience.

Q You paid an income tax for one year? A Yes, sir.

Q What year was that? A The first year it came out, 1913, the first year of the income tax.

30 Q How much did you pay? A About \$60.00.

Q That represented what income? A I have the figures there; I think I reported \$5,000 income.

Q That was what year? A 1913—\$8,000 on the report; \$8,000 I think it was.

Q The report showed an income of \$8,000, and you were exempt to the amount of \$3,000? A Yes, sir.

40 Q So your income was \$8,000? A Yes, sir; and I paid off an indebtedness of \$3,000; they

James W. Irwin, cross.

did not allow me to take that off; it is there; I have papers for everything.

Mr. Whiting. I have a lot of papers here, but I would rather have Mr. Irwin go over them.

Q Is this the copy of the return? A Yes, sir; that is the copy of it. 10

Q Your gross income was \$22,861.58 according to this return; is this correct? A Gross, yes, sir.

Q And your general deductions were \$14,466.95? A Yes, sir.

Q And your net income was \$8,394.63? A Yes, sir.

Q And you were entitled to a deduction and exemption? A Yes, sir; of \$25.19. In that year I paid off an indebtedness of \$3,000. 20

Q Out of that \$8,394.63 net income? A Yes, sir.

Q What was the indebtedness? A To Mr. Black, on the business; I had been paying him off in installments, and as I could; that was the best year that I had, and I paid off the balance of it; that was the last I owed Mr. Black.

Q Now, you said that your wife had a stiletto like paper-cutter under her pillow, and you were afraid she was going to kill you or kill herself with it? A Yes, sir. 30

Q That is the stiletto you spoke of? (Showing witness an article.) A Yes, sir.

Q That is what you were afraid about, that she would kill you or kill herself with that? A Yes, sir.

By the Court.

Q Did you buy it? A No, sir; it is not very comfortable to find under a pillow in the bed. 40

James W. Irwin, cross.

Further cross.

Q Were you afraid she would stab you with it or hit you over the head with it? A I did not think anything about that.

10 Q When did you first notice it under the pillow? A As I came in the room I saw her withdraw her hand from under the pillow.

Q Did you ever see it before? A No, sir.

Q Did you ever see it afterwards? A Under the pillow, no, sir.

Q What did she say about it? A She said she was going to kill herself.

Q She did not say she was going to kill you? A No, sir.

20 Q Did she say she was going to kill herself with this stiletto? A I asked her what she had it there for, and she said to kill herself.

Q Did you ask her why? A I don't recollect that I did ask her why she was going to kill herself.

Q She did not threaten you with this knife? A No, sir.

Q What did you do that night? A I think we were up quite a while that night.

Q Did you take the stiletto? A Yes, sir.

30 Q Did she resist your taking it? A No, sir.

Q You took it from under the pillow? A Yes, sir; and she said she was going to kill herself with it.

Q Were you fearful that she was going to kill herself? A I did not trust her at all; she had made so many statements along that line.

40 Q What did she want to kill herself for all the time? A I told her that while I was around I would prevent her from killing herself, if I could—or myself either.

James W. Irwin, cross.

Q Why didn't you go to see her the time you left her to try to prevent her from killing herself? A I could not go back.

Q When you left your wife you took the automobile with you? A No, sir.

Q You took it away from there? A No, sir; I did not. 10

Q You did not leave it there? A I left it there; I did not take it away until some time in March.

Q That was two months later? A About two months later, yes, sir.

Q Then you kept it until you moved back again in the house? A Yes, sir.

Q Then you brought it back? A Yes, sir.

Q You said you did not cohabit with your wife for a few months before you left her? A I said I was in the same room with her. 20

Q You said you slept in the same room with her until about the day you left? A Yes, sir.

Q But I ask you if you cohabited with her? A Not for two months previous.

Q Do you remember going to the drug store for your wife about two weeks before you left her? A Yes, sir.

Q And you got some pills? A Yes, sir; I did. 30

Q What date was this? A I don't know the date; it was in that month.

Q You thought she was pregnant, didn't you? A She asked me to get those for her.

Q And you went and got them? A Yes, sir; and I would do—

Q You thought she was pregnant? A Yes, sir; and I would do it again under the same circumstances. 40

James W. Irwin, re-direct—re-cross.

Re-direct examination by Mr. Whiting.

Q State what occurred in regard to this matter of the pills; state the entire story? A My wife gave me the memorandum of these pills and told me where to get them, and I got them.

10 Q Is that all the conversation? A She simply said she wanted some pills; she said that she had not had her illness, and she wanted these to regulate her.

Q Did you make any comment? A Yes, sir; I did.

Q What did you say? A I said, "Edna, it cannot be so; you know that it cannot be so"—

Q What did she say? A She said, "I know there was nothing this month, but it may have lapped over from last month."

20 Q Then what did you do? A I did nothing further; she had the pills and she took them.

By the Court.

Q Did you go and get them? A I bought them, yes, sir.

Q You gave her the box of pills? A Yes, sir; I did not want to bring that out.

30 *Re-cross examination by Mr. Mackay.*

Q You are assistant treasurer of the Marine Journal? A Yes, sir.

Q How long have you acted as assistant treasurer? A About seven or eight years, I should think.

Q You get a salary? A No, sir; I get the dividend from one share of stock; that amounts to about \$15.00 a year; it just about covers the
40 postage.

James W. Irwin, re-direct.

Q What are your duties in that capacity? A All my duties as assistant treasurer are to make out the checks once a week.

Q You don't have much to do then for the \$15.00? A No, sir; it does not take me five minutes a week.

Re-direct examination by Mr. Whiting.

10

Q You spoke of having an income in the year 1913 in excess of \$5,000, something like \$5,800; how long after that was it that you took out your insurance policy in which you said your income was \$5,000, or more than \$5,000, whatever you did say about it? A In the early part of June, 1914, just before I was married.

Q And your estimate was based upon what, when you made that statement? A Upon this income of the year before.

20

Q Had you ever had such a good year before that? A No, sir.

Q Nor since? A No, sir.

Q You have brought your books here? A Yes, sir.

Q You have instructed your bookkeeper to prepare the schedules showing what your income has been? A Yes, sir.

Q Have you, as a matter of fact, \$40,000 worth of property in Connecticut? A No, sir.

30

Q You have not any property at all in Connecticut? A I never owned any property in Connecticut.

Q Mention has been made of your coming back to your old home and residence in Oradell—isn't it? A Yes, sir.

Q How did you come to go back after this trouble? A I did not wish to go back, but many of the neighbors came down and asked

40

James W. Irwin, re-direct.

me to go back, and I did not, but finally they sent me a petition signed by the neighbors, stating that I had their continued confidence, respect and best wishes, and asked me to come back.

10 Q You have that petition here? A I think you have it, yes, sir.

Mr. Mackay. Objected to as irrelevant.

Mr. Whiting. Then I won't offer it.

A Some of those who signed are in court.

Q Mention has been made of a conversation between yourself and your wife and Mr. Black, at Mr. Black's home? A Yes, sir.

20 Q Something was said about one of the troubles between you and your wife being that she wanted you to sell the house and go to New York? A Yes, sir.

Q What did you do with respect to her suggestion of your selling the house? A I did not want to sell it, but I placed it in the hands of two real estate men in the town, with instructions to sell it; those real estate men were John Hoyt and Mr. Francis C. White.

30 Q How long did you leave it in their hands? A I left it there right along until a few weeks ago, when I was talking to Mr. Hoyt and I said to him, "You might withdraw that house for sale."

Q What price had you put upon it for them to sell?

Mr. Mackay. Objected to.

Mr. Whiting. I don't press it.

40 A I told them I would take \$6,000; I don't know whether I put an asking price of \$6,500 on it or not.

James W. Irwin, re-direct.

Q Was it in excess of \$6,500? A No, sir.

Q Where are your check books; you say you used this money that you gathered in? A I have them here (witness gets the books).

Q You have never shown those books to me, have you, Mr. Irwin? A No, sir; I don't think so. 10

Q Who kept them? A They are my own personal—

Q You kept them in your handwriting? A Yes, sir.

Q You made the entries at the time you drew the checks? A Yes, sir.

Q What period do they cover? A There is one from October 2, 1914, to September 1, 1916. 20

Q Have you the check books covering the period of deposits and withdrawals from March to November, inclusive, 1915? A Yes, sir.

Mr. Whiting. There was only banner year, 1913, in which it went up to \$5,800.

The Court. He has to show what he has made in the last two years. \$5,800 for 1913; he says that subsequently he made \$3,000, in round numbers, a year—at one time. 30

Q What was your income for this past year? A I think that was \$2,200.

Q You said you thought your income would average \$3,000 a year; how does it fall below \$3,000 this last year? A I had an expense of \$730.00 for fire escapes.

Q What is this expense? A For fire escapes. 40

James W. Irwin, re-direct.

Q Was that a voluntary expense on your part? A No, sir; I was compelled to put those fire escapes on by the State authorities.

Q Produce your books, Mr. Irwin. A Here they are.

10 *Mr. Whiting.* I offer in evidence these check books that cover that period.

Mr. Mackay. Objected to.

By the Court.

Q Did you keep those books? A Yes, sir.

20 *The Court.* I will accept them in evidence; they are just to show how he spent this five thousand or some additional that he had. As soon as this man got into trouble and difficulties, his income seems to disappear suddenly or got less; he was in affluent circumstances; he seems to be a smart business man, and he had accumulated quite an income, but as soon as trouble came there was nothing there.

Mr. Whiting. I want to make a complete disclosure in every possible way. I offer the check books; I offer the books of the company, without having looked at them.

30 Q Have you your bank books here? A No, sir; they are at the office.

Re-cross examination by Mr. Mackay.

Q How many bank books have you? A Just the Brooklyn Trust, one business and one private.

Re-direct examination by Mr. Whiting.

40 Q You have referred to a memorandum which appears to be a first draft of your income

James W. Irwin, re-direct.

tax statement; does that set forth your business income or your entire income from every source?

A Entire, from every source.

By the Court.

Q You have no source of income except your business and this \$15.00 a year that you spoke of? A That is all. 10

Further re-direct.

Q In your business you include the rental value of the property? A Yes, sir; everything is in that.

Q Prior to the incorporation of your company, did you have any salary in the business?

A No, sir.

Q You owned it? A Yes, sir.

Q What you drew was charged to you? A Yes, sir. 20

Q You had no fixed salary? A No, sir.

Q Since the incorporation, have you had a salary? A Yes, sir.

Q How much? A \$25.00 a week.

Q You have here the books of account of your business? A Yes, sir.

Q Will you produce them? A Yes, sir.

Mr. Whiting. Get them up here. 30

The Witness. The bookkeeper kept those.

Q Who kept those books? A Mr. Correll.

Q He is here in court? A Yes, sir.

Q Is he a bookkeeper? A Yes, sir.

The Court. You may withdraw this witness if you want to put the bookkeeper on

Mr. Whiting. Mr. Mackay wanted to cross examine Mr. Irwin on these books; we are perfectly willing that he should do so. 40

George Henry Correll, direct.

The Witness. I have not kept the books and am not familiar with them.

10 *Mr. Mackay.* When Mr. Irwin was on the witness stand before he knew all about the books, and testified as to the books; I recollect your Honor saying, "You charged up rent for this place when you did not have to pay any," and he said, "Yes"; now, I think he is familiar enough with the books to know probably better than the bookkeeper.

20 *The Court.* The bookkeeper wrote them up, and he offers to prove them through the bookkeeper; now, of course, if you afterwards want to cross examine this witness on the books, you may do so, but I think Mr. Whiting should have an opportunity to produce the books now as part of his case. Call up the bookkeeper. You may retire for the present.

(Witness withdraws.)

GEORGE HENRY CORRELL, sworn in behalf of the defendant, testified as follows.

By the Court.

30 Q Are you the bookkeeper for James W. Irwin? A Yes, sir.

Q How long have you been in his employ?
A Ten years.

Q What books do you keep for him? A I keep the business books; I also attend to some of his personal things, private accounts.

Q Have you the business books with you? A Yes, sir.

40 Q What year? A From March, 1912, until the present time.

George Henry Correll, direct.

Q What books do you keep? A I keep by the double entry system, and I have only the ledgers here, because that tells everything.

Q It shows the whole transaction? A Yes, sir.

Direct examination by Mr. Whiting.

10

Q They are books of original entry; what do you call those? A The sales books, the cash book, who the cash comes from, who it is paid out to.

Q You have not got those here? A No, sir.

Mr. Whiting. Do you want to object to the offer of these books because the others are not here?

Mr. Mackay. I don't care particularly whether the books go in or stay out, but I want to see what is what. 20

Q Have you a trial balance of your ledger here? A No, sir; Mr. Irwin told me to go through the books and show just what profits there are in the business; I have a general statement showing just what comes out of that book; it shows everything; it shows the total sales; it shows the total revenue from all sources, and the total expense, and what they were expended for. 30

Mr. Whiting. I offer the books.

Q From your examination of the books and your knowledge from having kept them, can you state, what Mr. Irwin's income was for this past year, or what is your fiscal year? A We generally run from January 1st to December 3rd.

Q You have figured out the income for the ten months' period preceding November 1st of this year? A Yes, sir. 40

George Henry Correll, direct.

By the Court.

Q What is it made up of? A From Mr. Irwin's personal account, and shows all money received.

10 Q Give us his personal income. A His gross income from business and everything was \$3,280.89, his gross income.

Q What is his net income? A I have to show all the expenses he spent on the building, \$1,936.61.

Further direct.

Q For what? A The running of the building; his mortgage interest and his coal, and the expenses of the building.

20 Q Can you give us the net income? A That would be whatever the difference would be between that \$3,280.89 and subtract \$1,936.61; which is for this ten months.

Q What unusual expense is there in connection with the building? A \$730.00.

Q For fire escapes? A Yes, sir.

30 Q How many months does this cover? A Ten months.

Q And allowing or adding for the two unexpired months, the average of the preceding ten months, gives you a total of how much? A I should have to have a pencil and figure that out.

40 Q If you don't add the extra expense of the fire escape, the net income would have been approximately \$1,800.00, wouldn't it, for the ten months? A I will figure it out (does so). If he did not have the fire escape expense, it would be \$2,074.28.

George Henry Correll, cross.

Cross examination by Mr. Mackay.

By the Court.

Q Have you a balance sheet for 1911 here?

A I have a sheet that shows all the profits, or whatever this book may show in profits—the total expense taken from this book; the total income. 10

Q Give me the balance in 1913, net profit?

A I have the average profit from March 1, 1912, to December 31, 1915, the average profit of these years.

Q How much is it? A The average profit would be \$4,219.32.

Q Per year? A Yes, sir.

Q What was 1913? A I have not any for years; I took the total sales of all years, and then the total expense for all years, and the average profit for three years and ten months, and the average profit per year was \$4,219.32. 20

Cross examination.

Q Can you tell me, from your examination, what caused the sudden deduction in profits in 1914-1915? A The building did not pay as much; the rents went down, one loft was vacant, and there was a general slump in business, due partly to the times and Mr. Irwin's condition of health, and we did not have as many men working, so they did not produce as much. 30

Q Was Mr. Irwin at business every day? A He was not there every day.

Q You took care of his books? A Yes, sir.

Q And the men do the work there? A Yes, sir. 40

George Henry Correll, cross.

Q And you are familiar enough to take charge in his absence? A I cannot do two people's work.

Q He was not on the sick list? A Yes, sir; he was.

10 Q How long? A He was sick shortly after the time has was married, two months afterwards he was not worth anything to the business; he would not come down until 11 o'clock in the morning.

Q In 1914 and 1915? A Yes, sir.

Q Do you attribute that to his inability to attend to the business; can you show us by the books any reduction in the rents from 1914-1915 to the prior years? A There were no rents received from some of the floors.

20 Q Can you show us by the books that less men were employed in the last few years than before? A I can, by the wages paid to them, but I have not a list of the men, but you can see by the money paid to them.

Q The books show it? A Yes, sir.

Q How is business this year? A Better than it was; it is improving, but not much better.

30 Q Are the lofts all rented now? A One at \$40.00 and one at \$50.00.

Q What did they pay in 1914? A Originally the rent was \$65.00 a floor, \$125.00 for the two of them; the other one paid \$65.00.

Q What did they pay in 1913? A \$65.00 a floor.

Q What do they pay today? A \$40.00 for one and \$50.00 for the other.

40 Q That is a reduction of \$30.00? A Yes, sir; and there are no power bills; we used to make a little money on the power.

George Henry Correll, cross.

Q How much did you make on the power; can you tell from the books? A No, sir, but we have to go down to the Edison rates of power.

Q You lost \$30.00 a month on the floors, and how much are your wages reduced; how much less do you pay in wages this year than you did last year? A Well, I cannot say in figures. 10

Q, Your books show that don't they; your books will show just what the number employed now is compared to what they were? A The men are getting a little more wages now.

Q How many less employees are there now? A There are six less employees now in the shop, five men and a boy are employed there now; wages so far this year for ten months are \$5,158.20.

Q That is this ten months? A Yes, sir. 20

Q Give me the wages in 1913, if you can. A 1913, the wages were \$9,332.76.

Q You account for that on the ground that you have less employees? A Yes, sir.

Q Now, the Hoole Manufacturing Company occupies how much of the space in the building? A It occupies the top floor, the first floor and the cellar, with the exception of what it takes to run the elevator and things like that. 30

Q What amount of rent do you charge against the company? A At the present day?

Q Yes. A \$165.00.

Q Per month? A Well, \$185.00 with power; no, \$160.00, and \$25.00 for power.

Q So that you charge yourself with rent at the rate of \$125.00 a month? A Charge Mr. Irwin with rent and power \$185.00.

Q And how is that rent of \$185.00 a month paid? A It is paid by check. 40

George Henry Correll, cross.

Q By whose check? A The Hoole Company's check to Mr. Irwin personally.

Q And Mr. Irwin personally receives this \$185.00 a month rent from the Hoole Company?

A Rent and power.

Q Each month? A Yes, sir.

10 Q And for the past ten months, from January until October, including October, 1915, the Hoole Company has given him for rent and power of that building \$185.00 a month? A No, sir, they have received from Mr. Irwin \$5.00 each week for maintenance of the building.

Q Every month this year the Hoole Company has given him that amount of money? A Yes, sir.

Q And that he puts in his own personal account? A Yes, sir.

20 Q And are there any other items that are charged in a similar manner? A No, sir; I charge him with the rent just the same as if he was a separate person and I did not know him at all; then I give him credit the first of the month for the rent, and then debit him when it is paid, the same as any other bill; he gets a check.

30 Q What does he do? A He deposits that check in his personal account.

Q When you speak of his net income being in the neighborhood of \$2,200, do you include this \$165.00? A Yes, sir, that is money from all sources that he received.

Q For instance, you mark the \$165.00 as paid out? A Yes, sir.

Q You mark that as paid out by that company? A Yes, sir.

40 Q And then after that is paid out, that shows what the income would be? A Yes, sir, what the Hoole income would be.

George Henry Correll, cross.

Q Are you speaking now about Mr. Irwin's income? A I have the Hoole income and I have Mr. Irwin's income.

Q Mr. Irwin's income is based on what? A On what he gets from the business and his salary, the rent from the entire building, wherever he gets it from.

10

Q So that the Hoole Company is practically Mr. Irwin's, he owns it? A Yes, sir.

Q It is all one and the same thing, and it is a matter of bookkeeping? A Yes, sir.

Q And do you show Mr. Irwin's income; do you have any reference to the income of the Hoole Manufacturing Company, or are they separate? A They are separate now from the first of the year.

Q Since January 1, 1916? A Yes, sir.

20

Q Now, what is Mr. Irwin's income for the ten months? A About \$2,200, \$2,074.00.

Q Now, what is the income of the Hoole Company for the ten months?

Mr. Whiting. The testimony was—

Q What I want to know is this: in the last ten months Mr. Irwin and the Hoole Company have been doing business separately? A Yes, sir.

30

Q How much in that ten months has Mr. Irwin earned net, and how much has the Hoole Company earned net? A I have given you Mr. Irwin's as \$2,074.28, provided the fire escape was not in there; and there is a profit or a difference between the gross earnings and the cost of the Hoole Machine Company of \$1,505.35.

Q So that added together, the Hoole Company's and Mr. Irwin's income, net, for ten months, is how much? A \$3,975.00.

Mr. Whiting. Let me ask a question here.

40

George Henry Correll, cross.

Re-direct examination by Mr. Whiting.

Q Do you ever charge depreciation in your business? A We have not this year, we have before.

10 Q What percentage have you allowed for depreciation? A It should be at least 10%; most businesses charge 10%. We have always allowed about that; never over that.

Q 10% of the value of the plant? A Yes, sir.

Q How much is 10% of the value of the Hoole plant? A If you were to charge depreciation on this building now it would be about \$1,000.

20 Q Answer the question directly, 10%; what is the capital stock of the Hoole Company? A \$10,000.

Q Does that represent actual value of the assets of the company? A Yes, sir.

Q Have you taken the \$1,000 a year out of this \$1,500 which you say is the profit? A No, sir, there is nothing shown for depreciation.

30 Q Have you allowed anything for the continuation of your business in the next succeeding period? A No, sir, that shows the difference between the gross earnings and the total expenses.

Further cross examination by Mr. Mackay.

Q What was Mr. Irwin's net income in 1915, the whole year? A The total income for 1915 was \$1,470.20.

40 Q What was the income of the Hoole Manufacturing Company for the year 1915? A I have said that on an average there was \$4,200 profit in the business; that I cannot say by years—

George Henry Correll, cross.

Q But an approximation would be about what? A I cannot say, the profits we had from March 1, 1912, to December 31, 1915—the total profits were \$16,174.00.

Q Just give me again Mr. Irwin's income separate from the company's? A For 1915?

Q Yes. A \$1,470.20.

10

Q That was outside of the company's affairs? A Of course, he got the rent from the Hoole Machine Works, the building, a legacy—

Q What legacy? A \$54.82; that was Dr. Frederick.

Q What did he get from the Marine Journal a year? A \$22.75.

Q What did he get the following year from the Marine Journal? A \$19.00; I might say he was overdrawn \$50.00 on salary.

20

Q And what was Mr. Irwin's net income in 1914, personal, I mean, outside of the company? A Well, at that time the business and Mr. Irwin's were all in one.

The Court. Do you want the bank books over here now?

Mr. Mackay. I think we will have them.

The Court. Mr. Whiting says he will have them brought here; you are entitled to go into this matter; they want the books of original entry.

30

Mr. Whiting. We will bring them over, but it all boils down in the final analysis to what the ledger shows.

Mr. Mackay. The only thing is, that there might be a deposit to show about that Oradell Building and Loan.

Q Do you keep Mr. Irwin's original checks?

A They are at the place; his bank book he

40

George Henry Correll, re-direct.

locks up in the safe himself; he has the key, but I have the combination of the safe.

Mr. Whiting. As I understand, you want the bank books showing the deposits; you want such vouchers as we have covering the period for the year 1915, and that is all.

10 *By the Court.*

Q Do you have charge of his deposit books in the Trust Company? A No, sir, he has that personally.

20 *The Court.* He used \$500.00 in speculation right in the midst of his necessities, as he says; that is quite apparent; but I think it is fair to him to bring in the Oradell statement; he says he used it to buy Southern Railway. Well, gentlemen, if you want the bookkeeper to get those books, you had better get him started off.

Mr. Mackey. I don't think I will insist on them, your Honor. All I want is the Oradell Building Loan date.

Re-direct examination by Mr. Whiting.

30 Q You have spoken about Mr. Irwin's condition and inattention to business; state what you noticed in that regard. A Mr. Irwin's health failed and several times—of course, he came in late—and several times after that when I went out to my dinner, I found him asleep at his desk, and everything that he did—he would make promises and forget them; he would make mistakes in figuring out a bill—

Mr. Mackay. Oh, I object to this; I don't think this witness is a judge of a man's health.

40 *The Court.* The objection is overruled.

George Henry Correll, re-direct.

Q When did you first notice any change in Mr. Irwin with respect to his conduct in his business? A Several months after his marriage.

Q Now, state what you noticed. A He came in late in the mornings; he would get there, and when he came there he would show that he was sleepy.

10

Q What made you think that? A Things that I would tell him to do and things that he ought to do, he did not do.

Q For example, what? A I would tell him the foreman wanted some steel, and he would say, "All right, I will make the order out"; and later in the day the foreman would call me up for the steel.

Mr. Mackay. I object to all this; this is simply making testimony between themselves, self-serving declarations of what he said to Mr. Irwin and Mr. Irwin said to him, making testimony that won't bind us.

20

Mr. Whiting. There is another theory upon which I think this line of questioning is permissible in this case.

The Court. If you can show a specific loss of any kind during that year, which would result in a reduction of his earnings, privately or publicly, why, of course, that will account for the reduction of the income, and you have gone in and shown one; you have shown fire escape, which reduced his income \$750.00—

30

Mr. Whiting. There is nothing in the records to show that the courts recognize that a man's physical condition is depleted because of marital trouble; it seems to me

40

George Henry Correll, re-direct.

that it is my duty to prove that by this witness, who saw him daily.

10 *The Court.* You may show some specific loss, if you want to; I cannot conclude that he had lost a lot of money because of his physical condition, if somebody else was running the business.

Mr. Whiting. I am not speaking of the financial feature; I am speaking now of the domestic feature. I want to show to the Court as corroboration of the defendant Irwin's statement of his physical health—I have to corroborate that.

The Court. It all goes back to who is the cause.

20 Q You have stated that Mr. Irwin's condition after his marriage, some months after his marriage, attracted your attention; now, I will ask you what it was that attracted your attention; don't give us any conversations. A He would cry and tell me his troubles.

 Q Had you ever noticed him crying before? A No, sir.

 Q Had he ever told you his troubles before this period? A No, sir.

30 Q What else, if anything, did you notice about him, out of the usual order; you said something about his being asleep; before his marriage did you ever know him to go to sleep during business hours? A No, sir.

 Q What did you notice in this regard? A When I came back from lunch I would find him asleep.

 Q How often did that happen? A Several times.

40 Q Was that after he was married? A Yes, sir.

George Henry Correll, re-cross.

Q Did it ever happen before he was married?

A No, sir.

Q What other things have you noticed since his marriage and prior to his leaving his wife, which were different? A He came in late and did not pay the attention to the business that he should, and I had to run the place.

10

Q Why did you conclude that he did not pay the attention to the business that he should? A I had to do it all; and I tried to wait on a customer and attend to the books, and he was useless in the place.

By the Court.

Q Can you tell us one specific loss in business that he made in 1915? A I know we lost sales.

20

Q Can you say any one loss? A No, sir; I know there was a general loss to the business through men coming in and not getting attention; of course, I cannot say whether we would get the order anyway.

Re-cross examination by Mr. Mackay.

Q You said you found him asleep one day, after his marriage? A Several times.

Q After his honeymoon or after he had been married some time? A Maybe six or seven months after—in the midst of all the trouble.

30

Q When was it, I say, that you were first told about this trouble? A I don't remember the day; I could see he was having trouble, but he did not tell me right away.

Q When was it he told you? A Seven or eight months, maybe less; I don't remember exactly the months.

40

George Henry Correll, re-cross.

Q Do you remember when he was married?

A Yes, sir.

Q Do you remember the date? A Yes, sir; June 9, 1914; I was there.

Q So you said six to seven months later? A Yes, sir.

10 Q When was that? A Around December or January of the next year.

Q 1915? A Yes, sir; three or four months after he was married he would tell me his troubles, little things, and he would cry.

Q Did he fall asleep often? A Several times.

Q You remember when he left his wife? A Yes, sir.

20 Q That was when? A January 25, of this year.

Q And he fell asleep after that? A Yes, sir; once.

Q How many months was that after he left his wife that he fell asleep? A That was right after this hearing that was heard, for that alimony.

Q That was several months after he left her? A Yes, sir.

30 Q After his mind had eased up a little? A No, sir; he was all upset on account of the trial.

Q He fell asleep before and after that? A Yes, sir.

Q He has not fallen asleep since that time? A No, sir.

Q He gets to business now on time? A Yes, sir.

Q What time? A 9 o'clock.

40 A Yes, sir.

George Henry Correll, re-cross.

Q Sharp? A Whenever the car brings him.

Q And that has been for how long? A Since Mr. Whiting has got the case.

Q When was that? A Whenever he got it, I don't know.

Q When was that? A Right after that hearing for the alimony. 10

Q Don't you remember when that was? A No, sir.

Q Do you remember the month— A No, sir.

Q He told you of his troubles? A I don't remember the exact month; I would say it was in March or April somewheres, this year.

Q And then between January 26, the date that he left his wife, and April, the time of the hearing for the alimony, he was still late at business? A He came down more regularly than before. 20

Q He was still late? A Late at times.

Q And how late—an hour or two hours? A Not like he used to be—9:30 or something like that, a later train.

Q You say it was seven months after his marriage that he began to be late? A No, sir; before that.

Q Shortly after he was married? A Several months. 30

Q And that kept up continuously? A Yes, sir.

Q And in spite of that fact, he averaged \$4,200 a year for five years? A That is the average for those five years; one good year would boost the average up.

Q You get a salary there? A Yes, sir.

Q You are a stockholder? A I have one share of stock. 40

Alfred W. Barian, direct.

Q Do you get a dividend on that? A No, sir.

Q How much salary do you get? A \$25.00 a week.

The Court. Get the Oradell Building and Loan statement for us.

10

ALFRED W. BARIAN, sworn in behalf of the defendant, testified as follows:

Direct examination by Mr. Whiting.

Q You are a member of the New York Bar, and reside in New York? A I do.

Q You know the complainant, Mrs. Irwin, and her husband, Mr. Irwin? A I have known Mr. Irwin a long time; I met Mrs. Irwin once.

20 Q Do you recall when that was, about? A Well, it was some time last winter that she came to my office one morning about 9:30, between 9 o'clock and 9:30, one morning, and she spent a big part of the morning in my office.

Q Will you state the object of her call, if you know it?

Mr. Mackay. Objected to.

The Court. Objection sustained.

30 *By the Court.*

Q Did she come to you in the capacity of a lawyer? A I had never met her before.

The Court. I will allow it to stand.

Q State the conversation. A It would be very difficult for me to give all the conversation; the conversation lasted for one hour and a half; she came in in the first place and asked me if I had seen Mr. Irwin, and I took it to mean
40 that she had expected to meet Mr. Irwin at my

Alfred W. Barian, direct.

office; I can only fix the date in this way—from her conversation she said that Mr. Irwin had left her the day before and had not come home; that is the only way I can fix the date; you gentlemen here can fix it beyond that statement; and she asked me if I had seen Mr. Irwin, and I said, “No, did you expect to see him?” and she said, “Mr. Irwin did not come home last night, and I thought, probably, he had been over to see you”; and I said, “No, I have no seen Mr. Irwin”; and then she told about the troubles that she had; the conversation went along.

By the Court.

Q What trouble did she tell you about? A The principal thing was, that she was very much upset because Mr. Irwin had gone away, and in the course of her conversation she said, “Well, Mr. Irwin has left me before”; and I said, “Perhaps he will come back again, perhaps there is no reason for your becoming excited”; and I talked to her; I said, “How long did he stay?” and she said, “Two or three days”; and I said, “Do you mean he went out?” and she said, “Yes, we had an argument, and he went away”; and I said, “I think that was a very wise thing for a man to do when he got into an argument with his wife, to take a walk”; so she told about having different arguments with him, and she mentioned, among other things, the fact that she had pounded him on the arm, although she said that while it became black and blue, he would get black and blue if you simply touched him; she wanted to know if I had talked with Mr. Irwin at all about his domestic affairs, and I said that Mr. Irwin had been in some little time before, but I had not

Alfred W. Barian, direct.

seen him for several weeks; I told her that I had talked with Mr. Irwin shortly after Thanksgiving, I thought it was, and he had told me something about one of their domestic affairs there was some trouble about—anyway, I think the net result of it was that they did not
 10 have any Thanksgiving at home. As far as I could make out—I could not attempt to give you the conversation, word for word, I can simply give you the parts of it that impressed me. One thing Mrs. Irwin—

Q Well, when she was at your office, was she in a great state of distress about her husband being away? A She seemed to be, and she had tears in her eyes because she said she could not bear to be long alone, and that was one of
 20 her complaints; she said she would get in an argument with him and have a few words, and he would go away, and she could not bear to be left alone.

Q What did she say the argument had been about when she came to your office? A I don't think she told me what it was about; she said she had had some disagreement or argument with him.

30 Q What over? A She did not say; so far as I could make out, they seemed to be all more or less petty things that seemed to start them.

Q But you did not know what it was? A No, sir.

Q She just came in there with tears in her eyes, and wanted to know where her husband was? A Yes, sir; she thought I knew.

40 Q Have you stated all you recall? A Well, she asked me—

Alfred W. Barian, cross.

Q Did she ask you to hunt him up? A
 No, sir; she said she had telephoned over to his
 office several times the day before, but she said
 he would not answer the telephone. I told her
 that I had had a conversation some time before,
 I believed two or three weeks before, with Mr.
 Irwin; he had spoken to me about this matter, 10
 and I told her I was not acting as Mr. Irwin's
 attorney, and was not competent to act as his
 attorney if anything did come of the matter,
 because I was not a practicing lawyer in New
 Jersey; and inasmuch as he lived over here, he
 would have to consult counsel over here, if
 it ever came to that; and she wanted to know
 what grounds Mr. Irwin complained of; I told
 her it was simply that he complained that he
 could not get along with her, and that she 20
 made it very uncomfortable for him, and he
 could not attend to his business; and she asked
 me if there were any other grounds that he had
 mentioned, and any question of infidelity, and I
 told her I certainly had not heard any such
 question mentioned by Mr. Irwin; I think that is
 as much as I personally recall; I told Mr. Irwin
 shortly afterwards, that I had had such a con-
 versation with Mrs. Irwin; there may be, pos-
 sibly, that my attention might be specifically 30
 called to that I don't think of now.

Cross examination by Mr. Mackay.

Q You told her you would try to telephone to
 Mr. Irwin and try to effect a reconciliation? A
 I may have told her that, and I think I did
 telephone to Mr. Irwin while she was there, but
 I don't recall; I don't think I got him on the
 telephone while she was there, but I think I did

Miss Octavia V. Irwin, direct.

subsequently get him on the telephone, and I think that was shortly after she left; I think it was the same day.

MISS OCTAVIA V. IRWIN, sworn in behalf of the defendant, testified as follows.

10 *Direct examination by Mr. Whiting.*

Q State your full name. A Octavia V. Irwin.

Q Where do you live now? A Oradell—Third street, Oradell.

Q With whom do you live? A With my brother and mother.

Q Your mother is an elderly lady? A 80 years old.

20 Q Is she in good health? A Well, she is in better health now; she has little spells due to her age, weakness.

Q How about your mother's memory, is her memory good? A It is not.

Q You mean by that, that it is not as good as it was? A It is not as good as it was, it is failing.

30 Q You lived at home practically all the time, during all your life? A Almost all the time.

Q You have lived in the Oradell house? A I first went there July 2, 1907; my mother, brother and father went with me, and my father died June 21, 1908.

Q Whose house is it? A My brother's house.

Q Do you remember when your brother married? A Yes, sir; June 9, 1914, and I was delighted to know he was going to be married.

40 *The Court.* Strike that out.

Miss Octavia V. Irwin, direct.

Q Did you know his wife before his marriage? A I cannot say that I did; I had met her occasionally, and just walked once from the station with her; other times I just spoke to her.

Q You had no feeling one way or another towards her? A No, sir.

10

Q Did you know that she was going to live in the house where you all were? A Yes, sir; I did.

Q She came right after the honeymoon? A Yes, sir.

Q How did things go after she came to the house; who had charge of the house? A She was given full charge.

Q You mean the complainant, Mrs. Irwin? A Yes, sir; my brother's wife.

20

Q You mean by that, she had the ordering of the household supplies? A Everything.

Q What did you do? A Well, I did a lot of things in the house, although after she was married for two months she asked me to pay my board; she asked me to pay \$3.00 a week, which I gave to her.

Q How did she come to do that? A She said that I was not doing anything in the house, but I was, and she said then that I need not feel that I need do anything except take care of my own room, and mother could take care of hers; and I said I would take care of my mother's room; and she said, "Very well, that is all you need to do"; but in spite of that, I did do lots of other things.

30

Q What income did you and your mother have? A We had the rent from the house and the income from the stock.

40

Miss Octavia V. Irwin, direct.

Q How much was the total amount for both of you, together; what did it average? A About \$200 to \$400 a year.

Q Did you live on that, you two? A We lived with my brother; of course, I did the housekeeping before he was married.

10 Q Then your support and that of your mother depended in part upon him? A Yes sir.

Q He supplied whatever was necessary, except for this income that you speak of? A Yes, sir.

Q Well, now, you did fix that with Mrs. Irwin? A She found fault with everything, and when the doctor ordered food for mother it was not supplied; he ordered her boiled lamb chops
20 for her luncheon, and she did not get them; and then I ordered it, and she said I would have to eat whatever she put on the table, whether we liked it or not.

Q I suppose there was a quarrel? A Yes, sir; and very high temper on her part.

Q What makes you say that? A She got in a high temper at the least provocation.

Q Did you ever see her in a violent temper?
30 A Yes, sir.

Q When was this? A I don't know just when it was, but one day I saw her lying on the floor, kicking and throwing her arms around.

Q Was this in the house? A Yes, sir; in the bedroom.

Q Who else was there? A My brother was there; my brother called me in—

Q What for? A He was frightened the first time he saw it, and he called mother also.

Miss Octavia V. Irwin, direct.

By the Court.

Q Did you interfere? A No, sir.

Q What did you do? A I didn't do anything; I did not know what to do.

Q And why did you order these things from the butcher? A Mother needed them; she needed the nourishment. 10

Q Why didn't you speak to the head of the house? A I did, and she paid no attention to it and did not order it; mother had to have the food.

Further direct.

Q Well, there developed bad feeling between you and Mrs. Irwin? A Well, I did not feel antagonistic towards her at all; I told her—

Q What did you do as a result of the situation; did you stay there? A No, sir; my brother told me I had better go, and I went, and I stayed away; I went on a Friday and I came back on Wednesday, and my mother did not recognize me, so then I knew that we could not be separated, so then I went to my brother's office and told him that we could not be separated. 20

Q As a result of your going to your brother, did anything happen? A He telephoned to me to come home on Thursday night, after seeing him, and I stayed then until the 9th of April, 1915. 30

Q What did you go then for? A My brother thought we had better go; he thought, perhaps, it would make peace—

Q Who went? A Mother and I.

Q Where did you go? A To River Edge.

Q Before you went away, did you observe how Mrs. Irwin and your brother were getting 40

Miss Octavia V. Irwin, direct.

along? A I knew they were not getting along well, because I heard her talking sometimes until two and three o'clock in the morning.

Q Could you hear what she said? A No, sir; I was sitting by my mother's bedside. In the morning she would come down to breakfast and then go up and sleep until lunch time, and my brother would look as if he had been crying.

Q Did you observe any change in his appearance or conduct after the marriage? A Yes, sir; some months afterwards.

Q What did you notice? A I noticed his eyes were red; he looked haggard and he was sick quite often afterwards.

Q How about his appetite? A He did not eat very good.

20 Q How has he been since he separated from his wife? A Much better.

Q When you and your mother left the house, where did you go? A To River Edge.

Q What did you do, did you board there? A No, sir; we rented a small apartment.

Q Were you able to live on your income, you and your mother? A No, sir.

30 Q Who put up the rest of it? A My brother.

Q It has been stated in evidence, Miss Irwin, that matters were talked over, as I recall it, behind Mrs. Irwin's back, or so that she did not hear it; do you know what I refer to; is that true or not? A No, sir; it is not true; it was just the other way; I would be shut out; I never knew what she was saying about me.

Q Something has been said about meals furnished to you and your mother? A Yes, sir.

Miss Octavia V. Irwin, cross.

Q What do you say about that? A When we had oyster stew on Friday, she gave me one oyster, never more than that.

Q Did she have any more herself? A Yes, sir; she had eight or nine.

Q Those were in the class of things that brought up trouble? A Yes, sir; they were petty things; I never complained, however, to my brother or to her about it. 10

Q Had you ever complained to your brother before you went away the first time? A No, sir.

Q When you went to live down at River Edge, did your brother come to see you from time to time? A Yes, sir.

Q Did you notice anything about his condition? A Yes, sir; he looked white, and his face looked drawn, and he did not talk very much. 20

Q How has he been since he separated from his wife? A Much better.

Q Did you ever try to get him separated from his wife? A No, sir; I never spoke of anything of the kind.

Cross examination by Mr. Mackay.

Q You wanted to pay board so as to be independent? A I did not ask to; she asked me for my board; I had said nothing about it. 30

Q Did you tell her you wanted to be independent? A No, sir.

Q Did you make that statement? A No, sir; I started to study typewriting and stenography so that I could make myself independent—as things were going on in the house I wanted to be able to earn my own living.

Q You told her you wanted to be independent? A Well— 40

Miss Octavia V. Irwin, cross.

Q And for that reason you offered to give her \$3.00 a week? A I did not offer it to her, she asked me for it. I thought I was doing enough work in the house; I used to wash the dishes and clean up the house in general, and make my own bed and my mother's, and if she
10 left her bed unmade, I made it; I would set the table for dinner, and yet she complained to my brother that I did nothing.

Q When did you leave the first time? A Some time in November, I believe it was.

Q 1914? A Yes, sir.

Q That was about five months after she was married? A About five or six months.

Q And wasn't it before that date, before November, 1914, that you saw Mrs. Irwin on the
20 floor kicking? A I don't remember that.

Q You said you saw her on the floor? A I saw her on the floor.

Q Was it before that date of your first leaving? A I don't remember.

By the Court.

Q Did you ever see her more than once on the floor kicking? A No, sir; only once.

Q Did you hear her say anything? A No,
30 sir.

Q Did you hear your brother say anything when she was on the floor kicking? A It was after she was on the floor that he called us in.

Q You did not see whether he threw her on the floor? A I don't believe he did.

Q You say you don't recall the month of the year? A No, sir.

Q You don't remember anything about it, except that vaguely you remember that she was
40 on the floor kicking? A Yes, sir.

Miss Octavia V. Irwin, cross.

Q And you could not tell us what she said?

A No, sir.

Q You went in the room? A Yes, sir.

Q Your brother called you in? A Yes, sir.

Q And you went in the room and saw her lying on the floor? A Yes, sir; she said she was faint, afterwards.

10

Further cross.

Q And you say you looked at her and could see nothing? A I did not know what it was.

Q Well, you did nothing anyway? A I could not.

Q And did you walk out? A Yes, my brother told me to go out and I went out.

Q How long were you in there? A Not very long.

Q How long was she lying on the floor? A I could not tell you.

20

Q Did she get up while you were there? A I don't know that she did.

Q You think she was still lying on the floor when you walked out again? A I think so.

Q So, as far as you know, after you were called in you saw her on the floor and you watched her on the floor, and you walked out leaving her on the floor? A I think he had had her in his arms; he tried to raise her.

30

Q When you came in? A Yes, sir.

Q Did she look as if she was faint? A No, sir; she did not.

Q Your memory is kind of hazy on it? A How do you mean?

Q You don't remember it very well? A I don't remember the date or the month, but I remember her lying on the floor and kicking and throwing her head around.

40

Miss Octavia V. Irwin, cross.

Q You don't remember whether you did anything or not? A My brother told me to go and give her a little whiskey; I did not want to do so, but I got some and handed it to him, and then I left; she seemed to be better; my brother was attending to her.

10 Q Did your brother tell you what the cause of it was? A No, sir.

Q Did you see her feet in the air? A I saw her throwing her feet from side to side; I knew it was temper.

Q And how did you know that? A From her actions and the way she looked.

Q Was this before or after the baby was born? A Before the baby was born.

20 Q You now recall that? A I remember now it was before the baby was born.

Q Why do you remember? A I don't know, but I remember.

Q There is no particular reason you can give? A No, sir; but I know it was before the baby was born.

Q Your recollection is based on what? A Well, I wondered that she would act like that.

30 Q Is your knowledge based on anything that you recall? A I wondered that she would act that way when she was in that condition; I knew she was, some time in the future, expecting a child.

Q It was shortly before you left the house, wasn't it? A I don't remember.

Q When did you leave the house? A I think it was some time in November.

Q But before you came back? A Yes, sir.

40 Q Then you and your mother left together? A Yes, sir.

Miss Octavia V. Irwin, cross.

Q And that was when? A On the 9th of April, 1915.

Q Was it about that time that you saw her on the floor? A I don't remember.

Q Shortly before the baby was born? A The baby was not born for several months after we left. 10

Q Well, you left in April, 1915—the baby was born in May? A In 1915.

Q The baby was born a month after you left; were you at the house when the baby was born? A No, sir; mother was not well, and then afterwards brother said she had better not come.

Q You were living one station below? A Two stations below. 20

Q About five or ten minutes' ride on the train, away? A Yes, sir.

Q After you left Oradell and moved to River Edge, your house was near the depot? A Yes, sir; a short block away; there was a park between it and the depot, Herrick Park, right at the station.

Q Right at the station; were you living east or west of the station? A West of the station. 30

Q That is up nearer the main road? A About a block from the main road.

Q Your brother came to see you? A Yes, sir.

Q Mornings? A When mother was sick he might run in for a few minutes.

Q When was your mother sick? A Quite a number of times.

Q Between what dates—between the time you left and the 26th of January, 1916? A Yes, sir. 40

Miss Octavia V. Irwin, cross.

Q That was a period of about eight months?

A She has been sick since that.

Q But I mean she was sick between those dates? A Yes, sir; she was sick and so was I.

Q Very sick? A Quite sick; sometimes the doctor would come a couple of times.

10

Q Now, while your mother was sick and you were sick, your brother would come there in the morning? A Occasionally, when she was sick.

Q How many days a week? A It would be occasionally mornings; he would not come two or three mornings in succession; in fact, he would only come one morning—if she was sick he would come.

20

Q He would come sometimes morning after morning? A No, sir; he never came two mornings in succession; I don't believe he was there more than three mornings all together while we were there, and that was just for a few minutes, just between trains.

Q Then he would stop there evenings? A Sometimes two or three times a week, sometimes oftener, if mother was not well.

Q Would he spend an hour or so there?

30

A No, sir; just between trains.

Q Did you hear your brother testify? A Yes, sir; he came on one train and went on the next.

Q Always? A Yes, sir; I might say also, that when my brother went for medicine for mother, she was angry about that.

Q You left on account of some little argument or other, didn't you? A No, sir; it was about the dog; she would not feed the dog; it was a family pet.

40

Miss Octavia V. Irwin, cross.

By the Court.

Q Did it become the duty of the wife to feed the dog? A No, sir; I would gladly feed the dog if I could get anything to feed him with.

Q Did you hear any arrangements made about her feeding it? A No, sir; I was perfectly willing to feed the dog; my brother told me to go; he said perhaps things would be better, and he did it for peace; and I was away from Friday until Thursday, and the reason I asked go back—I did not ask to go back, but mother did not recognize me when I went out, and so then I told my brother that my mother must either come to me or I must go to her, but that I would much rather her come to me. 10

Q Mrs. Irwin did not object to your coming back? A I don't know. 20

Q She treated you all right when you got back? A No, sir; I cannot say that she did.

RECESS TO 2 P. M.

AFTER RECESS.

MISS OCTAVIA V. IRWIN resumes the witness stand. 30

Cross examination (continued) by Mr. Mackay.

Q How did you get along with your brother after he was married? A Well, at first, he believed the things his wife told him; afterwards he found out that she told him things that were not so.

Q Afterwards he believed you? A After he proved it to his satisfaction. 40

William King, direct.

Q How about the little incident regarding the scissors? A I told my brother, I told him I wished he would stick them in me, I would rather be dead than living.

Q You told your brother this? A Yes, sir.

Q When was this? A I don't remember the
10 time.

Q Can you give us any idea? A No, sir.

Q You handed him the scissors and told him to stick them into you? A I had the scissors and I said to my brother that I wished he would stick them into me, because I would be rather dead than living.

Q What caused this? A I don't recall; I did object to her calling my mother a liar; she said that over and over again, "You're a liar";
20 and mother said, "Edna, I won't allow you to call me a liar"; and she said, "All the same, you do lie."

Re-direct examination by Mr. Whiting.

Q Was it anything that your brother had done that brought up this incident of the scissors? A I don't remember what it was about.

Q What was your brother's treatment of you? A He had always treated me well un-
30 til she came to the house.

The Court. It is immaterial.

WILLIAM KING, sworn in behalf of the defendant, testified as follows:

Direct examination by Mr. Whiting.

Q Where do you live? A East Rutherford.

Q How old are you? A 29.

Q Do you know Mrs. Irwin? A Yes, sir.

Q Have you known her long A Yes, sir.
40

William King, direct.

Q How long? A About 14 years.

Q Intimately? A Yes, sir.

Q How intimately? A I was engaged to her at one time.

Q Engaged to be married to her? A Yes, sir.

Q There has been some testimony in this case in regard to Mrs. Irwin's alleged temper; she has been described as at times throwing herself on the floor and kicking and doing such things; have you ever seen her do that?

10

Mr. Mackay. Objected to.

The Court. How are you going to prove this by this witness; it is pre-nuptial, isn't it?

Mr. Whiting. I offer it on this ground; that as this case has developed at least, one of the important issues is the question of the violence of the temper of this lady, and Mr. Irwin, of course, has testified to what he knows.

20

The Court. And you are going to prove the engagement was broken off on account of that?

Mr. Whiting. We can prove that.

30

The Court. It is going quite a distance.

Mr. Whiting. We are trying to get at this fact.

The Court. You have got the mother and the sister who was in the house all the time, and she has testified in one particular instance, the sister has, of violence—that was the kicking on the floor.

Mr. Whiting. We have two incidents here which are as clear as daylight.

40

William King, direct.

The Court. I will let them go in, subject to Mr. Mackay's objection. This is prior to the marriage, I understand?

Mr. Whiting. Yes.

10 *The Court.* I am in a state of great dubiety as to its competency, but I will allow it to stand, noting the objection, and will deal with it later.

Q What year was it, Mr. King, that you know anything about her temper; you have told me about two occasions; now, when were those occasions, what year? A One was about six years ago.

Q What was that occasion? A That was the breaking of the engagement.

20 Q Who broke it? A We had an argument.

Q Who broke the engagement off? A I think she broke it off, yes.

The Court. I am in a state of great dubiety on this, but I will admit it for the present.

By the Court.

30 Q Why? A We all went to a ball game at Oradell, a baseball match; I took my sister and my mother in the machine, and on our way home—Mr. and Mrs. Maples were there, and I was unable to get them all in the machine to bring them home, and she flew at me.

Q How did she fly at you? A With her tongue, right in the presence of all these people.

Futher direct.

40 Q What did she say? A I cannot exactly tell you what she said.

William King, direct.

Q What kind of voice did she speak in? A Very loud voice—because I could not put them all in the machine and bring them home.

Q What did she say? A I don't remember; it is eight years ago.

Q What happened then? A That happened on a Saturday; I took her home, and then I stayed away, and on the following Sunday night her father called me up and wanted me to come over there to see what I meant by using his daughter so, staying away over Sunday; so I went over there and asked him what she meant by using me the way she did up at the ball grounds. 10

Q What way did you say she had used you? A I cannot relate what she said.

Q You went over there and you had a conversation with her? A I went over Sunday night. 20

Q What conversation did you have with her? A We had a pretty hot conversation.

Q How hot—what was it? A It is so long ago that I cannot recall.

Q Were you hot? A Sure I was.

Q What was it about? A About the treatment I had given her.

Q What happened in the course of your conversation at the house? A We argued about it. 30

Q Was Miss Maples, the complainant, angry at the time? A Yes, sir.

Q What did she do? A She up and was going to hit me, when Mr. Maples interfered.

Q What made you think she was going to hit you? A She raised her arm.

Q What did you do? A I didn't do anything; I asked her whether she was through, and I walked out. 40

William King, direct.

Q What did her father do? A He protected me. He went over and took hold of her; she had her hand raised ready to hit me.

Q Was there any other occasion when she exhibited temper—you told me about two occasions? A The other occasion was at a dance.

10 Q Where was the dance? A At Oradell.

Q How many were present? A There were quite a few people present, and I danced with a certain party.

Q You danced with a certain girl? A Yes, sir, another girl, and she fainted.

Q Did she show any temper?? A I should think that would be temper.

Q Fainting? A Yes, sir, under the circumstances.

20 Q Did she say anything to you before she fainted? A No, sir, she just fainted; I was not in the room at the time she fainted.

Q You don't describe that as temper, do you? A Not exactly temper.

Q What did you see her doing when you came in the room? A Lying on the floor, I think she was.

Q In the dance room? A Yes, sir.

30 Q Was the room empty? A No, sir, there were quite a few people present.

Q Was there anyone around her? A Yes, sir, her father was there.

Q You did not see anything that led up to her fainting? A No, sir.

Q You were dancing with the other girl? A Yes, sir.

Futher direct.

40 Q What happened after you saw her on the floor? A I came in and immediately got the rig and took her home.

Fred. H. Konklin, direct.

Q Did you have any conversation when you got her in the carriage? A No, sir.

Q Didn't you talk at all? A No, sir.

Q Not a word? A No, sir.

By the Court.

Q All the way home? A No, sir. 10

Q Were you engaged to her then? A No, sir.

Q What did you attribute her fainting to—jealousy of you? A Yes, sir.

No cross examination.

FRED H. KONKLIN, sworn in behalf of the defendant, testified as follows:

Direct examination by Mr. Whiting.

20

Q You live in Oradell? A Yes, sir.

Q You know Mr. and Mrs. Irwin? A Yes, sir.

Q There was some testimony this morning about Mr. Irwin being urged to come back to Oradell after he had separated from his wife and gone away; do you recall that? A Very well, yes, sir.

Q Do you remember joining with the other neighbors in requesting him to come back? A Yes, sir. 30

Q In what form was it that you expressed that?

Mr. Mackay. Objected to.

By the Court.

Q What did you do about it? A I joined with the others in urging him to come back; I signed the petition for him to come back.

Q When was this, do you recall? A I think it was in the early summer of this present year. 40

Fred. H. Konklin, direct.

Q Would the petition itself refresh your memory? A Yes, sir; my signature is on there.

Q Is that it? A Yes, sir; that is mine.

Q When was it? A In June, in the early summer, last summer.

10 Q Where do those people live that signed that petition?

Mr. Mackay. I object to this evidence; I don't see what materiality it has.

20 *The Court.* People outside of the family might have different views and different affections and different friendships. There is nothing here that indicates that this man is not a reputable man; we are not trying that issue at all. The question is, how is he in the household; Mr. Mackay objects to this evidence.

Mr. Whiting. Here is a man who is a defendant in an action which results from his overt act, a thing which unexcused is certainly reprehensible.

The Court. Oh, yes.

30 *Mr. Whiting.* The defense which he has endeavored to set before your Honor is of such a nature that it deals in the elusive qualities of human nature and character, and I believe that sitting as the Chancellor, as your Honor does, that this evidence, while it does not prove anything against the wife, tends, in a practical sense, to corroborate the view that we have that Mr. Irwin is a man who would not leave his wife except for good cause.

40 *The Court.* Here is a document which anyone might go out and get signed.

Fred. H. Konklin, direct.

The Witness. I would not sign a petition like that for everybody.

The Court. I think it is immaterial and incompetent testimony. If this man knows anything about the internal troubles there, I would like to hear about it.

Q I will ask you if Mr. Irwin in any way was cognizant of the preparation of this paper of petition before it was sent to him? A I believe not.

10

Mr. Mackay. I object to that.

Q Did he solicit you to sign it? A No, sir.

Mr. Mackay. I object to that.

By the Court.

Q How long have you known him? A Ever since he came to Oradell, seven or eight years ago. 20

Q How long have you lived there? A 13 years.

Q Do you know his wife? A Yes, sir.

Q How long have you known her? A Prior to that time.

Q Have you ever been to their house? A Yes, sir, shortly after their marriage. 30

Q How was their situation then, as far as you observed? A Nothing different from any other home.

Q They seemed to be pleasant at that time? A Yes, sir.

Q The mother and sister were there then, as far as you recall? A I could not really say.

Q And you have not seen any quarrels or controversies, or heard any between the parties then? A I heard a great deal. 40

Fred. H. Konklin, direct.

Futher direct.

Q Have you ever heard Mrs. Irwin's character discussed with respect to the question of her temper?

Mr. Mackay. I object to that.

10 *Mr. Whiting.* I think the real question is: Is the reputation of this witness material; I think that is corroboration. We have specific acts testified to by Mr. Irwin, but those will not stand without corroboration. There is further evidence which has yet to be produced in corroboration; this witness is not corroborating those specific incidents, but it occurred to me, that if the woman's reputation was discussed and she
20 was known to have a bad temper in the community, that would be material.

The Court. The objection will be sustained.

By the Court.

Q Do you live near these people? A Yes, sir.

Further direct.

30 Q Have you noticed any change in Mr. Irwin's health since his marriage? A Decidedly, yes, sir.

Q Describe to the Court what you know in respect to that. A Previous to Mr. Irwin's marriage we exchanged pleasant greetings almost every morning, at least, whenever we met, a little daily joke, you know what usually goes on, but a few months after he was married, I noticed that he was nervous and absent-minded and ceased to exchange those little pleasantries.
40

Fred H. Konklin, cross.

Q Do you commute? A Yes, sir.

Q He commuted with you? A Yes, sir.

Q Whom have you known the longer, the wife or the husband? A I have known the husband more intimately, although with Mrs. Irwin we have attended the same church and the same choir.

10

Q Are you on friendly terms with both? A Yes, sir, so far as I know; there is absolutely nothing that we have ever had a disagreement over.

Q Did you notice anything in Mr. Irwin's appearance— A I should say he lost weight and lost color.

Q Have you noticed him since he has come back to Oradell? A Yes, sir, he appears to be more like he was before he married.

20

Q You are married? A Yes, sir.

Cross examination by Mr. Mackay.

Q Of course, after he left his wife you did not see him for a while, or did you see him? A I happened to meet him once or twice in the train.

Q How long after he left his wife? A I should suppose it to be a month or six weeks.

30

Q He appeared all right then? I I cannot say that he did; he is a man who took his troubles very much to heart, more so than the ordinary man would.

Q How are you deciding that now? A By my own standard.

Q Are you judging by what he said or by his color and weight? A By his appearance.

Q You are not an expert in that line? A No, sir, not at all.

40

Charles C. Hayes, direct.

By the Court.

Q What is your business? A I am an exporter.

10 CHARLES C. HAYES, sworn in behalf of the defendant, testified as follows:

Direct examination by Mr. Whiting.

Q Where do you reside? A Oradell, New Jersey.

Q How long have you lived there? A I have lived there for eight years.

Q You are a family man? A Yes, sir.

Q State what your business is? A I am in the silver business.

20 Q And you know Mr. and Mrs. Irwin? A Yes, sir.

Q Are you one of the gentlemen who signed the petition that has been spoken of? A Yes, sir.

Q Did Mr. Irwin ask you to sign that? A No, sir.

Mr. Mackay. Objected to.

The Court. Objection overruled.

30 *By the Court.*

Q How long have you known Mr. and Mrs. Irwin? A I have known Mr. Irwin for, possibly, five or six years.

Q Have you known Mrs. Irwin for just as long? A No, sir.

Q Have you ever been at their home? A No, sir.

Q Have you ever been in their company when there has been any controversy between them?

40 A No, sir.

Mrs. Catherine Ackerman, direct.

Q Did you notice anything in Mr. Irwin's appearance or actions after his marriage, which gave you an idea as to his physical condition?

A Well, there was a slight difference in his general manner, I thought, after he was married, and I think that about the time—

Mr. Mackay. Objected to.

10

A Well, I have heard the dog was killed, and that is the first notice I took of any depression.

Q Did you notice him afterwards? A Yes, sir, it appeared to be a permanent condition; Mr. Irwin, on his way to business, had to pass my home, and I spent quite a little time in my garden in the morning, and I would greet him frequently, and a period came along, after his marriage, that he would pass in a more or less abstracted manner and pay very little attention to me; I thought, perhaps, it was something personal on my part.

20

Q Did you ask him? A No, sir, it was not serious enough for that; I thought, perhaps, it was a grouch; I noticed Mrs. Irwin only after their marriage—

Q Did you notice whether she was depressed after their marriage? A I did not pay any attention to her general demeanor.

30

Q You were just neighbors? A Yes, sir.

Q You were not an intimate friend of Mr. Irwin? A No, sir.

No cross examination.

MRS. CATHERINE ACKERMAN, sworn in behalf of the defendant, testified as follows:

Direct examination by Mr. Whiting.

Q You live in Oradell? A Yes, sir.

40

Mrs. Catherine Ackerman, direct.

Q How long have you lived there? A About eight years.

Q You are in some business? A I am assistant probation officer in Hudson County.

Q How long have you occupied that position? A Twelve years.

10 Q Did you come to know Mr. and Mrs. Irwin? A I have known Mr. Irwin and family since 1907.

Q That is when they first came? A No, sir, I met them first at River Edge, they boarded at River Edge in 1907.

Q And you have known them since then? A Yes, sir.

Q Were you there at their house much; are you what you might call intimate with them? A
20 With his mother and sister I am, yes, sir.

Q I will ask you if you have noticed any change in Mr. Irwin's appearance or actions since his marriage?

Mr. Mackay. Same objection.

The Court. Objection overruled.

A In November of last year I met Mr. Irwin at the station, and I noticed his general health—at least, he looked entirely different; and I
30 spoke to him. He looked depressed; I spoke to him and he did not answer, and that was very unusual.

Q Did you ever see him after that? A I did not see him after that until the latter part of January or early in February, at his home, in River Edge; I stepped in to see his mother, who was not very well, and he looked very much depressed.

Q How does he seem now? A He seems
40 to be very much better, but I still think he is

Mrs. Catherine Ackerman, cross.

nervous, but his general health seems to be much better, that is, he looks better.

Q Did you notice his face or his color that morning you saw him at the station? A I thought he was very much depressed; he looked as if he had the weight of the world on his shoulders; that is as nearly as I can express it. 10

Q Do you know Mrs. Irwin? A Yes, sir.

Cross examination by Mr. Mackay.

Q What date was it when he looked as if he had the weight of the world on his shoulders?

A The latter part of November, around Thanksgiving.

Q You say he has not entirely recovered yet in his appearance? A He looks better.

Q What part of the weight of the world would you say was on his shoulders now? A I think he is simply nervous. 20

Q Did you ever see any quarrels between Mr. and Mrs. Irwin? A No, sir.

Q Have you noticed any change in Mrs. Irwin's physical condition? A I don't see enough of her.

Q How often have you visited at Mr Irwin's home? A Maybe four times a year; at that time his mother was ill. 30

Q You visited there at different times this year? A I have been to the house once since they came back to Oradell.

Q And before they came back to Oradell, while they were living at River Edge? A While they were living at River Edge, not more than three times this year; not more than four times in all.

Mr. Whiting. I have the testimony of Mr. Black stenographically reported. 40

Dr. C. A. King, direct.

(This witness was later produced and testified, and the discussion that ensued between counsel and Court is cut out.)

The Court. Bring the witness here Monday, then.

10

DEFENDANT RESTS.

REBUTTAL.

DR. C. A. KING, sworn in rebuttal, testified as follows:

Direct examination by Mr. Mackay.

Q You are a practicing physician? A Yes, sir.

Q You are located where? A Oradell.

20 Q You have been practicing how long? A Nine years.

Q You heard Dr. Levitas testify on the witness stand? A Yes, sir.

Q As to Mrs. Irwin getting out of bed and yelling that she did not want him any more? A I heard that, but I was not there at the time.

Q You heard the doctor testify that way? A Yes, sir.

30 Q Do you remember about that time whether or not you attended Mrs. Irwin? A Yes, sir, I was called there that morning; it was a Sunday morning about the 15th or 16th of October.

Q And where did you find Mrs. Irwin? A On the sofa, in the parlor of the house.

Q Was she able to get up? A No, sir, she was very limp and relaxed.

Q So that she was not able to get up on her feet? A Not at that time.

40 Q What was the trouble with her; what was her condition? A You mean leading up to it?

Dr. C. A. King, direct.

Q What was her condition? A She was in a sort of semi-conscious state.

Q Did you examine her? A Yes, sir.

Q What did you find? A I found a weak, thready pulse, which was relaxed and apparently as a person would be in a semi-conscious condition. I tried to brace her up with stimulants, and after a little while she was able to talk to me, and in the course of, perhaps say one-half or three-quarters of an hour, we were able to get her upstairs. 10

Q Who? A Her father and myself.

Q Did she walk? A She walked with our assistance; she was not able to stand alone, she could not stand alone; she reeled, and undoubtedly would have fallen if we had not held her.

Q Was that before Dr. Levitas was there? A Yes, sir. 20

Q And then Dr. Levitas was there after that? A Yes, sir.

Q And then Dr. Levitas spoke about her getting out of bed? A Yes, sir.

Q How long after Dr. Levitas was there, was it that you were there again? A I did not go in again until the evening of that day.

Q Do you remember when Dr. Levitas said he was there? A Yes, sir. 30

Q Do you remember what Dr. Levitas said? A Yes, sir.

Q How long after Dr. Levitas got there did you visit? A I went there about seven hours afterwards.

Q At that time was she in a condition to get out of bed?

Mr. Whiting. Objected to; that is calling for a conclusion; however, I will withdraw 40

Dr. C. A. King, cross.

the objection; I don't think it makes any difference.

Q Was her condition such that she could have gotten up? A I think she could have gotten out of bed, but she did not.

10 *Cross examination by Mr. Whiting.*

Q Had you ever attended her before? A Yes, sir.

Q Had you found her in that condition before? A No, sir.

Q Do you know what brought her into that condition? A Not from personal knowledge; simply that I was told that Mr. Irwin had gone out that morning and had not returned, and he came in while I was there.

20 Q And what happened when he came in? A He went over to her and seemed to be somewhat exercised over her condition and spoke to her very kindly—

Mr. Mackay. Who was this?

Mr. Whiting. Mr. Irwin.

A I think he helped to get her upstairs that time.

30 Q You don't know whether or not there had been an exhibition of temper by Mrs. Irwin just prior to her getting into this state? A I don't know; when I first went to Oradell about seven years ago—

Q How many times have you called upon her professionally? A I was going to say that previous to that time, between, I had attended her, and then for a time I was not in attendance.

40 Q How many times? A I cannot tell you—a period covering six years, but since she was married I saw her in August of 1915; I saw

Dr. C. A. King, re-direct.

her several times, probably five or six times, in October; and I also attended her from the 25th of January this year up until the present time.

Q You have rendered Mr. Irwin a bill for services? A Yes, sir.

Q It has not been paid? A No, sir.

10

Re-direct examination by Mr. Mackay.

Q Did Mrs. Irwin exhibit any temper? A I have never seen any.

Q Never? A No, sir.

Q Not all the time you attended her? A Never.

Q Which extends over a period of six years?

A Yes, sir.

Re-cross examination by Mr. Whiting.

20

Q How often during the six years have you seen her? A I cannot be explicit as to that, but professionally and socially, probably 100 or more times.

Q You don't know whether she has a bad temper or not? A I have never seen it.

Q You don't know whether she has one or not? A No, sir; my experience has been pleasant.

30

Q Aside from that, you don't know? A I do not.

Q Isn't it possible that she might have a bad temper without your knowing it? A Yes, sir.

Re-direct examination by Mr. Mackay.

Q You say you have even met her socially? A Yes, sir.

Q At dances? A At various little affairs that we have had in the town.

40

Edmund Maples, direct.

Q You never saw any exhibition of temper on her part? A No, sir.

Re-cross examination by Mr. Whiting.

10 Q Do you call it an exhibition of bad temper if she ran up to her husband and pounded his arm black and blue, and he just stood there; would you call that an exhibition of temper?

Mr. Mackay. Objected to.

The Court. Objection sustained.

Q What would you call an exhibition of temper—

The Court. Does he know anything about this black and blue business?

Mr. Whiting. It is in evidence.

20 *The Court.* He has made no impression at all on the mind of the Court in regard to her.

Mr. Whiting. I will take that statement of the Court.

EDMUND MAPLES, sworn in rebuttal, testified as follows.

Direct examination by Mr. Mackay.

30 Q Where do you live? A Oradell, New Jersey.

Q How long have you lived there? A For 27 or 28 years.

Q The complainant is your daughter? A Yes, sir.

Q Is she living with you now? A No, sir.

Q She has been living with you? A Yes, sir; prior to her marriage.

Q And after the marriage did you visit the home of your daughter and her husband? A
40 Yes, sir; on several occasions.

Edmund Maples, direct.

Q Can you tell the Court of any conduct on the part of either of the parties in this case? A Yes, sir; there were several occasions that Mr. Irwin and my daughter would come over to the house; on other occasions he would come over and cry and say how his sister was abusing him, and, of course, my daughter also; and one occasion in particular they came over there and said that they were going to go away from Oradell or put the mother and sister out; I begged him not to do anything to his old mother; to stick to her and do what he could, in fact, I went over to the house and spoke to the mother and sister, and I fixed everything up very comfortable and nice; it was very near Thanksgiving; I told them to think of Thanksgiving and become good friends, and we invited them over to the house, and they came over for Thanksgiving dinner, the mother and sister over to my house, and they had Thanksgiving dinner; that was 1915; that was before the baby was born. 10 20

By the Court.

Q The last year they lived together? A It was 1914.

Q And you say Mr. Irwin came over to your house? A Yes, sir. 30

Q And complained about his sister? A Yes, sir.

Q Now, when was the first time that he came over, how long after your daughter's marriage? A Well, she was married in June; this must have been in October, the first time; and the second time in November, I think; I am not certain about that, but I know they came in November; that was the time I went over to the house to try to settle matters up. 40

Edmund Maples, direct.

Q Did Mr. Irwin say what the trouble was?

A He said that his sister was abusing him and his wife and he could not stand it.

Q In what way did he say? A He said they were cutting up in some way; he said they could not get along with the sister.

10 Q How long after they told you this was it that you saw the sister—how long after Mr. Irwin told you this was it that you saw his sister? A I went over there on a Sunday, if I am not mistaken, the following Sunday, and saw the mother and sister both together.

Q And was Mr. Irwin there at the time? A He was there.

Q And what did you talk about? A Well, we talked about their trouble.

20 Q What was it? A The trouble that they could not get along together; Miss Irwin was trying to do things that disagreed with what my daughter wanted to do; she was supposed to have charge of the house, and she was aggravating her and he knew it, and he did not approve of it, and on several occasions he came over to the house in that way, saying that they could not get along and they threatened to move away.

30 Q Now, after that Thanksgiving, do you know of any more trouble? A Well, there was trouble all the time.

Q Did you know of anything? A Well, I did not go over there to fix up any trouble.

Q Did you see Mr. Irwin at all? A Yes, sir; he used to come over regularly with my daughter once or twice a week, sometimes three times a week, to visit; and every time he came over there he cried and complained about his sister's treatment.

40 Q He always cried? A Yes, sir.

Edmund Maples, cross.

Q Do you remember anything after Thanksgiving that he said about his sister? A No, sir; I do not; I don't remember anything. Of course, this was going on; it worried me a great deal; I knew they were not happy.

Q You knew who were not happy? A My daughter and Mr. Irwin over in that house; they both complained. 10

Q And it was due to what? A To his sister.

Cross examination by Mr. Whiting.

Q Mr. Maples, you heard that the trouble was on account of his sister, didn't you? A Yes, sir; I did.

Q Did things improve after the sister went away? A Well, there did not seem to be so much trouble; there did not seem to be so much trouble there; they seemed to be a little happier. 20

Q In what way? A They seemed to be more contented; there were no complaints as far as I could see.

Q Isn't it true that Mr. Irwin and your family ceased to be on good terms? A Yes, sir.

Q So that when you say that they seemed to be more happy, that was not from any communication that you had from Mr. Irwin, was it? A No, sir; not exactly. 30

Q Now, you were not visiting at the house after that, were you? A Oh, yes; we were.

Q Although you were not on good terms with Mr. Irwin? A Mr. Irwin was not on good terms with us.

Q But you still continued to visit his house? A Visited my daughter.

Q How often? A Maybe once or twice a month. 40

Edmund Maples, cross.

Q And Mr. Irwin was there? A On several occasions he was.

Q And there was no complaint as to the conditions after the sister went away? A Well, I don't remember any complaints, that is, except from my daughter; what do you mean, repeat
10 that again.

Q The daughter went away for awhile and came back, didn't she? A Miss Irwin—yes.

Q Then she went away and stayed for good? A Yes, sir.

Q Now, after she went away and stayed for good, I ask you if you know whether things were better, happier, with Mrs. and Mr. Irwin? A No, sir; they were not.

Q Well, it was not the daughter—it was not
20 the sister, Miss Irwin that made the trouble then? A I don't know about that; the sister was not living at the house, but I know they were not happy.

Q So that they were not happy, although the sister was not there at that time? A That is right.

Q And there was unhappiness? A Yes, sir.

Q You don't know what the trouble was? A
30 Only what my daughter told me; he was not friendly with us.

Q What was the cause of the trouble between you and Mr. Irwin? A I don't know; the trouble began after the baby was born; there is where the trouble was.

Q Everybody was happy in the family until the baby was born? A All except the sister.

Q How did he exhibit his unfriendliness towards you? A Well, I will tell you—I have al-
40 ways thought a good deal of Mr. Irwin up to

Edmund Maples, cross.

that time, when his actions were such that he disgusted me in his actions as a man.

Q You thought it was unmanly for him to cry? A He did not act the man in a great many things; crying was one thing; and the way he did things was not manly, not as another man would do; and after the baby was born there was a coolness because of Dr. Levitas' decision on the baby's death. 10

Q Your daughter does not live with you now? A No, sir; she does not live with me.

Q With whom is she living? A With my other daughter, Mrs. Smith.

Q Now, Mr. Maples, there has been more or less said about your daughter's temper in this case; I would like to ask you fairly just what you have to say about that? A What do you mean—about the charges? 20

Q No; you are her father, and you know her well, and I want to know what your idea is about her temper, whether she has a violent temper or not? A She has no violent temper; upon my oath I know her, and she has no violent temper, except when she is driven to it; she may have a violent temper when she is driven to it; there is nobody in that town that can testify that she has ever done anything violent by her temper. 30

Q Unless she is driven to it? A I have a temper if I am driven to anger; I have a certain temper, but she has never had a violent temper.

Q But you don't pound people just because they won't argue with you, do you? A Well, there are certain ways of getting to you; there are certain ways of angering people. 40

Edmund Maples, cross.

Q Do you think Mr. Irwin is that kind of a man? A I know he is.

Q What do you base that statement on? A Well, he is not straightforward, he is not manly.

Q What do you prove that by, what experience? A Well, he has testified here himself; 10 he is cowardly in a way.

Q That is what you mean by being unmanly? A There are a great many other things—that is, in the way he has done and tried to do things, and I don't believe that his actions—

Q Tell us what those things are. A Well, I don't think he is manly to do what he has done in the way he has handled this case even; I wanted to go to work and have this thing settled; I hired Mr. Van Buskirk, of Hacken- 20 sack—I hired Mr. Van Buskirk.

Q You tried to have it settled? A Yes, sir; and he promised he would make an engagement with Mr. Van Buskirk, and he broke it.

Q Is that one of the evidences of being unmanly? A Yes, sir.

Q You have told us that his crying is one thing; and about an attempt to settle this case as another thing, as evidence of being unmanly. 30 Now, can you give us any other instance? A Well, I cannot recall; I cannot recall incidents just now.

Q Can you recall anything beside the two things that you have just mentioned, namely, his crying and his conduct in this case, as you call it, anything which would drive your daughter into a bad temper; you said she would not have a bad temper unless she was driven to it; now, what will you say occasioned her to have 40 a bad temper besides such things as you have

Edmund Maples, cross.

already mentioned—anything that Mr. Irwin did or did not do; what would you say? A I don't know.

Q Well, now, did you hear your daughter testify that she did pound his arm? A Yes, sir.

Q Did I understand that that was one of the occasions when you think she was driven to that temper? A Yes, sir.

Q Now, what drove her to do that? A Well, my son was there; in fact, I was down to Asbury Park at the time; she invited my son there.

Q You heard her state what your son said about Mr. Irwin being too old; your son told Mr. Irwin in his own house, that he was too old? A Yes, sir.

Q Then there followed the incident about the pounding of Mr. Irwin's arm by your daughter? A Yes, sir.

Q Now, what was there that drove your daughter to the temper? A I was not there.

Q Did you hear your daughter's testimony about her temper herself? A I heard it.

Q And did you hear her say, I think, in substance, that at times her temper was such that in her weakness she did fall down on the floor? A I did not hear her say that; she has, at times, fainted.

Q And she made that statement in connection with questions as to her temper, didn't she? A No, sir; she did not.

Q You mean that she has some physical weakness that causes her to faint? A She has at times fainted, without having a passion.

Q And you think that will explain these incidents that have been testified to that she fell on

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Edmund Maples, cross.

the floor? A If she fell on the floor, she fainted.

Q In your experience, has she ever fallen on the floor in a faint? A She has fallen right down in a heap; I have known her to do that about four times.

10 Q When was the first time? A When she was taking communion at the church; she went off into a dead faint.

Q When was the next time? A Several times at the house she has fainted.

Q Nothing caused it? A No, sir.

Q No excitement? A No, sir; none that I know of.

20 Q Would you think that having a tussle with her husband over the possession of this nail file after a quarrel, or in connection with a quarrel, would you think that would occasion her to faint? A How do you mean.

Q The quarrel and the excitement and the tussle, and the breaking of this nail file.

Mr. Mackay. Objected to.

The Court. Objection sustained; that is calling for a conclusion on his part.

30 *By the Court.*

Q Do you remember when the separation occurred? A Yes, sir.

Q And where did your daughter live then? A She stayed right at the house.

Q Do you remember your daughter's illness? A Yes, sir.

40 Q How long was she ill in the house? A For about a month, as far as I remember; she had typhoid fever.

Harold E. Maples, direct.

Re-direct examination by Mr. Mackay.

Q Were you there? A Yes, sir; I went over there and lived there for about two weeks.

Q Right after Mr. Irwin left? A Not right after; I went over there to stay because there were only two there, and I thought it better for me to go there and stay with them in case anything happened.

10

Q And during the two weeks you were there, did Mr. Irwin appear on the scene at all?

A No, sir.

HAROLD E. MAPLES, sworn in rebuttal, testified as follows:

By the Court.

Q You are a brother of the petitioner here?

20

A Yes, sir.

Q You know both parties? A Yes, sir.

Direct examination by Mr. Mackay.

Q When was this that you were at the house of your sister and Mr. Irwin at the time of the trouble? A It was in the last part of August, about the last of August.

Q What year? A 1915.

Q After the baby was born? A Yes, sir.

30

Q And were you in the house that day? A I was.

Q During the entire day? A No, sir; not during the entire day.

Q What time did you get there? A I was there all night; I stayed there Saturday night and had my breakfast there and my dinner, and immediately after dinner I left; I went off and came back before supper, and I had my supper there.

40

Harold E. Maples, direct.

Q When you came back before supper, was Mr. Irwin there? A Not that I recall.

Q Do you remember his coming in? A Yes, sir.

Q And was there some trouble there? A Not that I heard; my sister would talk to me
10 and he would not have anything to say; he turned his head with a sarcastic look.

Q Was that the night that he put you out? A Yes, sir.

Q How were you put out, what happened? A My sister would talk to him; he would not have a thing to say; we were sitting on the porch and she left and went inside, and he started to tell me his troubles, the troubles he had with my sister, and I said, "From what
20 I can see, it looks one-sided," that it looked to me as if it was his fault, and I told him while we were on the subject, that I would like to have him tell me out and out what he had against my mother and father, and he could not tell me.

Q What did you say then? A I told him he should tell me, and he said he would not tell me; he said he would not argue with me, and I told him he could not.

Q Then what happened? A He told me to
30 leave the stoop; I was sitting on the porch at the time, and he told me to leave.

Q During the time you were talking with him, did your sister come back? A She did.

Q Was there any more trouble between them while you were there? A Not while I was on the porch.

Q Then you left? A I did not leave until he went upstairs and came down and told me to leave, and I told him if he wanted me to leave
40 in any hurry, he could put me off the porch.

Harold E. Maples, cross.

Q Did he put you off? A He did not put me off.

Q Did you get off? A Yes, sir.

Q Was that the last you know of that? A Yes, sir.

Q You don't know anything about what happened to your sister afterwards? A I do not; I was not there. 10

Q You did not come back again after that? A No, sir.

Q Was that the last time you visited the house? A While he was there, yes, sir.

Q Were you at the house when your sister was ill? A I called on several occasions to see her, and she was sick.

Q What was the trouble? A She had typhoid fever. 20

Cross examination by Mr. Whiting.

Q How old are you? A 25.

Q When this happened on the piazza at Mr. Irwin's house, you were how old? A 23.

Q Do you recall telling Mr. Irwin anything about his being too old at that time? A I do, yes, sir.

Q Well, you have not told that part of the conversation, have you? A No, sir. 30

Q Will you state that part of it? A At the time that I asked him to tell me what he had against my mother and father, he told me he would not; he got up and turned his back to me and started to cry, and I said, "I wish my sister had married a man and not a baby."

Q What else did you say? A I cannot recall anything else I said.

Q I call your attention to something being said by you about his being too old? A I said 40

Harold E. Maples, cross.

I wished my sister had married a young man, not an old man.

Q Can you think of anything else you said to him on the porch that night? A Not unless you call it to my mind.

10 Q Then you told him if he wanted you to go, he would have to put you out? A I did not say that.

Q Why did you use all this language to Mr. Irwin; do you talk to your elders like that very often? A What language do you refer to?

Q Your remarks that you wished she had married a man, and your remark that he was too old, and your remark that if he wanted you to leave his piazza, that he would have to put you off, or something like that; do you talk to people like that very much? A I do not, 20 no, sir; I did in that case, though.

Q You have a little temper yourself? A I certainly have.

Q Your sister has not any temper, has she? A Not a violent temper.

Q Just an ordinary temper? A Every normal person has one sort of a temper.

Q You have made some study of it? A I 30 have not.

Q Do you consider her temper a normal temper? A Not exactly; I said a normal person has some temper.

Q She has some temper? A A small temper.

Q She has a little temper? A Yes, sir.

Q You have a big temper? A Not necessarily, no, sir.

40 *The Court.* What difference does it make?

Mrs. Edna G. Irwin, direct.

Q When you were making these remarks to Mr. Irwin, I understand that all he did was to turn away from you and he would not argue with you, is that right? A Well, he said a few words back to me, the substance of which I cannot recall now; he got up from the chair after he told me to leave; he started to wave his hands and turned on the lights, and said, "This is my house," and he left the house and took a walk around the block. 10

Q Were you there as his visitor? A I was.

Q At his invitation? A The invitation was extended through my sister.

MRS. EDNA G. IRWIN, recalled in rebuttal, testified as follows.

Direct examination by Mr. Mackay. 20

Q You heard Dr. Levitas testify? A Yes, sir.

Q He said you jumped out of bed? A Yes, sir.

Q Did you? A No, sir.

Q Did you tell him you did not want him any more, as you had Dr. King? A Yes, sir.

Q And when you told him so that day, were you violent or in a temper at the time? A 30 Most certainly not.

Q And when you told him that, did you have him come again after that? A No, sir; I did not; while I was sick I understand that Mr. Irwin went for things and 'phoned for him while Dr. King was attending me, and Dr. Levitas had made such serious charges against me, that I felt I did not want to have him again.

Q Did you say that sometimes you attempted to draw a knife on your husband? A I did 40 not.

Mrs. Edna G. Irwin, cross.

Q You never did? A I certainly did not.

Cross examination by Mr. Whiting.

Q There had been some trouble that morning at the time Dr. Levitas and Dr. King came?

A Yes, sir, I went out in the yard and when I
10 came back I found them gone.

Q There had been a quarrel, hadn't there?

A Yes, sir.

Q Didn't you tell Mr. Irwin that morning that you would lead him a dog's life? A I said he had been leading me a dog's life and that I would lead him one if I stayed.

Q And subsequently, when Dr. Levitas was there, you called down to your husband to tell Dr. Levitas what the trouble was between you, didn't you? A No, sir, I did not.
20

Q Nothing like that occurred? A I said if he has anything to say, to come out and say it before me.

Q And your husband said, "My wife said this morning that she would lead me a dog's life, and I went out of the house?" A No, sir, I don't recall it in that way; I told him if he had anything to say to come up and say it before me, and he said that he needed medical
30 attention.

Q Nothing was said about a "dog's life?" A No, sir.

Q When was that mention made? A It was not in the presence of anyone, that I recollect.

Q Tell us just what was said? A I don't recall just exactly what was said; I know I did say that he had been leading me a dog's life and I would make him lead one.

Q You made him understand that morning
40 that you would lead him a dog's life, did you,

Mrs. Edna G. Irwin, cross.

eh? What did you mean by that; were you angry at the time? A Mr. Irwin did everything underhanded as far as I could see.

Q State what he did underhanded? A He never conversed with me.

Q What else did he do underhanded?

10

Mr. Mackay. Objected to as not cross examination.

The Court. It is not cross examination.

Q Now your husband, after you made that remark about leading him a dog's life, went out of the house, didn't he? A Well, he went out that morning, yes, sir.

Q Was it before you made this remark or not? A No, sir, it must have been afterwards.

Q How long after? A After he had had his breakfast, and I had washed on Saturday and I was out taking in the wash, and I went out and I looked all over the house looking for him, and I concluded he had gone off.

20

Q This was not a mere pleasantry when you said you were going to lead him a dog's life? A No, sir, I acknowledge there must have been something that led up to it, but I don't recall what it was.

30

Q Was it anything that Mr. Irwin did? A He must have done something.

Q He always did something when you got angry, didn't he? A Positively, I did not get angry over nothing.

Q The main thing that made you angry was his refusal to argue with you? A There are things in the home where two heads are better than one every time, and I got no satisfaction from him one way or the other; I was there

40

Edward G. Black, direct.

simply as a housekeeper, and in my estimation that is not married life.

Mr. Whiting. I offer this nail file in evidence.

10 *Mr. Mackay.* I want to offer this paper-cutter and also want to offer those papers; the statements relative to the stock of the Southern Railway and the Erie; those are the Henry Clews' statements. And also the statements of the withdrawal of the money from the Building and Loan in Hackensack; and also the Oradell statement, when it is produced.

20 *The Court.* All right, come in Monday and bring Mr. Black to testify. However, I shall be here any day next week, except Friday.

Continuation of the taking of testimony in the above-entitled cause, at the Chancery Chambers, Jersey City, New Jersey, on the twenty-eighth day of November, 1916, before HON. VIVIAN M. LEWIS, Vice-Chancellor.

Same appearances as before noted.

30 EDWARD G. BLACK, sworn in behalf of the defendant, testified as follows:

Direct examination by Mr. Whiting.

Q Where do you live? A Hasbrouck Heights, Bergen County, New Jersey.

Q State your age? A I shall be 80 next week.

Q Do you know both Mr. and Mrs. Irwin, the complainant and defendant in this case? A
40 Yes, sir.

Edward G. Black, direct.

Q You have known the defendant how many years? A About 30 years or more.

Q Intimately? A Yes, sir.

Q You had business relations with him? A Yes, sir.

Q In what connection? A As a clerk, I believe, in a factory business that I owned, and also as related to property that I own. 10

Q What was the name of the business you speak of? A The Hoole Machine and Engraving Works.

Q What did he do? A It was principally property on the corner of Prospect and Washington street, Brooklyn, New York.

Q Mr. Irwin did what for you? A He rented the premises partly in the latter part of the term for his own use, and also collected the rents from other tenants. 20

Q When did you first meet Mrs. Irwin? A Shortly before their marriage; I should say, perhaps, two months; that was in June, 1914, I believe.

Q They called upon you at your house? A They called at my house on me, a friendly visit; Mr. Irwin introduced his bride that was to be.

Q When did you next see Mrs. Irwin? A Not until sometime after the marriage; I should say about one year. 30

Q Where was that? A It was a year ago.

Q Where was that? A At my home in Hasbrouck Heights.

Q Who was present at that meeting? A Mr. and Mrs. Irwin and myself.

Q Anyone else? A No one else.

Q Had you sent for them to come to you? A No, sir, they came to me unexpectedly and made an afternoon call on a Sunday. 40

Edward G. Black, direct.

Q State what was said, so far as you can recall it. A Well, as I remember it, Mrs. Irwin said she wanted to talk over her affairs, and she asked James to state the reason of their call, James being Mr. Irwin; Mr. Irwin said that he did not want to involve me in any domestic troubles, and that he had no complaints of his own to make. I told him that I did not want to mix up in their domestic troubles, but if they stated their affairs to me and I could help them smooth out the difficulties, I should be pleased to do it. Mrs. Irwin said to begin with, that she had wanted her husband to sell his property in Oradell and move to New York, and that James was unwilling to do it. I said I thought it would be advisable to do that, if that would smooth out the difficulties and trouble. James said, "I will try to sell the property." Mrs. Irwin said afterwards, "Well, another trouble is, when I do things in a temper James holds them up against me, and I want him to admit the matter;" next Mr. Irwin said, "Well, you tried to throw a chair at me this morning;" she said, "Yes, but I did not throw it;" James said, "You threw a carving knife at me;" she said, "I admit it, but you won't argue with me." There was something more that I cannot recall now.

Q Do you recall seeing Mr. Irwin's arm in a black and blue condition? A Yes, sir; another thing, he asked her if she had not pushed against him to throw him down the stairs, and she said, "Yes, I did." Then he said, "Didn't you pound my arm so that it was black and blue?" and she said, "I did." But again she repeated, "He won't argue with me;" that I think, in substance, is the conversation. Oh, another thing—

Edward G. Black, direct.

By the Court.

Q How did they leave you; did they shake hands; did you give them any advice? A I gave them a little advice; I told them that I would advise them to settle this difficulty between them amicably and try and get along as well as they could, and I would be always glad to see them, and asked them to come down frequently to the house and talk over matters. She said that on another occasion she was taking a photograph of her husband, and she said to him, "Smile, damn you, smile," and she said it was only intended as a quotation, some slang remark, and she said that Mr. Irwin frowned at this, particularly as there was a girl friend of hers present. 10

Q During your acquaintance with Mr. Irwin, what was his condition of health prior to his marriage? A It had been good; he had a very remarkable memory; I had found it always so. 20

Q Did you notice anything about his health after his marriage, and if so, what? A I noticed his health was very much broken, and at the interview I had with him he had not apparently, the same vigor or strength that he had always had. He was always of a very equable temper. 30

Q Did he have a bad temper after he was married? A His temper never changed; one of the speeches that Mrs. Irwin made was, that James had always been very good to her, but that he would not argue with her.

Q What did he have to say about her? A He did not speak of her at all; he never named anything about her condition or anything, to me. 40

Edward G. Black, direct.

Further direct.

Q You started to speak of Mr. Irwin's health after his marriage; can you state any incident that occurred which led you to conclude that he was not in a good condition? A His failing memory I noticed. On one particular occasion, which I have in my mind, was when I gave him an Erie bond to sell for me in the city; I had a \$5,000 Erie bond that I wanted sold, and I gave it to him to sell; two weeks before it was actually sold he came to me and asked me for the bond.

10 Q Never mind what he said to you; he came to you; now, what did he do in that regard; as a result of the conversation you started to say you gave him something; now, 20 what did you give him? A I gave him the bond in his manual possession, to take and put in his safe—his safe deposit box.

Q Why did you do that? A So that he might have it in the city; I asked him to make the sale.

Q Now, then, did you ever give him any instructions with regard to the sale of the bond? A Subsequently, I gave him instructions to sell.

30 Q And what happened? A He reported the sale to me; he brought me a statement from the Guarantee Trust Company, showing he had sold this bond to them, and gave me a check for it.

Q How long after you had given him the instructions? A It was done immediately; it was on the 30th of March, two years ago.

Q What I want to get from you is, what there was about the occurrence which led you 40 to believe that he was not in good condition?

Edward G. Black, direct.

A Because he had asked me for the bond after I had given it to him before.

The Court. Strike that out.

A Showing a failure of memory.

The Court. Strike that out.

Q You said something about his having an even temper; what did you observe in that regard after his marriage? A His temper seemed— 10

By the Court.

Q Were you ever at their house? A Not after their marriage, but I was there before, several times.

Further direct.

Q How often did you see James after his marriage? A Probably once every two weeks. 20

Q At your home? A Yes, sir.

Q Tell us if you noticed anything about his temperament. A Well, I can only say this, that I noticed he was a good deal less cheerful than he had been.

Q Mr. Black, you say you sold the Hoole machine works to Mr. Irwin? A Yes, sir.

Q When was that? A In 1900, the 27th of February. 30

Q How did he pay you for that? A He paid me under the agreement that he should give me one-half of the profits earned during the ten years following.

Q Have you the agreement with you? A Yes, sir.

Q Will you produce it?

The Court. There is no dispute about this. 40

Edward G. Black, cross.

Q How much money did Mr. Irwin pay you as the half earnings of this company during all the period that he did pay you? A \$9,000 to \$10,000, approximately; that covered the ten years of our agreement; the last payment was not made for three or four years after it was
10 due to me.

Cross examination by Mr. Mackay.

Q How many times have you met Mrs. Irwin, the complainant, altogether. A I think about three times; I am not quite sure that there was not another time; it may have been four.

Q The last time you met her to talk was when? A On the occasion she came to make the complaint.
20

Q That was what date? A That was about the 10th of October last year—a year ago.

Q 1915? A Yes, sir.

Q Since the 10th of October, 1915, you have not seen her to talk to? A No, sir, not to talk to.

Q So that anything she told you on that date about what you have testified to, about the chair and the knife and her striking Mr. Irwin, happened before October 10th? A Yes, sir.
30

Q That is correct? A That was the date she told me of; she admitted the facts.

Q And she did not say just when those things occurred? A No, sir, she did not.

Q Did she say that she admitted throwing the carving knife? A Yes, sir.

Q Are you sure about that? A Quite sure.

Q Are you positive? A I am positive sure
40 as I can be of anything.

Edward G. Black, cross.

Q She admitted striking him? A Yes, sir.

Q Are you sure she admitted throwing the knife? A Yes, sir.

Q Did you hear Mr. Irwin testify? A I could not say that I did; I sat here in the room, but I am hard of hearing, and I could not hear half or a quarter of what was said. 10

Q Did you hear him say he took the knife away from her? A I heard him say something about a small nail file or something of that kind.

Q You did not hear him say he took a knife away from her? A I don't think I heard that.

Q How long have you known Mr. Irwin? A Over 30 years, since he was a lad.

Q Very, very close to him? A Part of the time I was, but not in the early years; he was the son of a sexton of our church, and I was an officer in the church. 20

Q Part of the time you have been close to him? A Since we had business relations.

Q When did that commence? A About 1887.

Q From that time down to date, you have been a very close friend? A I have, I believe.

Q Almost a father to him? A No, sir, I don't think I was. 30

By the Court.

Q Did you aid him financially? A Yes, sir, I gave him my business, a business worth from ten to twenty thousand dollars.

Q Was the gift founded on affection and regard? A It was founded on regard; I cannot say much about affection, but I had a great regard for him.

Q He has been collecting rents for you in Brooklyn? A Yes, sir. 40

Edward G. Black, cross.

Q For how many years? A I should say 15 or more.

Q He never charges you anything, does he?

A No, sir, they were part of our general affairs.

Q He does that even today, free of charge

A As a part of our agreement.

10 *Mr. Whiting.* I think I will offer that agreement.

The Court. There is no objection to it; it is not necessary to the case, though.

Mr. Whiting. Produce the agreement, Mr. Black.

The Court. I shall not let it in if you object.

Mr. Mackay. I do object to it.

20 Q Now, after the marriage, you were not present at the marriage, were you? A No, sir.

Q Now, after the marriage, you saw these people how often together? A I don't think I ever saw them together after their marriage until they came to see me on the occasion I refer to of October of last year.

30 Q How often after the marriage did you see Mr. Irwin? A Frequently.

Q How often? A I told you, I said before, I thought on an average of about once in two weeks.

Q I want to ask you whether you took note of his general condition of health? A Necessarily, I discussed matters with him.

Q You have told us about his failing memory. A I thought so.

40 Q You cited the case about the bond? A Yes, sir.

Edward G. Black, cross.

Q That is what you base it on? A Not entirely; on other matters that would come up in our business discussions.

Q Nothing particular that you have in mind now? A Only that one thing; I remember perfectly about the bond.

Q You don't recall anything else in particular? A Not in detail. 10

Q Just that one occasion? A That is all.

Q Did Mr. Irwin come to see you before he left his wife? A I think he did.

Q How long before? A Very shortly before.

Q How long? A Well, I could not say—a few days.

Q You advised him, did you? A That I cannot say, I don't think I did. 20

Q He came to you for advice? A No, sir.

Q You were always his adviser? A I cannot say that I was.

Q He discussed this subject with you? A Yes, sir.

Q You have a lawyer named Luce, of Rutherford, New Jersey? A I have no lawyer at all.

Q He has acted for you? A Yes, sir.

Q And you recommended Mr. Luce, didn't you? A Not in that connection at all; that was years before that he acted for me; I recommended him to Mr. Irwin. 30

Q And on your recommendation he went to him? A Yes, sir.

Q You saw Mr. Irwin afterwards? A He told me that he had met Mr. Luce.

Q You went on Mr. Irwin's *ne exeat* bond? A Yes, sir.

Q You put up the \$3,000 bond? A I signed a bond for him. 40

Edward G. Black, cross.

Q That you would stand any loss, if there was any? A I suppose I should, yes, sir.

Q How long did this conversation last between Mr. and Mrs. Irwin and yourself? A I should say from an hour to an hour and a half, perhaps.

10 Q Did you know they were coming there? A No, sir, it was a surprise to me; it surprised me to see them.

Q Kind of taken back a little bit, were you? A No, sir, I was not taken back.

Q It surprised you? A It surprised me that they should come over and talk over their affairs to me—that part of it.

20 Q You hardly knew what to do when they sprung that on you? A I am not so taken back by anything of that kind; I knew what it was; I would treat them as I would you or any other party that called on me.

Q You knew what advice to give them? A I advised them to settle up their difficulties.

Q Is that what you said? A I tried to smooth the thing over; I invited them to come frequently to my house and see me, just as I would say to anyone that was in difficulty of that kind—counsel some settlement.

30 Q So that you did not do much of the talking? A No, sir, I listened.

Q Did Mr. Irwin have much to say? A No, sir.

Q Did you advise Mr. Irwin at that time to get his mother out of the house? A I did not.

Q Or his sister? A I did not.

Q You never did? A Not to my knowledge at all, or recollection.

40 Q Oh, Mr. Black, just one more question: on this day that Mr. Irwin came to you, just

James W. Irwin, re-direct—re-cross.

before he left his wife, did you advise him to leave her? A No, sir, I did not.

By the Court.

Q How did you come to advise him to see counsel—Mr. Luce? A Mr. Irwin knew no lawyer over here, and I had been a friend of his for a great many years, and I suppose he asked me or I suggested it; he talked over his difficulties. 10

MR. JAMES W. IRWIN resumes the witness stand.

Re-direct examination by Mr. Whiting.

Q State to the Court the facts concerning your building loan withdrawals and purchase of Southern Railway shares; confine that to the Oradell Building Loan. A I withdrew and received payment for those on October 26, 1915. 20

By the Court.

Q How much? A One series was \$1,123.50, and the other was, \$918.80—\$2,042.30.

Q When did you buy your railroad stock? A November 1, 1915; I gave a check for it.

Q When did you sell your railroad stock? A October 6, 1916. 30

Q Is there anything further you wish to state? A At the last hearing the misunderstanding came there; we were talking a year back.

Re-cross examination by Mr. Mackay.

Q You collected the Oradell money in 1915? A Yes, sir.

Q You held it for how long—the cash received? A I deposited it immediately. 40

Mrs. Edna G. Irwin, direct—cross.

Q You held it in the bank for how long? A I let it stay there.

Q How long did you let it stay there, is the question, before you withdrew anything? A Within about three days.

Q How much did you withdraw then? A
10 November 1st, \$2,500.

Q That was 1915? A Yes, sir.

Q What did you do with that? A Bought 100 shares of Southern Railway stock, \$2,500, from Henry Clews and Company.

Q That is the Southern Railway? A Yes, sir.

Q You sold that in 1916? A Yes, sir, October 6th.

Q Have you the record there of buying that stock? A No, sir, I have only got the check
20 where I paid for it, a check to Henry Clews and Company, \$2,500.

MRS. EDNA G. IRWIN recalled.

Direct examination by Mr. Mackay.

Q Mrs. Irwin, did you admit to the witness, Mr. Black, that you threw a carving knife at your husband? A No, sir, I did not.

30 *Cross examination by Mr. Whiting.*

Q You did admit that you had pounded Mr. Irwin's arm?

Mr. Mackay. Objected to.

The Court. That is not cross examination. She has admitted pounding his arm.

BOTH SIDES REST.

Opinion.

Opinion.

Filed October, 1917.

IN CHANCERY OF NEW JERSEY.

Between

EDNA G. IRWIN,

Complainant,

and

JAMES W. IRWIN,

Defendant.

10

On Bill, &c.

Memorandum.

Dated October 4th, 1917.

On pleadings and proofs.

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Messrs. Mackay & Mackay for complainant.

Mr. Borden D. Whiting for defendant.

LEWIS, V. C.

This is a bill for maintenance under the twenty-sixth section of the Divorce Act, which provides *inter alia*, that where the husband abandons and neglects and refuses to support his wife, it shall be lawful for the Court of Chancery to decree and order such suitable support and maintenance as the nature of the case and circumstances of the parties render suitable and proper, in the opinion of the Court, and to compel the defendant to give reasonable security for such maintenance and allowance, etc.

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I find the following facts to be established: The complainant is a woman about twenty-eight years of age; she is in fair health, and was engaged in business previous to her marriage.

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Opinion.

There are no children, the only child having died within a few days of its birth. The husband was the one to leave the home, and to justify his conduct in doing so, he claims that the treatment he received from his wife was of such a cruel character that it was quite impossible for him to live with her. The Court, however, has reached the conclusion that the wife's treatment of her husband did not amount to extreme cruelty, and although he has the privilege of living apart from his wife, if he sees fit, it still remains his duty to support her "for such time as the nature of the case and the circumstances of the parties render suitable and proper in the opinion of the court."

"To justify the abandonment of a wife and also refusal to support her, the husband must show the wife to have been guilty of a matrimonial offence such as will entitle him to a divorce."

Bradbury v. Bradbury, 74 Atl. Rep., 150.

That a wife is extravagant, lazy, quarrelsome or intemperate, or neglects her duties, spends most of her time gossiping with neighbors, receiving attentions from men, or even going to saloons evenings with men, has been held insufficient to justify the husband in leaving his wife and refusing to support her.

Boyce v. Boyce, 23 N. J. Eq., 337.

Bradbury v. Bradbury, *supra*.

The defendant is a man of good character and of mild disposition. At the time of his marriage to the complainant he was living at Oradell, New Jersey, with his widowed mother and his sister, who were, in part, dependent upon him for their support. He owned the Oradell

Opinion.

home to which he brought his bride, and is in comfortable financial circumstances. She did not get on well with the mother and sister, particularly the latter. The wife says that the husband talked over affairs with his mother and sister, and not with her, and the testimony indicates that she was not given her proper place in the household at the outset. Things came to such a pass that finally the wife told the husband that it was a case of his mother and sister or herself having to go. The mother and sister then left the house, and the husband continued to help to support them. 10

The defendant seems to be a man that controversy of any character is distasteful to, and the wife high-spirited and keen to resent slights; and even after the removal of the mother and sister, matters grew still worse. The wife says the husband called her "common." He denies this, but says that he did characterize some of her remarks as "common talk." The wife wanted the Oradell house sold so that they could remove to New York. The husband acceded to her wish in this matter and put the house up for sale. Their troubles, however, continued. There was a difference of nearly twenty years between the ages of the respective parties, and there is no doubt in my mind that their difficulties arose through incompatibility of temper. She did not know what she wanted, and he had no great knowledge of the female sex. She evidently desired to be made much of, and if he had seen to it that she had a reasonable amount of affection. I think their dissensions would have ceased especially when the mother and sister were not there to criticize her. She was, undoubtedly, a woman of hasty temper, and she had to relieve 20 30 40

Opinion.

her mind in some way. The husband says that on one occasion she tried to push him downstairs; on another occasion that she tried to throw a chair at him; he also says that she threw a carving knife at him, which he managed to dodge; and that repeatedly in anger she came
 10 towards him with a knife, threatening to kill him, as well as herself, and that he took the knife from her; he also testified that she threatened him with a nail file, and in his struggle to take it from her, the file was broken; that she also got possession of his revolver several times and threatened to end the lives of both of them.

Mrs. Irwin denies her husband's story and claims that at the times she had the carving
 20 knife and the revolver in her hand, were occasions on which she threatened to take her own life and that her husband took the articles away from her.

Finally the husband wrote to the wife as follows:

"Dear Edna:

I regret that I find that it is impossible for us to live together hereafter.

I have in the past pleaded with you to be-
 30 have, and I told you, time and again, that things could not go on as they were, but it did no good and I could stand it no longer.

Hereafter we will live apart and I advise you to go home to your father.* * *

Please remove your personal belongings from the house as soon as possible, and I will take away my clothes and close up the house.

Sincerely,

James."

Opinion.

I have come to the conclusion, after carefully observing the demeanor of both the complainant and defendant, and the testimony given in this cause convinces me that the only effect on the husband of the wife's conduct has been to turn away his love, which the evidence does not disclose was very pronounced for her. I do not believe that he has ever been the least bit afraid of her, or that he ever thought for one second that she would harm him. To a man of his disposition, she was, of course, a trial, but that her conduct amounted to extreme cruelty, I am unable to see. If the complainant had become insane, the defendant would still have to support her. A man cannot get rid of his obligation to support his wife merely because they are always quarrelling. In my opinion, she has committed no matrimonial offence for which he could obtain a divorce, and the wife is, therefore, entitled to a decree.

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Final Decree.

Final Decree.

Filed May 12, 1917.

IN CHANCERY OF NEW JERSEY.

10	<i>Between</i> EDNA G. IRWIN, <i>Complainant,</i> <i>and</i> JAMES W. IRWIN, <i>Defendant.</i>	}	<i>On Bill, &c. for Mainte- nance.</i> <i>Final Decree.</i>
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20 This cause coming to be heard in the pres-
 ence of Mackay & Mackay, solicitors for and of
 counsel with the complainant, and Borden D.
 Whiting, Esq., solicitor for and of counsel with
 the defendant, on bill, answer thereto, replica-
 tion and oral proofs taken in open court, where-
 upon and upon duly considering said plead-
 ings and proofs, and hearing and considering
 the arguments of counsel, from all of which it
 now appears satisfactorily to the Chancellor
 that the complainant and defendant were law-
 30 fully joined in the bonds of matrimony on the
 ninth day of June, nineteen hundred and four-
 teen, and that the defendant without any justi-
 fiable cause abandons the complainant and sepa-
 rates himself from her, and refuses and neglects
 to maintain and provide for her, and that the
 complainant has her domicile in this state, and
 that the defendant was personally served with
 process in this state;

IT IS THEREUPON, on this seventh day of May,
 nineteen hundred and seventeen, by his Honor,
 40 Edwin Robert Walker, Chancellor of the State

Final Decree.

of New Jersey, by virtue of the power and authority in him vested, and in accordance with the acts of the Legislature of the State of New Jersey in such case made and provided, ORDERED, ADJUDGED AND DECREED that the defendant, James W. Irwin, do pay to the complainant, Edna G. Irwin, or to her solicitors, the sum of eighteen dollars per week, payable in equal weekly installments, on Saturday of each and every week, from and after the signing of this decree, and until the further order of the court to the contrary. 10

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a copy of this decree be served forthwith upon the defendant, or his solicitor.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the said defendant do further pay to the complainant or her solicitors, the costs of this suit to be taxed, and also a counsel fee of two hundred and fifty dollars (\$250.00), and that the said complainant do have execution according to the practice of this court. 20

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that either party shall be at liberty to apply, upon a future change of circumstances of the parties or either of them for a variance or modification of this decree, touching said alimony and maintenance. 30

E. R. WALKER,
C.

Respectfully advised,

VIVIAN M. LEWIS,
V.-C.

*Notice of Appeal.***Notice of Appeal.**

Filed June 21, 1917.

IN CHANCERY OF NEW JERSEY.

10	<i>Between</i> EDNA G. IRWIN, <i>Complainant,</i> <i>and</i> JAMES W. IRWIN, <i>Defendant.</i>	} <i>Notice of Appeal.</i>
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20 James W. Irwin, the above named defendant, hereby appeals from the final decree filed in this cause and dated the 7th day of May, 1917, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

Dated, June 4th, 1917.

COLBY, WHITING & MOORE,
Solicitors for and of Counsel ..
with Defendant.

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

BORDEN D. WHITING,
Of Counsel.

*Petition of Appeal.***Petition of Appeal.**

Filed June 23, 1917.

New Jersey Court of Errors and Appeals*Between*EDNA G. IRWIN,
*Complainant-Respondent,**and*JAMES W. IRWIN,
*Defendant-Appellant.**On Appeal.**Petition.*

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To the Honorable Court of Errors and Appeals in the last resort in all causes:

20.

The petition of James W. Irwin, the appellant in the above stated cause, respectfully shows that your petitioner finds himself aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of New Jersey, bearing date the seventh day of May, nineteen hundred and seventeen, wherein the above named Edna G. Irwin was complainant and the above named James W. Irwin was defendant, in this respect, to wit, that the said decree adjudges that whereas it appears that the defendant, James W. Irwin, without any justifiable cause abandons the complainant, Edna G. Irwin, and separates himself from her and refuses and neglects to maintain and provide for her, it is thereupon ordered, adjudged and decreed that the defendant, James W. Irwin, do pay to the complainant, Edna G. Irwin, or to her solicitors, the sum of eighteen dollars per

30.

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Petition of Appeal.

week as therein provided, and until the further order of the court to the contrary.

10 And your petitioner appeals from that part of the decree of the Chancellor which orders, adjudges and decrees as aforesaid, upon the ground that the same is erroneous for that the said defendant, James W. Irwin, separated him-
 self from the said complainant, Edna G. Irwin, by reason of the extreme cruelty of complainant, and ought not in law or equity be required to pay to the complainant said sum of eighteen dollars per week, or any sum whatever.

20 Your petitioner therefore prays that the said decree of the said Chancellor may be in the particulars aforesaid reversed, set aside and for nothing holden, and that your petitioner may have such relief in the premises as to this honorable court shall seem meet.

COLBY, WHITING & MOORE,
Solicitors of Appellant.

BORDEN D. WHITING,
Of Counsel with Appellant.

Answer to Petition of Appeal.

Answer to Petition of Appeal.

Filed.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

Between

EDNA G. IRWIN,
Complainant-Respondent,

and

JAMES W. IRWIN,
Defendant-Appellant.

On Bill, &c.

*Answer to
Petitioner's
Petition.*

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The answer of the respondent to the petition
of appeal of the appellant:

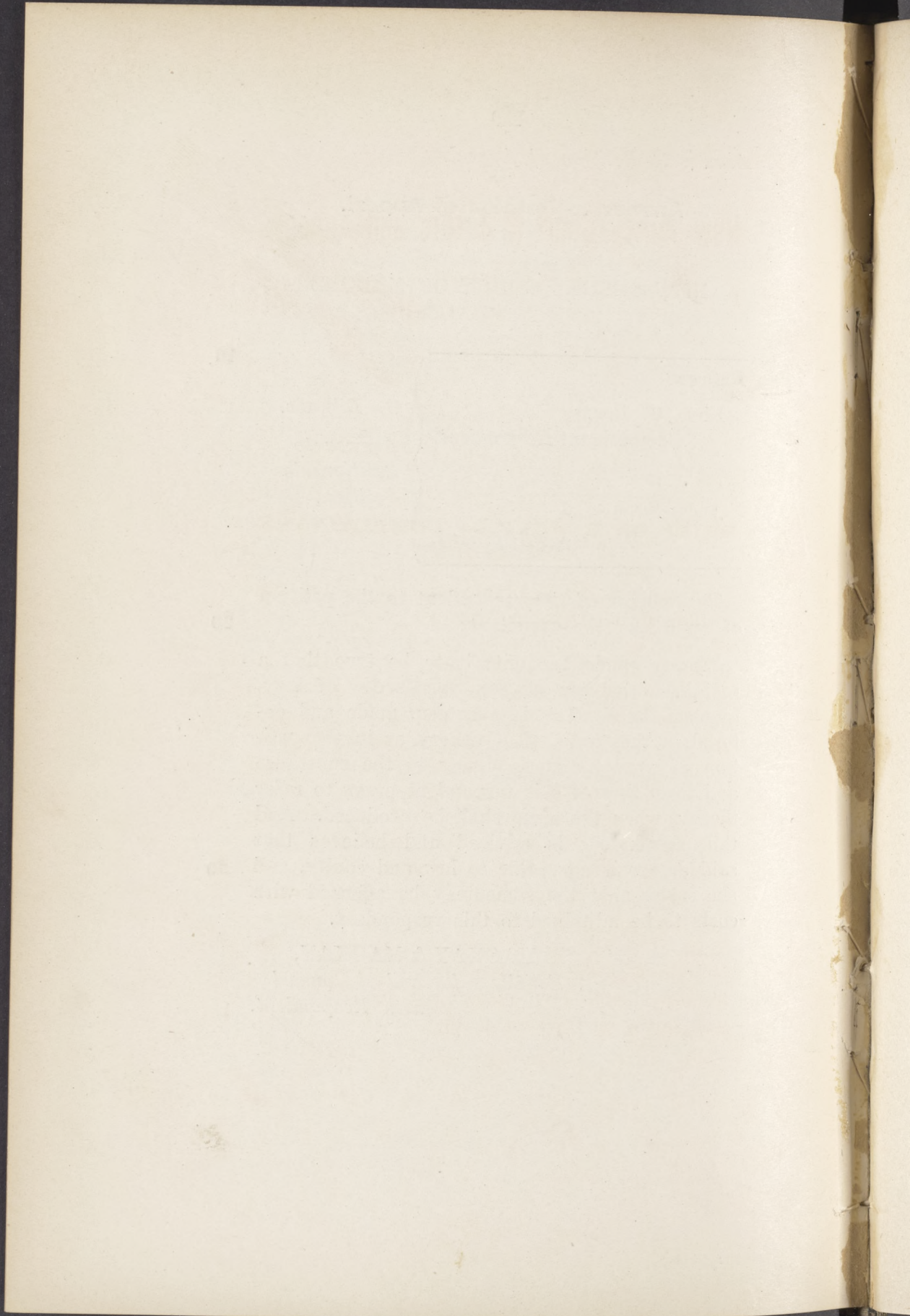
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The respondent admits it to be true that a certain decree was on the seventh day of May, nineteen hundred and seventeen, made and entered in the Court of Chancery as in the petition of appeal stated, but as to the substance and form thereof this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes that said decree is agreeable to law and equity, and she prays that the same may be affirmed with costs to be adjudged to this respondent.

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MACKAY & MACKAY,
*Solicitors for and of Counsel
with Respondent.*

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New Jersey Court of Errors and Appeals.

Between

EDNA G. IRWIN,
Complainant-Respondent,

and

JAMES W. IRWIN,
Defendant-Appellant.

On Bill, etc.

BRIEF ON BEHALF OF COMPLAINANT-RESPONDENT.

This is a suit for maintenance under the 26th section of the Divorce Act. The facts are fully set forth in the opinion of Vice-Chancellor Lewis (State of the Case, p. 209, etc.) The main contention of the solicitors for the defendant is that the husband was justified in leaving his wife and refusing to properly provide for her because of her alleged extreme cruelty. In their brief the solicitors for the defendant-appellant cite the case of *Smithkin v. Smithkin*, 62 Equity, 161, and rely on what Vice-Chancellor Reed said as a matter of dictum. In looking at the case it will be very plain to see that was an action where the husband filed a petition for a divorce because of the alleged desertion of the wife. The petition was not based upon the ground of extreme cruelty, but during the trial testimony was introduced which tended to show extreme

cruelty on the part of the wife, and in the opinion the Vice-Chancellor said, among other things:

"Blows by a woman with the hand would not, as a rule, injure a man, or be regarded as extreme cruelty, but if such blows were accompanied with the other disgusting act (referred to above) it would, in my opinion, amount to extreme cruelty."

This case was decided in May, 1901, whereas the case of *Bradbury v. Bradbury*, decided in 1909, 74 Atl. Rep., page 150, is a case directly in point and very clearly lays down the rule established by our courts showing the only justifiable cause for a husband abandoning or separating from a wife and refusing or neglecting to maintain or provide for her, namely, the wife must be guilty of a matrimonial offense, and we submit that no such state of affairs was shown or admitted to have been proven in the case under consideration. Vice-Chancellor Lewis also cited the case of *Boice v. Boice*, 23 N. J. Eq., 337, where it was held:

"The man is not justified in deserting his wife because she is extravagant or lazy or swears or uses coarse language or is sickly, fretful or of *violent temper*, or because she wreaks her temper or showers her coarse or profane language upon him and makes his life uncomfortable. That these are not crimes but infirmities and defects, which in consideration of law a husband undertakes to put up with when he marries his wife for better or for worse."

This case was unanimously affirmed by the Court of Errors, 24 Eq., page 588:

"Nor is neglecting her duties or spending her time gossiping with neighbors or receiving attentions from men or even going to

saloons evenings with men any crime or legal excuse for a husband's abandonment or non-support of his wife.

"While associating with men, especially in saloons, may be an excuse for a husband separating himself from a wife guilty of such conduct, it is not a legal excuse for non-support of the wife by the husband while the marriage relation between them exists or at least until cause for divorce against the wife is proved in an alimony or divorce suit."

We submit that this very clearly establishes the rule of our courts in cases of this kind and solicitors for the defendant seems to have lost sight of the fact that this action is an action for maintenance and not a suit for divorce.

Read the letters of the defendant and you will not find the slightest intimation of extreme cruelty being the cause of his leaving. The letter of the defendant to the petitioner (state of the case, pp. 17 and 188) is more of an apology and especially the provision allowing the wife \$7.50 a week for her maintenance when she was accustomed to the very best that could be had.

(State of the case, p. 127.)

"By the Court:

"Q. What was your income for this past year? A. I think that was \$2,200.

"Q. You said you thought your income would average \$3,000 a year; how does it fall below \$3,000 this last year? A. I had an expense of \$730.00 for fire escapes.

"Q. What is this expense? A. For fire escapes.

"Q. Was that a voluntary expense on your part? A. No, sir; I was compelled to put those fire escapes on by the State authorities.

"Q. Produce your books, Mr. Irwin. A. Here they are.

"Mr. Whiting: I offer in evidence these check books that cover that period.

"Mr. Mackay: Objected to.

"By the Court:

"Q. Did you keep those books? A. Yes, sir.

"The Court: I will accept them in evidence; they are just to show how he spent this five thousand or some additional that he had. As soon as this man got into trouble and difficulties, his income seems to disappear suddenly or got less; he was in affluent circumstances; he seems to be a smart business man, and he had accumulated quite an income but as soon as trouble came there was nothing there."

We fully agree with what the court said, and it certainly does look suspicious to say the least for a man who is averaging a net income of five thousand dollars or more a year when he decides to abandon his wife and proceedings are started for maintenance and support his income dwindles to less than three thousand dollars a year. The Vice-Chancellor found, and we believe correctly, that the income of the defendant was at least three thousand a year, and taking this as a basis eighteen dollars a week for the support of his wife is letting him off very easily.

The whole trouble with the defendant seems to have been that he was providing more for his mother and sister than he was for his wife. We do not criticize the defendant for thinking of his mother but we feel that he should be just before he is generous, and after properly providing for his wife he could use the balance of his income for the support and maintenance of his mother and sister if he so desired.

Conclusion.

We respectfully submit that the opinion of the Vice-Chancellor (State of the Case,—p. 209, etc.) has fully set forth the facts and laid down the law applicable to this case, and the case cited by the Vice-Chancellor of *Boyce v. Boyce*, 23 N. J. Eq., page 337, which was unanimously affirmed by the Court of Errors, Eq. 24, page 588, and followed by our court in the case of *Elliott v. Elliott*, 48 Eq., 231; *Bradbury v. Bradbury*, 74 Atl., page 150; and we respectfully submit that the decree of the Court of Chancery be affirmed with costs, and that the defendant be ordered to pay counsel fee in this court for the services of Mackay & Mackay, attorneys of the appellant herein.

MACKAY & MACKAY,
Attorneys for Complainant-Respondent.

