

INDEX

	Page
Notice of Appeal	1
Amended Notice of Appeal	3
Petition of Appeal	4
Answer to Petition of Appeal	7
Bill of Complaint	8
Answer	26
Replication	30
Conclusions	31
Final Decree	33
Testimony	35

WITNESSES

Complainant's:

Mildred Goldsborough,	
Direct	36
Cross	56
Recalled:	
Cross	74
Lawson R. Jones,	
Direct	67
Cross	72
William H. Areson,	
Direct	75
Cross	78
Re-direct	82

EXHIBITS

Complainant's:

	Offered Page	Printed Page
Exhibit C-1—Letter dated Dec. 17, 1926	44	84
Exhibit C-2—Letter dated Dec. 20, 1926	45	85
Exhibit C-3—Letter dated Jan. 8, 1927	45	86

New Jersey Court of Errors and Appeals

NOTICE OF APPEAL.

10

(Filed Jan. 30, 1930)

IN CHANCERY OF NEW JERSEY

75/40

Between,

MILDRED GOLDSBOROUGH,

Complainant,

and

JAMES GOLDSBOROUGH,

Defendant.

20

On Bill, etc.

The defendant James Goldsborough hereby ap-
peals from the final decree made in this court in
the above entitled cause, adjudging that the de-
fendant abandons the complainant and separates
himself from her, and refuses and neglects to
maintain and provide for her and the infant chil-
dren of their marriage; and adjudging the pay-
ment to said complainant, for the support and
maintenance of the complainant and the infant
children of their marriage, of alimony, and coun-
sel fee, and from the whole and every part of the

30

40

Notice of Appeal

said decree, to the Court of Errors and Appeals
in the last resort in all causes.

Dated, January 29th, 1930.

10

BENJAMIN M. WEINBERG,
Solicitor for Defendant.

I conceive there is a good cause of appeal in
the above cause.

BENJAMIN M. WEINBERG,
Of Counsel with Defendant.

20

Service of a copy of the within Notice of Ap-
peal is hereby acknowledged this 29th day of
January, 1930.

MERRITT LANE,
Solicitor for and of Counsel
with Complainant.

AMENDED NOTICE OF APPEAL.

(Filed Feb. 4, 1930)

IN CHANCERY OF NEW JERSEY

75/40

10

Between, MILDRED GOLDSBOROUGH, Complainant, and JAMES GOLDSBOROUGH, Defendant.	}	On Bill, etc.
--	---	---------------

20

The defendant James Goldsborough hereby appeals from the final decree made in this court in the above entitled cause by the Chancellor on the advice of Advisory Master Jacob L. Newman, adjudging that the defendant abandons the complainant and separates himself from her, and refuses and neglects to maintain and provide for her and the infant children of their marriage; and adjudging the payment to said complainant, for the support and maintenance of the complainant and the infant children of their marriage, of alimony, and counsel fee, and from the whole and every part of the said decree, to the Court of Errors and Appeals in the last resort in all causes.

30

Dated, February 3d, 1930.

BENJAMIN M. WEINBERG,
Solicitor for Defendant. 40

Petition of Appeal

I conceive there is a good cause of appeal in the above cause.

BENJAMIN M. WEINBERG,
Of Counsel with Defendant.

10 Service of a copy of the within Amended Notice of Appeal is hereby acknowledged this 3d day of February, 1930.

MERRITT LANE,
Solicitor for and of Counsel
with Complainant.

PETITION OF APPEAL.

20

(Filed Feb. 1, 1930)

NEW JERSEY COURT OF ERRORS AND
APPEALS

30	Between, MILDRED GOLDSBOROUGH, Complainant-Respondent, and JAMES GOLDSBOROUGH, Defendant-Appellant.	} On Appeal from Court of Chancery.
----	--	---

To the Honorable the Court of Errors and Appeals in the last resort in all causes:

40 The petition of James Goldsborough, the defendant, in the above stated cause, respectfully shows:

Petition of Appeal

That your petitioner finds himself aggrieved by a final decree made in the said cause by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date January 8th, 1930; in and by which said decree it is adjudged and decreed that said defendant abandons the complainant and separates himself from her, and refuses and neglects to maintain and provide for her and the infant children of their marriage; that defendant pay alimony to said complainant for the support and maintenance of the complainant and the infant children of their marriage; that the complainant have the exclusive care, custody, education and control of the infant children of the marriage aforesaid. And, in which it is further adjudged, that the said defendant do pay a counsel fee for the Solicitor of the said complainant. 10 20

Your petitioner humbly appeals from the said final decree, and alleges that the said decree is erroneous for the following reasons:

1. Said decree should have adjudged that the complainant's bill of complaint be dismissed for the reason that the evidence adduced on behalf of said complainant failed to sustain the allegations of her bill filed in this cause. 30

2. Said decree should have denied a decree for support and maintenance, and a counsel fee for the complainant for the reason that the evidence adduced on behalf of said complainant failed to sustain the allegations of her bill filed in this cause. 40

Petition of Appeal

10 3. Said decree should not have adjudged that the complainant have the exclusive care, custody, education and control of the infant children of complainant and defendant, for the reason that the evidence adduced on behalf of said complainant failed to sustain the allegations of her bill filed in this cause.

4. Because said decree is in other respects erroneous and should be reversed.

20 Your petitioner therefore prays that the said final decree of the 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 your Honorable Court shall seem meet.

BENJAMIN M. WEINBERG,
Solicitor for and of Counsel
with Appellant-Petitioner.

30 Service of a copy of the within PETITION OF APPEAL is hereby acknowledged this 31st day of January, 1930.

MERRITT LANE,
Solicitor for and of Counsel
with Complainant-Respondent.

ANSWER TO PETITION OF APPEAL.

(Filed March 6, 1930)

NEW JERSEY COURT OF ERRORS AND
APPEALS

Between,

MILDRED GOLDSBOROUGH,

Complainant-Respondent,

and

JAMES GOLDSBOROUGH,

Defendant-Appellant.

10

On Appeal
from Court of
Chancery.

The answer of Mildred Goldsborough, com- 20
plainant-respondent, to the petition of appeal of
James Goldsborough, defendant-appellant.

This respondent, not admitting the truth of all
or any of the matters in said petition of appeal
contained, for answer thereto nevertheless admits
that a final decree was made in said cause on the
8th day of January, 1930, in the Court of Chan-
cery for the purposes in said petition mentioned
and as therein set forth: but as to the substance 30
and form of said decree this respondent begs
leave to refer thereto when the same shall be pro-
duced.

This respondent is advised and believes that
the said decree is agreeable to equity, and she
prays that the same may be affirmed with costs
to be taxed in favor of this respondent.

MERRITT LANE,

Solicitor for and of Counsel

with Complainant-Respondent.

40

Dated: March 5th, 1930.

BILL OF COMPLAINT.

(Filed Aug. 10, 1929)

IN CHANCERY OF NEW JERSEY

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

Complainant, MILDRED GOLDSBOROUGH, of Montclair, County of Essex and State of New Jersey, respectfully shows unto your Honor:

1. On or about the 10th day of April, 1917, complainant was married to her present husband, James Goldsborough, at Brooklyn, New York, by the Rev. Dr. Rogers. After said marriage com-
20 plainant and her husband went to live in Flatbush, Brooklyn, New York, where they continued to live until June, 1921, when they came to reside in the State of New Jersey, and finally, in October, 1923, located at 25 Elmwood Road, Verona, New Jersey, where they were residing at the time complainant was obliged to leave the said defendant, as hereinafter set forth. That when complainant was obliged to leave the said defendant, which
30 was on or about June 17, 1929, she went to live with her mother, at Montclair, New Jersey, where she is now residing, and defendant continued to reside in Verona, New Jersey, where he is now residing.

2. There have been born to complainant and her said husband, as the fruit of their marriage, the following children: James Goldsborough, Jr., who is nine years old and Muriel Goldsborough,
40 who is eleven years old, both of whom are in the custody of complainant.

Bill of Complaint

3. Complainant shows that, almost immediately after their said marriage, defendant commenced to treat complainant cruelly. He found fault with complainant for the manner in which she prepared the food, and, within a month after the marriage, threw a plate across the table because a chop, which was on it prepared by complainant, was not well done as he insisted; during the pregnancy of complainant he insisted that she get up and make biscuits for his breakfast, although she was weak and hardly able to move; he neglected complainant, and upon one occasion, when she had a hemorrhage during pregnancy, and couldn't get up, he left complainant without assistance; after the birth of the children he was not only cruel to complainant but also to the children, and would, time over and again, bend the fingers of complainant and the children back and compel complainant and the children to get down on their knees to him, and would stand over complainant and the children and say "down, down," and complainant and the children had to get down because of the pain caused by the bending of their fingers; upon many occasions, when he came home he would pinch the children on different parts of their bodies; he would crush the nails of the children and pinch their ears; about two months before complainant left defendant to wit in December, 1927, he pushed the little girl downstairs in such a manner so that a piece of flesh was torn out of her leg; time over and again he would lock the little boy in a dark cellar for some trivial reason; upon occasion after occasion, he would ask the children to go down to the cellar and then

10

20

30

40

Bill of Complaint

go downstairs and chase them upstairs, pinching them if they did not hurry; the little boy following his example bent back the thumb of a little girl who resided across the street; he very often snapped the little boy's ears with his thumb and
10 finger and has taught the children to slap each other; if food upon the table did not suit him he would take the food and throw it in the air; upon many occasions he kicked complainant on the bone of the leg so that it left marks; he very often said "If you want to see who is boss around here, start something"; he continuously called complainant "stupid" and it was a daily occurrence for him to tell complainant to shut up and
20 if she didn't like it she could get out.

From the date of the marriage down to the date of the separation he gave complainant and the children inadequate support. The house was inadequately furnished. There has been practically no furniture bought since the marriage and the home was inadequately furnished; the rugs threadbare and the curtains full of holes; he did not spend more than twenty-five dollars a year on
30 the children for clothes. Defendant gave complainant only twenty dollars a month for clothes out of which she was expected to pay for Christmas presents, refreshments for defendant's friends, the children's teacher's present so that she had hardly anything left for herself for clothes and had only one coat in ten years, and that coat cost seventy dollars and was bought in 1914. Complainant's father aided and assisted
40 her to some extent and supplied certain clothes.

Bill of Complaint

Up to October, 1926, the time complainant first left defendant; defendant had only furnished her with two twenty-five dollar dresses, and two twelve dollars and ninety-eight cent dresses and a serge suit, which cost about twenty-five dollars or thirty dollars; he supplied no clothes for the children. At the time of the separation in December 1927, the little boy had but one suit; he insisted that the children be dressed as cheaply as possible and required that complainant keep a budget of the money which he gave her for the table and clothes and deducted from the table and clothes money the cost of fruits which he bought for himself, and ice cream which he bought on Sunday; if he took his suppers out, he deducted the cost of the suppers from the table money, which he gave complainant; he insisted that they live in as cheap a place as possible; when they were living in Woodbridge, New Jersey, the rent was forty dollars a month; it was in a very undesirable location; there were only two small oil cloth mats in the kitchen and complainant was obliged to use a card table for the kitchen table for a long time as defendant would not buy a table; complainant was obliged to keep her clothes in a basket under the bed and the household linens in a shirt waist box, defendant using the sole bureau for his own clothes.

In October, 1923, complainant and defendant moved to a somewhat better neighborhood than where they were residing at the time complainant left defendant, but the house was dismal; the rent was seventy-five dollars a month; the

Bill of Complaint

house was about fifty years old; it was heated with hot air furnace; the floors were painted black; the hot water had to be heated on gas stoves; it was only a roof over complainant's head, and defendant, for his own amusement, purchased a radio but refused to permit complainant to touch it; defendant purchased a second-hand Buick car but informed complainant that if she wanted to learn to drive she would have to pay for her own lessons; when collectors came from the church for contributions he would lock the door and order the children to keep still. He insisted that the little boy give no more than two cents at Sunday school; he threatened to have the telephone taken out of the house and never paid the gas and other bills until after numerous demands, and in March, 1927, the phone service was cut off for non-payment of bills.

His refusal to adequately support complainant and the children was not the result of inability to pay. At the present time his salary is \$6,000 a year and he is the manager of the New York Office of the Maloney Electric Co. in New York and he is worth between thirty-four and forty thousand dollars which is in securities; complainant believes to be in a safe deposit box in the Brooklyn Trust Company, New York; in October, 1926, when complainant first left, he had just bought a hundred dollar suit for himself and had a number of pairs of shoes; although requiring complainant and the children to wear their shoes to the ground and to have them repaired he never did it himself; at the time they were living in

Bill of Complaint

Flatbush, when they were first married, and were paying rent of forty-four dollars a month, he was worth at least \$6,000, which he had inherited and was earning about \$175 a month. Complainant has not been to the theatre more than once in over seven years but defendant goes and explains that when he goes it is with business friends; when complainant asked him for money for clothes he told complainant to spend the thousand dollars given complainant by her father and aunt before marriage; he concealed from complainant the amount of money which he had and always waited until complainant went to bed before making out his income tax; he bought the best of fruit for himself and ate it without permitting the children or complainant to have any and deducted the cost from her clothes allowance; he insisted upon having eggs and bacon even when eggs were a dollar a dozen, and also oranges, when complainant did not have sufficient money to buy the bare necessities for herself and children; he gave fifty dollars to his college, although at the time complainant had only an old coat; complainant was obliged to pay about \$3 a week for milk for the children and when she asked complainant for more money, which he refused to give her, he said—"They fatten pigs out west on skimmed milk"; he went several times a year to foot ball games, stating that he did it for business reasons; he went to a business party attended by the woman manager in the office, to which party the other men in the office took their wives, and he told complainant that she could not go because she did not have any clothes.

10

20

30

40

Bill of Complaint

He continuously insulted complainant and made remarks to her for the purpose of ridiculing her and making her unhappy. He told complainant many times "Get them young, treat them rough, and tell them nothing." He referred to
10 the fact how other women tried to flirt with him and liked him; he told complainant many times that he did not have to keep begging complainant all the time "with all those chickens in the street;" he ridiculed complainant, stating that she had a big nose and mouth, with turned down corners; that she was skinny—"why don't you get some flesh on your bones; no one will want
20 you when you get old; fish mouth." He constantly said if complainant had come clean to him he would have done everything for her.

In August, 1924, complainant's aunt gave the children a swing. Defendant saw it when he came home and tore it down in a rage. Complainant tried to take the swing and defendant struck complainant on the face with his hand with such force complainant was ill over an hour.

30 In October, 1926, complainant was sick and worn out and her menstrual periods were irregular and she thought that she was pregnant and she pleaded with defendant to take her to a doctor. Defendant laughed in her face. Complainant was sick and could not longer stand the treatment to which she was being subjected and thereupon, on October 6th, 1926, she left and went back to her father and mother. She was then
40 taken to the family doctor, who treated her. Defendant came to complainant's father's home and

Bill of Complaint

asked complainant to go back and stated that if she would go back he would be kind to her, and complainant, induced by his statements, returned on November 9, 1926. Defendant's treatment of complainant became worse. Complainant's finger became infected because of the condition of health, to which she had been reduced by reason of the conduct of defendant, and defendant told her that she could wash the dishes with one hand; complainant broke down crying and defendant went out and stated that he did not want to stay there with her bawling; he wanted some fun. He gave complainant no money, and on December 6, 1926, complainant was again obliged to leave and return to her father's home. She was ill and in bed and nearly died. While she was ill at her parent's home defendant wrote complainant a letter on December 17, 1926, a copy of which is hereto annexed and marked Exhibit 1. Again, on December 20, 1926, defendant wrote complainant a letter, a copy of which is hereto annexed and marked Exhibit 2; and enclosed a photograph taken from a newspaper of a young girl; again on January 8, 1927, defendant wrote complainant a letter, a copy of which is hereto annexed and marked Exhibit 3.

Complainant recovered to some extent and defendant desired complainant to return to him and he promised that he would treat her differently, and complainant, again, believed him and after defendant had told complainant and her brother that he would treat her differently, complainant agreed to return home, but could not until about

Bill of Complaint

the middle of March, 1927, at which time complainant again returned to the defendant and upon her return he did raise the table allowance to twenty dollars a week, and allowed fifty dollars a month for clothes; he had promised complainant
10 that he would move into a better house and pretended to look at houses but no house which was looked at suited him. He had promised to buy more furniture but did not do so. The house next door became vacant, and in the morning defendant asked complainant if she wanted to rent it. In the evening complainant said "yes," whereupon he replied "I won't rent it."

20 He accused complainant of going through his pockets, which was false. He paid none of the expenses for complainant's illness nor any board for complainant during the time she was ill; the doctor was paid by complainant's father; although complainant was ill and physically unable to have sexual relations he insisted upon it; complainant's father died in May, 1927, and defendant asked complainant's mother to come and live with them; for a few weeks there was no difficulty,
30 complainant's mother paying board at the rate of fifteen dollars a week, although she spent week ends with complainant's brother; defendant's treatment of complainant progressively became worse, and on or about 9, 1927, although complainant was ill, nervously and physically, he seized complainant by the arms, shook her in the manner in which children are shaken, by some parents, threw complainant into a chair, breaking
40 ing the leg of the chair and the imprint of defend-

Bill of Complaint

ant's fingers on complainant's arm was visible for upwards of two and a half weeks; complainant was seriously injured; she was obliged to lie down on the bed; her bladder was weakened; complainant continued to suffer; she spoke to defendant about it; he sneered at her; complainant was obliged to appeal to her brother; he secured a doctor for her on the 14th day of December, 1927; she was attended by a doctor, and was advised that it was impossible for her, because of her condition of health, to live as she had been living and she thereupon, with the children, left the home of defendant and went to live with her brother at Montclair, New Jersey.

10

20

She returned to the home on or about January 2, 1928, to get her clothes. Defendant was present and permitted complainant to take some of her clothes. Since January 3, 1928, when he phoned her at her brother's, except as hereinafter set forth, he did not communicate with complainant nor send anything for her support and that of the children. He sent no Christmas present for the little girl or for complainant, but did buy a suit which was four years over age for the little boy. At the time complainant was at the house, on or about January 2, 1928, when she took some of her clothes, he told complainant that if complainant did not appreciate him there were others who would.

30

On or about the 18th day of January, 1928, complainant filed in this Court her action for separate maintenance against defendant which, as

40

Bill of Complaint

hereinafter appears, was discontinued at defendant's request and his further promises.

After the service upon defendant in the said action, he immediately sought out complainant
10 and requested her to return to him, promising that if she would return, he would reform his ways and live with her as a just husband should. He promised if she would return, he would buy a modern home, that he would properly furnish it and employ a maid and ask complainant's mother to live with them, complainant's mother being a widow. He made these requests of the
20 complainant through friends, and personally, and finally complainant again believed defendant in his promises and for the third time, resolved to return to him and did so the latter part of February, 1928. Defendant asked complainant's mother to come and reside with complainant and him and took her to the home in his automobile, complainant returning at the same time in the automobile of her brother, and thereafter, until defendant ordered complainant's mother to leave, she paid to complainant \$12 per week for her
30 board and gave her additional money presents.

Defendant shortly relapsed into his habit of abusing complainant; no new home was bought, nor any furniture and no maid hired. He made a practice of insulting complainant's mother; defendant would bank the furnace in the morning on leaving the house so that the house was unlivable until hours later, although complainant in
40 fear of her life because of her condition turned on the dampers after he left, and defendant upon

Bill of Complaint

his return would question her as to whether she put any coal in the furnace.

He again delayed paying Public Service bills until the collectors threatened to discontinue the service in order to grieve complainant; he resumed his practice of continuously ringing the door bell on his return home until complainant opened the door and told complainant if she was delayed, that when he rang he wanted the door opened, and he would keep the bell ringing by keeping his finger on the button until complainant responded; he made a practice of changing his clothes in the evening to old soiled clothes, turn on his radio and keep it constantly going until he retired; at the dinner table he would tell the little boy women were good for nothing except to spend money and would make the little boy say yes and he constantly made similar remarks of women. 10 20

He told the children in order that they would tell complainant, that complainant kept him a prisoner and that he had picked a lemon in the garden of love, and in reply to the statement of the children to him that complainant was sick and thin, he said she would be thinner before she was through with him. 30

In April, 1928, defendant's sister's husband died and defendant demanded that complainant write insisting her to make her home with complainant, which complainant did, and defendant went in a rage as he said the letter was not cordial enough and compelled complainant to write her a second letter which complainant did; de- 40

Bill of Complaint

defendant quarreled with complainant because complainant attempted to tell a friend of defendant's sister's husband's death; he criticised anything complainant did and many times in the purchase of articles he would show complainant advertisements of the article at a lower price and demand complainant to return it; he gave only as a rule after he increased complainant's allowances, as aforesaid, checks, and in order to make complainant uneasy stated he did so to have a record; if complainant told the children to answer the phone or other things, he would tell them not to; in the summer of 1928 he promised complainant a vacation, but from time to time put it off, stating he had to wait for a man from the west, and no rest or vacation was had by complainant from her household duties and care of the children, although her condition required it.

Defendant desired to make a visit to his said sister in the west, and purchased a new car for the purpose; he represented to complainant that he would arrange to have her taught to drive by the automobile agent's teacher, and that it would cost nothing, and defendant did so arrange in complainant's presence; complainant believed defendant and her health improved and her nervousness decreased, and she gained in weight to 123 pounds, which was much more than she customarily weighed, as complainant believed defendant had reformed and intended to treat her as other men treat their wives, but such was not the case, as hereinafter appears.

Defendant insisted that complainant go with him and the children to get the new car and com-

Bill of Complaint

plainant did; defendant went into the place and came out in the car with a mechanic, drove off and paid no attention to complainant or the children, and left them there; complainant and the children waited upwards of two hours and as defendant did not return, complainant told the office girl to tell defendant she had gone home, and went home in the street car. 10

Complainant believed defendant, as aforesaid, and on Sunday, the 14th of April, 1929, asked defendant to permit her to learn to drive as he promised; defendant flew into a rage and said the car was too good for her, and that it was not a family car, it was his car, and that he would like to put complainant in an insane asylum, which remark he from time to time made to complainant, and had in the winter of 1927, when complainant near died at her father's home, in fear of complainant making disclosure of his conduct, stated he hated to say so, but believed complainant insane; he stood over complainant, and complainant broke down and wept and told defendant of other men, poor in circumstances, who had bought cars so their wives could have the use of them, and defendant sneered and laughed at complainant and said, "Rah, Rah, let them go to it"; the children were present and believed defendant was about to strike complainant, and ran upstairs to complainant's mother who was in her room, and so told her. Complainant's mother came down and remonstrated with defendant and defendant began to dance, snapping his fingers in the manner of Spanish dancers, and went into an adjoining room and subsequently, as hereinafter 20 30 40

Bill of Complaint

appears, ordered complainant's mother from the home.

Defendant's treatment of complainant was progressively worse and on Friday, April 19th, complainant was unable to get about and was confined to her bed and required the services of her physician.

Complainant was worn and thin and suffered from severe headaches, and two days later, Sunday, April 21st, her physician requested to see defendant, and told defendant that complainant's condition was such that her mental faculties were in danger of impairment, and her life in danger, and advised sending complainant to a sanitarium; complainant was confined to her bed for one week under the constant attendance of her doctor, and her mother nursed her and cared for the children; defendant, the second day complainant was up, ordered complainant's mother from the home to further grieve complainant, and although complainant was unable to prepare meals and needed her help.

Complainant's condition was such she was obliged to have iron injections, and on Saturday, May 4th, requested defendant to take her to the doctor the next day, Sunday, and defendant refused and said it was too far off to decide, and why did complainant make an appointment on a Sunday. Defendant further abused complainant, and complainant was prostrated and that evening required the attendance of her physician.

Complainant's mother left the home on May 13th and established a home of her own, and took

Bill of Complaint

with her the ice box which belonged to her, and defendant failed and neglected to provide another and, until the time she left, June 17th, was obliged to eat canned foods; defendant came home in a rage and complainant went upstairs and defendant followed her and complainant in fear of defendant went to a neighbor's; defendant locked the children in as they tried to follow complainant and the little girl cut a rope and attempted to get out of the house from the second-story window; defendant asked complainant if he couldn't bring her some tooth picks and chewing gum, and again dragged the little girl down the stairs because she delayed going out and shook her so she became afraid and ran to a neighbor's and stayed the afternoon, although defendant sent the little boy after her; defendant continued to strike the children without cause; he made a practice of striking their hands together and their heads and kicked the little girl because she got mud on his new car; the children asked defendant why he struck them when they had done nothing, and he said it was good for them, and told the little boy to wait until he was a man and he too could be a boss; complainant protested to defendant striking the children on the head and was fearful of the effect to their hearing, and defendant replied animals did it, particularly bears to their cubs. 10 20 30

Complainant remained under her physician's care, and notwithstanding her weakened condition, her husband continued to abuse and neglect her, and treated her with such cruelty and exhibited such hatred toward her, and on the advice 40

Bill of Complaint

of her physician, that finally, on the 17th day of June, 1929, when it appeared that further cohabitation with her husband must be attended with grave danger to her life, and being in great fear, anguish and discomfort, she left defendant's
10 house on said day, and fled with the children to the home of her mother at Montclair, New Jersey.

Complainant further says that although defendant knows where she is residing with the children, he has not communicated with her, nor sent any money for her or the children's support, and that complainant has been reduced to a physical and nervous wreck; that her state of health, both
20 mentally and physically, is due wholly to the treatment accorded her by defendant; that it is unsafe for complainant to live with defendant, and that if she did live with defendant it would mean her death.

Complainant says that by the true intent and meaning of the statute in such case made and provided, said defendant has abandoned complainant, without justifiable cause and separated himself from her and has refused and neglected, and
30 still does refuse and neglect, to maintain and provide for her and her said children.

Complainant further says that she has no money; that she is now being supported by her brother; that she is unable to work because of her condition of health; that defendant's salary is \$6,000 a year, with bonuses, the amount of which complainant does not know, and that he has property and securities of upwards of \$40,-
40 000; these securities are in the State of New York;

Bill of Complaint

defendant has no property in the State of New Jersey to the knowledge of complainant; complainant says that defendant has often told her that if she started anything he would leave the State of New Jersey. There is nothing to hold defendant within the State of New Jersey. He 10 had told complainant, upon many occasions, that if he could not get along with a woman he would leave this section; that he could get a bungalow in California; his brother was a sailor and now resides in California; his sister resides in California; he has no relatives here in this State; his business is in New York; there is nothing to hold him in the State of New Jersey;

Complainant has no remedy at common law 20 and therefore prays:

1. That James Goldsborough, who is the defendant, to this suit, may answer this bill of complaint and each statement therein made, but without oath.

2. That defendant 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 complainant and the children of the said marriage, and for such times as the 30 nature of the case and the circumstances of the parties render equitable and proper; and that the said defendant may be compelled to give reasonable security for such maintenance and allowance, and to pay the same from time to time under the compulsory orders of this Honorable Court, as provided by the statute.

Answer

3. That a writ of subpoena may issue, commanding said defendant to answer this bill of complaint and to abide by such decree as this Court may make in the premises.

10 4. That complainant may have such other relief as may be just.

MERRITT LANE,
Solicitor of Complainant.

EUGENE M. BLANKENHORN,
Of Counsel with Complainant.

20

ANSWER.

(Filed Aug. 20, 1929.)

IN CHANCERY OF NEW JERSEY.

30	Between, MILDRED GOLDSBOROUGH, Complainant, and JAMES GOLDSBOROUGH, Defendant.	} On Bill, &c.
----	---	----------------

40 The defendant, residing at #25 Elmwood Road, in Verona, in the County of Essex, State of New Jersey, answering complainant's bill of complaint, exhibited against him, says:

Answer

1. He admits so much of paragraph one as alleges that he and complainant were married on April 10, 1917; and he also admits the places of residence mentioned therein, but he denies that said complainant was obliged to leave said defendant. 10

2. Paragraph two is admitted.

3. He denies all of the allegations of cruelty, penuriousness, neglect, selfishness and vulgarity set forth in paragraph three. He denies all the allegations set forth in the remainder of complainant's bill of complaint.

DEFENSES.

20

By way of defenses to complainant's bill of complaint, this defendant sets forth:

1. On January 18, 1928, complainant filed her complaint in this Court in an action against this defendant, in which action, all of the allegations contained in the bill of complaint filed in this cause, prior to said January 18, 1928, were alleged.

2. After said defendant served a copy of his 30
answering affidavit in said cause upon complainant's solicitor, the cause was thereafter, to wit, on or about February 17, 1928, by consent of this defendant's counsel, dismissed, and said complainant and said defendant resumed their relationship as husband and wife, and continued to live together as such until June 17, 1929, when said complainant, without justification, abandoned this defendant, taking with her their two 40

Answer

children, named in complainant's bill of complaint.

10 3. Defendant has always treated his wife with the utmost consideration and has given her and the children all that he reasonably should have provided for her and them. He admits, however, that as he is a salaried man, working for others, he has not been a spendthrift, and that he has by dint of hard work and self-denial, saved some money which, naturally, is for the best interest and protection of his wife and children.

20 Whatever ill-temper or impatience may have been shown by this defendant toward his wife, the above named complainant, has been fostered, engendered and stimulated by the actions and conduct of complainant's mother—this defendant's mother-in-law—and her son, Lawson R. Jones, Esquire, a New York attorney.

30 Defendant's conduct at no time was such as to justify his wife in leaving him on June 17, 1929. On that day, complainant disappeared from her home, taking the two children with her, and leaving no word or information as to where she had gone, or when she would return, and this defendant was obliged to drive around the various municipalities seeking for evidences of her residence. He eventually discovered where she lived which was, and still is, with her mother in Montclair. But on approaching his two children who were playing in front of the house, he was deeply saddened by seeing them immediately scamper off and run into the house, as though
40 they were under instructions so to do.

Answer

Defendant has no ill-will toward his mother-in-law, but she continually resents every act taken by him as a member of the household; denies his right to give instructions or advice to his children; continually suggests that complainant rebel against defendant's conduct and does every- 10
thing to bring about discord in the family.

Defendant has frequently told complainant, who has agreed with him at times, that if their family could live alone—freed from the influence of complainant's mother and brother—their family life would be a happy one, but the influence of complainant's mother over said complainant is so strong that she seems to exert no will of her own. 20

Defendant only recently has asked his wife to come back to live with him and that he would secure a new place of residence for her; that he thought that even with his mother-in-law in his family, she would perhaps under new surroundings, be better contented. But she rejected his offers and insists upon living with her mother.

Defendant realizes the right of complainant to show affectionate regard for her mother, and 30
nothing in the way of jealousy in that respect has ever been evinced or shown by him, but he has been disheartened and has become dejected because of the fact that all of the affection in the household was showered by complainant upon her children and her mother, leaving this defendant in the position of a mere intruder in his own home.

Replication

DEFENSE IN POINT OF LAW.

Defendant denies that any facts sufficient to sustain the present cause of action are set forth in complainant's bill of complaint.

10

BENJAMIN M. WEINBERG,
Solicitor for Defendant.

REPLICATION.

(Filed Oct. 10, 1929.)

20

IN CHANCERY OF NEW JERSEY.

Between, MILDRED GOLDSBOROUGH, Complainant, and JAMES GOLDSBOROUGH, Defendant.	}	On Bill, etc.
---	---	---------------

30

The complainant joins issue on the answer of the defendant.

MERRITT LANE,
Solicitor of Complainant.

40

CONCLUSIONS.

(Filed Jan. 8, 1930.)

IN CHANCERY OF NEW JERSEY.

75/40

10

Between, MILDRED GOLDSBOROUGH, Complainant, and JAMES GOLDSBOROUGH, Defendant.	}	On Bill, &c.
---	---	--------------

20

January 2 and 6, 1930.

Eugene M. Blankenhorn, Esq., Solicitor for
Complainant.

Benjamin M. Weinberg, Esq., Solicitor for De-
fendant.

NEWMAN, A. M.:

The complainant in this case has filed a bill 30
pursuant to the statute in such case made and
provided for a suitable support and maintenance,
alleging that the defendant has abandoned her
without justifiable cause and has separated him-
self from her and has refused and neglected to
maintain and provide for her and the children of
the marriage.

The defendant did not appear but was repre-
sented by his counsel and counsel for the defend- 40

Conclusions

ant cross-examined the witnesses in the case and after a full and complete hearing, I have determined that the complainant has substantiated by the greater weight of the evidence the allegations in her bill of complaint and that she was justified
 10 in separating herself from her husband because of his cruel physical treatment of her and his utter disregard and indifference for his wife's feelings, as a result of which she suffered mental pain and experienced a nervous breakdown.

I therefore will advise a decree in favor of the complainant pursuant to the prayer of the bill, and as counsel have stipulated that if I should decide the case in favor of the complainant, the
 20 alimony for the support and maintenance of the complainant and the children of the marriage be fixed at the sum of Sixty Dollars (\$60.00) per month, it will be so fixed at said amount.

I will award the custody of the children of the marriage to the complainant and a counsel fee to the solicitor for the complainant of One Hundred Dollars (\$100.00).

30 JACOB L. NEWMAN,
 Advisory Master.

FINAL DECREE.

(Filed Jan. 8, 1930.)

IN CHANCERY OF NEW JERSEY.

Between, MILDRED GOLDSBOROUGH, Complainant, and JAMES GOLDSBOROUGH, Defendant.	}	On Bill, &c.
---	---	--------------

10

This cause coming on to be heard on the 2nd
 day of January, 1930, and on the 6th day of Jan- 20
 uary, 1930, in the presence of Eugene Blanken-
 horn, representing Merritt Lane, of counsel with
 complainant, and Benjamin M. Weinberg, of coun-
 sel with defendant, upon bill, answer and replica-
 tion and upon oral proofs taken in open court,
 and the Court having read, heard and considered
 the pleadings and proofs in the cause and the
 arguments of counsel, from all of which it now
 appears satisfactorily to the Chancellor that the
 complainant and defendant were lawfully mar- 30
 ried on or about April 10, 1917; and that the de-
 fendant, without any justifiable cause abandons
 the complainant and separates himself from her
 and refuses and neglects to maintain and provide
 for her and the infant children of the marriage;
 that at the time this cause of action arose, the
 parties had their domicile in this State, and that
 the complainant now has her domicile in this
 State; and that the defendant was personally 40
 served with process within this State;

Final Decree

It is, thereupon, on this 8th day of January, 1930, by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, ORDERED, ADJUDGED and DECREED that the defendant do pay to the complainant or to her solicitor, the sum
10 of \$60.00 a month, payable in equal quarter monthly installments of \$15, beginning on the day of the date hereof, as and for a suitable allowance for the support and maintenance of the complainant and the infant children of the marriage;

It is further ORDERED, ADJUDGED and DECREED that the said defendant do further pay the complainant, or to her solicitor, the costs of this suit
20 to be taxed, and also the sum of \$100.00 which is hereby adjudged and decreed to be a reasonable counsel fee for the solicitor of said complainant; and that the complainant do have execution for said costs and counsel fee according to the practice of this Court.

It is further ORDERED, ADJUDGED and DECREED that the said complainant have the exclusive care, custody, education and control of James Goldsborough, Jr., and Muriel Goldsborough, infant
30 children of the marriage aforesaid.

It is further ORDERED, ADJUDGED and DECREED that either party be at liberty to apply upon a future change of circumstances of the parties for a variance or modification of this decree concerning the support or maintenance of complainant and said infant children as shall be just and equitable.

40

E. R. WALKER,

C.

Respectfully advised,

JACOB L. NEWMAN,

A. M.

TESTIMONY.

IN CHANCERY OF NEW JERSEY

75/40

Between

MILDRED GOLDSBOROUGH,

Complainant,

and

JAMES GOLDSBOROUGH,

Defendant.

On Bill, &c.

Depositions.

10

Transcript of shorthand notes of testimony taken in the above cause before Jacob L. Newman, Advisory Master, at his office, 810 Broad Street, Newark, New Jersey, on Thursday, the 2nd day of January, 1930, at the hour of two o'clock in the afternoon. 20

Appearances:

Eugene M. Blankenhorn, Esq., representing the complainant.

Benjamin M. Weinberg, Esq., representing the defendant. 30

State of New Jersey,

County of Essex. ss:

Marion W. Ogden, of full age, being duly sworn on her oath, says: I will faithfully and truly take stenographically and reproduce in typewriting the evidence to be given in the above matter.

MARION W. OGDEN.

Sworn and subscribed to before me,
this 2nd day of January, 1930. 10

Jacob L. Newman,
Advisory Master.

Mildred Goldsborough—Direct

MILDRED GOLDSBOROUGH, the complainant, being duly sworn on her oath, testified as follows:

Direct-examination by Mr. Blankenhorn:

10 Q. Mrs. Goldsborough, will you please state your name and address? A. Mildred Jones Goldsborough, 67 Watchung Avenue, Montclair, New Jersey.

Q. When were you married to your present husband? A. 1917. Thirteen years ago this spring, April 10.

Q. By whom? A. Dr. Rogers.

Q. Reverend Dr. Rogers? A. Yes.

20 Q. Where is he? A. In Brooklyn.

Q. And you were married in Brooklyn? A. Yes.

Q. Was your brother present at the wedding? A. Yes.

Q. That is your brother, Mr. Lawson Jones? A. Yes.

Q. Where did you go to live? A. Flatbush, in East 18th Street. I think it was 170 18th Street. I am not sure of the number.

30 Q. How long did you live there? A. About four years.

Q. Then where did you move to? A. Woodbridge.

Q. New Jersey? A. Yes.

Q. What county is that in? A. Bergen.

Q. How long did you live there, approximately? A. About 2½ years.

Q. Then where did you move to? A. Verona.

Mildred Goldsborough—Direct

Q. How long did you live there? A. It would be six years this October, almost six years.

Q. Then where did you go to live? A. To my present address.

Q. At Montclair? A. Yes.

Q. So that you have lived continuously in the State of New Jersey how long? A. About eight years. 10

Q. During that time did your husband live with you? A. Yes.

Q. He lived with you up until what time, that is to say, what is the date that he left you finally? A. In June, 1929.

Q. Now have you any children by your husband, James Goldsborough? A. Two. 20

Q. What are their names and ages? A. James Goldsborough, Jr., age nine, and Muriel Goldsborough, a daughter, aged eleven years.

Q. Are they both living with you? A. Yes.

Q. Now state generally how your husband treated you. Did he treat you kindly or otherwise? A. He was as inconsiderate as he could be.

Q. When did that start? A. It started almost from the first date of our marriage.

Q. What did he do? A. Well, we came back from our honeymoon—I think it was the first month—I was out one night making curtains. It was a very stormy night and the transit was delayed. I forget just the reason why I was late in getting home. I went to my aunt's. She had a sewing machine and I did not. I was sewing these curtains. When I came home he just sat and glared at me. I had veal chops for dinner. I went in and spoke to him but he just glared at 30 40

Mildred Goldsborough—Direct

me. We started to eat dinner and he tossed the plate across the table and said, "This isn't done." I had been home a month.

Q. This was before your first child was born?

A. Oh, yes.

10 Q. What other things did he do? A. The attitude off and on throughout the first year was very inconsiderate. I had tonsilitis one night and my throat ached terribly. If I tried to swallow it was just as if I had knives in my throat. I called up our doctor in Brooklyn, who I had before I was married. He came up and prescribed for me. My mother and father came down and they called my husband up and asked him to come
20 home early. Instead of coming home early, he came home very late. He gave me a lecture that it was nothing at all and I did not need a doctor. That was before my daughter was born.

Q. Did he strike you or lay his hands on you? Just describe that. A. One summer when we were living in Verona my aunt bought a little swing for my little girl from a man who was going around selling them. It was hung up by the hooks on a tree in the yard. On a Saturday my husband came home. He grabbed the swing down and came in in a rage. I went to the door as soon as he rang the bell. I was surprised that he had the swing. He was in a terrible temper. When I opened the door he took his hand and slapped me across the face as hard as he could.

Q. About when was that? A. That was in August. I think it was the year before my father died, three or four years ago.

41 Q. When you were pregnant how did he treat you and what happened? A. He was inconsiderate.

Mildred Goldsborough—Direct

erate. Of course, I had to do everything that was to be done.

Q. What do you mean? A. He wanted me to do cooking that was unnecessary and get up earlier than I should.

Q. If you did not do it, what would he do? 10
A. Just be cruel.

Q. Strike you? A. I can't say I remember him doing that then.

Q. Do you recollect when you had the hemorrhage? What occurred while you were pregnant?
A. He went out and left me. It was in the morning and he went to business.

Q. At the time you had the hemorrhage? A. 20
Yes, that day.

Q. Was that known to him? A. Yes.

Q. He went out? A. To business.

Q. Did he get a doctor for you? A. No, I went to the doctor later, with my mother.

Q. That is later the same day or another day?
A. I forget. It was right about the same time, probably it was the same day.

Q. Was there any time when he took hold of the children to pinch them or took hold of you and forced you down on your knees? A. Yes, 30
often.

Q. Tell us about that. A. He would come in at dinner time—it was a pet habit of his—and he would take us by the hands and sort of bend our knuckles and bend our fingers and say, "Down, down on your knees."

Q. Did you have to get down on your knees?
A. If you wanted to avoid pain. He would especially do it in a rage. He knew I did not like 40
it and they did not like it.

Mildred Goldsborough—Direct

Q. What about pinching the children's legs and their arms? A. He did those kind of things all the time.

Q. Describe that. A. He would force their fingers back and force their thumb back. My little
10 boy did it to an older girl across the street and I know he learned it from his father. When Jimmie was in the high chair he would take his finger and snap them against his ears. If he cried he would say, "Cut that out or I will give you something to cry about."

Q. Did he ever kick you? A. Yes.

Q. Can you remember a time when he kicked you, or one or more times? A. He would sit op-
20 posite me in the evenings. When I would be sitting opposite him he would lean over with his foot and kick me on the ankle.

Q. Without provocation? A. Yes, just because it amused him.

Q. Kick you hard? A. Hard enough to bruise me.

Q. Leave a mark on you? A. Yes.

Q. Black and blue? A. Yes.

Q. What about the furnishings in the house?
30 A. He would not buy anything at all. He just did not care about the house.

Q. You say he would not buy anything at all? A. Practically nothing.

Q. At that time was he able to buy things? A. Yes, very well able.

Q. What was his position? A. I have coaxed him ever since we lived in Verona to buy a new dining room rug. We were only there a year
40 when he was making, I think they started him

Mildred Goldsborough—Direct

with \$5,500 and then gave him a \$500 bonus, or he may have made \$6,000 the first year. He had over \$20,000 when we moved there.

Q. Over \$20,000 in securities? A. Yes.

Q. Where did he get them? A. He inherited \$5,000 the first year we were there. 10

Q. \$5,000 from whom? A. \$5,000 from his mother. He inherited about \$9,200 or \$9,300 when we were in Woodridge, from his uncle.

Q. He was earning about \$6,000 a year? A. He earned more than that because he got bonuses. His salary was \$6,000.

Q. How much did he give you to run the house and buy your clothing, if anything? A. He gave me in the apartment—he started at \$10 and he raised it when my child was born about \$1.50. 20

Q. \$10 a week? A. For the table and expenses. He used to give me \$20 a month and I had to pay all the extras with that. When my baby was born I told him I could not get along on \$10, so he gave me \$1.50, figuring the milk just to the cent. He did not even raise me a full dollar when Jimmie was born.

By the Master:

Q. Were you a strong and healthy girl before you were married? A. Yes. 30

Q. You weren't nervous in any way? A. No, not like I am now.

Q. What effect did his conduct have on your health? A. I wasn't happy. I became thinner. I lost all my color.

Q. Lose weight? A. Yes.

Q. Did it make you nervous or hysterical to some extent? A. Yes. 40

Mildred Goldsborough—Direct

By Mr. Blankenhorn:

Q. Came there a time when you felt obliged to leave the defendant? A. Yes.

Q. When was that? A. That was three years ago last October.

10 Q. What was the immediate cause of your leaving? A. I was very ill.

By the Master:

Q. From what? A. I just got awfully run down.

Q. Was there any cause for your being run down? A. It was a general condition.

Q. Your husband's general attitude towards you or do you mean your own general attitude?

20 A. I think it was his attitude. I was feeling worse and worse. Then in October I was feeling very badly and I wanted him to take me to the doctor. He would not do it. He would not even call up the doctor. He laughed at me and said he had more important things to think of. He made remarks about his business.

By Mr. Blankenhorn:

Q. That was October, 1923? A. Three years ago this past Thanksgiving.

30 Q. 1926? A. Yes.

Q. You asked him to take you to the doctor? A. Yes.

Q. What else? A. He did not know what my condition was and he did not care and he would not take me. Then I went around and stayed with mother and father for a while. I think it was about a week.

Q. Did they take you to the doctor? A. Yes,
40 Dr. Whitehorn called regularly.

Mildred Goldsborough—Direct

By the Master:

Q. Don't you remember at that time you complained about your finger being infected and what occurred? A. That was after Thanksgiving. I went around twice.

By Mr. Blankenhorn:

10

Q. Did you, after you went around to your mother's, go to the doctor? A. Yes.

Q. And receive treatment? A. I did not receive any treatment. I went to the doctor and I went to a doctor in Montclair. He said I ought to go to a sanitarium. I went to a doctor in Brooklyn. I had Dr. Whitehorn. I think he was around about a week or ten days. I went back right before Thanksgiving.

20

Q. Went back where? A. To Elmwood Road.

Q. To your husband? A. To my own home.

Q. How long did you continue to live with your husband then? A. Well, he acted very, very unkindly after I went back that first time. I had this infection on my finger.

Q. What was that from? A. I don't know what it came from.

Q. Did you ask him to take you to a doctor for that? A. I asked him to take me for some of the treatments and he would not do it. I had the doctor at the house.

30

Q. Did you leave again? A. He insulted me and I left.

Q. How did he insult you? What did he say or do? A. When I first went back the second time that fall that I left I hadn't any extra money, as he knew. He agreed voluntarily that he would give me more money and more money for the

40

Mildred Goldsborough—Direct

table and clothes and so I asked him for it one morning before he left for business and he told me that when I would be a wife to him he would give me more money. He tore up the check and I went away.

10 Q. You left then? A. Yes.

Q. Had you ever refused to have sexual intercourse with him? A. No, not unless I was ill.

Q. Had you been ill at this time when he made this statement to you? A. Yes, I had just come from mother's and father's. I had been there about a week after having been at the doctor's in Brooklyn. I felt terrible.

20 Q. Had he, between the time you returned and the time he made this statement to you, attempted to have sexual intercourse with you? A. Yes.

Q. Were you able to? A. Yes.

Q. Had he had sexual intercourse with you? A. Yes, but he wasn't satisfied.

Q. How long did you remain away this second time? A. Until about the first of March, from the first part of December.

Q. During that time did you receive any communications from him? A. Yes.

30 Q. I show you a letter dated December 17, 1926, addressed "Dearest Mildred" and signed "Jim" and ask you if that is one of the letters you received? A. Yes.

Q. Is that letter in your husband's handwriting? A. Yes.

Mr. Blankenhorn: I offer that letter.
(Received and marked Exhibit C-1.)

40 Q. Did you reply to that letter? A. No.

Mildred Goldsborough—Direct

Q. In the course of time you received another letter; is that right? A. Yes, I think I did. I received one or two.

Q. I show you a letter dated December 20, 1926, addressed "Dearest Mildred" and signed "Jim" and ask you if you received that letter from your husband? A. Yes. 10

Mr. Blankenhorn: I offer that letter in evidence.

(Received and marked Exhibit C-2.)

Q. That letter is in his handwriting? A. Yes.

Q. I show you a letter dated January 8, 1927, addressed "Dearest Mildred" and signed "Jim" and ask you if you received that letter from your husband? A. Yes. 20

Q. That is in his handwriting too? A. Yes.

Mr. Blankenhorn: I offer that letter in evidence.

(Received and marked Exhibit C-3.)

Q. The picture newspaper clipping, was that enclosed in one of the letters? A. Yes.

Q. Is it referred to in the letter? A. I am not sure. I don't think it was. 30

Q. Do you know what that picture is? A. No.

Q. Now, Mrs. Goldsborough, when did you go back again to your husband? A. I think it was the first of March, around that time.

Q. Had these letters anything to do with your going back? A. That and his general attitude. He came around and promised—I thought things were going to be different.

Q. What did he promise you? A. Promised me everything. 40

Mildred Goldsborough—Direct

Q. What were some of the things? A. He would act differently; stop teasing the children; have another home. He would buy some furniture. He said he would give me a larger allowance for the table and clothes.

- 10 Q. What about your mother? A. My father was living then. He told me he would have mother—father was not in good health—he told me that he would get this larger home and if anything happened to father he wanted mother to make her home with us. That is all I think was said about mother.

Q. When you went back to him did you set up your home again? A. Yes.

- 20 Q. Whereabouts? A. In the same house. We had a lease there until the first of October.

Q. First of October what year? A. It ran from October to October. I went back to him in March so I expected to find a place in the summer.

Q. March of 1927? A. Two or three years ago.

Q. During this last period that you were living at home did he live up to his promises? A. He never has lived up to them, either this time or any other time.

- 30 Q. Did he treat you any differently? A. After I went back in March he acted very different for a time.

Q. How long did that last? A. Gradually he became a little bit different. When the house question came up he was positively ugly.

Q. Did he strike you? A. I don't remember any striking in particular in that period. He had that kicking habit.

- 40 Q. That is, he would kick you in the ankle? A. He did that all along, off and on.

Mildred Goldsborough—Direct

Q. So that it bruised you each time? A. In the fall he bruised me badly.

Q. Is that the fall of 1927? A. Yes, that is two years ago this Christmas.

Q. That was after you had returned after the receipt of these letters? A. Yes. 10

Q. Did you leave him then again? A. Yes.

Q. When did you leave him again? A. I think it was about ten days before Christmas or shortly before Christmas.

By the Master:

Q. In 1927? A. Yes, two years ago this Christmas.

By Mr. Blankenhorn: 20

Q. What was the immediate cause of your leaving then? A. For about a week he had been acting just as mean as he could. He knew I had made plans to take the children down to the stores to see Santa Claus. Just the night before I was to go he said, "You can't take them down. I am going to take them." And he did not take them. I went out—he wanted to have pictures taken to send to his people for Christmas of the children. He came home late one Saturday and I went down with him, dressed them and had their pictures taken. Naturally I was looking forward to having the pictures myself. Then the clock incident came up about then. He brought home a clock. On account of the children going down to school it was difficult to know the correct time because none of our clocks went. I told him I would like a small clock. He brought home a high clock because he knew I wanted a small 30 40

Mildred Goldsborough—Direct

clock. He wanted it on the mantle and I told him I did not want it there. He folded his arms and said, "Let's see you try to move it." I went to lift the clock and he took me by the arms and threw me in the chair, breaking the chair and
10 bruising me.

Q. From the force of your being thrown in it?
A. Yes.

Q. How was the chair broken? A. The back leg.

Q. Did you fall to the floor? A. No, I fell in the chair.

Q. When the leg broke what happened? A. The chair still stayed up. It was strong enough for that.

20 Q. Then what happened? A. Then I showed him the bruise the next day. He just looked at it and said nothing. I think I told him almost any one would say they were sorry. My mother was away in Brooklyn at the time of this clock incident. She came back, I think, on a Monday. I talked to him after that and then one night he came home and I asked him about the pictures. He told me he had gone down to the photographer and had pictures developed. I said, "Why didn't
30 you let me see them and go, too?" "I told you those pictures were not for you. You are not going to have a look at them." I said, "You don't mean that. You only have a brother and a sister. You can't want to send them all to them. Who else is there?" He said, "That is my affair. You aren't going to have a look-in. I am telling you that." I cried and mother asked him why he wasn't kind. "Don't you think a child's
40 mother has any claims?" He just laughed at her.

Mildred Goldsborough—Direct

She said, "Why aren't you kinder?" He said, "Kindness means nothing to me." So I was awfully upset, of course.

Q. Were you ill in any way as the result of your being thrown into this chair? A. I was awfully shaken up. My heart, of course, beat dreadfully. I went upstairs and laid down on the bed for, I guess, about an hour and a half. 10

Q. Did you have a doctor? A. I did not have a doctor that night, but I went away the next day and had a doctor.

Q. You mean you left home the next day? A. Yes.

Q. You had a doctor? A. He wasn't a bit sorry. 20

Q. Did you receive treatment from a doctor then? A. Yes, from Dr. Areson.

Q. How long were you under his care? A. Quite regularly for quite a few days and then off and on for a month or two. I don't know exactly. I forget.

Q. How long did you remain away from your husband this time in December, 1927? A. I think I went back the latter part of February. I am not sure. 30

Q. In the meantime you had brought a suit in this court for separate maintenance, is that so? A. Yes.

Q. Did your husband see you respecting that? A. He called me up on the telephone.

Q. What did he say to you? A. He made all these promises that he always made.

Q. To change his treatment? A. To do everything. 40

Mildred Goldsborough—Direct

Q. To treat you better? A. Yes.

Q. What did he say about furnishing a home?

A. Yes, he said that everything would be different, getting a home and everything.

Q. Was anything said about your mother? A.

10 He said he would take mother. I fact, I said mother is no issue. Mother had other places she could go.

Q. Had your father died in the meantime? A. My father died right after I first left him.

Q. What effect did these statements or promises have on you? A. I believed him again and I went back to him.

Q. Did he treat you any differently when you
20 went back? A. Yes, for a time he did.

Q. How long? A. Not very long.

Q. Then what did he do? A. He went in his
rages about nothing. I remember he went in a
rage about his sister's husband. His sister's
husband died and he wanted her to come to live
with us. I wrote her a letter and told her if she
cared to come to live with us, I would be very
glad to have her. I thought it was a very nice
letter. He came in and he said nobody would
30 come on such an invitation. He was in a terrific
rage. I kept a copy of the letter to show him.
I thought he would be pleased. He was in a terrible
temper. He said, "No one would come on
such an invitation." I told him if he would dic-
tate a letter I would write it. That he did not
care to do. He said she should be told about the
concerts in New York so I wrote her another let-
40 ter and told her the advantages she would have in
New York and we wanted her to come. About a

Mildred Goldsborough—Direct

week later we were going out to an old friend's house. He told me in the automobile on the way down that he did not want me to tell them his sister's husband had died. It seemed such a trivial thing. I said, "What difference does it make? Why do you want to hide things all the time?" He never came out in the open about anything. Then he got in another one of his rages. All through my life I could mention dozens of things. He got these terrible temper fits for no reason at all. That was in April when his sister's husband died. You see it was shortly after I went back. 10

Q. Did he after your last return strike you at any time? A. No. 20

Q. Did he strike you? A. He has struck me.

Q. I mean since your last return to him. A. No, I don't think he has. He threatened to but he did not.

Q. Tell us about his threats. A. I know one morning I remember I had an old gas heater in the kitchen. It used—flames used to shoot out from it—air in it I suppose. It was because it was old I presume. I had a brushed wool sweater. It got afire and I had to put the flame out with my hand. My hair was singed. Naturally I did not want the children to light that heater. One morning—that was in the summer, the last summer. He acted awful when I did not light the heater as I had been in the habit. He used to stay in bed until eleven or twelve o'clock. I had not lighted the heater. He told Jimmie to light it. Jimmie knew how I felt about his lighting the heater and he told me and he heard 30 40

Mildred Goldsborough—Direct

Jimmie or found out that he had told me that he had told him to do it. He gave him an awful slap upstairs and then he dragged him downstairs. I just followed on the stairs. He turned around. The attitude he assumed was just as if he was
10 going to.

Q. What did he do when he turned around? A. He took the attitude; turned completely around and sort of braced himself as if he was going to.

Q. Going to what? A. I thought he was going to strike me but he didn't.

Q. Why were you following him? A. He had Jimmie by the shoulders. He was in his pajamas, Mr. Goldsborough was, and he was dragging
20 Jimmie down to the heater. He said he was going to show Jimmie—

Q. You said just now he was dragging him? A. Yes, he was.

Q. Just describe that. A. He gave him this beating in the hall upstairs. Then he took him by the shoulders and dragged him downstairs. Then he put him in front of the heater and lighted the heater. He told Jimmie he was punishing
30 him. He did not want him to tell me things he told him to do. He said he did not want him to go to his mother about things he said. He made him light the heater. Then when they left the heater he was very angry and he told him not to come near me. He didn't. He told Jimmie to pick up the paper and carry it upstairs. He followed him upstairs with the paper. That same morning he pulled Muriel downstairs by one ear.
40 She lost her footing. She ran out hysterical. She had on her best socks, the only pair of real

Mildred Goldsborough—Direct

silk socks she had. She had worn them to Sunday school. I told her to change them. He told her to go right out. She went in to change her socks and told him mother had told her to change them. He told her to go out and grabbed her by the ear. To the best of my knowledge she had lost her footing on the stairs. He did the same thing the last Sunday I was there. 10

Q. The same child? A. Yes.

Q. Tell us what led up to you finally leaving your husband. A. These things he was doing continually to the children. That last summer he hardly spoke to me. He knew I was sick. I could not have stayed much longer. I did not have much strength left. The last day I was there I had to stay in bed that afternoon. That summer all the time he was doing things to the children. He banged their heads together when they were out. They would come home crying to me. 20

Q. What was the thing that led up to your leaving finally? A. I just stayed there. I hated to do it. I stayed on as long as I could. My health just went. When I came down to Montclair I had all I could do to get my strength back. The children were terribly nervous and I could not stay much longer. I could not have stood it. 30

Q. Did you toward the time when you last left see a doctor? A. Yes, I took blood injections from Dr. Areson. He was giving me nerve medicines and different things. I was under his treatment more or less.

Q. Did you say anything to your husband about going to a doctor? A. Yes. 40

Mildred Goldsborough—Direct

Q. What did he say? A. I asked him to take me to the doctor. That was, I guess that was in May, I think the first part of May and he would not take me. I told him Dr. Areson had told me to come on Saturday. I told him Dr. Areson
10 wanted to give me these injections as quickly as he could.

Q. Did you tell your husband what Dr. Areson had told you was the trouble? A. Oh, yes; he knew.

Q. What did he tell your husband was the trouble? A. A general condition.

Q. What this general condition was? A. Certainly, of course he knew.

20 Q. Did you tell him you wanted to see your doctor? A. Yes.

Q. What did you tell him that Dr. Areson said your condition was? A. He knew that I was very sick. I had these terrible headaches. I wanted to go to Dr. Areson and I asked my husband to take me. He said, "Why does he have to make it at two o'clock?" I said, "Won't you take me?" That was the next day. It was very hard
30 to get to Dr. Areson's without an automobile. You had to take two cars as he knew. I said, "Won't you say you will take me?"

Q. Did your husband have an automobile? A. Yes.

Q. Did he permit you to use it? A. No, not this last one. He said I could have it. It was too good for me.

Q. What was the event that finally led up to your leaving your husband? A. Just a series of
40 events. My strength was going. He treated the

Mildred Goldsborough—Direct

children so terribly and treated me so terribly. He was ignoring me.

Q. Was this request to take you to a doctor the last request you made of him with respect to your health? A. No, it wasn't.

Q. You asked him to take you to Dr. Areson in his automobile and he refused? A. Yes. 10

Q. Did you ever make any other request of him after that to take you to a doctor? A. Not that I remember.

Q. Did you ever make any request of him? A. Yes, just a short while before I left him I tried to talk to him.

Q. You say you did talk to him? A. I tried to.

Q. What about? A. I wanted to see if he would not change. I tried hard all along to avoid this. I thought maybe I could talk it over with him. He said, "What do you want?" when I called him in the room. I was lying down. I asked him if—I forget just how I worded it—it was just a last desperate attempt to straighten things out. He told me he wasn't going to—I forget the expression—but he wasn't going to give me any more promises. That was the attitude he took. He walked out of the room within two or three minutes. I saw it was useless. 20

Q. How long after that did you leave? A. That was a few days before I left.

Q. Has your husband supported you since you left? A. He did not send any money until the first of October. Then his sister sent these checks. She sent a \$7.00 check. The first week she sent an \$8.00 check and then the \$7.00 check 30 40

Mildred Goldsborough—Cross

for the support and maintenance of James Jr. and Muriel.

Q. Is that written on the check? A. No, she sent a separate letter. The next week she sent \$7.00 and the next week \$8.00 and the next \$7.00.

10 Q. How long has that been going on? A. Since the first of October but I have not received any in a week and a half.

By the Master:

Q. You mean since the first of October, 1929?

A. Yes.

By Mr. Blankenhorn:

20 Q. This maintenance action that you began previously, what happened to that, if you know? A. I don't know. It was just dropped.

CROSS-EXAMINATION by Mr. Weinberg:

Q. Mrs. Goldsborough, since I have been in the room and heard a recital from you I have noted the fact that you have made but one complaint of any physical attack upon you and that was on one occasion when you say that you were thrown or pushed into a chair, the leg of which broke.
30 Had you before that testified to any actual attack upon you, I mean any physical violence? A. Yes, I told about one Saturday afternoon when he came home from business.

Q. What year please? A. Three or four years ago in August. If I had time I could remember it. He came home and my aunt had bought a little swing for the children. It was up in a tree.
40 He came home in a very bad temper. He took the swing down. I went to the door. He was

Mildred Goldsborough—Cross

just in a terrible rage as was easily seen. I went to reach for the swing and he made a remark, "Where did this come from?" I just reached out for the swing and he slapped me across the face just as hard as he possibly could. It left a flush on my face which lasted for a long time. We were going out that afternoon and I had to bathe myself in cold water. 10

Q. Was that the first time he ever actually put his hands on you in anger since you were married? A. He used to kick me on the ankle.

Q. The kicking might have been playful. Following the time of your marriage what acts of violence were perpetrated on you by your husband, not in play, of course, but in anger? A. It wasn't play. 20

Q. Have you any recollection of any other acts of violence? A. I have recollection of his ideas of bending our fingers back and forcing us down on our knees and all that.

Q. Tell us about that. When did he ever do that to you? A. He did it frequently.

Q. When did he start with this procedure? A. I can't remember just when he started. He did it right along when we were living in Verona long before I first left him. 30

Q. Immediately after your marriage? A. No, he wasn't as much that way when we were first married.

Q. That was after the children had grown up? A. No, he acted that way all through their childhood, their babyhood.

Q. You were complaining of his taking their fingers and bending them back and then and there 40

Mildred Goldsborough—Cross

getting them down on their knees, you have often seen that done by others? A. No, I have never seen another father act like him.

Q. I don't mean actions. A. No, I never saw anyone do it.

10 Q. How did he manage to do it to you, by consent? A. No, he did not.

Q. How did he manage to get you in such a position? A. He was stronger than I was.

Q. He would separate your fingers and put his in between? A. Bend them back and press my finger nails back.

Q. That was when he was angry? A. He wasn't in a rage like he was when he came in
20 about the swing and about the clock. He knew I did not like it and I have asked him to stop.

Q. Except those things, what else had you been testifying to before I came? A. I think that was about all.

Q. When was the first time he kicked you and why? A. I can't remember the first time. There was no reason.

Q. The time that you do remember, you say
30 you can't remember the first time, the first time you do remember? A. I could not say I remembered any first time. It was a thing he did frequently.

Q. When did he start doing it? A. I don't know when he started. He has been doing it for years.

Q. How long after you were married? A. I could not tell just when.

40 Q. You don't know when the first occasion was when he started to kick you? A. No, I don't know.

Mildred Goldsborough—Cross

Q. Do you remember when any of the occasions occurred? A. I could not remember any times. I could remember sitting in the room in Elmwood Road and having him do it.

Q. Was that shortly before you separated or was it a long time? A. I am not sure. I think he had been doing it almost from the start and and it seems to me all through my life he was doing it. 10

Q. Won't you give us some definite information as to when it was? Was it the first year, second year, or was it a year or two before you separated? A. If he had just kicked me hard I could remember it.

Q. You mean the kicking was so slight it made no impression on you? A. Of course, it bruised me but it wasn't extremely hard. 20

Q. Can you associate these kickings with any other events in your life that would enable you to give us some idea as to the time? A. They weren't done for any particular reason. He did that to me just like he did it to the children.

Q. That is as definite as you can tell me? A. Yes. When my children were little he used to make them put out their hands and he would slap them across the fingers for no particular reason. 30

Q. I am interested to know about these kickings which you spoke of where he left bruises, as to when they occurred, how often they occurred, and why he did it, if you know? A. I don't think he did it for any particular reason. I think he was brutal. I can't remember any first occasion.

Q. I am here representing Mr. Goldsborough— 40

Mildred Goldsborough—Cross

By Mr. Blankenhorn:

Q. Can't you tell it, when it was? A. I don't remember any kickings when I was in Flatbush.

By the Master:

10 Q. Do you remember the kickings after you left Flatbush? A. I remember them in Elmwood Road right along.

By Mr. Weinberg:

Q. When did you live on Elmwood Road? A. Up to the time I left him. I have lived there for six years or so.

20 Q. Did you call the attention of any person to the bruises, if there were any such, as the result of these kickings? A. I never called anyone's attention to it. My father came around one afternoon when I was dressing. I was putting on my stockings. He saw the bruises on my ankle. I told him about it and he called my husband's attention to it.

Q. Is there anyone to whose attention you called these matters whom you expected to have testify? A. No one but my father.

30 Q. Your father is deceased? A. Yes.

Q. What else was there in the way of any attacks upon you? A. Just these general things I told about. Of course at times he slapped my face and the time he seized me about the clock. He did that deliberately.

Q. That was when you say you were pushed into the chair? A. Yes.

40 Q. On that occasion had you not become real hysterical before he touched you? A. No, I wasn't.

Mildred Goldsborough—Cross

Q. Did he not simply take you by the arms and force you into the chair because you were hysterical? A. No, he did not.

Q. You have had nervous attacks and hysteria? A. No.

Q. You never became hysterical? A. Not except from his treatment. 10

Q. You have been hysterical on occasions when you would argue together. You had many unpleasant arguments had you not? A. Not very many considering, I don't think. I gave in to him absolutely.

Q. You did have a number of unpleasant discussions? A. There could not help but be unpleasant discussions. 20

Q. Many of them grew out of his attitude toward the children or his attitude toward you? A. Yes.

Q. You resented everything he did in the way of correcting the children? A. No, I did not.

Q. You have mentioned a great many instances here? A. I don't think he should have done some of the things. No one would.

Q. As a result of these things that occurred between yourself and the children you, of course, did get quite angry? A. Yes. 30

Q. Many little things you mention such as his having promised to buy you things which he did not do, those things also caused you to become somewhat excited? A. No, the money question wasn't the thing which caused this.

Q. You speak of an incident about his putting his finger on the electric bell and holding it there until you opened the door. That you thought 40

Mildred Goldsborough—Cross

was serious enough to mention. That upset you very much? A. I did not like it. He would not do it anywhere else but his own home.

Q. He promised to buy you an automobile? A. No, he did not promise me. I didn't want the
10 new automobile.

Q. You complained about that? A. I did not complain about that. There was never any complaint about it.

Q. You were very much distressed about it? A. He promised that I might run it. When I asked him for the key, he said it was too good for me. We would see whose car it was.

Q. Didn't your husband often complain that
20 he wasn't recognized as the father in the house? A. Well, he used to say, "no one else is going to be boss. If you want to see who is boss, start something."

Q. Was there a great deal of affection shown on the part of the children toward their father? A. When his mother visited me she told me Jimmie was the boss of his own home.

Q. Was there much affection shown by the children towards Mr. Goldsborough? A. I don't
30 think they had the affection a child would have toward a kind father.

Q. He had spoken of that very frequently? A. No, he did not.

Q. He said, "I am going to show you who is the boss around here" didn't he? A. We would see who is the boss. Yes, he said that.

Q. Were there any unpleasant discussions
40 which arose because of your mother being in the

Mildred Goldsborough—Cross

house? A. No. He never complained to me that the children did not show him affection.

Q. Was he not rather peeved at your being advised by your brother, feeling that your brother was running his own home more than he was?

A. My brother did not do anything to run his home. 10

Q. I don't mean any physical work, I mean so far as household matters? A. I know one time he had an automobile accident. He called up my brother. When my brother telephoned to find out what he wanted I told him about the accident. I know he was in one of his violent tempers because I told my brother. My brother has never in any way interfered in my home. 20

Q. I want to know whether it wasn't true that many of these little discussions were because of his jealousy of your brother or mother or the children or what not, isn't that so? A. No, I would not say it was.

Q. You accuse him of being very selfish and dressing well and going to ball games? A. Anything he wanted he got.

Q. That, of course, did not please you over much? A. I was begging for a new rug for our dining room which would only cost \$40. He was going out and spending \$100 for overcoats. He would not let me have a new rug. 30

Q. This rather selfish attitude, of course, worked you up considerably? A. It made me unhappy, of course.

Q. You complained not so much that he treated you cruelly as he had not given you the things you wanted? A. I complain of both. I think he has been cruel and I think he was selfish. 40

Mildred Goldsborough—Cross

Q. When you refer to the fact you told him to take you to a doctor and he refused, you did have a family doctor at that time, did you not? A. When do you mean?

Q. You spoke of an occasion when you asked
10 him to take you to the doctor and he refused, you had a family physician at that time, did you not? A. Dr. Areson came to the house.

Q. Before this occasion you had gone to Dr. Areson's office? A. Yes, but I had to take a taxicab to get up there and Dr. Areson told me to come on this particular day. It was Saturday and he had the automobile.

Q. You frequently went without your husband
20 to the doctor's? A. No, I did not, not until this spring.

Q. Who did you go with? A. The doctor visited me.

Q. He did not refuse to pay a doctor, did he? A. He told me he did not want me calling the doctor for everything. He told me that when Muriel was less than a year old.

Q. He did nothing to actually prohibit you from seeing a doctor whenever you wanted one? A.
30 No, I did not say that.

Q. Do you want to tell me of any other acts of physical violence which I before asked you other than those which you mentioned? A. I don't suppose so.

Q. You never accused him of infidelity, did you? A. I don't think he has been faithful.

Q. Did you ever accuse him? You have never charged him with infidelity? A. Not through Mr.
40 Blankenhorn.

Mildred Goldsborough—Cross

Q. Did you accuse him personally? A. The stories he told me I could not believe and his actions whenever we were out together he stared at every flashily dressed woman right before me and the children. He turned right around.

Q. Did you ever charge him with being unfaithful to you to his face? A. No, I have not charged him with that but I have told him about these stories he told me, not to repeat them as they might not be understood. 10

Q. You did not accuse him about being unfaithful? You told him a lot of things which would indicate that you thought he might be?

The Master: He told her stories that led her to believe he might be. 20

A. When he told me the first story I took him right up. He told me he met this girl in the train. She was connected with this Doll case. The man was connected with the Interborough Rapid Transit. There was a girl who was murdered. It was in the paper in the headlines. This Mr. Doll was a friend of hers but that did not have anything to do with it. He took the paper up and he said, "I met her when I was traveling for the Westinghouse." 30

Q. Irrespective of what the stories were, did you tell him you did not believe him, indicating to him you did not think he was faithful to you?

A. I told him I did not think it was any way for a married man to act. This girl asked him to take her to the theatre.

Q. Did he ever accuse you of unfaithfulness? A. Never. He did not accuse me. 40

Mildred Goldsborough—Cross

Q. You went back shortly after Christmas, 1927, shortly after your first suit was instituted. You went back to live with him a few months after you started your first action which I think was brought in January, 1928? A. Yes.

10 Q. After you went back that time how long did you live with him? A. Up until this June, this past June.

Q. June, 1929? A. Yes.

Q. I understood you to say in answer to Mr. Blankenhorn's question that during all that time, that is when you went back to him in the early part of 1928 until June, 1929, he had not struck you or otherwise assaulted you? A. He had in
20 little ways, these smaller things that he did. He did not strike me.

Q. Or otherwise assault you? A. He did bite me.

Q. When was that? A. Off and on all through that past year when he was leaving in the morning.

Q. Where did he bite you? A. On the cheek.

Q. Bite you to the extent it was visible? A. It
30 would leave a mark generally all day.

Q. Did you show that to anyone? A. I told him it would hurt me.

Q. Would that be when he would kiss you good-bye? A. He did not kiss me goodbye, not at the last. He did other things.

Q. On the occasions when he bit you on the cheek, would that be when he was saying goodbye to you? A. Yes.

40 Q. He never drew blood? A. No.

Lawson R. Jones—Direct

LAWSON R. JONES, being duly sworn on his oath, testifies as follows:

Direct-examination by Mr. Blankenhorn:

Q. Where do you reside? A. Montclair, New Jersey. 10

Q. What relation are you to Mrs. Goldsborough? A. Brother.

Q. Did you see her married to her present husband, James Goldsborough? A. I did.

Q. When and where? A. In Brooklyn, New York, on April 10, 1917.

Q. By whom? A. Dr. Rogers, a minister.

Q. And do you know where Mr. and Mrs. Goldsborough have lived during the past two years? 20
A. Yes.

Q. Where? A. At 25 Elmwood Road, Verona, New Jersey.

Q. Did you visit them there? A. I did.

Q. Do you know whether there are children?
A. There are two children, a boy and a girl.

Q. Their ages? A. The boy is nine and the girl is eleven.

Q. Will you state what was the general condition of your sister's health at the time of her marriage? A. She was in good condition, healthy, happy. 30

Q. What was her condition as compared to the present time? A. Now she is nervous, cries, unhappy.

Q. How long has she been in that condition to your knowledge? A. It has been progressive.

Q. From what time? A. From the time she moved to Woodridge, New Jersey from Flatbush 40
after the little boy was born.

Lawson R. Jones—Direct

Q. Have you visited her at her home during the time that they lived in New Jersey? A. Yes.

Q. Did you observe the manner in which her husband treated her? A. Yes.

Q. Will you state whether or not he treated her
10 kindly?

Mr. Weinberg: Object to that, pure conclusion.

The Master: Tell what he observed as to his treatment. Leave out your conclusions but just state facts.

Q. Tell us as near as you can the time you made these observations. A. Well, after Mildred left
20 him and he had thrown her in the chair she went back to the house one night on a New Year's night two years ago, and she went to get some of the children's things. He was there and she said "Good Evening" to him, and went upstairs. He followed her around the place and he said if she complained about bruises and the chair thing, that he was through with her. He stood and shook his hand at her, his finger. It affected her
30 so badly that it was quite a little time before we could leave and I talked to him, told him to do the right thing, and I thought he would.

Q. Did he say anything about it? A. He said that he would be through with her if she said anything about the bruise.

Q. Had you seen any bruise? A. I saw it.

Q. Describe it. A. I had to bring her to the doctor and the doctor said "You had better take
40 her to your house."

Q. What doctor was that? A. Dr. Areson.

Lawson R. Jones—Direct

Q. Did you personally see any of the conduct of the husband to his wife at that time? A. At the time she had Dr. Whitehorn I saw him one afternoon and he came home and picked up a letter and started to read it. She went up to him and he turned his back right on her. 10

Q. Did you ever see him strike her? A. No.

Q. You have not described this bruise that you say you saw at about the time your sister said she was thrown in the chair. A. The bruise was on her arm and clearly showed the imprint of the thumb.

Q. Do you know how long that stayed on the arm? A. It was quite pronounced and lasted about three weeks. 20

Q. Black and blue? A. It was black.

Q. Did you ever see any other marks or bruises on your sister? A. I have seen marks on her cheek. She did not tell me what they were from. I asked her.

Q. Had you any conversation with Mr. Goldsborough after the time that you described you went to the house to get the children's things? A. When Dr. Areson treated her he called me on the telephone crying. 30

Q. Who called you? A. Goldsborough called me on the telephone crying and asked if he could not see me. I told him the doctor told me she was in very bad condition and he feared for her health, her life. He came down to the office. I told him the circumstances. He went and saw Dr. Whitehorn himself. Then he wrote these letters to Mildred. 40

Lawson R. Jones—Direct

Q. Did you see the letters as they came? A. No, I saw them afterwards.

Q. Did you ever talk to Goldsborough after your sister had gone back in that January? A. About her condition?

10 Q. About his treatment of his wife? A. Yes, the night, the Saturday she has testified to, Saturday night, her health had run down and she had been taking these iron injections. They had to be taken at different intervals of two days apart. That next day was the time and she asked him—

Q. What you said to him?

By the Master:

20 Q. Fix the time the iron injections occurred. A. They occurred in May, 1929. She called up on the telephone and said he would not take her.

Q. Never mind what she said. As a result of what occurred you saw Mr. Goldsborough and what did Goldsborough say? A. I went up there and I told him I would take her if he could not go and then he refused to take her. That night when she asked him to take her he laughed at her.

30 By Mr. Blankenorn:

Q. What did he say? A. I don't remember just the things he said. Yes I do too. He said he would take the little boy. Then he said he would take the little girl but that he would not take her.

Q. Did he say why? A. No. Then she got sick. She had to go upstairs and he then said he would take her. She then had phoned the doctor.

40 Q. What did he say when you offered to take

Lawson R. Jones—Direct

your sister to the doctor? A. He did not say anything.

Q. Did you talk with him after that at any time? A. I had been there the Sunday morning two weeks before and the doctor had wanted her to go to the sanitarium. He did not want her to go. He talked it over with me. I did not think it advisable for her to go either. She was in such a nervous condition. 10

Q. What did he say about his treatment of her or what did you say to him about it? A. I did not go over those things with him.

Q. Did you ever after that talk to him about his treatment of her? A. Yes, at the time when she had left in December, 1927, he called me up and I reviewed the whole situation with him. 20

Q. What did he say about what would happen if she came back? A. He promised to treat her kindly.

Q. Promised you? A. Yes.

Q. Just what did he say? A. He said he would do everything for her. He wanted to take her on a trip. He said he would buy her a coat. She had not had a coat for six or seven years. He did buy her a coat and he said he would give her more money. Then at the time after he threw her in the chair and he called me up. I had her at my house. He spoke to me about seeing her. The doctor said it wasn't advisable and I told him what the doctor had said that she couldn't have any more excitement right then but as soon as she got well he could communicate with her. He did. He asked her to go back and she did go back. 30 40

Lawson R. Jones—Cross

Q. What doctor was that? A. Dr. Areson.

Q. After she went back that time did you ever again talk to him about his treatment of his wife?

A. I never did except in May when she was ill and Dr. Areson wanted to send her to a sanitarium. We discussed together whether it would be to her benefit to be in a sanitarium but that was all that was said.

CROSS-EXAMINATION by Mr. Weinberg:

Q. What sort of a sanitarium was this? A. Dr. Areson in Montclair came there.

Q. What sort of an institution were they referring to? A. Dr. Areson is here. I thought he referred, when he suggested a sanitarium, to a place where she would have quiet.

Q. I have heard for the first time something about an infected finger. Who caused that? Did Mr. Goldsborough have anything to do with that? A. I don't believe so. I think that was due to her physical condition.

Q. What was the occasion of your referring to it? Why are you speaking of the infected finger?

A. I haven't referred to it.

Q. You have referred to this thing of throwing her in the chair, did you tell us when that was?

A. That was just before Christmas, 1927, in the month of December, 1927.

Q. That occurred in your presence? A. No, sir.

Q. Am I not to understand that you were present on the occasion when this alleged pushing of your sister to a chair occurred? A. The little boy was there. I wasn't there.

Lawson R. Jones—Cross

Q. You were not present? A. No.

Q. You heard of it through your sister? A. Yes.

Q. You have never witnessed any acts of physical violence between your brother-in-law and your sister? A. No. 10

Q. Do you remember when your sister left her husband this last time? A. The time when she left him?

Q. The last time? A. She left him in the month of June, 1929.

Q. Did you know she was going to leave? A. The doctor had advised her to leave.

Q. Did you know she was going to leave? A. I knew the doctor had advised her to leave. I 20 did not know she was going to leave.

Q. She did not tell you she was going to leave? A. She had said she wanted to stick it out as long as she could. Dr. Areson had told her to go but she said she was going to stick it out as long as she could. She had stayed there a month after.

Q. Did you know she was going to leave before she actually left? A. Yes.

Q. How long before she actually left? A. 30 When the doctor told her.

Q. How long was that? A. About a month.

Q. Did you communicate that fact to Mr. Goldsborough? A. That she was going to leave him?

Q. Did you tell him in any way that she was going to leave? A. Not in so many words. He knew it.

Q. I ask that that be stricken out. I want to know whether you told him in that exact language or words equivalent to it or substantially 40

Mildred Goldsborough—Cross

that she was going to leave him because of his treatment? A. No.

Q. Did you know where she was going to go?

A. I did not know where she was going to go.

10 Q. You had nothing to do with the place to which she moved? A. No.

Q. You never told him afterwards where she was? A. This was the one time he did not call me up.

Q. You did not call him up? A. No.

20 MILDRED GOLDSBOROUGH, the complainant, recalled.

By Mr. Weinberg:

Q. Did you inform your husband before you left him in June of 1929 that you were going to leave? A. Not right before. I told him about a month earlier that I would have to and he said "If that is what you want, it is all right with me."

30 Q. After you left him did you inform him as to where you moved? A. No.

Q. You made no attempt to let him know where you moved? A. No.

Q. Who moved to the home where you took up your residence? A. The children.

Q. Anyone else? A. No.

Q. Did your mother move with you? A. My mother had been there quite a few weeks.

40 Q. She preceded you and then you followed her with the children? A. Yes.

William H. Areson—Direct

Q. Have you at any time since leaving your husband informed him where you went to live?

A. No, he knew.

Q. Did you ever tell the children not to tell him where you lived? A. No.

Q. Remember how he found out where you lived? A. He was riding around the streets and saw them in front of the house. 10

Q. Do you recall the children running into the house and you kept them in the house? A. Yes.

By Mr. Blankenhorn:

Q. Why did you do that? A. They did not want to go out.

Q. Why didn't you tell your husband where you had moved to? A. I did not know what to do. 20
He was acting just about as mean to me as he could. I could not approach him in any way. He was acting just as badly to the children. I did not know what to do. I saw Judge Lane and he told me if I wanted to go, to go.

Q. Had you told him what Dr. Areson had said to you about your nervous condition and there would have to be a change? A. Yes.

Q. What did he say? A. He didn't care. He 30
did not say anything about it.

WILLIAM H. ARESON, being duly sworn on his oath, testifies as follows:

Direct-examination by Mr. Blankenhorn:

Q. Are you a practicing physician in the State of New Jersey? A. Yes, sir. 40

William H. Areson—Direct

Q. Duly licensed?

Mr. Weinberg: I will admit his qualifications.

Q. Do you know Mrs. Mildred Goldsborough?

10 A. Yes, sir.

Q. How long have you known her? A. The first contact was in the early part of 1927, January or February.

Q. Has she been under your care? A. Yes, sir.

Q. For what? A. For general breakdown in plain language, physical and nervous troubles, neuro-circulating asthenia.

20 Q. Have you had her under your care and attention ever since that time? A. Ever since August, 1927.

Q. Have you treated her from time to time? A. Yes, from time to time for attacks aggravated by something or other occurring in the house according to the history.

Q. Can you give us any idea of what the cause was for her trouble? A. Only from her own history, patient to physician.

30 Q. Will you state what history she gave you?

Mr. Weinberg: I object to it.

Mr. Blankenhorn: I think it was incidental to what the doctor treated her for.

The Master: I will exclude it.

Mr. Blankenhorn: I ask an exception.

By Mr. Blankenhorn:

40 Q. Doctor, will you describe the treatment that you gave Mrs. Goldsborough? A. Well at differ-

William H. Areson—Direct

ent times I put her to bed and gave her the rest treatment. At other times I gave her iron injections for the anaemic condition and medicine in order to hold down her nervous system and quiet her down. Of course, in December I saw her at her brother's home. 10

Q. December of 1927? A. About December 15. Then she had a bruise on her arm.

Q. What kind of a bruise? A. Hemorrhagic black and blue spot about the size of a half a dollar on the inside of the upper part of the left arm.

By the Master:

Q. From what she told you that occurred in the household what did you advise her to do, if anything? A. I advised her that she must get away from that atmosphere and I told Mr. Goldsborough that. 20

By Mr. Blankenhorn:

Q. When did you tell him that? A. That was in May shortly before she did go.

Q. Just what did you tell Mr. Goldsborough? A. I told Mr. Goldsborough—I had a satisfactory talk with him, a plain straight forward talk from a physician to him about his wife. I told him he must be well versed of the fact that she was in a terribly rundown mental condition and I believed her stories as told to me as to the cause of that trouble. 30

Q. Did you tell him what she had told you? A. Absolutely.

Q. Tell us what you told him. A. I told him that she had told me about his bending her fingers back and twisting her fingers and annoying her 40

William H. Areson—Cross

by teasing the children, all of which in her state produced a terribly bad effect, that she could not live on in that atmosphere. She had to face a situation for her own good. She ought to get away. Of course, a general hospital was not the
10 type of place for that particular case; that a sanitarium or rest home would be the proper place but he did not think so. I told him it was his wife, to take my advice or not. I said unless she did get out of that environment, that atmosphere, I would not be responsible for her mental condition.

Q. What was your opinion that her mental condition would be if she continued to live with her
20 husband treating her as you told him that she had told you? A. I don't know whether I told him my impression. She had this organic nervous disorder which might eventually result in a melancholic condition. I doubt whether I mentioned that to him or not. I did tell him her condition was serious.

Q. Did he say to you whether or not the statements made by his wife to you were true? A. No.

30 Q. Did he deny them? A. He did not affirm or deny.

CROSS-EXAMINATION by Mr. Weinberg:

Q. Doctor, how long have you known the Goldsboroughs? A. Only since then.

Q. Since when? A. The early part of 1927.

Q. When you first met her what was her general condition? A. Very nervous, very high
40 strung.

William H. Areson—Cross

Q. Had you determined just what was ailing her? A. In what way?

Q. Physically? A. She was anaemic. She had a disorganized central nervous system which I felt was due to the history.

Q. Was she at that time a neurotic? A. I 10
would not call her straight neurosis.

Q. Bordering it very closely? A. Yes, bordering it or going even beyond a neurosis.

Q. Can you tell how long standing that condition was? A. No.

Q. It might have existed for many years? A. We don't expect neurosis to exist for many years without becoming mentally incompetent.

Q. What organic change would you find in a 20
person who is highly nervous? A. Probably none.

Q. Sometimes there are physical causes for nervousness? A. Sometimes pathologic. That I did not find.

Q. Did you make any examination to determine that? A. I tried to discover it.

Q. You found nothing from which you could determine the cause of this nervous disorder? A. 30
It was a distinct nervous disorder.

Q. There was anaemia? A. The anaemia was real.

Q. There are a great many causes for anaemia? A. Yes.

Q. It was impossible for you as a physician or any other physician to trace anaemia to any one particular thing? A. I would not say impossible.

Q. There is never a satisfactory diagnosis as to the cause of anaemia? A. Oh, yes; only in a 40
few cases we can't find the cause of the anaemia.

William H. Areson—Cross

Q. If you find a distinct underfeeding you can sometimes attribute anaemia to that, can you not?

A. You can.

Q. Where one is aggravated or irritated, or worried, have you ever definitely determined that it would cause an anaemic condition? A. I think it will.

Q. Have you ever determined that? A. I have not.

Q. There are a great many nervous people that you have treated, have you not? A. Yes.

Q. Those nervous conditions sometimes become aggravated as time goes on? A. A doctor makes a mind picture as to what the cause is of this nervousness and whether there are outside influences, the removal of which will be of benefit.

Q. Have you not had many cases where the wife has been nervous where the husband's attention has been all that it should be? A. I would not say many. Those are the exceptions.

Q. Isn't it frequently the fault of the individual who over-exaggerates everything, little occurrences that mean nothing, worries about expenditures and such things, do not those things gradually work up a nervous condition? A. No question about the truth of that. This much we have to admit. This neurotic question—medical science is supposed to get at the bottom and find the focal infection, tonsils, teeth, or something like that, as a real definite cause for an unsettled nervous condition. There are nervous cases for which no pathological reason can be found.

Q. I want to know whether you at the time you first met her in 1927, the first occasion on which

William H. Areson—Cross

you met her, decided in your own mind as a medical man from what you found as to the origin of this lady's nervousness? A. Origin or causative factor?

Q. I can't see much distinction. I mean cause. 10
A. From her history I did.

Q. Aside from any history of any disturbance with her husband or anything of that sort, did you make up your mind or could you have made up your mind as to what was causing her nervous condition? A. Not outside of the history.

Q. You do not as a general thing in nervous cases find that the person is nervous simply because somebody else is doing something to injure them or aggravate them or irritate them? A. I 20
think that is true in a fairly large proportion of cases.

Q. Don't you find over-exaggeration and fear to be the predominating factors? A. That is all right. Now you are talking factors.

Q. Going back from the factor to the cause, what do you find necessarily or is there anything necessarily that you find that causes nervousness in a person? A. Certainly.

Q. It sometimes comes in childhood and gradually works up? A. Very seldom. There is generally an organic reason for nervousness. 30

Q. In the early changing part of one's life, the early period, the first change, you very frequently find that the person's condition and character becomes somewhat fixed then, do you not? A. Yes, but that doesn't mean nervousness.

Q. This may be caused by nervousness? A. Aren't you thinking of a nervous, cantankerous, 40
little kid?

William H. Areson—Re-direct

Q. I will tell you what I am thinking of. I am thinking of a person who has had everything that a man could give his wife, who at the same time, notwithstanding everything she has been given, is so nervous and irritable that everything
10 that occurs is magnified so as to appear to be something terribly serious, something impending that is going to occur. A. That woman is so near insane there is no fun in it. You watch her. She is going to land somewhere.

Q. Assuming that she has been so near insane for 35 years, what would you say about the problem? A. I think she is an insane case. When I say insane, I mean organic mental changes.

20 Q. What does that mean in plain language? A. Changes in the brain cell.

By Mr. Blankenhorn:

Q. Dr. Areson, have you treated Mrs. Goldsborough since she separated from her husband?

A. I doubt it, maybe once or twice. I have seen her. I was down to see her mother and I think her mother was very anxious and asked me to prescribe for her.

30 Q. You have had opportunity to observe her? A. Yes.

Q. Will you state whether or not her condition has improved? A. There is no question about that. In my opinion she has improved forty to fifty per cent, her conduct, viewpoint, physical and mental condition. She is a distinctly improved woman.

40 Q. Has that any effect on your opinion as to the cause of her trouble? A. It certainly has.

Exhibit C-1

I think it is due to her removal from the nagging to which she has been subjected, according to her story, from her husband.

By Mr. Weinberg:

Q. You don't think her separation from her husband is going to worry her? A. Absolutely not. She is much better, far from worrying. 10

Q. You find a great many women who do worry because they are separated from their husbands? A. Yes.

(Adjourned to January 6, 1930, at two P. M.)

20

(Hearing continued on January 6, 1930, at two P. M.)

Same appearances.

Mr. Weinberg appeared and said he desired to offer no evidence but the evidence was not sufficient that had been produced to warrant the court in making any decree in favor of the complainant.

30

EXHIBIT C-1.

December 17, 1926.

Dearest Mildred:

My own little sweetheart I am terribly sorry about your illness, more sorry than words can 40

Exhibit C-2

express and I just wanted you to know how anxious I am for your early recovery.

10 Doctor Whitehorn tells me that you are improving and I am hopeful. Please forgive me if I have ever said anything which hurt your feelings. No man can ever ask for a finer or sweeter little girl than I have, so you see I really do love you and always will.

I am like a man in exile without you and hope you will make every effort to get well soon for my sake although you may not feel that I am entitled to such consideration. Forgive me, I am almost frantic without you.

20 Kindly kiss Muriel and Jimmy for me and take good care of yourself. With lots of love and kisses

From

(Signed) JIM.

EXHIBIT C-2.

30

December 20, 1926.

Dearest Mildred:

I know you like to hear from me and as I am feeling happy tonight because I have heard that you are much better, I wanted to let you know just how I felt. Congratulations—and I am so pleased with Dr. Whitehorn that you will never hear me complain if you have him in the future
40 at any time for any trouble whatsoever, even for a boil.

Exhibit C-2

Note how healthy the girl is in the picture and I am hoping that a good rest will make you just as strong. Well, at any rate Mildred, dear, I have only the best of wishes for you and know you will enjoy life so much more if your general condition improves. May Hands 'phones that she 10
was giving a New Year party and wanted us to attend. I told her you were ill but that I hoped that you would feel much better shortly and if so we might go. And then if you promise to be real good, and you really have to do this, then I might take you to a good play in New York. Now isn't that sweet of me? You probably won't admit it, but you never did flatter me any and so I have no particular reason for trying to be nice 20
to you except for the fact that you are ill and I am more than sorry for you because of your illness. I admit I love and care for you but do you admit likewise for me? Well at any rate I am going to send you my love and kisses with the stern command that you get well soon or else you won't have any husband.

Kiss little Fatty for me and Jimmy too and tell them their Daddy will be out with "Santa 30
Claus" Xmas up at the North Pole.

Lots of love and Best wishes from

(Signed) JIM

EXHIBIT C-3.

January 8, 1927.

Dearest Mildred:

Just a line and no more as it is late and I like
10 yourself, am trying to observe better hours.

What I want to tell you is that for your Xmas
present I want to buy a fur coat and I am writ-
ing the word small as if I were saying the word
lightly because I know you need the coat and be-
cause of your condition you should have had the
coat before and really should not go out now
without it as I am awfully afraid of colds, so
promise me you will be careful. If you want, I
20 can make a date with you the latter part of the
week and help you pick out one or if you want,
you can go by yourself and buy one and I will
give you the money. Believe me, I don't want
anything in the world to happen to my little Mil-
lie. I am terribly sorry you have been so ill and
my only prayer is that you will be strong and
well soon. Be of good cheer and be patient as
you really are getting along nicely and looked
very well today considering what you have been
30 through. I am never going to let you get run
down again in such a condition. I am truly thank-
ful to your Mother and Father for what they
have done for you and I can't help but realize
that your Mother has had a lot of extra care
forced on her, although she would do anything
in the world for you because of her affection. At
any rate, Mildred dear, you do your part now by
using your best efforts to get strong and don't
40 take any chances.

Exhibit C-3

I am anxious to see you soon. Expect to be with the Ned Corcey's Monday night. How about Tuesday or Wednesday?

Lots of love and good wishes to the sweetest little girl that I ever want to meet. Kiss Muriel 10 and Jimmie for me.

(Signed) JIM.

27

Exhibit C

I am writing to you; you know. I hope to do so
with the Red Cross's money. I hope to do so
Tuesday or Wednesday.
I hope to have good news to tell you.
I hope that I can tell you. I hope to tell you
and I hope for me.

(Signed) JIM

28

THE JOURNAL
OF THE
COURT OF COMMONS AND APPEALS

IN THE YEAR 1841

BY
JAMES WILSON

OF THE
COURT OF COMMONS

AND
APPEALS

IN THE
YEAR 1841

BY
JAMES WILSON

OF THE
COURT OF COMMONS

AND
APPEALS

IN THE
YEAR 1841

BY
JAMES WILSON

OF THE
COURT OF COMMONS

AND
APPEALS

IN THE
YEAR 1841

BY
JAMES WILSON

OF THE
COURT OF COMMONS

AND
APPEALS

IN THE
YEAR 1841

BY
JAMES WILSON

OF THE
COURT OF COMMONS

AND
APPEALS

IN THE
YEAR 1841

BY
JAMES WILSON

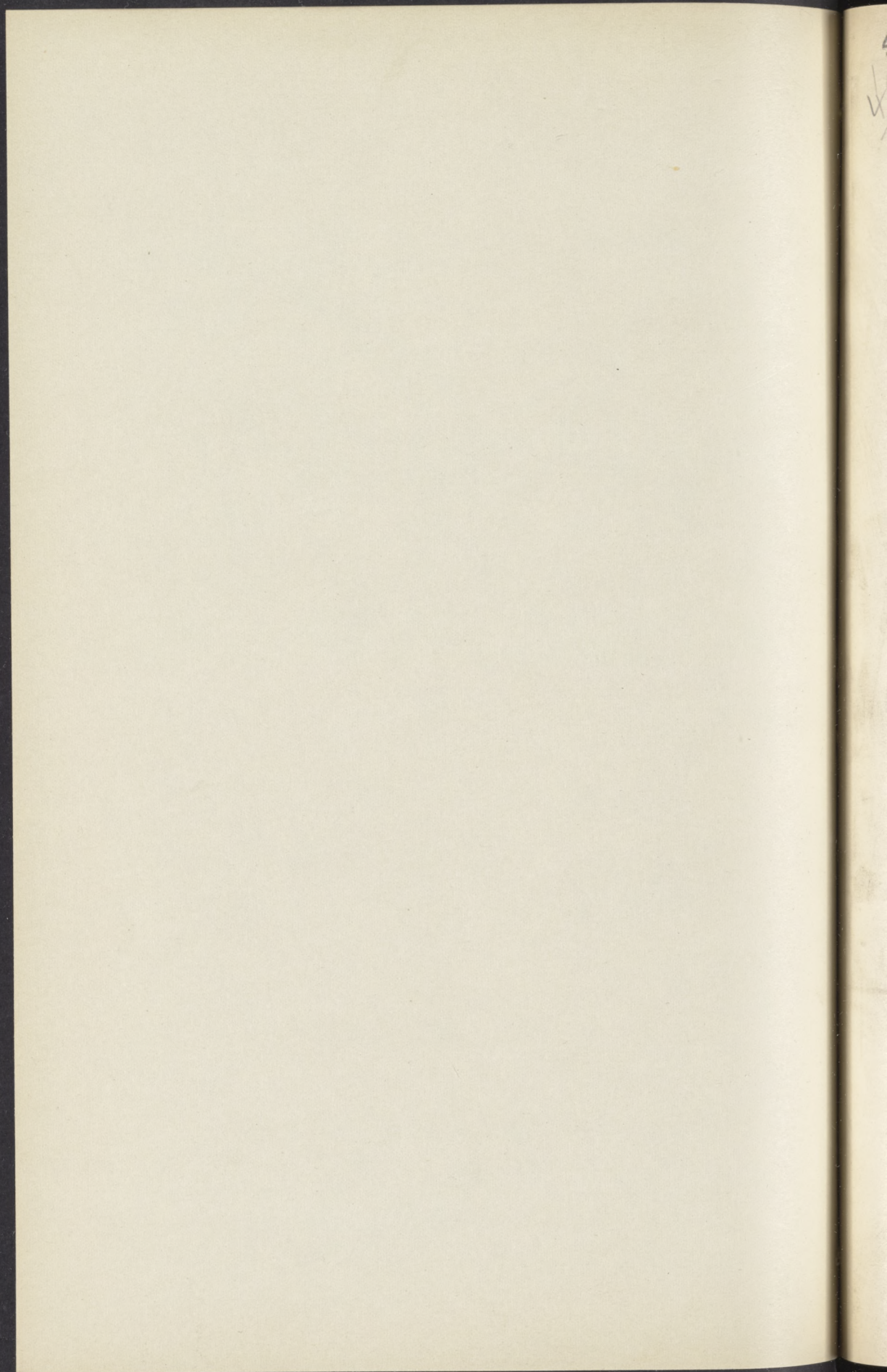
OF THE
COURT OF COMMONS

AND
APPEALS

IN THE
YEAR 1841

BY
JAMES WILSON

OF THE
COURT OF COMMONS



New Jersey Court of Errors and Appeals

Between

MILDRED GOLDSBOROUGH,

Complainant-Respondent,

and

JAMES GOLDSBOROUGH,

Defendant-Appellant.

On Bill, &c.

On Appeal
from Court
of Chancery.

BRIEF ON BEHALF OF DEFENDANT- APPELLANT.

Complainant filed her bill in this cause for the purpose of obtaining a decree against the defendant for support and maintenance for herself and the children of their marriage. She rests her claim upon allegations of acts of cruelty on the part of the defendant. A decree was advised by Newman, A. M., from which decree this defendant appeals.

STATEMENT OF FACTS.

Complainant and defendant were married on April 10th, 1917. For a period of about four years they lived together in Brooklyn, New York, moving therefrom to Woodridge, Bergen County, New Jersey, where they lived approximately two

and one-half years. From there they moved to Verona, Essex County, New Jersey, where they lived about six years, after which, complainant moved to Montclair in said county, where she resided at the time of the filing of the bill in this cause. Two children were born of their marriage; a boy now aged 9 and a girl aged 11.

Complainant charges that between April, 1917, when she and the defendant were married, and February, 1928, when she last returned to him, her husband was guilty of the following acts of "extreme cruelty," to wit:

1. Shortly after their return from their honeymoon he tossed a plate of veal chops "across the table" (*not at her*), saying, "This isn't done" (S. C. bot. p. 37, top p. 38).

2. He failed to come home early from his work on an occasion when she had a sore throat (p. 38, l. 10). This was during the first year of their married life.

3. Six or seven years afterwards, he became angry because a child's swing was hung up by hooks on a tree in the yard, and slapped her across the face, "as hard as he could" (p. 38).

There must be some doubt about the force of this blow, in view of the fact that we hear nothing further about this incident.

4. Defendant wanted her to do cooking that she says was unnecessary, and wanted her to get up earlier than she should (p. 39).

There does not appear to have been any physical or other chastisement because of her refusal to do as he requested.

5. Defendant would take the children and herself by the hands and sort of bend their knuckles and fingers and say, "Down, down on your knees," and he would pinch the children's legs and arms (Bot. p. 39, top p. 40). No definite times were stated by complainant, when these acts occurred. They were said to have taken place "always."

Although the children were at the time of the hearing 9 and 11 years of age, neither of them gave any evidence as to these alleged acts of cruelty; nor was there any testimony by the complainant that these acts were severe or left any marks on anyone. It seems unbelievable that this "finger-bending" could have been done without the participation of all the persons concerned.

6. Defendant would frequently lean over, while sitting opposite complainant, and kick her in the ankles. This was done "just to amuse him" (p. 40).

We remark right here that there was no corroboration of any of these allegations by complainant, nor was there any proof of any injuries resulting from either the finger-bending or kicking episodes to warrant the use of even the simplest household remedy. Nor is there any evidence that any inconvenience was occasioned thereby.

In October, 1926—9 years after her marriage—she left the defendant.

To indicate the lack of seriousness of these so-called acts of cruelty, complainant went back to defendant about a month after she left him (pp.

42-43). It is evident that this absence of hers was just a vacation at her mother's home and was not caused by any cruel treatment of her. After her return in November, 1926, she lists the following acts of cruelty committed by defendant:

Defendant insulted her by tearing up a check which he had given her after she had asked him for extra money (bot. p. 43, top p. 44). Whereupon she again left him and remained away until March of the following year. Several letters received by her from the defendant were of the most endearing type, in none of which letters was there any reference to any unpleasantness between them, or of any forced or involuntary vacation (see exhibits, pp. 83-87). She says her return was based upon the fact that her husband promised her "everything." Such as ceasing to tease the children, buying some new furniture, giving her a larger allowance for the table and clothes, procuring a larger home and taking her mother to live with them, should anything happen to her father who was ill (p. 45).

Not a word here to indicate that he promised reformation of his own personal conduct and attitude toward her, which it is submitted, is a fair indication that he had done nothing of consequence to injure her. She admits that he did not, in that period, strike her, although he had the "kicking habit" (bot. p. 46).

Although nothing of consequence thereafter appears to have disturbed the serenity of her home, she again left defendant at Christmas of that year (1927). The causes leading up to her leaving were the following:

1. Disappointment because he did not take the children to see "Santa Claus," although he had promised to do so (p. 47).

2. An argument as to who was to have the children's photographs, which were taken about that time (p. 47).

3. An argument about where a clock, which he purchased, should stand. He wanted it placed on the mantle, but she did not want it there. He challenged her to move it, whereupon she went to the clock to move it and she says he then took her by the arms and threw her into a chair, bruised her and breaking the chair, although it did not fall to the floor, nor did she.

This was the most serious charge of all that was made by her during her entire married life, as the testimony is recalled. Although the most that she makes of that incident is that she showed him a bruise the next day and told him that almost anyone would be sorry over it, but that he said nothing.

There were further arguments regarding the children's photographs and she then again left her husband and remained away from him until the latter part of February, 1928—about two months—in the meantime bringing a suit in the Court of Chancery for separate maintenance.

Characterization of the alleged acts of cruelty by counsel for the defendant seems idle. It is respectfully insisted, however, that during the 11-year period mentioned, the lives of these two people seem to have been reasonably barren of seriously unpleasant conduct. The complainant was undoubtedly a very nervous and highly-strung

woman, going away at the slightest provocation and returning at her own sweet will.

From the time of her return to him in February, 1928, until she left him for the last time on June 17th, 1929, nothing of any moment seems to have occurred, which can be classified as acts of personal cruelty. She was asked by her solicitor the following question:

“Q. Did he (meaning the defendant), after your last return, strike you at any time?” to which she answered, “No” (p. 51).

Complainant had an old gas heater which would flame out because of too much air in the burner. She did not care to light it, so defendant told their boy Jimmie to light it. She did not want him to do it, and when defendant found out that the child told his mother that he was asked to light the heater, she says he gave the child a slap and dragged him downstairs. He turned around and *she thought* he was going to strike her, but he did not (pp. 51-52). Later on, he tantalized the other child by pulling her by the ear. An argument started about the socks the child was wearing. The mother told her to change them, but the father told her to go out with them, and the mother's orders were obeyed. The child went in to change her socks, whereat, she says, the defendant grabbed it by the ear.

When asked to state why she finally left her husband, she said, “*These things he was doing continually to the children.*”

From that point on, through the rest of her testimony, *she made it clear, more than once, that defendant did not commit any acts of vio-*

lence or make any threats of so doing during the entire sixteen months that she last lived with him.

When asked when the first time was that defendant kicked her, and why (l. 25, p. 58), she answered, "*If he had just kicked me hard I could remember it.*" This answer was followed by the question, "You mean the kicking was so slight it made no impression on you?" and her answer, "Of course, it bruised me but it wasn't extremely hard."

She spoke of many little matters which indicated that she resented defendant's being "boss" and other matters connected with the household. She complained that he was selfish (p. 63). She also indicated that she was jealous, and approached the border line of accusing him of infidelity, although she says he never accused her similarly (p. 65).

Coming down, again, to the period during which they lived together the last time, to wit, *between February, 1928, and June, 1929, she testified that defendant never struck her.* When asked, however, whether he otherwise assaulted her, she for the first time stated that he bit her. When asked when that was, she answered, "Off and on all through the past year when he was leaving in the morning."

"Q. Would that be when he would kiss you good-bye? A. He did not kiss me good-bye, not at the last. He would do other things.

Q. On the occasions when he bit you on the cheek, would that be when he was saying good-bye to you? A. Yes.

Q. He never drew blood? A. No."

In view of the fact that complainant made no such allegation in her bill of complaint, nor made any reference to any biting in her direct-examination, it is fair to assume that this was a clear afterthought.

Complainant, in her further testimony, stated that after she left defendant she did not inform him as to where she moved; made no attempt to let him know where she moved; that she moved to a place where her mother had been living; that she *at no time after leaving her husband informed him where she went to live*; that he found out where she was living by having seen the children in front of the house while he was "riding around the streets"; that she remembers that the children ran into the house on that occasion and that she kept them there.

LAWSON R. JONES, complainant's brother, testified that *he never saw the defendant strike his sister* (p. 16, l. 11); that he saw a black and blue mark from some pressure on her arm and that he had seen marks on her cheek. He said his sister did not tell him what caused that, although he asked her (p. 69, l. 25).

Although he knew that complainant was going to leave defendant, he did not inform him of that fact.

DR. ARESON, being called on behalf of the complainant, stated that he first met her in the early part of January or February, 1927, and that she had been under his care for a general breakdown ever since. He ordered a rest cure and gave her iron injections for an anaemic condition and medicine to quiet her down (p. 77). He informed the defendant that his wife was in a run-down

mental condition, telling him that he heard about the bending of his wife's fingers and the teasing of the children, all of which produced a bad effect upon her, and that she ought to get away for a rest. He testified that she had an organic nervous disorder (p. 78).

This witness further testified that complainant was very nervous and high-strung; that she bordered on neurosis; that he could not tell how long standing that condition was. His testimony dealt generally with causes of nervousness and anaemia.

ARGUMENT OF THE LAW.

The argument under this head will be divided into two parts.

First. Complainant has failed to show any acts of cruelty on the part of the defendant during any part of their married life, sufficiently serious to entitle her to the decree granted her.

Second. No acts of cruelty having been perpetrated by the defendant upon the complainant between February, 1928, when she returned to him, and June, 1929, when she left him for the last time, any acts of cruelty prior to her return to her husband have been condoned by complainant.

POINT I.

COMPLAINANT HAS FAILED TO SHOW ANY ACTS OF CRUELTY ON THE PART OF THE DEFENDANT DURING ANY PART OF THEIR MARRIED LIFE SUFFICIENTLY SERIOUS TO ENTITLE HER TO THE DECREE GRANTED HER.

The law relating to extreme cruelty has been defined many times by the courts of our state.

The same proof of extreme cruelty is required in an action for alimony, as is required in an action for divorce from bed and board.

In *Taylor v. Taylor*, 73 N. J. E. 745, Vice Chancellor Leaming, in his opinion, which was affirmed by this court, upon the question herein involved, said (at page 746):

“It follows, therefore, that when the wife, as in this case, separates herself from her husband and claims alimony she must justify that separation by proof of extreme cruelty upon the part of her husband to the same extent that she would be compelled to prove if she were suing for a divorce from bed and board on the ground of extreme cruelty.”

He cites (at page 747) the case of *English v. English*, 27 N. J. E. 579, where Justice Scudder, in delivering the opinion of the court (at page 585) uses this language:

“The court must be satisfied that the wife is in danger of bodily harm if she goes back to him, or, to use the language in *Close v. Close*, 25 N. J. E. 529, that he has done and will continue to do such acts as will endanger her health or render her

life one of such extreme discomfort and wretchedness as to incapacitate her to discharge the duties of a wife. It is not the question whether she will live more comfortably at her father's house with a liberal allowance of alimony, but whether she is released from her duty as a wife by the extreme cruelty of her husband and the reasonable apprehension that it will continue. The principle which must decide this case does not affect these parties alone; it is of the utmost importance to all that these bonds should not be lightly severed." (Italics mine.)

Again, he cites from *Black v. Black*, 30 N. J. E. 215, approving the language of Vice Chancellor Van Fleet, as follows:

"The question, then, presented by this branch of the case is this: Was the complainant justified in separating herself from her husband? The justification she offers is cruelty. She must show a case of extreme cruelty, such as would entitle her to a decree of separation. The courts can know no middle ground—a wife must live with her husband, make his home hers and give him her society and services, unless she can show reasons valid in law relieving her from her duty to him."

Also, from *McVickar v. McVickar*, 46 N. J. E. 490:

"That to justify a wife in separating herself from her husband, physical violence need not be proved, but such conduct of the husband must be shown as will reasonably convince the court that her life or health was in danger or her life rendered one of such extreme discomfort and wretchedness as to incapacitate her to discharge the duties of a wife, or that the conduct

of the husband, if continued, would have brought about these conditions."

In the later case of *Cavileer v. Cavileer*, 94 N. J. E. 160, Justice Trenchard, for this court, referring to proof of a certain cruel act committed by complainant, said:

"That single act of personal violence is not extreme cruelty, justifying abandonment of, and refusal to support, the wife, where, as here, the injury was slight and the act committed under circumstances which do not furnish any reasonable apprehension that the continuance of cohabitation would be attended with further personal injury."

In *Regan v. Regan*, 100 N. J. E. 158, the complainant testified that her husband called her vile names, quarreled with her, threatened her and slapped her. In this she was corroborated. She also testified, referring to her husband's actions, that he "tried to choke me but I am nearly as strong as he is and able to take care of myself. He would take hold of my neck with both hands but I am very strong and able to take care of myself. Up to this time I always thought I would live with him, taking his good qualities as well as his bad ones together."

Vice Chancellor Church, in affirming the report of the Special Master denying a decree, said (quoting from *Hewitt v. Hewitt*, 37 Atl. 1011):

"Three or four separate acts of violence occurring at different times * * * which did not cause a condition of terror or apprehension for the future, and did not prevent the continuance of the connubial relation will not sustain a decree of divorce from bed and board on the ground of extreme cruelty."

In *Henrikson v. Henrikson*, 128 Atl. 872, 3 N. J. Misc. 49, the petition was by the wife, for divorce on the ground of extreme cruelty. The wife testified that the defendant frequently slapped her face, struck her about the shoulders, pulled her hair, choked her and on two or three occasions knocked her down. There was corroboration of some of the incidents by one sister and of others by another sister. Although there was denial of some of the acts by the husband, Vice Chancellor Buchanan said:

“Undoubtedly the husband did use physical violence toward his wife on occasions, beyond the mere pushing away, but I am not satisfied that there was anything really serious except perhaps on one or two occasions; and I am satisfied that most, if not indeed all, of the occasions were not without provocation on her part. He admits that on one occasion he tore her away from the door of the bedroom and threw her on the bed and sat on her, but says this was because she was holding the door shut to prevent him from going out. * * * He also says that on the occasion immediately preceding the separation he was drunk, and either from that or from a blow which he says was dealt him by his sister-in-law, he does not remember what took place.”

In *McLean v. McLean*, 144 Atl. 583, Judge Kays refused to accept as sufficient proof of extreme cruelty, evidence that defendant's wife on one occasion attacked him with a razor.

The burden of proving that defendant was guilty of acts of extreme cruelty justifying a wife's leaving her husband, is upon complainant. (*O'Brien v. O'Brien*, 142 Atl. 898.)

It is, therefore, respectfully submitted that none of the acts of conduct related by the plaintiff and her witnesses, meet the test of the law in our state, and that, therefore, the decree granted in this cause, so far at least as complainant is personally concerned, should be reversed.

POINT 2.

NO ACTS OF CRUELTY HAVING BEEN PERPETRATED BY THE DEFENDANT UPON THE COMPLAINANT BETWEEN FEBRUARY, 1928, WHEN SHE RETURNED TO HIM, AND JUNE, 1929, WHEN SHE LEFT HIM FOR THE LAST TIME, ANY ACTS OF CRUELTY PRIOR TO HER RETURN TO HER HUSBAND HAVE BEEN CONDONED BY COMPLAINANT.

Without admitting, however, that any conduct of the defendant prior to the last return of the complainant to the defendant was such as to warrant its characterization as extreme cruelty, it is urged herein that there was a condonation on the part of the complainant of any such acts when she returned to him in February, 1928.

In order to justify this insistment by the defendant, it is necessary for him to show that (assuming that he had been guilty of any acts of cruelty prior thereto) he did not repeat them, nor did he commit any other offense of which our matrimonial courts take cognizance.

The instant case is somewhat different from most of them which present themselves to this court. The leaving was in every instance the act of the complainant and the return was also al-

ways of her own volition. If, therefore, during the period of sixteen months (from February, 1928, to June, 1929), complainant and defendant lived together without any untoward acts having occurred during that period, then, clearly, any acts of his theretofore committed were condoned.

The rule as stated in *Warner v. Warner*, 31 N. J. E. 225, is as follows:

“Condonation is always conditional, the condition being that the pardoned party shall in the future treat the other with conjugal kindness. And by this is meant that he shall not only refrain from a repetition of the offense forgiven, but shall also refrain from committing any other offense which falls within the cognizance of a matrimonial court.”

**FOR EITHER OR BOTH OF THE REASONS
HEREINABOVE POINTED OUT, IT IS MOST RE-
SPECTFULLY URGED THAT THE DECREE OF
THE COURT OF CHANCERY BE REVERSED.**

Respectfully submitted,

BENJAMIN M. WEINBERG,
*Attorney for and of Counsel
with Defendant-Appellant.*

The Otsego Press, Cooperstown, N. Y.

New Jersey Court of Errors and Appeals

Between

MILDRED GOLDSBOROUGH,
Complainant-Respondent.

and

JAMES GOLDSBOROUGH,
Defendant-Appellant.

On Bill for
Separate
Maintenance.

Sat Below
Newman, A. M.

Decree for
Complainant.

Defendant's
Appeal.

BRIEF OF COMPLAINANT- RESPONDENT.

(Italics, etc., mine, except where otherwise noted.)

Statement of the Case.

The bill was filed for separate maintenance (p. 8) alleging that the life of complainant was made so wretched and her health was so affected by the conduct of complainant as that on June 17, 1929, she was obliged to leave her husband (p. 24).

Defendant answered (p. 26) denying the charges and setting up, by way of separate defense, interference of complainant's family. Defendant appeared at the hearing before the Advisory Master (p. 35) through his counsel who cross-examined the witnesses produced for complainant but offered no evidence (p. 33).

The Master filed his conclusions p. 31, which resulted in the final decree allowing separate maintenance (p. 33) from which this appeal was

taken (Notice of Appeal, p. 1, Petition of Appeal, p. 4).

The decree is challenged upon the sole ground that there was not sufficient evidence to support it.

The Law.

In the brief of appellant at several points in discussing the evidence he says that there was no corroboration of certain statements made by the wife.

Corroboration is not required in a suit for separate maintenance.

Shore v. Shore, 96 N. J. E. 661.

Where corroboration is required it need not be by the testimony of witnesses as to every act alleged, nor need it be the testimony of witnesses at all. It may be by surrounding circumstances including the circumstances surrounding the trial itself.

Foote v. Foote, 71 N. J. E. 273;
Robinson v. Robinson, 83 N. J. E. 150,
 affirmed 84 N. J. E. 201;
Rogers v. Rogers, 89 N. J. E. 1;
Orens v. Orens, 88 N. J. E. 29;
Bissell v. Bissell, 93 N. J. E. 537.

Under the rule announced by this Court in *Haskell v. Haskell*, 99 N. J. E. 399, the Advisory Master erred in favor of appellant when he excluded the testimony of respondent's physician as to what she had told him was the cause of her illness when she consulted him for treatment.

Appellant cites *Taylor v. Taylor*, 73 N. J. E. 745; *English v. English*, 27 N. J. E. 579; *Black v. Black*, 30 N. J. E. 215; *McVickar v. McVickar*, 46 N. J. E. 490; *Cavileer v. Cavileer*, 94 N. J. E.

160; with respect to what kind of conduct will justify a wife in leaving her husband and has referred to statements in some of the opinions that a single act of physical cruelty is not sufficient and the like.

The true rule is that physical violence need not be shown but only such conduct on the part of the husband as that the Court is reasonably convinced that if he is allowed to retain control over the wife her life or health will be in danger, *or* will render her life one of such extreme discomfort and wretchedness as to incapacitate her to discharge the duties of a wife.

Doty v. Doty, 92 N. J. E. 660 (Ct. Er. and App.);

Hill v. Hill, 97 N. J. E. 237 (Court of Chancery).

In this case appellant, although answering denying the charges and setting up an affirmative defense of interference by the wife's relatives offered no evidence in contradiction of the statements of the witnesses produced by her. He had his opportunity to deny or to palliate his conduct. He did neither. He must be considered as having admitted the truth of every statement of the wife and her witnesses and it will not do for him *now* to attempt to cast doubt upon any of those statements. His criticism now is not equivalent to what his sworn denial or explanation would have been.

Nor has he put himself in the best position by making the affirmative charge in his answer that the difficulty was all due to the interference of the wife's relatives and not offering a word of testimony before the Advisory Master in support of that charge.

With this consideration of the law I will examine the facts.

The Facts.

Appellant and respondent were married on April 10, 1917 (p. 36); there are two children, a son aged nine and a daughter aged eleven living with the mother (p. 37); difficulty commenced immediately upon the marriage (p. 37); within a month he criticised her cooking, tossed a plate across the table and said, "This isn't done" (p. 38); from the beginning the husband neglected the wife and whenever she was ill deprecated her illness and scoffed at any requisite for a physician (p. 38); when they were living in Verona three or four years before the separation, because a swing had been hung in the yard for the little girl he flew into a violent temper, tore down the swing and slapped the wife across the face; during her pregnancy he neglected her, requiring her to continue to do unnecessary housework; when birth was about on he made no provision for a doctor and the wife was obliged to get the doctor through her mother; after the children became of an age to appreciate pain it became his habit to take the wife and the children by the hands, bend back their fingers and say, "down, down on your knees", which posture they were obliged to assume to avoid pain; it became his habit to pinch the children's legs and their arms, force their fingers and thumb back and the little boy, following his father's example, was found practicing the same conduct on an older girl in the neighborhood; when the son was so young as that he was still in a high chair the husband would take his fingers and snap them against the child's ears and, if the child cried, would say, "cut that out or I will give you something to cry about" (p. 40); it became his habit, when he was with his wife in the evenings, to sit opposite her and lean over with his foot and

kick her in the ankle without provocation "just because it amused him" (p. 40); the kicks were hard enough to bruise her, leaving marks (p. 40); he paid no attention to the house and bought practically nothing although he had a good income and other resources; a year after they began to live in Verona he was making \$5,500 a year and had more than \$20,000 when they moved (p. 41); he gave her, to run the house, \$10 a week and raised it when the child was born \$1.50 a week, giving her twenty dollars a month in addition out of which she had to pay the extras, and his wife testifies: "When my baby was born I told him I could not get along on \$10, so he gave me \$1.50, figuring the milk just to the cent; he did not even give me a full dollar when Jimmie was born."

At the time she was married she was strong and healthy and not nervous. The effect of his conduct was such as to make her thin, nervous and hysterical. By October, 1926, she had become very ill (p. 42); she wanted her husband to take her to a doctor; he refused and would not even call up the doctor and, "He laughed at me and said he had more important things to think of". She had to have medical assistance and, her husband refusing to supply it, she went with her mother and father and stayed for about a week and they took her to Dr. Whitehorn (pp. 42, 43) as well as another doctor. The doctors told her that she ought to go to a sanatorium for treatment (p. 43).

On the night before Thanksgiving of 1926 she returned to her husband; she had an infected finger and requested her husband to take her to a doctor, which request he refused; he had promised, when she returned, that he would treat her kindly and that he would give her more money; sometime after she returned, she asked for more money and "he told me that when I would be a wife to him he would give me more money. He

tore up the check and I went away" (p. 44). She had not refused sexual intercourse except when she was ill and, after she had returned, she had had sexual intercourse with her husband, "but he wasn't satisfied" (p. 44).

She left in the first part of December, 1926, and remained away until March 1, 1927; during the time that she was away the husband wrote Exhibits C-1, C-2 and C-3; letters dated December 17, 1926, December 20, 1926, and January 8, 1927 (pp. 83 to 87).

These letters demonstrate that the husband had no complaint to make of the wife or of her family and that he knew of his wife's illness, and, read carefully, they are in the nature of confessions.

In the letter of December 17, 1926, he expresses his sorrow because she is ill and hopes for her early recovery and then, "Please forgive me if I have ever said anything which hurt your feelings. No man can ask for a *finer or sweeter little girl* than I have, so you see I really do love you and always will." "Forgive me, I am almost frantic without you." What had he said that he thought might "hurt her feelings"?

In the letter of December 20, 1926, he says: "Congratulations—and I am so pleased with Dr. Whitehorn that you *will never hear me complain if you have him in the future* at any time for any trouble whatsoever, even for a boil." Had he complained? *She* says that he refused her medical assistance and the letter of December 20, 1926, is corroboration of that charge.

He becomes facetious in the letter of December 20, 1926, and says: "And then if you promise to be *real* good, and you really have to do this, then I might take you to a good play in New York. *Now isn't that sweet of me?* You probably won't admit it, but you never did flatter me any and so I *have no particular reason for trying to be nice to you*

except for the fact that you are ill and I am more than sorry for you because of your illness."

His facetiousness indicates his true nature.

In the letter of January 8, 1927, he says that he wants to buy her a fur coat for her Christmas and "I am writing the word *small* as I were saying the word lightly because I know you need the coat and *because of your condition you should have had the coat before and really should not go out now without it*". The fact is that she should have had many things before.

Remembering that in his answer here he blamed the wife's relatives his statement in the letter of January 8th, 1927 (p. 86), is important—"I am never going to let you get run down again in such a condition. I am truly thankful to your mother and father for what they have done for you and I can't help but realize that *your mother has had a lot of extra care forced on her*, although she would do anything in the world for you because of her affection."

This is an admission upon his part that she had become run down and that the mother had had a lot of extra care forced on her because of his neglect. The letters, while written in tones of endearment, are in reality confessions that his conduct was not what it should have been.

She returned to her husband about the 1st of March, 1927; her husband promised that he would act differently and stop teasing the children and buy further furniture and give her a larger allowance for the table and clothes. Induced by these promises, she returned.

Appellant argues, p. 4 of his brief, that there is nothing in the testimony to indicate that he promised to reform his personal conduct and that there is nothing in the letters (Exhibit C-1 to C-3, pp. 83 to 87) which indicates that there was any unpleasantness between them.

I have already analyzed those letters and they do not bear the interpretation put upon them by appellant.

For a short time after she returned he *was* different and then gradually became "positively ugly". He went back to the habit of kicking her in the ankle (p. 46) and finally, about ten days before Christmas of 1927, after being ugly for about ten days, there was a dispute about the location of a clock in the house, and, when she went to lift the clock, "he took me by the arms and threw me in the chair, breaking the chair and bruising me" (p. 48); she was bruised; the next day she showed him the bruises and he said nothing; there was a discussion about pictures which were to be taken of the children and which he insisted he himself would have taken; he refused to allow his wife to go with him and said to her, "I told you those pictures were not for you; you are not going to have a look at them"; when she protested he said, "that is my affair; you are not going to have a look in"; her mother was present and suggested that he ought to be kinder under the circumstances, and he replied, "Kindness means nothing to me"; the episode made her ill and she was forced to leave the house (p. 49).

She went to a doctor, a Dr. Areson, who was a witness (p. 75), and was under his care continuously for quite a few days and then off and on for a month or two; she brought a suit for separate maintenance in the Court of Chancery (p. 49); after she brought this suit her husband called her up on the telephone and made the promises which he had made before all over again and promised to treat her better; in the meantime her father had died, and, believing her husband, and about the 1st of February, 1928, she went back to live with him (p. 50).

As before, *for a time* he treated her differently (p. 50) and then began all over again; he got in rages over nothing (p. 50); they had an old gas heater which had burned the wife when she had tried to light it, with the result that she did not want the children to light the heater; he instructed the boy to light it; Jimmie went to his mother and told her about it and when the husband found out he slapped Jimmie, dragged him downstairs and, when the wife followed, he turned and indicated that he intended to strike her; he did not strike her; he seized the little boy, Jimmie, who was then eight years old, by the shoulders and dragged him down to the heater; he had already given him a beating in the hall upstairs; he put Jimmie in front of the heater and made him light it; he told Jimmie not to go anywhere near the wife (p. 52); that same morning he pulled the little girl Muriel downstairs by one ear; she lost her footing and ran out hysterical (pp. 52, 53).

The particular instances which she remembers as to the children were but examples of a general course of conduct; he was continually mistreating the children, knocking their heads together, making them cry in the wife's presence, although he knew that she was sick; during the summer he hardly spoke to the wife.

The conduct of the husband was such as that the wife became so ill as that it was impossible for her to stay with the husband; she again consulted Dr. Areson (p. 52) and took nerve injections; she talked to her husband about it and he adopted the same attitude as he had before with respect to her condition; he not only refused to take her to the doctor's but also refused to permit her to use the automobile stating "that it was too good for me" (p. 54).

The wife finally became so worn out that most of the time she was obliged to lie down; in a last

"desperate attempt to straighten things out" (p. 55), she called her husband into her room and asked him to talk about it but he walked out saying that "he wasn't going to give me any more promises; that was the attitude he took; he walked out of the room within two or three minutes. I saw it was useless" (p. 55); she left.

On cross-examination counsel for appellant attempted to belittle the various particular episodes to which the wife had referred as he does in the brief. She describes the way in which her husband forced both herself and the children to their knees by bending their fingers and also the manner in which he kicked her (p. 57). While counsel says in his brief that the kicking was not hard, the witness said (p. 59):

"Q. You mean the kicking was so slight it made no impression on you? A. Of course, it bruised me but it wasn't extremely hard."

And further:

"Q. Can you associate those kickings with any other events in your life that would enable you to give us some idea as to the time? A. They weren't done for any particular reason. He did that to me just like he did it to the children.

"Q. That is as definite as you can tell me? A. Yes. When my children were little he used to make them put out their hands and he would slap them across the fingers for no particular reason."

She tells, page 60, of his slapping her face and page 61:

"Q. You never became hysterical? A. Not except from his treatment."

She denies pages 61, 62, that the difficulty was over money, and page 63:

“Q. You complained not so much that he treated you cruelly as he had not given you the things you wanted? A. I complain of both. I think he has been cruel and I think he was selfish.”

In the beginning he kissed her good-bye when leaving but abandoned that and substituted biting her on the cheek, leaving a mark which would last all day. She protested and told him that it hurt her but he did not desist (p. 60).

The wife's brother testified (p. 67) and said that he saw the bruises on the wife at the time the husband threw her into the chair and it was he, the brother, who took her to the doctor, and the doctor advised that she be taken home to her mother's house (p. 68). The bruise, which was on the arm and clearly showed the imprint of the thumb, lasted for three weeks (p. 69). When the wife left on the occasion before the writing of the letters Exhibits C-1 to C-3, in 1926, and was treated by Dr. Whitehorn, the husband called up the witness Jones and asked if he could see him and Jones told him that the wife was “in a very bad condition and he (the doctor) feared for her health, her life”. The husband came down to the office and talked to Jones and it was after that interview that he wrote the letters Exhibits C-1 to C-3, pp. 83 to 87.

The doctor wanted the wife to go to a sanatorium but the husband protested. After the wife left in December, 1927, the husband again called up Jones and saw him, and Jones went over the entire situation with him; whereupon the appellant promised that he would treat her kindly, if she would return (p. 71).

There is no point in the suggestion of appellant that there is no proof that the husband promised to treat the wife better.

Jones says (p. 73) that the wife wanted to stick it out as long as she could, and Dr. Areson had told her not to remain but she said that she was going to stick it out as long as she could.

Dr. Areson testified (p. 75) that he began to treat the wife in the early part of 1927 and that she had been under his care since that time for general breakdown, "in plain language, physical and nervous troubles, neuro-circulating asthenia" (p. 76). He said that he had treated her ever since August, 1927, and on specific occasions "from time to time for attacks aggravated by something or other occurring in the house according to the history". The Advisory Master did not permit him to tell the history, although that testimony was admissible, I submit, under *Haskell v. Haskell*, 99 N. J. E. 399. He treated her at the brother's house in December, 1927, at the time the husband threw her into the chair, bruising her, and he saw the black and blue marks. In May of 1929 the doctor "advised her that she *must* get away from that atmosphere, and I told Mr. Goldsborough that" and the doctor testified:

"I told Mr. Goldsborough—I had a satisfactory talk with him, a plain, straight-forward talk from a physician to him about his wife. I told him he must be well versed of the fact that she was in a terribly rundown mental condition and *I believed her stories as told to me as to the cause of that trouble.*

Q. Did you tell him what she had told you?
A. Absolutely" (p. 77).

The doctor said that he told the husband about the bending of her fingers and those of the children and of the teasing of the children—

"all of which in her state produced a terribly bad effect, that she could not live on in that atmosphere".

The doctor told him that

“unless she did get out of that environment, that atmosphere, I would not be responsible for her mental condition”.

Appellant neither affirmed nor denied the statements of the wife related to the doctor and by the doctor related to him.

Since her removal from her husband she has, in the doctor's opinion, “improved forty to fifty per cent., her conduct, viewpoint, physical and mental condition. She is a distinctly improved woman”.

The doctor said that her improvement is due to “her removal from the nagging to which she has been subjected, according to her story, from her husband” (p. 82).

With this record the husband was content and offered no evidence.

Appellant in the brief lays great stress (pp. 6 and 7) upon the fact that, at least during the last time that the husband and wife lived together, the complaint of the wife was not so much with respect to the conduct of the husband directed towards her, but that directed towards the children, and seems to indicate that cruel treatment toward the children in the presence of the wife is not cruel treatment of the wife. To state the proposition is to answer it.

The quintessence of cruelty to a mother is cruelty to her children. She may stand cruelty directed towards herself; she cannot, if she is a woman, stand cruelty directed towards her children. Such conduct is enough to drive her insane, as it has nearly driven this woman insane. The record shows that this husband knew that fact and deliberately, knowing his wife's condition of health, gave outlet to his vicious disposition by ill-treating the children.

It is hard to refrain from epithets when picturing a strong man, in his pajamas at eleven or twelve o'clock in the morning, he just having arisen from bed, beating a boy eight years old in the presence of the mother and dragging that boy down into the cellar and forcing him to light a gas heater, merely because, when the father commanded the boy to light the gas heater, he had told his mother, because his mother had warned him to beware of the heater, because she had tried to light it on one occasion and the heater had become afire and singed her hair, and when picturing that same strong man continuously as a "playful" habit taking the fingers of both the wife and the children and bending those fingers back and forcing the wife and the children to kneel to him to demonstrate that he is the "boss", and when picturing that same strong man pulling his little daughter by the ear from one floor to another, and when picturing that same strong man, because his wife and himself disagreed as to the location of a clock, throwing her into a chair with such force as to break the chair and bruise her, or when picturing that same strong and healthy man ridiculing the condition of his wife which bordered on insanity, according to the physician, declining to aid the wife in any manner with respect to medical assistance, refusing to take her to a doctor and refusing to permit her to use his automobile because it was too good for her.

That persistent cruel and inhuman conduct, when considered in the light of the circumstances, one, perhaps, may expect from a man who, although he had an income of between five and six thousand dollars a year and \$20,000 invested, allowed his wife ten dollars a week for all expenses to run the house, with nothing extra save twenty dollars a month, and who raised the amount which

he allowed his wife for weekly expenses \$1.50 per baby (pp. 40, 41).

We should also expect it, I suppose, from a man who will in this litigation not only deny the charges in his answer but interpose a special defense to the effect that it was all the fault of the relatives of the wife, and then, having made the charge, not only offer no evidence to support it or his denials, but is proven to have injected a defense which he knew had no substance in the light of his letters (Exhibits C-1 to C-3, pp. 83 to 87).

This woman stood it just as long as she could. She left and went back at least three times upon the promises of her husband. She did not leave finally until she was advised by her doctor, as is indicated by the doctor's testimony, that it was a matter of life or death for her.

This conduct of the husband comes squarely within the cases which hold that the wife is entitled to separate maintenance if the conduct of the husband has been such as to render her life one of such extreme discomfort as to endanger her health or life or to incapacitate her to discharge the duties of a wife.

Doty v. Doty, 92 N. J. E. 660 (Ct. of Er. and Ap.).

That this rule has been satisfied in this case can, I submit, admit of no question.

One other thing—this case is one of fact. Much depends upon the impression made by the witness on the stand. The Master saw this woman when she testified. He could gather from the manner in which she testified and her appearance on the stand what she had been subjected to without words. I am informed that she collapsed upon the stand. He could judge of her sincerity.

Under these circumstances the Master's determination on the facts, I submit, should be given great weight.

Riddle v. Clabby, 59 N. J. Eq. 573;
Pittis v. Pittis, 84 N. J. Eq. 506;
Cortan v. Phelps, 91 N. J. Eq. 312;
Mackie v. Cain, 92 N. J. Eq. 631;
Sparks v. Lorentowicz, 106 N. J. Eq. 178.

In conclusion I again direct the attention of the Court to the fact that this is not a petition for divorce, where corroboration is necessary, but one for separate maintenance, where corroboration is unnecessary.

Shore v. Shore, 96 N. J. E. 661.

It is respectfully submitted that the decree should be affirmed.

Respectfully submitted,

MERRITT LANE,
Of Counsel with Complainant-Respondent.

