NEW JERSEY COURT OF ERRORS AND APPEALS

Between MARGARET WALSH, *Complainant-Respondent,* and JOHN E. WALSH, *Defendant-Appellant.*	ON BILL FOR MAINTENANCE. ON APPEAL.

APPELLANT'S BRIEF.

I.

STATEMENT.

The bill in this cause was filed for maintenance, alleging abandonment of the complainant and respondent by the appellant.

The couple were married forty-two years before filing the bill (p. 41). Appellant is seventy-four years old, is a native of Ireland. As far back as 1880 he kept a saloon on South Feeder Street, in Trenton, and his wife, the respondent, tended bar (pp. 295-6). Prior to that he had been an agent for ale and beer, driving the wagon himself (pp. 290-1), afterwards he kept the Monument House in Trenton (p. 215). About twenty-nine years ago he bought property at Ewingville where he engaged in training and dealing in horses, afterward keeping the hotel at Ewingville

New Jersey State Library

(pp. 215-16). He accumulated some property and besides the Ewingville property of about twenty-four acres, owns twelve houses in Trenton of an equity of about $14,000, (p. 237). Besides this he purchased, in 1878 or '9 (p. 235) the Monument House property for $2850.00, and put the title in his wife's name. He afterwards erected a three story building on it, at a cost of about $14,000.00 (p. 236). This is subject to $8000.00 mortgage, besides $1000.00 which is appellant's obligation and on which he pays the interest. This property is still owned by respondent and is worth about $28,000.00 (p. 238). Nine children were born and practically all reared while the couple were engaged in the liquor business. The testimony shows that the children were given a fair amount of schooling, being kept at school until nineteen or twenty-one (p. 276). Appellant's career might be called a successful one of its kind, but in view of the environment in which the family lived, and in which the children were reared, one could hardly expect the atmosphere of the home to suggest Murray Hill or Arlington Avenue. Supersensitiveness on the part of the wife is hardly to be expected, nor such delicacy of feeling as to make, after practically forty years of continuous cohabitation with appellant, any peculiarities of temperament or idiosyncrasies of conduct on his part, a menace to her health or serious obstacle to her happiness.

Some twenty years ago respondent, with her children, left Ewingville, to which place they had moved, and came to Trenton and lived in one of appellant's houses on Pennington Avenue, in order to place her children in a parochial school (pp. 42, 43, 217, 289, 290). Respondent got goods on appellant's credit (p. 43, l. 33). She was not then "on the outs with" appellant, she says (p. 43, l. 15).

In about a year respondent returned to appellant at Ewingville (p. 44), and they lived together until 1910. Up to the time appellant sold out the Ewingville hotel and the eldest three children, Will, John and Peter, were grown and married, respondent testifies she had "had no particular trouble with Captain Walsh" (p. 45, l. 21).

In 1910 respondent again left appellant and came to Trenton, residing with part of the children on Murray Street, afterwards in an apartment in the Monument House. They differ as to the cause of the separation. Respondent says (p. 46, l. 34) she was "forced to." Appellant says (pp. 224, 226-7, 292-3) respondent struck him severely about the head and in anger he left the house for Trenton to have her arrested and was there met by his eldest son, William, who dissuaded him and promised to get appellant and the remaining children away from Ewingville. Appellant's anger lasted a short time but when he returned to his home his wife and children were gone (p. 228).

Previous to this separation in 1910, appellant had always collected the rents from the tenants of the Monument House (p. 229). Part of the tenants objected to paying the rents to respondent and appellant directed that the rents should be paid to her (pp. 48-49, 229). This action was voluntary on the part of appellant (p. 48, l. 23, et seq.), and respondent has collected the rents ever since, (pp. 49, 229).

Whatever may have been the actual cause of respondent leaving appellant in 1910, they soon became friendly and respondent, while continuing to reside with her children in Trenton, early began making weekly visits (or oftener) to appellant at Ewingville, taking lunches to him and bringing away eggs and other supplies (p. 53), respondent made these

visits alone (pp. 174, 175, 183, 197, 230, 231). Friendly relations were restored though they continued living apart with week end visits from the wife to the husband.

The renewed friendly relations of the parties continued and respondent returned to appellant's home at Ewingville in 1913, while appellant was on a visit to Ireland (p. 24, l. 30, pp. 50, 51, 232).

RESPONDENT DID NOT AGAIN LEAVE APPELLANT AFTER THIS RETURN.

No conduct of appellant drove her forth after that. The last separation was in 1915, and *it was the appellant who then left the home* to seek happiness and peace for himself. He says the reason for his departure was the unendurable conduct of his grown-up younger sons. On page 233, l. 8, he says "Until the children became boss there was no trouble between my wife and I." Appellant left in February, 1915, and established a home at 78 Pennington Avenue, and asked his wife to join him there, but without the children (pp. 262-3, 301-2). He told respondent it was impossible for him to stand the abusive language and threats of his sons Harry, Tom and Frank any longer (pp. 240-1). He had tried to induce his sons to work (p. 242).

Respondent herself testified (p. 56, l. 20, p. 57, l. 10 and p. 304, l. 28) that appellant said to her "If you want to come you can come, if you don't you can stay." She was, according to her testimony, given the option to make her home with her husband or to stay away from him with her children.

There can be no question but that appellant invited respondent to make her home with him in his

new abode at 78 Pennington Avenue. The house has three stories, a bath, hot and cold water, eight rooms and is in a good neighborhood (pp. 276-7). It is not disputed that it was suitable for a home for appellant and respondent. Respondent had "no fault to find with the neighborhood" (p. 57, l. 30).

After hearing all the testimony the learned Vice-Chancellor expressed the hope that an adjustment might be made that would reconcile "these unfortunate parties" (p. 315), and he directed that the case stand over for two weeks and if at that time counsel should announce that a reconciliation was impossible then he would decide the case.

No reconciliation was effected and the Vice-Chancellor then decided appellant's conduct towards respondent was such as to deny him the right to require her to share his home and advised a decree that appellant pay respondent $10.00 a week with the right to apply for more should she be obliged to vacate the house of appellant then occupied by her, and a counsel fee of $100.00.

From that decree an appeal was taken.

II.

Appellant contends that the conclusions of the Court were unwarranted by the evidence and unjustified by the law applicable to the facts.

Appellant accepts, as the correct rule, that stated in *Taylor vs. Taylor,* 73 N. J. Eq. 745, 70 Atl. Rep. 323, where the same learned Vice-Chancellor's opinion was affirmed by this Court, the syllabus of which says:

> "A wife who has separated herself from her husband on account of his extreme cruelty may

be entitled to alimony, though he used no physical violence toward her, but she must prove that his conduct was such as to place her life or health in danger, or to render her life 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 was such as to bring about these conditions."

The Vice-Chancellor in the course of his opinion says:

"The conviction brought to my mind is not that Mr. Taylor was a model husband. I think the proofs justify a conclusion very much to the contrary. I cannot help believing, under all the evidence, that Mr. Taylor fell very far short of the standard which the good of society demands of a husband in his treatment of a wife. But it would be a misjudgment upon all the testimony in this case for this Court to treat as proven the averments of the bill that Mr. Taylor was cruel, in the sense of the statute, toward his wife."

Further on the fact of the wife separating herself from her husband, he says:

"I have no doubt the attentions she received from her husband were much less than a wife in her condition would crave and should receive, but I cannot conclude that her husband's conduct was such as would justify her in this breach against her matrimonial vows and against society itself."

The same Vice-Chancellor in *Saunders vs. Saunders*, 82 N. J. Eq. 491, 89 Atl. Rep. 518, held that

withdrawal of the wife from the husband's home was not justified because of quarreling through mutual fault or because the husband, in sudden anger, provoked by the wife, may have struck her. Among other things he said:

> "It is entirely apparent that petitioner has at no time feared defendant; any infirmity of health which may have existed prior to their final quarrel was not due to petitioner's fear of defendant. Nor am I able to believe that defendant ever threatened to shoot petitioner. It is clear she never regarded the revolver incidents, if they in fact occurred, as a source of danger."

And he then quotes approvingly Chancellor Runyon in *Coles vs. Coles,* 32 N. J. Eq., 547, 557, as follows:

> "The defendant's conduct, in laying violent hands on his wife, is not justified. It is not capable of justification. But the question to be determined is whether there is reason to apprehend that, if complainant shall return to his house, she will be in danger of violence or cruelty at his hands. I do not think she will. But, if on her return, he shall again treat her with violence, this court will be open to her for relief. The bill will be dismissed, but without prejudice, as in English vs. English, 27 N. J. Eq. 579."

In *Casey vs. Casey,* 83 N. J. Eq., 603, 93 Atl. Rep. 720, V. C. Griffin found that the defendant was "addicted to more than the ordinary use of intoxicating liquors and habitually came home late at night, if not drunk in a more or less maudlin condi-

tion." He had, according to the wife's story, seized her by the throat and struck her twice.

The Court further said:

> "After seeing the parties, and hearing them testify, I am satisfied that neither fear of bodily harm nor possible impairment of health induced her leaving him. She is a strong, vigorous, strong-willed, decent young woman, showing not the slightest indication of ill treatment. She is likewise not supersensitive, nor of such delicacy that the treatment received by her from her husband would impair her health. She, undoubtedly, had some mental suffering on account of her husband's habits. She is rather quick tempered, and my notion is that in her dealings with her husband her display of temper tended to bring on the disputes between them quite as much as his intemperance. To say the least, her conduct was provocative. * * * *
>
> "To my mind when she left him on July 21st, she did not fear him. Her leaving was due to the fact that she despised, rather than feared, him. I am, therefore, of the opinion that at or before the time that the petitioner left her husband was his conduct such as to justify the inference that if they continued to live together she would be in danger of bodily harm at his hands, or that her health would be impaired."

Tested by the rule as above set forth and applied it is submitted that the decree made in the case at bar was erroneous and should be reversed.

What is the evidence to warrant a conclusion that by reason of appellant's conduct respondent's health or life was in danger or that her life was rendered one of extreme discomfort and wretchedness?

It is sought to show that appellant was addicted to excessive drinking, that he was in a state almost of chronic drunkenness and that he was violent when intoxicated.

He was an habitual beer drinker, not a whiskey drinker. The testimony of Patrick Ryan (pp. 200-201), A. Reeder Green (pp. 204-5), Edgar Maple (p. 206), William J. Sanford (p. 209), Frank E. Cook (p. 213), and John W. Hendrickson (p. 256), disinterested and respectable witnesses, all tends to disprove the stories of his habitual gross intoxication told by respondent and her children.

Appellant frankly admits fondness for beer, denies that he drinks whiskey—in which denial he is corroborated—and denies that he became drunk and quarrelsome and violent because of drunkenness. The testimony of his son John (pp. 143-145) was that he became a little talkative at times, when drinking, that he was a normal drinker. One of the other witnesses said drink made him a little "jovial."

Certain specific acts of violence or threats of violence are charged. These may be divided into two classes. First, those which are alleged to have occurred before 1910, at which time respondent left appellant, and, second, those which occurred after 1913, at which time an intermediate reconciliation was consummated by the return of respondent.

While the evidence relative to the first class will here be considered, it is insisted by appellant that the Court must, in disposing of this case, *confine itself to the conditions which existed subsequent to the rehabilitation of the home in* 1913.

Whatever the shortcomings of appellant prior to that time, respondent cast the veil of oblivion over them by her voluntary return to her husband and to his home. Unless they will help to explain or clarify

occurrences since that time, they should be absolutely ignored by this Court.

THEY CAN THEMSELVES NO MORE BE MADE THE BASIS OF A DECREE AGAINST THE APPELLANT THAN IF THEY HAD NEVER OCCURRED.

Respondent has, herself, determined that they did not create a condition such that she ought not to return to her husband. Without compulsion or necessity she returned. She has shown beyond question that she had no fear from what had previously happened.

WHAT OF THE ALLEGED ACTS PRIOR TO 1910?

The daughter Agnes swears (p. 95) that her father and mother quarreled about her sister coming home late from school and appellant knocked her glasses off and "grabbed hold of her" and she ran across the street for her brother. The brother, John, says (p. 144) he went over to the house, found loud talking, his father had his mother by the arm and he said "Pop, let leave of her," and he did at once.

The son Edward, who wasn't on speaking terms with his father for 8 years (p. 150) says (p. 149) that John struck his father to make him let go. John denies this (p. 144, l. 15). The appellant himself explains (p. 270) that he grabbed his wife by the wrist to prevent her from hitting him when they were having an argument. The weight of the evidence

on this incident is with the appellant and it was prior to 1910.

Appellant's claim that the relations between him and his children were such as to make it impossible for him and them to live together in comfort, is more than corroborated by the manifest venom in their testimony. Whatever the cause, whosoever the fault, the fact is transparent.

The oldest son, William, testifies (pp. 139, 140-1-2), that he brought respondent and her children to Trenton in 1910, because appellant told him if he did not remove them their blood would be on his (William's) head. He swears he believed they were in danger of violence, even of murder at the hands of his father, because of his temperament and his habits, that his habits had not changed, that he still believed in the danger after 1910, but that it was he who effected a reconciliation and return of his mother to the appellant in 1913. His testimony is self-destructive. Appellant (p. 227) denies the son's version.

There is more testimony of alleged quarrelings prior to 1910, grossly exaggerated, it is submitted, where not positively false, and having no real bearing on the final disposition of this case.

WHAT OF THE THREATS OR ACTS SINCE 1913?

There are just three alleged threats since 1913 *which are made the basis of the charge that respondent could not safely live with the appellant.*

First. A threat to blow out respondent's brains.

The Vice-Chancellor (pp. 30-1-2) tried in vain to

get the respondent to give some substantial account of appellant's alleged threat. She said (p. 30, l. 36) "He came home and got arguing and I wouldn't listen to him and he said if I didn't he would blow my brains out." On page 32, l. 18, she says the quarrel lasted "two hours," and l. 25 "*I was tired listening to him,*" not that she was terrified, not frightened, just "tired" listening to a drunken man's talk. She left her room to get away from appellant and "hid" in her daughter's room. The daughter, Josephine, came out into the hall (p. 79) asked her father "Who are you looking for?" and he replied "For your mother" and the daughter replied "She is in here; what do you want her for?" and "he didn't say anything; he just went on in the next room, in his room."

"Q. Did he say anything at all?
A. No."

This was all there was of the quarrel or of the threat that night, (p. 60, l. 16). Respondent says appellant had something behind his back and they "were afraid it was a revolver."

What a spectacle! An infuriated drunken maniac talking to, "quarreling" with his wife, threatening to blow her brains out for two hours until she leaves the room from sheer weariness and seeks safety in her daughter's room, the drink-crazed man hunting through the house for his intended victim, a deadly weapon concealed behind him, and when he learned of the whereabouts of the object of his search, without a word, going "on in the next room, his room" (p. 79, l. 20).

This incident never occurred as described.

To give a semblance of substance to this allegation of a threat to blow respondent's brains out, it

is fixed on a night in February, 1914, when appellant came home "about one o'clock at night" (pp. 25-6) from the banquet of a Vigilance Society of which he was a member, and the assigned cause of the quarrel was the refusal of the respondent to convey the Monument House to appellant. It is proved beyond question that the Vigilance Society banquet of February, 1914, was held in the afternoon, that it was all over before 6 o'clock, that appellant came home from it in the afternoon in a sober condition. Patrick Ryan (pp. 199-200) remained at the banquet until it was over, left appellant there sober. John W. Hendrickson (p. 255) left when the banquet was over, between 4 and 5 o'clock, and appellant, who was chairman of the banquet committee, was not intoxicated. William J. Sanford (pp. 208-9) left the banquet with appellant, went home with him on the 6 o'clock car, appellant was sober. They had a bottle of beer apiece at appellant's house (p. 210).

So much for the Vigilance Society banquet as an explanation why appellant should be grossly intoxicated this particular night.

Appellant emphatically denies that he ever asked respondent to convey the Monument House to him (pp. 235, 267, 275), though this is the basis given by respondent and the children for the "quarreling." Appellant is corroborated by the fact that when respondent left in 1910, appellant voluntarily directed the tenants to pay her the rent, and never afterward sought to interfere with the collection of the rents and by the fact that at times he "paid the taxes for her when she couldn't pay them herself." For what purpose could he want a reconveyance, if not for the rents? He could not sell and convey the property without her signature. Practically, his position with regard to the Monument House would not have been

changed since he was not seeking to collect the rents. (p. 267, l. 30.)

The props of this story of a night of terror in the Walsh home having been knocked out by the true story of the banquet, the incident of this alleged threat and the subject of the quarrel falls.

So much for threat No. 1.

Second. A threat to drive a screw driver through respondent.

This was in April, 1915, after appellant had left the house at Ewingville and had returned to get some of his goods (p. 40).

He said to respondent "If you don't get away from me I'll drive this through you."

Appellant had brought a neighbor, a Mr. Lewis, with a screw driver, to remove a hall door lock (p. 61). Respondent and her son Thomas stood there and forbade Mr. Lewis to remove the lock, and he declined to do the work. Appellant picked up the screw driver, but owing to the words of respondent and the children, did not remove the lock (p. 62, l. 30).

Jesse C. Lewis, neighbor, respectable and disinterested witness, testified (p. 193) that respondent told him "not to touch the lock," that appellant asked for the screw driver, witness handed it to him, he kneeled down to the door, respondent got hold of the screw driver, which was returned to witness several days afterward and *not from appellant.* Witness stood close to both appellant and respondent, heard everything that was going on; did not see appellant point the screw driver at respondent, did not hear the threat to run it through her, was near enough to hear the threat, and to see the motion if it had been made (p. 194, l. 10). On cross-exami-

nation witness says the threat was not made while he was there (p. 195, l. 21), and further direct that respondent already had possession of the screw driver before he left, and that appellant came out to the porch with witness.

Appellant swears (p. 246) that he was on his knee working at one of the screws, and respondent reached over his shoulder and snatched the screw driver from him and he has not seen it since, and denies that he threatened her with it.

So much for threat No. 2.

The testimony of Mr. Lewis effectively eliminates the screw driver incident. It does more. It shows the unreliable character of the testimony given against the appellant. The story told by respondent and the others about the screw driver was not true. What of their other statements? Are they any more true?

Third. A threat to use a gun.

This was just prior to his leaving home in 1915, at the time when his wife, sons and daughters met in a sort of ecumenical council to determine what they should do with the father, whom they all professed so greatly to fear, (pp. 160-161).

The son Edward testifies (p. 161) that appellant "attempted to pull a gun" and another son, Peter, grabbed appellant's arm, and appellant struck Peter in the face. They didn't take the "gun" from appellant, they "didn't make any effort to get the gun out of his pocket" (p. 161, l. 14). In fact, Edward has never seen his father have a revolver in his hand or in his pocket (p. 158). All were present, the *boys,* not respondent, were the ones talking to appellant (p. 164, l. 8). Appellant did not mention respondent when he said he would use the gun (p. 163, l. 35).

On pages 272-3-4 appellant tells what undoubtedly is the true occasion of the family council. The sons came to dissuade appellant from sending his son Harry away because of abusive conduct toward appellant. Appellant agreed to compromise on a temporary banishment in recognition of his right in his own home, and all were apparently satisfied but Peter, and he grabbed appellant and jerked him from his chair; and "he being so much stronger and active than I was, every one of them—I will give them credit for that—they all came in to save me" (p. 273, l. 33). Appellant did not put his hands in his hip pocket and threaten to draw a gun (p. 274, l. 3).

Appellant said in reply to a question by the Vice-Chancellor *"Peter is here, and I am satisfied that Peter is truthful and he will tell the story straight—and the only one."*

Peter *was* there. He was not called to contradict appellant's version of this alleged gun threat episode. Appellant virtually challenged them to call Peter to say whether his story of the incident was true. Why was he not called? Manifestly, because he would not contradict appellant. Why would he not contradict him? Because appellant's story was true.

Moreover, while appellant had procured a permit to carry a revolver, he never did carry one (p. 296, l. 30). Neither respondent nor any of her witnesses ever saw him have one.

Can there be the slightest question that the charge of threatening to pull a gun on respondent is based on less than nothing?

So much for the three alleged threats since 1913. The last two are so emphatically refuted, the one by the positive testimony of Mr. Lewis, the other by the silent testimony of Peter, and the direct testimony of appellant, that the first is thoroughly discredited

being put forth, as it is, by the same parties in interest, apart from its own inherent contradictions.

These "threats" could not have caused respondent to "fear" appellant.

The telephone incident.

Appellant's avowed purpose when he left his Ewingville home in 1915, was to provide a home for himself and wife at 78 Pennington Avenue, and no longer to furnish, at his expense, a home for his grown-up children. Accordingly, he contemplated closing the Ewingville house (p. 75, l. 20). About May 12th, 1915, (pp. 37-8) appellant came to the house to get some of his household goods and found a man installing a telephone. He ordered him to desist as it was appellant's right to do as the owner. A "scrap" arose over the telephone. Appellant was seriously cut about the face and across the knuckles. (Dr. Madden's testimony, pp. 21-2). Respondent says she seized the telephone, that appellant grabbed it, they struggled and she let go and the telephone flew up and cut appellant's face and "how he hurt his hand was kicking the box that was on the side of the washboard, and he kicked me and my arm and limbs were all black and blue" (pp. 37-8).

The daughter Josephine—the only one present besides appellant and respondent, says (p. 87), respondent picked the telephone up, her father grabbed it while it was in her mother's hands, that she let go of it when he wrenched it from her and then he kicked the box "loose from the wall," and that was all the kicking she saw him do. She thinks her mother was frightened, but she neither ran from him nor went to him "she had the telephone in her arms" (p. 87, l. 28). Further, on page 88, l. 10,

> "Q. And what became of the telephone?
>
> A. Father took the telephone and threw it across the porch out.

Q. He didn't molest either of you?

A. Unless you call trying to yank the telephone away from her.

Q. After that, he didn't molest you or either one of you?

A. No, he went on down to the trolley and went down, and went to my brother's."

Again (p. 89, l. 10) after saying her mother "had her two arms around" the telephone.

"Q. After he got it he didn't do anything to your mother?

A. No."

Appellant (pp. 264-5) tells a different story about the telephone. He and respondent did not struggle over the possession of a telephone. He kicked a telephone box out and respondent, in anger, went to the kitchen and returned concealing beneath her apron a stick with which she struck him across the face and knuckles injuring him seriously. He did not kick her. He, in his wrath, went to Trenton and made a complaint against her for the assault and battery.

This incident may be important for three reasons.

1. Appellant did not kick respondent, but only kicked the box according to the daughter's testimony. Respondent swore he did. This indicates how her other testimony may be colored so as to pervert the truth.

2. Her seizing and tenaciously and defiantly holding on the telephone—according to the versions of herself and her daughter—shows how little she had come to "fear" appellant; and

3. If appellant's version is substantially correct, it shows that respondent was abundantly able to care for herself in any likely tussel between her and appellant.

That appellant's account is in substance correct is indicated by the character of the wounds described by Dr. Madden which hardly could have been inflicted in the manner stated by respondent and her daughter and by the fact that appellant made a criminal complaint against respondent.

The daughter was a witness to this affair. If the occurrence was as the respondent says, this daughter would be sure to be a witness against appellant and to prove that no assault was made by respondent.

Appellant's angry act in making complaint against his wife may have been far from gallant, but the circumstances indicate that he did it while smarting under the sting of the injury inflicted by his wife.

What possible motive could there be for the complaint with the daughter as the only witness, unless he was conscious of the truth of his charge and believed the daughter would truthfully, though reluctantly, corroborate him?

The Vice-Chancellor said (p. 169, l. 10) "I think the real question and the only question is whether or not his conduct justified her refusal to live with him, his conduct prior to the separation."

We agree with this view. What was there to justify such refusal?

The specific charges of violence or threatened violence, on examination fall. The circumstances surrounding the entire case as revealed by respondent's witnesses as well as those of appellant's, show the baselessness of the claim that respondent lived

in fear of appellant and that this fear caused her to refuse to join him in the home he provided.

Some of these circumstances are:

(a) Respondent testifies (p. 52, l. 6) that before she went back in 1913, he made "just the same" threats "as he did since I went back," that "it was the same conduct." In a word, there has been no particular change of conduct on appellant's part. There was, apparently, the amount of friction normal in the family. Thus, respondent says (p. 33) there was "continual quarrel and turmoil" until he left. This sheds light on what she means by "quarreling." It suggests what weight should be given to her talk of threats. It was necessary, in order to maintain respondent's case, to extemporize reasons. Hence it was determined to allege threats —concerning which respondent could give the Court no intelligent description and as a motive for those threats the refusal to deed the Monument Hotel to appellant.

(b) In spite of all the tales of appellant's violence towards respondent, of her fears for her safety, of his dangerous temper when drunk, of his frequent and habitual drunkenness, thus making the alleged danger practically constant, of his threats to blow out respondent's brains, of the fears of the children for their mother's safety, of the need of their protection lest their father might, at any moment, do her bodily harm—in spite of all these things alleged, respondent continued, without interruption, to occupy the same room with appellant until he separated from her (p. 100, l. 30), and no effort was made by the children—so far as the evidence discloses—to prevent their mother from being alone with this supposedly dangerous man.

(c) A Mrs. Blackwell (p. 178) and a Mrs. Lewis (p. 184) near neighbors of the respondent at Ewingville, never heard complaints that appellant was threatening respondent. Much might occur in the Walsh household without these women neighbors knowing of it. But it is inconceivable that affairs should have been a tithe as bad as is charged in this case, without the near neighbors of the respondent knowing something of it. Such occurrences rapidly percolate through the neighboring atmosphere.

(d) The fact that respondent took the initiative in preventing the removal of the lock.

(e) The fact that she—apparently without fear of appellant—struggled over the telephone.

(f) The fact testified to by respondent (p. 75) that appellant couldn't get his whiskey away from the house without promising to leave the stove and linoleum there.

"Q. Why did he have to give you this stove to get his own whiskey; couldn't he get it?

A. No.

Q. Why?

A. Because I wouldn't give it to him. He got what belonged to him there; of course, the whiskey belonged to him because nobody else used it.

Q. And he couldn't get that whiskey from you without giving something in return?

A. No.

Q. And he couldn't get it because you wouldn't give it to him?

A. No."

Which was the dominant personality, in the light of these words of respondent, for the moment off her guard and revealing her true relations to the appellant as a forceful, self-assertive and—when need was—defiant wife?

Appellant tells a different story of the whiskey (p. 249). Let us accept hers, however. If true, it shows she had no fear of appellant; if false, it discredits all her testimony in the case.

(g) The testimony of the son Frank (p. 123) shows appellant was overawed by the son Peter at the time of the family council; the son Thomas says (p. 127, l. 2) "he wouldn't never argue much *in front of us. He knew there wasn't much chance; we would tell him to shut up, and he would argue with her at night.*" And (pp. 132-3) that his father didn't take the lock off the door because he "wouldn't let him."

What does this picture indicate as to the dominant figure in that family?

(h) The fact that the son Peter was not called to the stand to corroborate either his mother or the brothers and sisters, which fact suggests but one explanation, to wit, that he could not be persuaded to back up with his oath the fabricated accounts of appellant's ill treatment of respondent.

The son, Edward, testified (p. 162) that at the time of the alleged gun incident, he led his father around taking hold of his arm, there "wasn't any force about it." Appellant was objecting to being led around, still no "force" was necessary.

Appellant testified (p. 285) that after the sons grew up and thought they were men "there was no living for me," and he tells of their abusive language towards him.

The separation in 1915, when appellant *and not respondent* left home, was clearly the result of the incompatibility of temper between the appellant and the sons, Thomas, Harry and Frank. The testimony of these sons, the vile language towards respondent which they attribute to appellant, the story of Harry —who was bound over to keep the peace towards his father (p. 109)—of Thomas and of Frank about appellant's systematic efforts to render the house uninhabitable by treatment of the heater and the ashes, of his conduct at table, done deliberately to annoy—all of which is denied by appellant—incredible as it is, demonstrates beyond peradventure that whatever the cause of the unfortunate condition, a household in which these sons would occupy a place of authority or even tolerance was no fit habitation for the father.

The children relate the details of appellant's alleged conduct towards respondent, the vile epithets attributed to him as habitual speech, not with any apparent reluctance as though necessary to protect their mother from their father's wrongs, but with all the indications of ghoulish glee.

Here is the key to the solution of this case. The relations between the father and the sons made it imperative that he should separate himself from them. The mother clung to the children and would not leave them to join her husband in a new home. Fear of appellant never entered into the matter at all. One needs but to read the evidence of these sons to be convinced that it is grossly overdrawn. It reveals a venom towards their father which not only is distressing but which discredits their every word.

An effort was made to obscure the case by injecting insinuations about the relations of appellant with Ellen Walsh, a young woman relative brought by him

from Ireland, in October, 1915 (p. 277), and who acts as his housekeeper. No proofs of anything improper in their relations were produced. Appellant brought her, he says (p. 278), to be a servant to his wife or to Col. VanCleef. He testified (p. 278, l. 25) that if respondent would come to live with him Ellen's services should be at respondent's disposal, that if Ellen's presence should not be desired "in five minutes the girl will leave," that respondent should be absolutely mistress of the house.

Moreover, appellant left Ewingville and sought to establish a new home at 78 Pennington Avenue, in April, 1915. Respondent's refusal to go with him could not have been influenced at all by consideration of Ellen Walsh. This Ellen Walsh incident further illustrates the lack of a general basis for this action against appellant. A cause grounded on substantial fact would not need to resort to palpable subterfuge.

The learned Vice-Chancellor said (p. 316, l. 20), that there is a "frightful conflict of testimony in this case." And (p. 318) that he believed if appellant should go back to respondent he would "behave himself like a good husband."

Following this deliverance, after failure of the parties to get together, in his opinion, the Vice-Chancellor says that unless respondent and the several children who testified in her behalf, deliberately testified to falsehoods, appellant's conduct was such as to create at the time of the separation the conditions which would justify respondent in refusing to share appellant's home. He was, he said "unable to doubt the truth of their statements" and was "equally unable to believe the denials of defendant" (p. 320). A review of the testimony he regarded as unnecessary.

Appellant's counsel are equally unable to under-

stand how, with a candid review of the testimony, —peculiarly essential in this case, —a Court could under the evidence, ever reach the conclusion upon which the decree appealed from is based.

This is not a case where, because of conflicting testimony, the Court was compelled to determine which side it would believe and which reject. The evidence supplies an unerring guide for decision as to the weight of the evidence on the whole case in the light of the rule established by this Court.

That guide is the proof supplied by the evidence of the conduct of the respondent herself. Let us not forget that appellant may, as in *Taylor vs. Taylor,* not have been "a model husband." He may, as in that case, have fallen "very far short of the standard which the good of society demands of a husband in his treatment of a wife" without, as was held in the Taylor case, being cruel to his wife "in the sense of the statute."

Nor is there more reason in this case than in the Saunders case above cited, to believe that the wife feared the husband, nor to believe the appellant ever threatened to shoot respondent, or that she ever "regarded the revolver incidents, if they in fact occurred, as a source of danger."

As was said by Chancellor Runyon in *Coles vs. Coles,* where the husband had unjustifiably laid violent hands on his wife, the question to be determined is whether "there is reason to apprehend that, if complainant shall return to his home, she will be in danger of violence or cruelty at his hands."

The learned Vice-Chancellor, who heard all the testimony and saw the witnesses, could not have thought so, for he held the case for two weeks to see if the parties could not agree to live together.

To what conclusion, under the authorities, does

the conduct of respondent drive the Court? Did the almost constant hurling of vile epithets at respondent, as testified to by her and her witnesses, make it "impossible" for her to live in the same house with him with a reasonable degree of peace and happiness? Respondent herself gives the answer. There is no guess work, no difficulty at all about it. The Court is relieved by her of the necessity of deciding between the conflicting testimony. Respondent testified (p. 37, l. 10) that she had an interview with appellant about a week before he finally went away. She "asked him why he didn't give all his stuff up and come home and do what is right." This was before he took the furniture away. And further (l. 19) she told him "Why don't you come home and try to be a man and try to remedy these things; *no one will molest you and your home is open here. You are just as welcome here as at any other time.*"

This woman offering "welcome" to the man she feared, whose conduct was so repellant she could not live with him. Credulity alone can accept such a view.

Respondent was not seeking to escape from a man who had abused, had vilified her. She was bidding the prodigal return and promising the fatted calf in the shape of pledge of *protection from his sons.* What else did she mean by the promise that no one "would molest" appellant? Not a word about appellant "molesting" her. This does not enter her mind.

Again (p. 38, l. 25) on the morning that he left she told him about the curtains and the linoleum, that she "then spoke to him and said 'why do you do such a foolish thing,' you will be sorry for this." Appellant had taken his clothes before, he took the furniture that morning. This was the "foolish" thing to which she referred.

By what perversity of reasoning, by what species of intellectual leger-de-main, can any one believe that the woman thus chiding the man for leaving her and warning him that he would repent the step, was animated by a fear of him or felt that his treatment of her had been such as would make her living with him a source of wretchedness and misery?

To reach such a conclusion, it is submitted, one must reverse the processes of reasoning.

Again on cross-examination, (p. 68) with reference to the time of the telephone incident, she testified as follows:

"Q. Have you ever had any threats or trouble with him since that time?

A. As I say, when he came to the house I never spoke to him; never came in contact with him, but once after that I told him why didn't he come home and try to be a man; what was the use of all that? He said, 'No, never.' I said, 'All right, then, go ahead.'

Q. When was it and where was it after this episode of the telephone that you asked him ——

A. He came to the house.

Q. How long after?

A. Well, maybe a week or so after.

Q. And you invited him to come and live together then?

A. Yes.

Q. And you meant it?

A. Of course, I did.

Q. Since that time you have had no trouble?

A. No, because I wouldn't come in contact with him.

Q. You have had no trouble?

A. No.

By the Court:

Q. When you invited him to come home, what did he say?

A. 'No, never.' I said 'All right, you go your way.' "

All this after appellant's rather impetuous making complaint for the assault. Even that did not create in her a desire to live away from him,— perhaps because his version of the struggle over the telephone was true, because she was conscious of having been in the wrong and wished to make amends.

On page 69, the Court asked her:

"Q. Didn't he ever say anything to you about objecting to the children?

A. Oh, he wanted me to put them out; I said 'No, that wouldn't be natural for a mother; they are not doing anything and not costing you anything to keep them.' "

Here is corroboration of appellant's claim that difficulties with the boys were the source of his family troubles.

Again (p. 304, l. 34) she testified:

"Oh, I asked him a couple of times to give up his foolishness of tearing up the house, I said that nobody would interfere with him and nobody has ever interfered with him.

Q. You asked him that a couple of times? How late was that that you asked him this?

A. Even after he took the furniture.

Q. Was that after the telephone incident?

A. Yes."

Respondent did not ask appellant to give up any of his conduct in the home and come back, it was only

that he should come back and not break up the home. All her complaints, all her admonitions had reference to appellant leaving his home. Not a word of complaint about anything else.

All the abuse, all the epithets, all the vile names, all the grossness, all the drunkenness, all the violence, all the threats, had occurred, and respondent saw in them all no reason why she should not live with appellant if he would only remain in the old home with the children. But appellant had a legal right to select the place of his habitation and if respondent knew of no reason why she should not live with him in the old home the Court has no legal or moral right to find for her a reason why she should not live with him in the new.

The irresistible conclusion is that these things never occurred as told by respondent and "the several children who testified in her behalf," or that if they did occur, that they did not offend respondent's sensibilities sufficiently to seriously mar her happiness.

Another circumstance that refutes the wholesale charge of violent abuse made against appellant is that respondent does not claim that during their 42 years of married life, appellant ever struck her. Only threats are charged, no blows. The alleged *kicking* during the struggle over the telephone—if it occurred—was undoubtedly due to respondent thrusting herself in the way when appellant was kicking the box.

It is inconceivable that if appellant were half as black as he is painted with reference to violence of temper and proneness to abuse, he could show a record of 40 odd years of family tilts and differences without a blow. Within that period temper would have been translated into action.

How, we repeat, in view of respondent's own conduct, of her repeated invitations to appellant to remain with and to return to her, can the Court sustain the decree?

How could it be safe and proper for him to live with her, and unsafe or improper for her to live with him?

If it be said that the children would be her protection had appellant gone back to her, the answer is their presence did not protect her from all the vile abuse alleged and which she must have expected to continue should he return. While as to protection from violence, it is submitted that an analysis of the testimony shows that the charges of threatened violence have no substantial foundation.

What, then, is the motive of this suit? It is submitted that respondent had no grievance which prompted the filing of the bill of complaint.

Respondent offered evidence (pp. 168-9) to show that appellant was instrumental in procuring the foreclosure of a mortgage on the Ewingville property with a view of getting possession of the property. So long as the children could have a home with respondent in appellant's property all was well. With the prospect of ejectment as the result of foreclosure proceedings the situation changed. Hence the scheme to force appellant to contribute money for the maintenance of a home for these grown children, part of whom made appellant's home unendurable for him. This action, it is submitted, was prompted by them. Respondent was their instrument in pursuing appellant. Hence it was, that respondent—the alleged victim—and her daughters were unable to give the Court, in their testimony, any intelligent account of the troubles while the boys were much more fluent with their stories.

If respondent preferred to reside with her children and away from appellant it was her privilege. But she has no right to demand money payments from him to maintain a home for these children. This is the effect of the decree in this case.

We submit, it is, under the circumstances of this case, a monstrous injustice to compel appellant to contribute for a home for the children whose abuse drove him from the home he had. If respondent would claim the support to which a wife is entitled, she should share with appellant in the house selected by him, the home she showed herself not only willing but desirous of sharing with him in the house he left.

It is no part of the function of this Court or of the Court of Chancery to compose family difficulties or to act as a sort of clearing house for matrimonial disputes. There must be a substantial, concrete case of peril to life or health or of wretchedness of life induced by the defendant to such a degree as to make the wife incapable of performing her duties as such.

That condition does not exist in this case. Respondent, by her conduct, shows this beyond the possibility of doubt. She, herself, overwhelmingly refutes the statements sworn to by herself and "the children who testified in her behalf."

The decree should be reversed.

Respectfully submitted,
JOHN T. VANCLEEF,
LINTON SATTERTHWAITE,
Counsel with Defendant-Appellant.

STATE GAZETTE PUBLISHING CO., Printers, Trenton, N. J.

New Jersey Court of Errors and Appeals.

MARGARET WALSH,
Complainant-Respondent,

and

JOHN E. WALSH,
Defendant-Appellant.

Brief of Complainant-Respondent.

This is an appeal from a final decree advised by Vice Chancellor Leaming.

The respondent filed her bill for alimony under the statute (C. S., p. 2038). Section 26 provides—

> "In case a husband, without any justifiable cause, shall abandon himself from her, and refuse or neglect to maintain and provide for her, it shall be lawful for the Court of Chancery to decree and order such suitable support and maintenance to be paid and provided by the said husband for the wife and her children."

The appellant (the husband) without any justifiable cause has abandoned respondent (his wife) and separated himself from her and has refused and neglected to maintain and provide for her.

Appellant abandoned his wife and separated himself from

her; he left their home; he never offered her another home and he has made no provision for her maintenance. This abandonment and separation was not justifiable.

At the time respondent filed her bill in this cause, she was domiciled in, and she has since continued to remain in, the occupancy and possession of their former home. This home appellant voluntarily left without any justifiable cause. Before leaving the same, and since, he has tried by every means in his power to break up and disrupt this home in order to compel respondent to leave. Appellant's conduct toward his wife for a long time before and since he left their home had been such as to make her life one of extreme discomfort and wretchedness. Under these circumstances, respondent could not be expected to leave her home and take up another home with her husband, when by his conduct toward her in the past he had made her life with him one of extreme wretchedness; but respondent contends that appellant never invited her to make a home with him elsewhere.

(1) The parties were married January 7th, 1874, over forty-three years ago. The appellant is now seventy-four years of age, the respondent a few years younger. She has born him nine children, all being of age. Three sons and two daughters now remain with the mother. The family has always lived in Trenton or in Ewingville. Respondent has for twenty-five years past, with the exception of a period of about a year, in 1897, and again a period of more than two years after 1910 and before the fall of 1913, resided with appellant in Ewingville, and for a number of years past appellant and respondent maintained a home in the house now occupied by her and from which home appellant departed without any justifiable cause.

It was appellant who left this home in February, taking up his abode elsewhere. It was he who separated himself from respondent and went out of their home early in the month of February, 1915, and returned thereafter only occasionally. Finally, he removed therefrom altogether, taking all his clothing, and on April 6th, 1915, and thereafter, he resorted to every means in his power to break up and

destroy this home. Notwithstanding appellant's efforts to destroy this home and drive respondent therefrom, she remained and now continues in the occupancy thereof.

The Vice Chancellor, after hearing the parties and their witnesses testify, at the close of the trial, suggested that because of the age of the parties and their long married life together, that an effort should be made to reconcile the parties and delayed the decree. He determined that the parties should have two weeks' time within which to become reconciled. (315–16–17.) At the expiration of this time the Vice Chancellor, on being advised that the parties could not be reconciled, without hesitation, made the decree which provides: "That so long as the complainant is permitted to remain, and continues to remain, in the occupancy and enjoyment of her present home, and is not disturbed in the occupancy and enjoyment of the same, the defendant shall forthwith pay to the complainant, or to her solicitor, the sum of $10 per week." From this decree the husband appeals.

The testimony abundantly shows that the appellant is a man of intemperate habits, of a fault-finding and quarrelsome disposition, addicted to the use of vile and vulgar language; that for a number of years he conducted a saloon business and a wholesale beer business in Trenton, and the hotel at Ewingville; that after giving up this business he never changed his mode of life; that he was always under the influence of drink with the exception of a short period each year during the Lenten season; that he would return home four or five times a week "barreled," as one of the witnesses expressed it; that he was always in a quarrelsome, fault-finding mood (78); that he would swear at his wife and the children, calling his wife vile and vulgar names. (94–95.)

This conduct on the part of the appellant compelled the respondent to leave him in 1897, when she remained away a year, and again in 1910 remaining away until the fall of 1913, when, at the solicitation of appellant, she again returned to him.

The appellant contends that whatever may have been the

cause of these separations, they have been condoned and forgiven, when the respondent returned and again took up her home with him. The respondent testified that she was induced to return to her home in 1913, on the promise of the appellant that he would do better. The testimony discloses that appellant's conduct toward respondent was good for some time after his return home from Europe in 1913, thereafter he resumed his old habits of intemperance, and abuse of his wife (71), not by any physical abuse, but by such intemperate language that made her life with him unbearable. Still respondent continued to remain the true and dutiful wife to him, providing for all his wants, and from the earnings of the children who lived with her, and her own income she maintained the table and defrayed the ordinary household expenses of the family.

It is evident, from the testimony of all the parties, that appellant resorted to a studied effort to break up his home. He made no provision for another home for his wife, nor did he ever invite her to another home. Early in the year of 1915, on New Year's Day, he refused to partake of dinner with the family. Thereafter he absented himself frequently from the home, taking a room in the Turkish Bath, in Trenton. (82.) He would return home occasionally, and, finally, during the absence of the family, nailed up their home, placing "No Trespass" signs (268) thereon, and when his daughter returned, he ordered her from the house. (83.) On his sons' returning they gained entrance to the house and thereupon the appellant had them arrested and put under bail for "breaking and entering." After finding himself balked in this endeavor to drive his wife from their home, appellant brought an action in replevin in the District Court of the city of Trenton against his son Thomas, and under its process he removed from the house all of his furnishings and furniture, leaving only a stove and a pump, and after a period of two weeks he returned and carried these away. (188–189.)

He temporarily stored his furniture in a property of his, No. 78 Pennington avenue, and when he went to Europe (305) the property was rented and the furniture stored in a

warehouse. (309.) At the hearing appellant produced what purported to be three lead pencil copies of letters or notices which he said he served on respondent on the advice of his counsel. (244.) These he said he delivered to her in their sitting-room at their home in Ewingville. They are marked Exhibit D 1–D 2–D 3, pages 327–328. They bear dates March 5th, March 17th and March 21st.

In the first one (Ex. D 1) he says: "I am willing to maintain and provide a home for you." (327.)

In the second one (Ex. D 2) he says: "I am going to make a new home for you and me." (327.)

In the third one (Ex. D 3) he says: "Mam, I have selected No. 87 Pennington avenue as our new home for you and me." (328.) These notices contain no invitation, but rather a declaration by appellant.

The respondent, on being shown these exhibits, denied ever having seen or received such notices (303–304), or that appellant ever invited her to make a home on Pennington avenue or elsewhere with him. The invitation, if given, was: "If you want to come you can come, if you don't you can stay." (304.)

The deliberate attempt on the part of the appellant to break up his home is shown by his own direct testimony (248), when he exacted from the respondent a promise to remove from her home. He testified that he said, "Mam, what day do you expect to move?" "How soon do you expect to move?" Respondent's reply being, "The first of next week." Appellant said, "What day?" and her reply being, "It will be either Monday or Tuesday." His reply being, "Can't you move on or before Saturday?" and her response, "Just as soon as I get a house," and appellant's reply then was, "Well, if you will give me your word that you will move on or before Saturday, I won't push this," and he permitted the stove to remain, after exacting this promise.

This testimony shows appellant's insistance that respondent move out of their home, not to a new home provided by him for her and to which he invited her, but that she should leave *his home*.

After the appellant had dismantled his wife's home, we have what has been termed, the "telephone incident." The bitter quarrel between the parties, and the attempt on the part of the appellant to prevent his wife's having a telephone installed in the house which resulted in a tussle, the appellant's receiving some slight injuries to the face. His going before a justice of the peace and preferring a charge of assault against his wife and placing her under bond for a hearing before the grand jury. (41.) Thereafter appellant departed for Europe, and returned to Trenton early in the fall, bringing with him a young woman whom he installed in the house No. 78 Pennington avenue, and who is now living with him in said house. He says she is a relative. What their relation is we can only surmise; that they are intimate is shown by the postal card (Exhibit C 2), in which she addresses him in familiar terms and says, "Let me alone, you old divil, you."

Appellant's effort to dispossess respondent from their home in Ewingville is further shown by the records of a proceeding in the Court of Chancery, in a suit to foreclose a mortgage of $2,000 on the property, brought by Headley B. Harper, who testified that a few days before the appellant went to Europe, in 1915, and before the interest became due, that he met the appellant on the street and asked him about the interest. He said he was through paying the interest; he would pay no more and that appellant directed him to take the mortgage to his counsel, Col. Van Cleef, and get him to foreclose the same. At the sale the property was bought by Walsh in the name of Helen Walsh, the young woman who lives with him, and the bid was assigned to a realty company formed and owned by appellant. (138–146–147.)

The appellant actually abandoned respondent; he left the common home, carrying away his belongings, resorting to legal proceedings to obtain possession of his furnishings, nailed up the house, took up his abode elsewhere, and finally took a journey to Europe. On his return he took up his abode in a house with a young woman who returned with him from Europe, and who has since been his companion or

housekeeper. (306.) He never concerned himself about his wife, or her whereabouts, nor as to her maintenance.

He made no effort to become reconciled, nor did he at any time before or after he removed from their home invite her to join him in a home elsewhere. He says he invited her through the children. This both the respondent (304) and children (310) deny. Then he declares she knew she could come back, but how was she to know this, when he had not invited her to return. Respondent says appellant took all the furniture (38), all his clothing (39).

Q. When he was leaving did he ask you to go with him?

A. No.

Q. Did he ever ask you to go with him?

A. Only that time he said, "If you want to come you can come, and if you don't you can stay where you are."

Q. When was that?

A. When he moved his things (39).

Certainly, no self-respecting wife would make a home, even if invited to do so, in a house in which her husband installed a young woman who journeyed with him from Europe and now makes her home with him.

The appellant admits that he has not provided for his wife since he left; that he is amply able to do so is shown by the property which he owns and the values placed thereon, besides the moneys in the bank. The appellant contends that his wife has an ample estate of her own. She is not bound to use her own property to support herself. That is a duty which the law places upon him.

Respondent's proofs show abandonment, separation and failure on the part of the appellant to provide for respondent; that appellant voluntarily left their home in Ewingville, and by every means in his power he has endeavored to break up his home—

(1) By removing the furniture.

(2) By nailing up the house during complainant's absence, posting up "No Trespass" signs.

(3) By removing the stove and pump which provided the means for supplying the house with heat and water.

(4) By failing to provide another home for his wife.

(5) By failing to make any provision for her maintenance or support.

(6) By going to Ireland, and on his return bringing with him a young woman whom he holds out to be his niece, installing her in a house which he furnished and which he now occupies with her.

(7) By causing foreclosure proceedings to be commenced on a mortgage which was an encumbrance on their home and a sale to be had thereunder; he has purchased the same in the name of a corporation which he formed and now holds title to said land in the name of that corporation, and has since the hearing in this suit for maintenance caused this corporation to issue a writ of assistance to dispossess his wife of the premises.

(8) By his failure to seek out his wife and making an endeavor to have her return to him.

Clearly, these acts show not only abandonment and a separation, but as well a failure on the part of appellant to communicate, become reconciled or to provide for his wife.

APPELLANT WAS NOT JUSTIFIED IN LEAVING HIS HOME.

The testimony shows that appellant left this home without justifiable cause or for any reason which the respondent, his wife, gave him for leaving. In fact, she invited him to come home and try to be a man, and what was the use of all that. His reply was, "No, never." (68.)

Q. What did you say to him?

A. I told him, "Why don't you come home and try to be a man and try to remedy these things; no one will molest you and your home is open here. You are just as welcome here as at any time."

Q. What did he say?

A. "No, by no means." "By no means he wouldn't listen."

Appellant endeavors to justify his leaving because he couldn't get along with his children; because of his quarrels with the boys. These children were all of age and the evidence shows that the children never gave him any cause for leaving. In fact, they contributed and aided the mother in the maintenance of the home, besides the appellant might have ordered the children to leave his home. The children's misconduct, if there was any, such misconduct cannot be attributed to the respondent.

Appellant's testimony is that he never had any quarrels with his wife. He says he never had any words with her and that he left because he couldn't get along with the children. "That there never was a word between my wife and I while they were under my control." (285.)

If these quarrels were with the children, and not with respondent, and she was no party to them, or in any way encouraged the same, then appellant was not justified in leaving respondent and their home.

APPELLANT FAILED TO SUITABLY SUPPORT AND MAINTAIN HIS WIFE.

Paragraph 24 of the appellant's answer, on page 17, shows that appellant admits that he has not for nearly two years last past contributed to the support of the complainant, but he has been at all times willing to do so if she would comply with his request to take up her abode with him.

Q. Has he, since 1910, provided you with——

A. No, he gave me nothing; what I bought I bought myself.

Q. He provided you with a house to live in?

A. Yes.

Q. You lived there with your family?

A. Yes.

Q. Anything else?

A. The coal.

Q. Anything else?

A. No.

Q. Any supplies?
A. No.
Q. Any of the produce from the farm?
A. No. (74.)

Compiled Statutes, page 2038, section 26.
Anshutz *v.* Anshutz, 16 Eq. (1 C. E. Gr.) 162.
Weigand *v.* Weigand, 41 Eq. (14 Stew.) 202.
Margarum *v.* Margarum, 57 Eq. (12 Dick.) 249.
Parker *v.* Parker, 57 Eq. (12 Dick.) 577.

10

Respondent having shown that appellant, without justifiable cause, abandoned and separated himself from her and failed to support and provide for her, it is respectfully submitted that the decree below should be affirmed.

PETER BACKES,
Sol'r and of Counsel with Complainant-Respondent.

INDEX

	PAGE
Bill of Complaint	1
Answer	8

Plaintiff's Testimony:

Margaret Walsh—Direct	23
Cross	41
Re-direct	70
Re-cross	75
Re-re-direct	76
Josephine Walsh—Direct	76
Cross	87
Re-direct	89
Re-cross	90
Agnes Walsh—Direct	90
Cross	99
Harry S. Walsh—Direct	102
Cross	106
Re-direct	110
Frank V. Walsh—Direct	111
Cross	118
Thomas Walsh—Direct	125
Cross	130
Re-direct	133
Re-cross	133
William J. Walsh—Direct	134
Cross	139
John F. Walsh—Direct	142
Cross	147

PAGE

Edward H. Walsh—Direct 148
Cross 152
Headley B. Harper—Direct 167
Cross 171

Defendant's Testimony:

Walter B. Madden—Direct 21
Cross 22
Artie S. Blackwell—Direct 173
Cross 179
Jessie S. Lewis—Direct 182
Cross 185
Walter D. Pownall—Direct 187
Cross 191
Jesse C. Lewis—Direct 191
Cross 194
Patrick Ryan—Direct 196
Cross 202
A. Reeder Green—Direct 204
Cross 205
Edgar Maple—Direct 206
Cross 206
William J. Sandford—Direct 207
Cross 209
Frank E. Cook—Direct 212
Cross 213
John E. Walsh—Direct 214
Recalled—Direct 262
Recalled—Cross 285
Samuel T. Atchley—Direct 251
Cross 253
John W. Hendrickson—Direct 254
Cross 256
William T. Dunn—Direct 257
Cross 262

PAGE

Plaintiff's Rebuttal:

Margaret Walsh—Direct 303
Cross 304

Defendant's Sur-Rebuttal:

John E. Walsh—Direct 314
Cross 314

Conclusions 319

Decree 321

Notice of Appeal 324

Petition of Appeal 325

Exhibit D1 327

Exhibit D2 327

Exhibit D3 328

BILL OF COMPLAINT.

(Filed Jul. 14, 1916)

IN CHANCERY OF NEW JERSEY.

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

Complaining, shows unto your Honor, your oratrix, Margaret Walsh, of Ewingville, in the county of Mercer and State of New Jersey:

1. That she was married to her present husband, John E. Walsh, on the 7th day of January, 1872.

2. That she resided with him in the city of Trenton, and for twenty-five years during her married life resided in Ewingville aforesaid, in a house the title of which was in the name of the said John E. Walsh, when they cohabited until the abandonment by the defendant of your oratrix, as hereinafter complained of.

3. That there were born of said marriage nine children, five of whom are now living with your oratrix; the others having married and established homes of their own.

4. That the said John E. Walsh lived with your oratrix and his family in the house at Ewingville until April 6, 1915, excepting about the year 1897 when he lived separate from your oratrix, and again in the year 1910 when your oratrix was compelled to leave him and live with her children until 1913, for a period of nearly three years.

5. That it was the habit of the said John E. Walsh for several years last past to leave your oratrix and take a trip to Ireland, generally being absent from the first of August until October in each year. That he so absented himself in the years 1913, 1914 and 1915.

6. That in the year 1897 the said John E. Walsh by reason of his cruel conduct and drunkenness, compelled your oratrix to live apart from him for nearly a year.

7. That in 1910 the said John E. Walsh caused your oratrix to be dispossessed from her home by a constable, sold the household furniture and threatened the life of your oratrix and her children, and that in fear of her life and the lives of her children, your oratrix was compelled to live separate and apart from the said John E. Walsh during the years 1910, 1911 and 1912, and part of the year 1913.

8. That in the month of September or October, 1913, at the earnest solicitation of the said Walsh, your oratrix again took up her home at the house at Ewingville, and refurnished said house with the furniture which she bought while living separate and apart from her husband; and the said John E. Walsh then took up his home in the house with your oratrix and his family, and contributed to the support of the said family by furnishing the home and buying the coal, and that the other household expenses were defrayed from the earnings of the children and from the income which your oratrix received from her real estate.

9. That, after the aforesaid return, the said John E. Walsh continued to live at home until some time in the month of March, 1915, when the said Walsh, during the absence of your oratrix and her family, entered the house, nailed the same up, and posted notices thereon of no trespassing.

10. That your oratrix was then compelled to break into said house to gain possession thereof, and continued to occupy the same.

11. That during the summer of this same year said Walsh instituted replevin proceedings in the District Court of the city of Trenton for the recovery of certain furniture, stoves, pumps and other appliances in the said house, in order to hamper and embarrass your oratrix and to force your oratrix to leave the said premises. That he at the same time took from the said house the stoves, including all the coal, a gas engine pump which was used to force and furnish the water supply for the said house. That subsequently he entered the said house and took out the phone, and upon being remonstrated with by your oratrix, thereupon caused your oratrix to be arrested, charging her with assault and battery, and held her for a hearing before the grand jury of the county of Mercer.

12. That thereafter the said Walsh absented himself, going to Ireland. But before going on said journey he defaulted in the payment of interest and directed Headley B. Harper, the mortgagee, to commence foreclosure proceedings against him for the foreclosure of a mortgage on the house occupied by your oratrix.

13. That the said Walsh caused an appearance to be entered and service to be acknowledged thereon by John T. VanCleef as his counsel.

14. That the said John E. Walsh abandoned your oratrix on the 6th day of April, 1915.

15. That said John E. Walsh returned from Ireland in October, 1915, bringing with him a young woman about thirty years of age, named Ellen Welsh, who, it is said, was a barmaid working at McGee's Hotel in Balla Bo Fey, Dunegal County, Ireland. That the said Walsh introduced said young woman as his niece, and installed her in a home which he occupied with her at No. 78 Pennington Avenue, in the city of Trenton.

16. That the said Walsh is now living in said house with said young woman, holding her out to the neighbors as either his niece or his housekeeper.

17. That your oratrix is informed and believes it to be true and charges the fact to be that the said young woman is no relative of the said Walsh; that she is not his niece; that she was and is a companion of said Walsh found by him in Ireland and brought by him into this country and installed by him in his home as a housekeeper.

18. That the home of your oratrix was sold under foreclosure proceedings brought by the said Headley B. Harper, aforesaid. That the said John E. Walsh attended said sale and purchased the property, directing the title thereto to be taken in the name of the aforesaid Ellen Welsh.

19. That in the month of January, 1913, the said John E. Walsh sold the property known as the Ewingville Park Hotel for $16,000, subject to a mortgage of $5,000, and received the balance in cash, and that he procured the signature of your oratrix to the said deed on the promise to pay her $5,000. That he has never complied with his promise. That the said Walsh has the said money either on deposit in bank or invested on good security.

20. That at about the same time he sold another property on Center Street in the city of Trenton for $6500, subject to a mortgage of $1,000 and received the balance in cash, which money he has either on deposit in bank or invested on good security.

21. That the said John E. Walsh is the owner of twelve dwelling houses situated on Pennington Avenue and Gordon Street, estimated to be of the value of about $30,000.

22. That the said John E. Walsh is also the owner of the dwelling house in which your oratrix resided and the land attached thereto, which property is estimated to be of the value of at least $10,000 to $15,000.

23. That the said Walsh is the owner of real estate and other property of the estimated value of at least $50,000, and that he has a yearly income from his property of at least $3,000; and that defendant is abundantly able to maintain and support your oratrix in a manner suitable to their position.

24. That the said John E. Walsh has not contributed any money to the support of your oratrix, and that for nearly two years last past he has been en-

deavoring to dispossess your oratrix from her home, and that he is now trying to force your oratrix from the home which she occupies in Ewingville.

25. That the said John E. Walsh is a man of violent temper and at all times abusive, and addicted to the use of strong, intoxicating liquors, and is daily under the influence of liquor. That he has repeatedly threatened the life of your oratrix, calling her vile names and abusing her before her children and her neighbors.

26. That owing to the dissipated habits of the said John E. Walsh and his frequent threats of bodily harm, your oratrix fears for the safety of her life, and that she cannot with safety to herself make a home with the said John E. Walsh, even if he would agree to provide for the maintenance of a home.

27. Your oratrix further shows that ever since the 6th day of April, 1915, aforesaid, the defendant has abandoned your oratrix without just cause, and separated himself from her, and has refused and neglected and still refuses and neglects to maintain and provide for her and her children.

28. Your oratrix shows that she is now dependant for her support upon her own exertions and the small income from real estate which she holds and upon the earnings of the said children living with her.

In tender consideration whereof, foreasmuch as your oratrix can be relieved only in this court;

To the end, therefore, that the said John E. Walsh may answer the premises, but without oath, and that he may be ordered and decreed to provide such suit-

able support and maintenance to be paid and provided by him or made out of his property, for your oratrix, and for such times as the nature of the case and the circumstances of the parties render suitable and proper; and that the said defendant may be compelled to give reasonable security for such maintenance and allowance and to pay the same from time to time under the compulsory orders of this Honorable Court as provided by the statute; and in case the defendant cannot be found in this state to be served with process, that his estate, property and effects in this state may be sequestered to compel his appearance and performance of any decree as shall seem fit to your Honor, and that the defendant may be required to pay to your oratrix a proper amount for counsel fees. That she may have such further equity as to your Honor shall seem meet.

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

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

PETER BACKES,
Solicitor and Counsel of Complainant.

MARGARET WALSH.

ANSWER.

(Filed Aug. 10, 1916)

IN CHANCERY OF NEW JERSEY.

Between
MARGARET WALSH,
Complainant,
and
JOHN E. WALSH,
Defendant.

ON BILL, &c.
ANSWER.

The answer of John E. Walsh. This defendant answering the bill of complaint, says that:

1. He admits that he was married to the complainant, but says that the time of said marriage was January 7th, 1874, and not in the year 1872, as stated in said bill.

2. He admits substantially the allegations in the second paragraph of said bill; excepting that he denies that he abandoned the complainant, as in said bill alleged.

3. He admits the third paragraph in said bill, and says that the five children living with complainant are all past twenty-one years of age, and are all earning an independent livelihood and are in no sense dependent upon the complainant for support.

4. This defendant admits that the complainant lived with him in a house at Ewingville, and that they ceased to live together there April 6th, 1915, as stated in paragraph 4. And this defendant admits that about the year 1897 he lived separate from the complainant, but this defendant says that the reason for the complainant and defendant living separately at that time was that the complainant refused to live with defendant upon the farm which this defendant owned near Ewingville, and of her own accord took the children of herself and defendant, and the furniture from the house, and moved to one of defendant's houses, No. 82½ Pennington Avenue, in the city of Trenton, and lived there for about three years, where this defendant furnished her and the children with support. After which time she again returned to live with this defendant, and continued to live with him until about the year 1910, when she left of her own volition, taking the children, and remained away until about 1913, but this defendant denies that she was compelled to leave this defendant, or that he gave her any cause for so going, and he admits that she remained away for a period of nearly three years.

5. This defendant admits, as stated in paragraph 5 of said bill, that he made three trips to Ireland, but says that said trips were made for the benefit of this defendant's health and to visit his old home and relatives, and that said trips were in no sense any abandonment or leaving of the complainant.

6. This defendant denies that in the year 1897, as in paragraph 6 of said bill alleged, he compelled the complainant to live apart from him by reason of cruel treatment and drunkenness, and denies said allegation either for said year 1897 or any other time.

7. This defendant denies that in the year 1910 he caused the complainant to be dispossessed from her home by a constable, or by any other means, or that he threatened her and her children, and denies that any fear of her life and the lives of her children compelled her to live separate and apart from this defendant, as alleged in paragraph 7; but this defendant says the truth is that although the defendant had the use of horses and carriages to drive her to town any time she might need, she expressed herself unwilling longer to live with this defendant in the country, and insisted on moving to town, and defendant had a public sale of some of the household goods and furniture because the complainant was about to leave him, and complainant did not leave because of any such sale. Defendant further says that he could not, without sacrifice to his business interest and welfare, at that time move to town with the complainant, because his business interests required his personal attention and presence at the farm near Ewingville.

8. This defendant says that during the years 1910, 1911 and 1912, the complainant occasionally visited this defendant at his home on his farm near Ewingville, and on such occasions this defendant would ask her to move back to his home, and that complainant did move back, as alleged in the 8th paragraph of said bill. But this defendant denies that the complainant refurnished the house with furniture, but on the contrary says that this defendant refurnished the house, buying the furniture needed for that purpose, and went with the complainant to purchase the same. And this defendant denies that he then took up his home in the house with the complainant and her family, but says on the contrary the complainant and the children took up their home with this defend-

ant in his house. And this defendant denies that the earnings of the children were used to support the family or the household, but says that he himself furnished the household and living expenses.

9. This defendant further says that his children who came back to live with him in company with the complainant, were so undutiful to this defendant and so abusive in their manner toward him, that he was unwilling to live in the same house with them, and proposed to the complainant that they remove to a house of this defendant at No. 87 Pennington Avenue, in the city of Trenton, offering to give to complainant a good home at said place, and this defendant made preparations to move and did move to said 87 Pennington Avenue, but the complainant refused to come with him. This defendant undertook to close up the house which had been occupied by the complainant, this defendant, and their children, but the complainant and the children drove this defendant away, threatening injury to this defendant, and this defendant was unable to close up the house occupied by the complainant, which the complainant has continued to occupy with the five children of herself and this defendant, as alleged in paragraph 3 of said bill.

10. This defendant denies that the complainant was obliged to break into said house to gain possession thereof, as alleged in said paragraph 10 of the bill.

11. This defendant admits that he instituted replevin proceedings to recover certain pieces of the furniture which belonged to him, and which were in said house, making one of his sons defendant to said proceedings, and as the result of said proceedings ac-

tually procured possession of said furniture; but this defendant denies that said proceedings were brought to hamper and embarrass the complainant and to force her to leave said premises, but in good faith, in order that this defendant might reasonably furnish the house to which he had moved, and to which he had invited the complainant to come as his wife and housekeeper. And this defendant says that the only articles he took were those belonging to him and were needed for the furnishing of his house at 87 Pennington Avenue, furnishing a proper home for this defendant, and the complainant, if she would come with him, said goods and articles being kept from this defendant by his children, as aforesaid. This defendant further answering denies that he entered said house and took out the telephone, but says that he ordered the telephone taken out, and it was removed, and that complainant subsequently ordered the telephone restored and this defendant seeing the agent of the telephone company about to reinstate the telephone, remonstrated on the ground that it was the property of this defendant and the defendant did not wish a telephone put in there, as in fact this defendant was no longer residing there and wished the complainant to come with him to 87 Pennington Avenue, and wished the house to be vacated by his children; but thereupon the complainant violently assaulted this defendant, and this defendant admits that he made a complaint against her for this assault and battery and that she was held pending action by the grand jury, but this defendant denies that he caused the arrest of the complainant because of any remonstrance on her part on account of the removal of the telephone, as in said bill alleged.

12. This defendant admits that he visited Ireland, as in the 12th paragraph stated, and admits that he defaulted in the payment of interest on a mortgage on the premises in Ewing Township, and that Headley B. Harper in consequence of said default commenced foreclosure against said property.

13. The defendant admits the allegation in paragraph 13 of said bill.

14. This defendant denies that he abandoned the complainant on the 16th day of April, 1915, or at any other time; but on the contrary always has been and now is willing to support her suitably to their condition in life.

15. This defendant admits that he returned from Ireland in October, 1915, that he brought with him a young woman by the name of Ellen Walsh, but denies that she was a barmaid in Ireland, but says on the contrary that her occupation there was a waitress. This defendant admits that he introduced said young woman as his niece, and that he placed said young woman in the house occupied by him at 87 Pennington Avenue, in the city of Trenton.

16. This defendant admits that he is now living in said house with said Ellen Walsh, that said Ellen Walsh is acting as housekeeper for this defendant, but this defendant says that he brought her from Ireland in good faith to act as helper and housekeeper for complainant, if she should, as defendant well hoped she would do, desire to live with this defendant, that said Ellen Walsh has been acting as housekeeper for this defendant in the absence of complainant, and if complainant will come to the house of

this defendant to live the said Ellen Walsh will be at the service of said complainant, or if the complainant does not desire her services in said house, the said Ellen Walsh will be dismissed at the pleasure of the complainant.

17. This defendant denies that the said Ellen Walsh is no relative of his, but says on the contrary she is a near relative, but this defendant admits that technically she is not his niece, but says the truth is that on the first of his visits to Ireland he renewed old acquaintances there and looked up family relationships there, and that said Ellen Walsh and her sisters being of a younger generation by consent of all concerned they addressed him as uncle and he addressed them as nieces, and that said practice grew up among his relatives while he was visiting in Ireland, and when the said Ellen Walsh came over with him from Ireland she continued to address him as uncle and he spoke of her as his niece, and there was no secret at all as to the actual relationship between this defendant and the said Ellen Walsh. This defendant further says that he understands that the true relationship is that this defendant's father and the grandfather of said Ellen Walsh were brothers, but that owing to the disparity in ages between the defendant and said Ellen Walsh and her sisters, it seemed natural for them to, so to speak, adopt this defendant as an uncle. This defendant further says that one of his sons, Hugh Edward, was named for the father of the said Ellen Walsh. This defendant further says that the said Ellen Walsh is not living with him as a companion in any sense of the word, that she is merely rendering bona fide services as housekeeper for this defendant, awaiting the coming of the complainant and her pleasure with regard to said Ellen Walsh, as aforesaid.

18. This defendant admits the sale of the property occupied by the complainant, as in the 18th paragraph alleged, and this defendant says that the property was cried off to the said Ellen Walsh as a mere convenience, and the bid was afterwards by her assigned to the Walsh Ewingville Realty Company, a corporation organized to take over and develop said property, in accordance with plans which this defendant had formed, and this defendant says that he suffered said foreclosure to go on to sale not for the purpose of defeating any property right or dower right which the complainant might have therein, but solely that the property might be advantageously developed and sold by having the title transferred to a realty company, in which transfer the complainant would not assist this defendant in making. Said sale and transfer of property was suffered to be made to advance the property interests of this defendant, but not for the purpose of depriving the complainant of any property right or interest which she might have therein.

19. This defendant admits that in or about the month of January, 1913, he sold the Ewingville Hotel property for $16,000.00, subject to a mortgage of $5,000.00. This defendant denies that he procured the signature of the complainant to the deed on a promise to pay her $5,000.00 or any other sum, and denies that she asked for any money as compensation for signing said deed, or intimated that there was any such understanding. This defendant further says that he was obliged to pay out of the equity of $11,000.00, to wipe out obligations which he owed, about $8,000.00, leaving only about $3,000.00 of said equity in the hands of this defendant for the purpose of investment or otherwise.

20. This defendant admits the sale of property on Centre Street, as alleged in the 20th paragraph of said bill, but says that the equity was nearly all used to pay taxes and assessments on this property and other properties of this defendant, until very little of said equity received was left available for use by this defendant other than paying his debts, as aforesaid.

21. This defendant admits that he is the owner of the twelve houses mentioned in paragraph 21 of said bill, but says that a fair valuation of the equity in the same is about $9,400.00, and not $30,000.00, as in said bill alleged.

22. This defendant admits that the title to the dwelling house and land adjacent in which the complainant resides has not yet passed from him by delivery of the deed from the sheriff under the foreclosure proceedings, by the confirmation of sale and delivery of deed, but denies that the value of the same is from $10,000.00 to $15,000.00, but says that the property sold at the sale at $9,555.00 as the result of bona fide bidding at said sale, out of which is to be paid $2,000.00 principal of the mortgage foreclosed and accrued interest and costs.

23. This defendant denies that he is the owner of real estate and other property of the estimated value of $50,000.00 and that he has a yearly income from his property of at least $3,000.00, as in said bill alleged, and this defendant says that the truth is that his total income from his property does not exceed $1,200.00. This defendant admits that he is able to maintain and support the complainant in a manner suitable to her position, and says further that he is

willing to do so if she will take up her abode and live with him and take care of his house and home.

24. This defendant admits that he has not for nearly two years last past contributed to the support of the complainant, but he has been at all times willing to do so if she would comply with his request to take up her abode with him. Defendant denies that he is trying to force her from the house which she now occupies, further than if said sale in foreclosure be consummated and the title transferred to said realty company, it is his purpose, through said realty company, to develop and sell said property as he properly may do. And this defendant further says that the complainant is the owner of a valuable property, known as the Monument House, situate at the junction of Brunswick and Princeton Avenues, and at the head of Pennington Avenue, Warren and Broad Streets, the title to which was made a gift to the complainant by this defendant, and this defendant after making such gift built the present improvement upon said property, and that the net income from said property to the complainant, which income she not only now enjoys, but has enjoyed during all the time that this defendant has been supporting her, and which she would still enjoy in addition to the support which this defendant is willing to give her if she will live with him, would be not less than $1,500.00 annually, the market value of said property being about $30,000.00.

25. This defendant denies absolutely the allegation in paragraph 25 of said bill.

26. This defendant denies absolutely the allegation in paragraph 26 of said bill.

27. This defendant denies the allegations in paragraph 27 of said bill, excepting that he refused to provide for their children, and says that he is willing to support the said complainant, but not willing to support their children who are now of age, and all of whom are earning independent livelihoods and abundantly able to support themselves.

28. This defendant denies that the complainant is dependent for support upon her own exertions and small income from real estate which she holds, and upon the earnings of the children living with her; but this defendant says that the truth is, as above alleged, that the income from her real estate, which was a gift from this defendant, is ample to support her in ease and comfort, and that her children are not dependent upon her for support. And this defendant further says that the complainant may have support at any time by taking up her abode with this defendant and receiving support as a wife should.

This defendant denies that he has ever, by his neglect, abuse, or ill treatment, given the complainant any just cause to leave his home or to refuse to return to it after having left the same, and this defendant says that he has always been ready and willing, and is now ready and willing to furnish her with a suitable home in the house now occupied by him, if she will come to it and accept the support which this defendant is ready to give. And this defendant says that the real trouble and difficulty in the way of the complainant and this defendant living together in peace and harmony, is that she desires to have the children mentioned live with her, and this defendant is unwilling to have them live with him now that they are past their majority and are self-supporting, for the reason that by their conduct to-

wards this defendant they make life unpleasant for him in his home.

And this the defendant is ready to maintain, aver and prove, and prays to be hence dismissed.

JOHN T. VANCLEEF,
Solicitor and of Counsel for Defendant.

TESTIMONY.

IN CHANCERY OF NEW JERSEY.

Between
MARGARET WALSH,
Complainant,
and
JOHN E. WALSH,
Defendant.

TESTIMONY.

Testimony taken in the above-entitled cause at the State House, Trenton, New Jersey, on Thursday, the nineteenth day of October, 1916, at 10.30 A. M.

Before EDMUND B. LEAMING, Vice-Chancellor.

APPEARANCES:
PETER BACKES, ESQ., for complainant;
LINTON SATTERTHWAITE, ESQ., and JOHN T. VAN CLEEF, ESQ., for defendant.

Mr. Satterthwaite: We have subpoenaed here Dr. Madden, a former mayor of this city, and a former sheriff of Mercer County, to testify as to the condi-

tion of the defendant at one time when he came to him in 1915, and he asks as a personal favor that he be allowed to testify in order that he may attend to his practice, and go to Philadelphia.

The Court: All right.

WALTER B. MADDEN, a witness produced on behalf of the defendant, being duly sworn, testifies as follows:

Direct examination.

By Mr. Satterthwaite:

Q. You have been a practicing physician in Trenton for some years, haven't you?

A. Since 1897.

Q. You know Captain Walsh, the defendant?

A. I do.

Q. Did he come to your place sometime in May, 1915?

A. Yes, sir.

Q. For some treatment?

A. Yes.

Q. What was his condition and what treatment did you give him?

A. He came into my office; he had a cut over the bridge of the nose, and one over the left eyebrow, and another along about the cheek bone, with some bruises and cuts on the right hand and across over the knuckles.

Q. What was the nature of those cuts about the face?

A. They were ragged cuts; they weren't clean cuts. I stitched the one across the nose and over the eyebrow.

Q. Of what degree of severity were they?

A. Well, they were not severe cuts; he got well from them.

Q. What would be the length of them, if you could give an idea?

A. Well, I think the one over the left eyebrow—I think that was in the neighborhood of half an inch, and this one over the nose, of course, just took in across the bridge of the nose, and down each side a ways.

Q. Could you give any opinion from the appearance of the cuts, as to what nature of an instrument had caused them?

A. I would say it wasn't done with anything sharp.

Q. Did the captain come back again for treatment?

A. Yes.

Q. How often?

A. Three visits I think he made, to my office.

Q. And the cuts healed up?

A. Yes.

Cross-examination.

By Mr. Backes:

Q. They were simply abrasions of the skin, weren't they?

A. A little deeper than the skin.

Q. They could have been made by coming in contact with the telephone, couldn't they?

A. Well, I suppose they could have been made by

coming in contact with anything, if the contact were hard enough.

By the Court:

Q. How about the injury to the hand?
A. That seemed to be little, slight cuts about the region of the knuckles.
Q. And that wasn't stitched up?
A. No, sir.

MARGARET WALSH, the above-named complainant, being duly sworn in her own behalf, testifies as follows:

Direct examination.

By Mr. Backes:

Q. You are the complainant in this suit?
A. Yes, sir.
Q. And how long have you been married to John E. Walsh?
A. About forty-two years, I guess.
Q. Where did you reside?
A. In Trenton.
Q. Where do you reside now?
A. In Ewingville.
Q. Did you reside there before?
A. Yes, sir.
Q. Are you residing in the farmhouse?
A. Yes.
Q. How long have you occupied it?
A. The last time?

Q. Yes.

A. Why, going on three years.

Q. You speak about the last time; under what circumstances did you go there the last time?

A. Well, before that in 1910, I think, he ordered me from the house, and wouldn't let me come back, so I went to Trenton and went to live on Murray Street; then he wrote to me, and I went to see him and came back.

Q. Well, you made a number of visits back and forth, didn't you?

A. Yes, sir.

Q. You were away then, how long?

A. Well, between two and three years, I guess.

Q. Do you remember when you came back?

A. I think it's three years this last September.

Q. After you came back you occupied the house you are occupying now?

A. Yes.

Q. And Mr. Walsh lived with you?

A. Yes.

Q. Who else?

A. The children.

Q. What ages were the children at that time?

A. Well, they were from twenty-six down to nineteen.

Q. Now, in your own way, Mrs. Walsh, describe your life with your husband after you returned, on down to the month of April, 1915.

A. Well, when I went back he was in Europe, and then when he came back, of course, he told me to come back. While he was away, I came back, and when he came back it seemed all right for awhile, and then he began to find fault, and I blame also drink, and he made my life so that I couldn't stand it; then I wouldn't live alone with him any more, and

that's the reason I wanted the children with me for protection, because he has threatened my life and he has made by life miserable in many ways.

Q. You say it was all caused by drink? Tell us about what his habits were.

A. Well, he didn't have much to do; he got up in the morning and he drank what he liked and went to Trenton, and came back mostly all the time under the influence of liquor. Of course, I wouldn't say much to him, for fear it would cause an argument. I didn't say anything to him.

Q. When he came home in that condition, what was his conduct towards you?

A. Finding fault and everything; cursing and swearing.

Q. Anything else?

A. Well, he was mean in every way, and to everybody that came in contact with him.

Q. Did he ever make any threats to you?

A. Yes, he threatened my life two or three times during my married life.

Q. During this period?

A. Yes.

By the Court:

Q. What would he say that you construed into those threats? What language would he use?

A. He said he would blow my brains out.

By Mr. Backes:

Q. Did he ever threaten you with any revolver?

A. Well, one night it was at the Vigilant dinner, and he came home very drunk, and he started to argue and talk, and I left the room. That was about

one o'clock at night, and he followed me, and I hid, because he went to the closet and I didn't know whether he had a revolver or not. I hid in the girl's room and he searched the house and went from the garret to the cellar, and one of my daughters went out into the hall and asked him what he wanted, and he said, "Where is your mother?" She said, "She is in here." Then he went back and locked his room door. The next morning I didn't say anything to him—it would only raise an argument.

Q. What happened the next morning?

A. The same thing; he would get up in the morning and be disagreeable in every way.

Q. When was that dinner?

A. I think it was in February; I forget the date.

Q. What year?

A. Of '14, 1914.

By the Court:

Q. You were going to describe this occurrence when he was drunk, but you said nothing about any threats. You began your statement by indicating that you were giving an account of some threats, yet you said nothing about them; did you forget them, or were there any threats?

A. There were.

By Mr. Backes:

Q. What were they?

A. That he would kill me if I didn't sign the Monument House over to him.

Q. How long was that before he left the house?

A. Well, about three or four weeks, I guess.

Q. You said it was in 1914. He didn't leave the house until 1915. Are you right about the year?

A. Well, maybe it was 1915, in February.

Q. It was in the month of February before the time when he left?

A. Yes.

Q. What was his conduct after that time towards you?

A. Always disagreeable.

Q. Tell us what the disagreeableness consisted of.

A. He would come home, as I said before, drunk and find fault and quarrel with me and everybody else in the house.

Q. Was that a daily occurrence?

A. Mostly a daily occurrence.

Q. Did he call you any vile names?

A. Yes.

Q. Such as what?

A. Oh ——

Q. You must tell them; tell us what threats he used and what langauge he used towards you.

A. He would call me a name that no mother should be called, or wife, I don't think.

Q. Do you recall him coming to the house a short time before he left for the purpose of removing the furniture?

A. Well, I don't know what date it was, but Mr. Van Cleef came up there and took an inventory of the goods, and then after that, it must be in March, then he wanted to take the things out, and I wouldn't let the things go out. Then he sued my youngest boy for the things.

Q. What did he say he wanted to do with the things?

A. He said he was going to the home down Pennington Avenue.

Q. Did he ever ask you to go to that home?

A. He said if I wanted to, I could come, and if I didn't I could stay.

Q. Then you say he brought suit against your son?

A. Yes.

Q. What occurred after that, Mrs. Walsh?

A. Then he brought a constable there to take the things.

Q. What did he take?

A. He took the things that he sued for, and then the day he took the things he said to me, "When you leave," he says, "you leave the curtains and the linoleum on the dining room," but I didn't make him any answer or say I would or wouldn't, but I thought of that ——

Q. Didn't he come there and take the stove?

A. He took the stove and the engine out of the cellar.

Q. And that was used for what purpose?

A. To pump the water.

Q. The water supply?

A. Yes, sir.

Q. Do you recall him going to the house on any other occasion?

A. After he had taken the things?

Q. No, before that.

A. Well, he would come off and on. He would go down town at night and he wouldn't come home until the next morning.

Q. How long before he left did that occur?

A. Well, around the time he sued for the furniture.

Q. Then he didn't stay in the house at all; did he have any meals there?

A. No, he wouldn't.

Q. Did you ask him to have it?

A. Yes, often I cooked the stuff and any time he would be in the house I would go and tell him to come to the meal.

Q. During that time, did he ever write to you any letters or notes?

A. No.

Q. Do you recall an occasion when you returned home and found the house locked up?

A. Yes.

Q. When was that?

A. That was after he had moved the things; I think that was in April, sometime in April.

Q. What occurred?

A. Why, he nailed all the windows and doors and put a placard on the hall door and on the tree that no trespasser was allowed, and we forced our way in the kitchen door and the boys when they came home, of course, they took ——

Q. Well, you took possession of the house?

A. Yes, certainly.

Q. Did he come home, or did you see him after that?

A. Well, he would come off and on.

Q. Did you have any talk with him?

A. No.

Q. Did he ask to talk with you?

A. No; I wouldn't say anything to him.

Q. Did he ever attempt to talk to you when he came back and forth?

A. No.

Q. Did he ever come back to see whether the house was still locked or whether you had gained possession?

A. I suppose that is what would bring him back.

Q. Did you see him at that time?

A. I saw him.

Q. Did he say anything to you?

A. No.

Q. Now, describe more generally what his conduct was when he returned at night.

A. Well ——

By the Court:

Q. I would like to hear more about the threats, if any. So far you have stated he made threats against you, but you have not stated distinctly any of the circumstances surrounding any of the threats. You have not narrated it in a way that I can see what you mean or understand you. You told about his threatening to blow your brains out, but you have not told anything about the circumstances, or how it happened or when it happened, and you spoke about a threat he made one night when he came home late from a dinner, but in narrating it you didn't tell anything about the threat. Now, I would like to hear something about this threat, in such a way that I can understand the occurrence and see the whole situation. Can you do that?

A. Why, in a way that he would threaten my life; he said that he would blow my brains out.

Q. Yes, but can't you tell me something about sometime when he said that; did he call it from the house top, or when you were in the cellar, or were you at the table?

A. No, in the room.

Q. Tell me about it; can't you describe it to me so I can understand where the occurrence took place and what it was? What was the occasion of his saying it?

A. He came home and got arguing and I wouldn't listen to him, and he said if I didn't he would blow my brains out.

Q. When was this?

A. The night he was out at that supper, when the Vigilant Society had a supper in the evening.

Q. When was it, in point of time?

A. In February, I don't know whether it was the 12th or 14th of February.

Q. Was that the occasion you described when you hid?

A. Yes.

Q. I understood you to say before that what he said was that he would blow your brains out unless you signed the deed for that property.

A. Yes, it was on that that he was on all the time, that was his quarrel all the time.

The Court: I want to find out, Mr. Backes, if I can, something about how these things happened. I would like to realize the situation. She tries to portray it, but I can't understand the situation from what she says.

Mr. Backes: I am trying to do that, your Honor.

By Mr. Backes:

Q. Now, Mrs. Walsh, you have heard what the Court said. He wishes to see the picture of these occurrences and just what occurred between you and your husband on the night in question.

By the Court:

Q. Suppose you were telling some intimate friend of yours about your husband's treatment; you would tell it different from that you have told it to me. Tell it to me just as you would tell it to them, only be very careful to be exact and truthful.

A. Well, it's as I said. He came home that night about one o'clock and he was very drunk and he got arguing about property and about different things that I should do. For instance, order the children away from home. I said, "It's no use in talking like that. You had better wait until you are sober." He said, "You have to do as I tell you, or else I will blow your brains out," and he followed me and that's when I hid.

By Mr. Backes:

Q. Where did that occur?
A. In the bedroom.
Q. He came to your bedroom?
A. Yes.
Q. How long did this quarrel last?
A. Oh, it lasted over an hour—two hours.
Q. What else did he say to you during all that period?
A. Why, he just talked about the property. You have no idea what a drunken man will do; they repeat over and over again.
Q. Did he do that that night?
A. Yes, so much so that I was tired listening to him.
Q. Did he make any other threats that night; did he do any swearing or cursing?
A. Yes, lots of that.
Q. Tell us; not "lots of it"—tell us.
A. Tell it?
Q. Yes, can't you tell us?
A. No, because I ran away.
Q. But for two hours you say he carried on?
A. It may be; it was around that.
Q. What did he do during all that time?
A. He was talking.

Q. In a nice and gentlemanly manner?

A. No, there was nothing gentlemanly about it.

Q. What did he call you, Mrs. Walsh, besides making these threats? What did he call you?

A. He called me what no mother should be called.

Q. I know; but tell us.

A. A prostitute.

Q. Did he call you anything else?

A. No.

Q. Did he do that more than once?

A. Yes.

Q. How often did he do it in that time?

A. Oh, a half a dozen times.

Q. Tell us of another occasion when this same quarreling occurred.

A. Well, Mr. Backes, it has been a continual quarrel and turmoil with him from the first until he left.

Q. Tell us what occurred, more in detail just as I told you this morning you must tell us your life history during that time; tell us what occurred.

A. It was like this: I never would say much to him because it would always raise an argument, and whenever he would get drunk he would scold and quarrel in every way possible; he would come out in the kitchen where I was, or anywhere, and quarrel.

By the Court:

Q. You don't mean anything when you say he was quarreling; that doesn't describe anything. It would be no offense in the law if he came out in the kitchen and quarreled. The law doesn't prevent the husband from quarreling with his wife, because there might have been something to quarrel about and there might not. Unless you can tell me

how he quarreled, or for what reason, it doesn't convey any impression to my mind.

A. He quarreled for no reason; if he had a reason ——

Q. What do you mean by quarreling?

A. Calling names and cursing, and what he would do.

Q. Can you give me a notion of what he would say? Some people might call quarreling if a husband would come into the kitchen and say to his wife when she was getting the meal, "I think you are awfully slow in getting that meal," but that would be no ——

A. It's no quarreling like that.

Q. What do you mean by quarreling?

A. Calling names and cursing and swearing and saying things that were mean.

Q. Then you will have to tell something of what he said. It seems to me that if I were a woman and my husband had cursed me so much as you say he cursed you and threatened me so much as you say he threatened you, and if he had been abusive to the extent you say he has been abusive, that I could remember something he had said. I don't see how you can forget things that he said that he should not have said. If you can remember them, say them; if you cannot, don't try.

A. Well, some of the things wouldn't be fit to say.

Q. If you don't say them, I can't act upon them, of course. There is no reason why you shouldn't repeat anything he has said. I have got to have it or I can't pay any attention to it.

A. Well, it got so I couldn't live with him. It is impossible for me to live with him. His conduct; and you don't know and no one else knows how disagreeable it was.

Q. And I can't know unless you can tell me. I can't understand how you could reach the conclusion that you couldn't live with him, but I shall have to know why. You may have been a very unreasonable woman, for all that I know, and you may have been untruthful and you may not, and the only way I can find out is for you to tell it. I can't guess at it, or accept your statement in the form you have given it, and then drunkenness is not a ground for divorce.

A. And when a man leaves you ——

Q. But the conduct of a drunken man may be a ground for a woman refusing to live with him. Now, you must tell me his conduct. A husband may get drunk and habitually get drunk without entitling his wife to leave him, but it is quite possible for him to behave during his drunken period in such a manner that she would be entitled to leave him. Won't you tell me something more that happened?

A. I can't tell you unless I tell you how he cursed and swore and threatened my life.

Q. Do that.

By Mr. Backes:

Q. You have told us of one occurrence; now tell us of more of them. Tell us what he said.

By the Court:

Q. I understand he threatened to blow your brains out unless you should do as he wanted on this occasion when you say he came home from a dinner. That is the only threat so far you have told us. Did he ever threaten you any other time?

A. Yes, a couple of times. He was accustomed

to make the threats; that's the reason I was afraid to live with him.

Q. Tell us some other occasion.

A. Well, he came home drunk oftentimes.

Q. Can't you tell us when it occurred, and what the occasion for it was; how it came about? I am not in the habit, and it is not my custom to coax a party to a suit to tell his or her story. I am only doing it on this occasion because you seem so reluctant to answer the questions of your counsel, but it don't seem as though you will answer me in the manner I want you to.

A. The whole thing is, I can't live with that man on them conditions.

By Mr. Backes:

Q. Let me recall to your mind the circumstances under which you left the house in 1910; what occurred then?

A. Well, he raced after me to beat me, and then he told my oldest son that if he didn't take me out of there that my blood would be on his shoulders.

Q. After that, what occurred?

A. Why, I left, and he wouldn't let me back.

Q. He wouldn't?

A. No.

Q. Where did you go?

A. To his house—to Will's house.

Q. Your son's house?

A. Yes, for awhile, until I could get a home.

Q. That was the previous time to this one?

A. Yes, sir.

Q. Now, before that, did you ever have any threats made?

A. Yes.

Q. When?

A. Well, a number in my life.

Q. In 1910, what did he say to you in addition to what you said?

A. Calling me names, calling me something out of my name, something terrible.

Q. What did he say?

A. What a drunken man generally says.

Q. Well, now, Mrs. Walsh, did you have in interview with your husband about a week before he went away?

A. No, only at that time I asked him why he didn't give all his stuff up and come home and do what is right.

Q. When was that and what occurred?

A. That was before the time he took the furniture.

Q. What did you say to him?

A. I told him, "Why don't you come home and try to be a man and try to remedy these things; no one will molest you and your home is open here. You are just as welcome here as at any other time."

Q. What did he say?

A. "No, by no means." By no means he wouldn't listen.

Q. Do you recall an occurrence when he returned to the house when you were having a telephone installed?

A. Yes.

Q. What occurred then and when was that?

A. I was getting a telephone in and he came and ordered the man to stop putting it in, so I took hold of the telephone and I said, "I want this telephone and must have it"; he said, "You can't have it," and I held it in my arms, and he came and grabbed it, and in his grabbing he pulled it and knocked it up

against his face and then pushed me up in the corner roughly, and how he hurt his hand was kicking the box that was on the side of the washboard, and he kicked me and my arm and limbs were all black and blue.

Q. Was that the time ——

A. About the 12th of May.

Q. Was that the time he went for treatment to Dr. Madden?

A. Yes, sir.

By the Court:

Q. The 12th of May, 1915?

A. Yes, sir.

By Mr. Backes:

Q. That was after he left the house?

A. There was nothing in the house that belonged to him.

Q. Do you recall the morning of the day he left the house; what was done and said between you that morning?

A. Well, nothing, only what I told you about the curtains and the linoleum, and I then spoke to him and said, "Why do you do such a foolish thing as this; you will be sorry for this."

Q. And what did he say?

A. He said, "No, he wouldn't; he didn't care a damn."

Q. Did he say anything else?

A. No.

Q. What did he take with him that morning?

A. The furniture.

Q. Did he take any of his clothes?

A. Yes, that was taken before.

Q. What did he take?
A. All his clothing in two dress-suit cases.
Q. Did you tell him to take it?
A. No.
Q. Did he ask you whether he could take it?
A. No.
Q. Did he tell you where he was going to take it to?
A. No, I didn't ask him.
Q. When he was leaving, did he ask you to go with him?
A. No.
Q. Did he ever ask you to go with him?
A. Only that time he said, "If you want to come you can come and if you don't you can stay where you are."
Q. When was that?
A. When he moved the things.
Q. Has he ever returned to the house since?
A. Yes, he has been there twice lately, but I haven't spoken to him or anything.
Q. Did he come into the house?
A. Yes.
Q. While you were there?
A. Yes.
Q. He didn't speak to you?
A. No.
Q. You didn't prohibit him from coming in?
A. No.
Q. Do you remember an occurrence which took place in a struggle where your son, Tom, stepped in between you?
A. In the hall.
Q. What was that?
A. He had a man there for to take the lock off the hall door, and I told the man not to touch that

lock, and he left it just as it was and he had a screw-driver ——

Q. Who had?

A. Their father.

Q. Yes ——

A. And he said to me, "If you don't get away from me I'll drive this through you."

By the Court:

Q. When did this occur?

A. In April; just about the time he was going to take the things away, you know.

By Mr. Backes:

Q. Did he make any other threats at that time?

A. No; he said he would fix me, and I told him then not to touch the things, but to leave them where they are. He said he would have a moving-van come and get them.

Q. What did he do with the screw-driver on that day?

A. I went away from the door after he threatened me.

Q. How did he threaten you; by simply speaking to you?

A. He said, "You get away from me, or I'll drive this through you." I was preventing the man from taking the screws out of the lock.

Q. Where was he standing?

A. There.

Q. Right alongside of you?

A. Yes, sir.

Q. Do you recall the time when you were arrested?

A. Yes, sir.

Q. On whose complaint?
A. On his complaint.
Q. And where were you taken and before whom were you taken?
A. I wasn't taken before anybody.
Q. Who arrested you?
A. Well, the 'squire came to Will's office and I signed some paper; I don't know what it was.
Q. Were you put under bail? Do you know what the charge was and who made it?
A. He said he did.
Q. Who said he did?
A. The 'squire.
Q. Who made the charge to the 'squire?
A. John E. Walsh.
Q. Your husband?
A. Yes, sir.
Q. What did he charge you with?
A. Assault.
Q. Was that the assault that occurred at the telephone incident?
A. Yes, sir.

Cross-examination.

By Mr. Satterthwaite:

Q. Mrs. Walsh, you say you have been married forty-two years, and during that forty-two years you have lived with the captain, excepting about three or four?
A. Well, five or six, I guess.
Q. And you have raised how many children?
A. Nine children.
Q. And the youngest of those children is how old now?
A. Twenty-one years old.

Q. Where did you live say fifteen years ago; where did you live?

A. Why, over at the hotel in Ewingville.

Q. Captain Walsh kept the hotel?

A. Yes.

Q. How long did he keep that?

A. I couldn't say.

Q. Several years?

A. Several years.

Q. And you lived there all the time he kept that?

A. Not all the time; I went to live ——

Q. Was he keeping that in 1910 when you went to Trenton?

A. No, before that.

Q. Do you mean you went to Trenton to live?

A. Yes.

Q. When was that you went to Trenton to live?

A. I guess twelve or fifteen years, it might be.

Q. You have not mentioned leaving that time, have you?

A. No.

Q. How long a time were you away then?

A. About a year.

Q. Where did you live during that time?

A. On Pennington Avenue.

Q. In whose house?

A. In his house.

Q. Was your family with you at that time?

A. Yes.

Q. All of them?

A. All of them; all but one boy, and he stayed with him.

Q. Captain was still running the hotel?

A. Yes.

Q. Who kept house for him during that time?

A. I don't know.

Q. Why did you leave at that time, Mrs. Walsh?

A. Well, in the first place, it was time for my children to go to school ——

Q. And you wanted them to attend the parochial school?

A. Yes.

Q. And they went to that school?

A. Yes; because there was no way to raise an argument and it was very hard for ——

Q. Ewingville is about how far out of Trenton?

A. Three and a half miles.

Q. Now, you were on friendly relations with the captain, then, while you were away?

A. Well, I wasn't on the outs with him.

Q. Did he furnish you support—you and the children?

A. No.

Q. How did you get support?

A. Through a store we dealt with.

Q. You got goods there on the captain's credit?

A. Yes, but ——

Q. He paid the bills?

A. I don't know whether he did or not.

Q. You bought on his credit?

A. Yes.

Q. At that time had you become the owner of the Monument House?

A. Yes.

Q. And you had the rent from that?

A. No, I didn't until 1910. I had no income and the children were all too small, excepting one.

Q. You were living in Captain's house and you were getting goods on his credit?

A. Yes.

Q. And you never paid for them?

A. No, the man is dead and I asked him two or

three times whether they were ever paid for, and he told me no.

Q. You never paid for them?

A. No, I never did.

Q. How long did the man live after you got these goods?

A. He is dead about four or five years, I guess.

Q. He has now been dead four or five years?

A. I think so; Mr. Michaelson.

Q. He never came and asked you to pay for them?

A. No, but I asked him to see if he did.

Q. At that time, he said he hadn't?

A. Yes.

Q. You came back in about a year?

A. Yes.

Q. He was still running the hotel?

A. Yes.

Q. And you lived with him?

A. Yes.

Q. There?

A. Yes, sir.

Q. You and the children?

A. Yes.

Q. For how long?

A. I can't remember.

Q. Do you remember when he quit the hotel?

A. That's six or seven years ago, I guess.

Q. That was 1910? This is 1916; was that about the time?

A. He wasn't living in the hotel then; it may be longer than that.

Q. Starting out at 1910, how long bofore 1910 was it?

A. Well, you know, he kept it awhile when we lived over where I live now; I wouldn't live in the hotel.

Q. When you went back to the hotel to live with him, he was keeping the hotel?

A. Yes.

Q. How long did you live with him in the hotel?

A. I couldn't say—until he sold out.

Q. Before he quit keeping the hotel, you moved to where you now live?

A. Yes.

Q. That was in his house?

A. Yes.

Q. With about thirty acres of land?

A. Twenty-six acres of land.

Q. He still conducted the hotel?

A. Yes.

Q. And you lived together?

A. Yes.

Q. And how long was it before he gave up the hotel entirely?

A. Maybe two or three years. He kept it until he sold out.

Q. Up to that time you had no particular trouble with Capt. Walsh, had you?

A. No.

Q. And your children were all born?

A. Yes, there were two of them born over there.

Q. Up to the time he left the hotel the children were all born?

A. Yes.

Q. And the youngest then was about what age?

A. I don't know. They were going to school.

Q. They were of school age?

A. Yes.

Q. Were some of the oldest grown up?

A. Yes.

Q. Which were grown up?

A. Will and John and Pete.

Q. And were they living at home?

A. No, they were married.

Q. Which ones were living at home when you gave up the hotel?

A. John and Frank and Harry and Tom and Ed, for awhile.

Q. Were the two girls living there?

A. Yes.

Q. Now, then, after he gave up the hotel, what did he do then for a business?

A. He didn't do anything.

Q. Did he work this land up there?

A. Yes.

Q. He had some properties in Trenton?

A. Yes.

Q. Did he look after them?

A. Yes, sir.

Q. And take care of them?

A. Yes, sir.

Q. Now, then, coming down to 1910, you were living at that time on this Ewing farm of about 26 acres, where I believe you still live?

A. Yes.

Q. And you and Captain were living together?

A. Yes, sir.

Q. At that time, what children were at home in 1910?

A. Frank and Harry and Tom and Aggie and Joe.

Q. How old was the youngest then, grown up?

A. No, they were going to school; they were only boys and girls going to school.

Q. And you moved down town to Trenton then, didn't you, in 1910?

A. Yes, I was forced to.

Q. And where did you go?

A. I went down to my oldest son's house, and

stayed there for awhile until I went to the people in the Monument House and told them they should pay me some rent, for I had no income at all.

Q. You went to your son William's house?

A. Yes.

Q. Where?

A. Pennington Avenue.

Q. What number?

A. 82½.

Q. Was that a house that belonged to your husband?

A. Yes.

Q. And your son lived in it?

A. Yes, sir.

Q. Do you know whether he was paying rent or not?

A. I don't know anything about their business.

Q. Did you take your children with you?

A. Yes. When they came down?

Q. When you went, did you take your children with you?

A. No; the boys stayed; three of the boys stayed home. One of my girls came with me, and the other was down at Long Branch at a hospital.

Q. You went to the people in the Monument House and told them to pay the rent to you?

A. Yes.

Q. And they did so?

A. Yes.

Q. You have always got it ever since?

A. Yes.

Q. Did the captain ever make any objection to your taking it?

A. No.

Q. Then after you did that, where did you locate yourself?

A. 36 Murray Street.

Q. When you first went to the tenants of the Monument House, did they decline to pay you the rent at first?

A. No.

Q. They didn't?

A. No, part of the place wasn't rented.

Q. Didn't they object to paying you that rent until they heard from Capt. Walsh?

A. No, one party said they rented from Capt. Walsh; "Well," I said, "you'll have to pay me the rent." Well, they said they would see.

Q. Did Captain meet you there afterwards and tell them to pay you the rent?

A. I believe in one place he did.

Q. And was that the place?

A. That is the place where the man said he would see.

Q. Then Captain met you there afterwards and told the man to pay you the rent?

A. He met me on the day I went to tell them that I should receive the rent.

Q. He met you by appointment?

A. No, I was surprised when I saw them. He must have watched and followed me.

Q. You went there and he happened to be there at the same time?

A. He wasn't there when I went first.

Q. He came in while you were there?

A. Yes.

Q. Were you in conversation with this man?

A. Yes.

Q. What did the captain say?

A. He said he should pay me the rent.

Q. What led him to say that? Something was said first?

A. Nothing to him.

Q. Did he hear you ——

A. No, he wasn't there; he came in just as I was going to go out. I said, "All right."

Q. The first thing he said to the man was that he should pay Mrs. Walsh the rent?

A. Yes, sir.

Q. And after that you had no trouble about getting the rent?

A. No.

Q. He hasn't objected to your receiving the rent since?

A. I don't see why ——

Q. He has not, as a matter of fact, has he?

A. Only by asking for the Monument House.

Q. He deeded it over; he has never objected to your receiving the rents?

A. No, because he couldn't.

Q. Now, you located your place at Murray Street; how long did you stay at Murray Street?

A. About a year and a half.

Q. Who was living with you there?

A. My children.

Q. All of them?

A. All that wasn't married.

Q. And they were working?

A. No, only two. Two was working and one was in the hospital, as I told you, studying to be a nurse.

Q. She was supporting herself?

A. Yes, sir.

Q. How many, then, were at home?

A. Five; two of them were working; Frank he was working and Ed., and they always paid me.

Q. You stayed there about a year and a half, and then where did you go?

A. To the Monument House.

Q. To live in part of it?
A. Yes, sir.
Q. And then you stayed there how long?
A. I stayed there about fifteen months.
Q. That would be about two years and ——
A. It was very near three years, all but a week or two.
Q. Then where did you go?
A. That's when I moved to Ewingville.
Q. To the captain's home?
A. Yes.
Q. You moved there while he was away?
A. Yes, sir.
Q. He had told you to do that?
A. Yes.
Q. Before he went away?
A. Yes, sir.
Q. And you arranged to move in?
A. Yes, sir.
Q. Now, during the time that you were down there, nearly three years, Captain remained where?
A. Up at Ewingville.
Q. Living at this house where you now live?
A. Yes.
Q. Did he have any housekeeper?
A. For awhile he did.
Q. Who?
A. I don't know who they were.
Q. Did he live alone or have a housekeeper?
A. Part of the time he lived alone.
Q. Did you visit him?
A. When he wrote to me.
Q. Did you visit him?
A. When he wrote to me.
Q. When was that?
A. It was when I lived at the Monument House.

Q. Didn't you go up there quite frequently to Ewingville?

A. I would go every Sunday afternoon.

Q. Did you go through the week any?

A. No.

Q. Not at all?

A. No.

Q. But you would go every Sunday afternoon?

A. Yes.

Q. And would the captain give you any provisions when you were up there?

A. I generally brought them.

Q. You generally brought them?

A. Yes.

Q. What would you bring?

A. Why, a lunch.

Q. For him?

A. Yes, and myself.

Q. A little tid-bit?

A. Yes.

Q. I suppose you preferred to provide a lunch than take what he would provide?

A. Yes.

Q. You were a better cook than he was, I take it?

A. I don't know.

Q. Didn't he give you eggs and things of that kind?

A. Yes, sir.

Q. And chickens occasionally?

A. No.

Q. Had he made any threats before this time that you talk about?

A. Yes, sir, he has.

Q. Had most of these threats which you talk about been made before this time?

A. No.

Q. What threats had been made before this time; before your going back again?

A. Before 1910?

Q. Before you went back; you came away in 1910, it would be 1913, nearly three years?

A. Yes.

Q. Before you went back in 1913, what threats did he make?

A. Just the same as he did since I went back.

Q. Just about the same?

A. Yes, it was the same conduct.

Q. But those threats didn't prevent you from going back and visiting weekly and taking lunch with him?

A. Not during the time I would go there.

Q. Before that time he would make the same threats he made since?

A. Yes, before I left in 1910.

Q. The threats he had made didn't prevent you from going back and visiting him weekly and taking lunch together?

A. Well, he didn't make the threats just then; he had written to me and I took one of my boys up with me.

Q. When did he write to you?

A. When I lived in Murray Street.

Q. He invited you to go up?

A. Yes, sir.

Q. Have you got the letter?

A. Not here.

Q. Was your son always with you when you visited Ewingville?

A. No; there was always somebody else.

Q. Who?

A. A stranger.

Q. You mean that happened to be there?

A. Yes.

Q. You went alone?

A. Yes, generally.

Q. And so far as any arrangements were concerned, you expected to meet Captain there alone?

A. Yes, sir.

Q. How long would you stay?

A. A half a day.

Q. And how would you get back?

A. On the trolley.

Q. The trolley was up there then?

A. Yes, sir.

Q. How did Captain receive you during these visits?

A. Why, he was all right, I guess. Two or three times I went up there he was drunk, and I left right away.

Q. Did he threaten you those times he was drunk?

A. Well, he was abusive.

Q. In what way?

A. He wanted to know why I came up; why I wanted to come up there.

Q. Anything more than that?

A. No.

Q. And you didn't enjoy his society when he was in that condition, so you left; but, on most of the occasions, he was kindly disposed towards you?

A. Yes.

Q. And it was very much like old times, wasn't it?

A. No; my idea was that brought me up there, to try to make things right and to live my life the right way on account of my children.

Q. You went up there weekly covering a period of two years?

A. No.

Q. How long?

A. It might be a year and it might not.

Q. It was at least a year before you moved back?

A. Yes; I don't think it was a year.

Q. Well, about a year?

A. Yes, sir.

Q. And you had no fears about going up there then?

A. Well, when he was drunk I wouldn't stay any time; I would come down on the next trolley.

Q. After seeing him drunk on those occasions, you did, acting on his suggestion, move up there while he was away?

A. Yes, because, as I told you, he wrote to me.

Q. He had gone to Ireland?

A. Yes, sir.

Q. You expected him when he came back to come and live with you?

A. Yes, he said so.

Q. And he did so when he came back?

A. Yes, sir.

Q. While you were living in the Murray Street house, did you have a talk with Captain, or he with you, with regard to the amount of rent you were paying?

A. No.

Q. Just refresh your memory; didn't he ask you what rent you were paying, and didn't you tell him $20, and he said, "Part of the Monument House is empty, why don't you go there and live"?

A. No, he never said anything about the Monument House.

Q. Did he invite you to go over to Ireland with him that summer?

A. No, but once or twice he said, when he would come back, that he should have asked me to go; it would be after he came back.

Q. He would be speaking about his trip and what

a pleasant time he had and regretting he didn't take you over to enjoy it with him?

A. Yes.

Q. Is that what you mean?

A. Well, regretting that ——

Q. Now, what time did he come back that year?

A. He stayed away for about six or seven weeks, I guess.

Q. What time of the year was it?

A. In the fall.

Q. Then you lived on there after that, how long together? This was in the fall of 1913?

A. Yes.

Q. How long did you live there together after that?

A. Until the fifteenth.

Q. Now, then, you left once previous to 1910, in order that you may have the children attend the parochial school; then you left again, and then you came back and the next time Captain left?

A. Yes.

Q. Now, when was it he left, about?

A. About the first part of April, I guess.

Q. Who was living home with you both then?

A. The children.

Q. Which children?

A. Three of the boys and two girls.

Q. Name them.

A. Harry, Frank and Tom, and Aggie and Joe.

Q. Johanna?

A. Josephine.

Q. Previous to going away, did he have any trouble with those boys?

A. No.

Q. You never heard any trouble or of any quarrels between him and the boys?

A. No, he would be drunk and when he would be

abusing me then they would step in to protect me, but they never quarreled with him of their own account.

Q. But, as a matter of fact, did you witness those quarrels between him and the boys when you say he was abusing you?

A. Witness?

Q. Did you ever see any quarrels between him and them?

A. Nothing but talk; they would tell him he shouldn't abuse me; that he should leave me alone.

Q. Did they ever threaten him?

A. No.

Q. Not to your knowledge?

A. No.

Q. Before he left there, did he have any conversation with you in which he told you that he wanted to make a home in Trenton, away from the children?

A. Only that time I told you about, before he said he was going to make a new home, and I could come if I wanted, and if I didn't, I could stay.

Q. Did he give a reason why he was going to make a new home?

A. No, unless it was his funniness.

Q. Didn't he say he wanted a home with you and away from these boys?

A. He did; indeed, I wouldn't live with him alone, for I am afraid of him; I wouldn't live with a man that would go on the way he went on.

Q. But you can't say whether he told you that he wanted to make a home away from these boys?

A. He didn't say anything about boys; he said he was going to make a home.

Q. Did he give you a note and ask you to come with him?

A. No.

Q. Telling you where he was going to make his home?

A. No.

Q. As a matter of fact, do you know where he did go to?

A. How, to make the home?

Q. Yes.

A. Why, he said he was going down to Pennington Av. to make a home and if I wanted to go I could go, and if I didn't I could stay.

Q. Did he tell you which house he was going to?

A. No.

Q. You knew the house he did go to?

A. It was vacant.

Q. You knew which house he did go to?

A. Yes.

Q. One of his houses?

A. Yes.

Q. Where he now lives?

A. Yes.

Q. What kind of a house is it?

A. I ain't been in it for years.

Q. When you did see it last, was it a good house?

A. I wouldn't live in it.

Q. Well, you wouldn't live in it with him, I suppose; why wouldn't you live in it, Mrs. Walsh?

A. I don't like the place.

Q. The neighborhood do you mean?

A. No.

Q. Is it a respectable neighborhood?

A. I have no fault to find with the neighborhood; I don't know any of them; I never had no dealings with them.

Q. Why is it, because you think the house isn't good enough?

A. It isn't in good condition.

Q. You say you have not been in it for a good while; do you know what condition it is in?

A. Of course, I ain't been in it of late years.

Q. You don't know, then?

A. Judging by the rest of the things he ever did.

Q. What?

A. Judging by the rest of the improvements he made, it wouldn't be much.

Q. You don't know?

A. No.

Q. Now, did you ever live in the house that your son, William, occupied?

A. Yes, and from there we moved to Ewingville.

Q. You lived there how long?

A. Five years.

Q. That was a good enough house?

A. It was new.

Q. Was that a good enough house?

A. It was new; everything was good and new about it.

Q. Was that a good enough house?

A. Yes, sir, it was a good deal different from what it is now.

Q. This same house, isn't it?

A. Yes, it was in good condition it was a good deal different from what it is now.

Q. Now, when was this that Col. Van Cleef came up there to make an inventory of the things that were in the house?

A. I don't know what day; sometime, I guess, in March, if I am not mistaken. I don't know the dates.

Q. Were you there at the time?

A. No.

Q. Then you were only told that then? When

was this Vigilant dinner, when you say Captain came home and behaved so disorderly?

A. In February.

Q. What year?

A. 1914, I guess.

The Court: 1915, don't you mean?

A. It was the year he left.

By Mr. Satterthwaite:

Q. And what was the first thing he said when he came in that night?

A. Well, he came in very drunk and started to quarrel.

Q. What was the first thing he said?

A. He says, "Well, are you ready for to sign over that Monument House, or are you ready to leave here, and put everybody out?" I didn't make him any answer, because I knew he was drunk.

Q. Then what?

A. Then he quarreled and said he would force me.

Q. Force you to do what?

A. To sign the Monument House over.

Q. And then what?

A. And then I left the room and he followed me and searched the house from top to bottom.

Q. And your daughter went out in the hall?

A. And asked him what was the matter with him and what he wanted, and he had something behind his back holding it like that (illustrating), and we were afraid it was a revolver.

Q. Did you see that he had his hands behind his back?

A. Yes.

Q. Were you looking out of the door?
A. Yes, I was in the room.
Q. Did you see him out in the hall?
A. At a distance.
Q. You saw he had his hands behind his back?
A. Yes.
Q. And she asked him what he wanted?
A. Yes, and what was the matter with him.
Q. He wanted to know where her mother was?
A. Yes.
Q. And she said you were in her room?
A. Yes.
Q. And he said no more?
A. No, he went back to the room and locked the door.
Q. Was that all there was of that quarrel that night?
A. Yes.
Q. Was that all that took place?
A. I think that was enough to frighten a person.
Q. Was it all?
A. It is a thing I want to escape going through it again; I wouldn't go through it again for nothing.
Q. Do you know anything about how Captain came to bring a suit against your son for these goods? Which son was it?
A. The youngest.
Q. Which one?
A. Tom.
Q. And he had moved away himself, hadn't he—the captain had?
A. Then, yes, he had gone.
Q. And did he come up there one day to get some of his furniture to take?
A. He came up with the constable.

Q. I ask you if he came up one day to get some furniture.

A. Yes, he came up one day.

Q. Was Tom at home?

A. Yes.

Q. What did Tom do?

A. He didn't do anything, only the man was there; he brought a man there to take the screws out of the hall door lock and force it open, and, of course, Tom stood there and I stood there, and I said, "You won't bother with that"; I said, "You leave that lock alone."

Q. To whom?

A. To the man.

Q. Was this the constable?

A. No, a neighbor.

Q. What neighbor?

A. Lewis, his name is.

Q. Capt. Walsh had brought him?

A. Yes, sir.

Q. Did Tom threaten them if they didn't go away?

A. No, Tom said, "Mom says not to take that lock off, and you can't take it off."

Q. Capt. Walsh was there, wasn't he?

A. Yes.

Q. What did he say?

A. He would take it off if he pleased, it was his place. I said, "You won't take it off; I won't permit you." He said, "If you don't get out of here, I'll drive this screw-driver through you," because Mr. Lewis had left the screw-driver go; he said, "I wouldn't interfere with anything like that; I didn't come over with that intention."

Q. Did he take the lock off?

A. No.

Q. Did he go away and leave it?

A. There were several of them standing there then.

Q. Who?

A. The children.

Q. And did Captain retreat?

A. No; I said, "Why don't you leave these things alone; why are you acting so foolish?"

Q. What did he say?

A. He said he would move heaven and earth, and I said, "Then go and move heaven and earth."

By the Court:

Q. Did he go away?

A. Yes. He said he would drive it through me.

By Mr. Satterthwaite:

Q. Did he go away and leave the screw-driver there, or pick it up?

A. I don't know what he did with it.

Q. Did he leave?

A. He didn't leave the house.

Q. What did he do?

A. He went through the house scolding.

Q. He didn't take that lock off, did he?

A. No.

Q. He came there for the purpose, with a man, to take that lock off?

A. Yes, sir.

Q. And you and the children gathered around there and had this talk back and forth and the result was that Captain didn't take it off?

A. Yes.

Q. What did he do in the house?

A. Just walk through, that's all.

Q. Did he do anything that was wrong?

A. I don't remember what he said.

Q. Do you remember anything what he did say, except what he said about the screw-driver?

A. No, I didn't follow him, or have any conversation.

Q. When he said this about the screw-driver, where was he with reference to you then; where did you stand?

A. I stood in front of the lock.

Q. How close to it?

A. Very close.

Q. And how close were you to him?

A. He was standing right there (indicating).

Q. Within three feet?

A. Oh, no; he may have done me harm, only the others were there.

Q. I ask you how close he was to you.

A. Standing, well, within three or four feet, I guess.

Q. And how many others were around you?

A. Three or four others.

Q. And what did he do with the screw-driver when he said that?

A. Of course, when he made the motion to use it, he was prevented.

Q. What motion did he make?

A. He raised it up (indicating).

Q. Was he down on his knees working on the lock?

A. No.

Q. He was standing up?

A. Yes.

Q. What way did he raise it?

A. This way (indicating); he said, "If you don't go away from here, I'll drive it through you."

Q. He stood where he was?
A. Yes.
Q. He didn't step towards you?
A. No, but he went like this (witness raising her arm).
Q. He raised it up as a gesture at the time he made the remark?
A. Yes.
Q. Who prevented him?
A. One of the children there said, "Pop, don't act like this."
Q. What did he say then?
A. He was talking to them.
Q. What did he say?
A. I didn't pay any attention to what he said.
Q. Which child was it that said that?
A. I don't remember. There was two or three of them there.
Q. After going through the house, he left, and when next did you see him up there?
A. I think when he came after the furniture.
Q. Was that after he had had a suit against his son, Tom?
A. Yes.
Q. Was it a suit of replevin?
A. Yes.
Q. As to his right to the furniture as against the son?
A. Yes.
Q. Then he came and got it?
A. Yes.
Q. Were you home?
A. Yes, sir.
Q. Who came with him?
A. A constable.
Q. What constable?
A. Pownall, I think his name was.

Q. What did they take away?
A. They took what he had in the list.
Q. Do you remember what it was, about?
A. Well, the list is there somewhere.
Q. I ask you whether you remembered what it was?
A. Why the parlor suit and dining suit and stove and bedroom furniture and hall furniture.
Q. And they took the things away and you remained on there?
A. Yes.

The Court: I don't want to in any way limit you, Mr. Satterthwaite, or to embarrass your case; I know you have a purpose in all you do, but couldn't it be shortened to advantage? With the number of witnesses we have present, I see we have quite a seige ahead of us, and we shall not get much done unless we get down to the more essential features. If there is anything you think will be material, which you may forget now, you may recall the witnesses for further testimony; that may be done on either side.

Mr. Satterthwaite: I will act upon your Honor's suggestion.

By Mr. Satterthwaite:

Q. When next did you have any threats from Capt. Walsh?
A. Why, he left.
Q. Have you had any threats since?
A. Well, the day he came after the telephone man.
Q. That was after he had left?
A. Yes, and taken everything with him.

Q. There was a man up there putting in a telephone when he came?

A. Yes.

Q. And he came in?

A. And he came in and ordered it out.

Q. What did he say?

A. He said, "Take that telephone to hell out of here."

Q. What did the man do?

A. The man said, "Mrs. Walsh ordered us to put in a telephone," and he said he didn't care, he should take it out; and he ordered the man standing up on the radiator putting up some wire to get out. The man went right out and he said, "Come and take this telephone out." He said, "I am going across the street and I will be back." He said, "No, you come and take it out now," and I had it in my arms. I said, "I am going to keep this telephone." He said, "No, you're not." I said, "Yes, I am," and he grabbed me by the arm and throwed me up against the house, and said, "Give me that telephone," and snatched it away, and as he snatched it he hit himself up in the face.

Q. Do you know what part of the telephone hit him in the face?

A. I had hold of like the bottom and he pulled it up.

Q. Did you let go of it?

A. I had to when it was taken from me by force, and then he started out and then is when he kicked me.

Q. He kicked you?

A. Yes.

Q. Where?

A. In the leg.

Q. More than once?

A. Yes, sir.

Q. How many times?

A. Oh, I don't know; two or three times; then he went to hit me and my daughter came between us.

Q. Which daughter?

A. Josephine.

Q. What did your daughter say?

A. She said, "Pop, give this thing up; it's awful; you shouldn't do things like this."

Q. Did she say anything to you or did he?

A. No, I stepped aside.

Q. Did she say to you, "Now, Mom, don't do that"?

A. No.

Q. Did she say, "Mom, by God, don't do that"?

A. No, she didn't; positively she didn't.

Q. And what did Captain do when he pulled this telephone up against him?

A. He was bleeding in the face, so Jo., she was standing talking to him; with that, he took the telephone and kicked it out on the porch; then we went and closed the door and he kicked it in, and I went back and closed it again and he kicked it in; and the man said, "He has got the worst temper of any man I knew in my life."

By the Court:

Q. Was he drunk on this occasion?

A. Well, he wasn't sober.

By Mr. Satterthwaite:

Q. The captain was very angry because you were putting a telephone in a house he wanted closed up?

A. He must have been.

Q. After you hit him with the telephone, he was in a good deal of a passion?

A. Yes.

Q. Have you ever had any threats or trouble with him since that time?

A. As I say, when he came to the house I never spoke to him; never come in contact with him, but once after that I told him why didn't he come home and try to be a man; what was the use of all that? He said, "No, never." I said, "All right, then, go ahead."

Q. When was it and where was it after this episode of the telephone that you asked him ——

A. He came to the house.

Q. How long after?

A. Well, maybe a week or so after.

Q. And you invited him to come and live together then?

A. Yes.

Q. And you meant it?

A. Of course, I did.

Q. Since that time you have had no trouble?

A. No, because I wouldn't come in contact with him.

Q. You have had no trouble?

A. No.

By the Court:

Q. When you invited him to come home, what did he say?

A. "No, never." I said, "All right, you go your way."

By Mr. Satterthwaite:

Q. Did he say anything about coming home with the boys there?
A. No.
Q. He didn't say anything about that?
A. No.
Q. Did he say anything about your coming to live with him?
A. No.
Q. Afterwards?
A. He never asked me after.

By the Court:

Q. Didn't he ever say anything to you about objecting to the children?
A. Oh, he wanted me to put them out; I said, "No, that wouldn't be natural for a mother; they are not doing anything and not costing you anything to keep them."

By Mr. Satterthwaite:

Q. They were self-supporting and able to take care of themselves?
A. Not then; two of them wasn't. They had just left school, looking for a position.
Q. How old were they then?
A. Tom was about twenty years old, in his twentieth year; and Harry was in his twenty-second year.
Q. Tom was the youngest?
A. Tom was the youngest.
Q. Were they attending school at that time?
A. No.

Q. Were they doing any work?

A. No, they were trying to get work; they couldn't get any work.

Q. How long had they been out of school?

A. They had been out of school since vacation, I guess.

Q. Just the year before?

A. Yes, sir.

Re-direct examination.

By Mr. Backes:

Q. Mrs. Walsh, you have spoken about visiting your husband, every Sunday at Ewingville?

A. Most every Sunday.

Q. For what purpose did you visit him?

A. Because he invited me there.

Q. Any other reason?

A. No.

Q. Didn't you try to effect a reconciliation?

A. Yes, in was on that line that I ——

Q. Did you talk over your affairs?

A. Yes.

Q. What promises, if any, did he make to you?

A. He promised if I would come back, everything would be all right and he would do what was right?

Q. What did he say he would do?

A. Fix the house up and put improvements in it and make it so I could live in it, and that I need never leave it.

Q. Did he say anything more?

A. No.

Q. What did he say about his change to conduct towards you?

A. He would try and do better. I said, "If you

will give up your drink, I'll have more confidence in you that you'll be right."

Q. Was he drinking at that time?

A. No, there was spells at that time that he didn't. I was surprised at him, but still he always had it in the house; always had a closet full if anybody would come ——

Q. But he didn't do any drinking at that time?

A. Not that I could see; only he never took anything while I was there.

Q. You say you arranged to return while he was in Europe?

A. While the house was under repairs, it was under repairs as he went away, and he said, "When the men get through with their work for me to move back," and I did.

Q. Had you any understanding on what condition you should move back?

A. Yes.

Q. What was it?

A. That if I would come back everything would be all right and that he would try and do better.

Q. When did he return?

A. He was away about five or six weeks, I guess.

Q. And where did he make his home then?

A. There.

Q. He came there?

A. He came there.

Q. What was your relationship then between you, pleasant or unpleasant?

A. Yes, it was all right.

Q. How long did that continue?

A. Until, well, maybe pretty near a year. Well, not a year; it wasn't a year; then he started drinking, and he drank off and on very heavy.

Q. Well, now, do you know the extent of his drink-

ing habits; what quantity of liquor he would consume?

A. Well, I couldn't say, Mr. Backes, because he was always so that he just had enough in to keep him ——

Q. How would you know he had enough in?

A. By his conduct and actions.

Q. By his condition?

A. Yes.

Q. Can't you give me some idea of how much drinking he would do?

A. Well, oftentimes he would have people there that would help him to drink, and I couldn't keep count of how much he drank. I really didn't care, if he behaved himself, what he drank, as I told him. He had one room there and he could do as he liked in it, and he had all the drink he wanted. He had a closet full of whiskey, and all the beer, and anybody that has been up there knows it.

Q. He always kept the place well stocked?

A. The whiskey part was well stocked and the beer part, and nobody in the house drank only him and those that would come to see him.

Q. Now, you returned in 1913; when did he next go to Europe?

A. I think the next August.

Q. And returned again to the house?

A. No, no, that's when he brought this woman.

Q. Do you know who this woman is?

A. No.

Q. Did he ever introduce you to her?

A. No.

Q. Ever bring her to the house?

A. No.

Q. Ever tell you who she was?

A. No.

Q. Has he ever been to the house since he has returned?

A. Yes, but I had no conversation with him.

Q. He saw you?

A. No.

Q. Did he ask to see you?

A. No.

Q. Now, as to this question of the Monument House, which seems to have been the root of the evil, which house was that?

A. The Monument House there at the head of town.

Q. Who did it belong to?

A. Me.

Q. Where did you get it, or how did you get it?

A. Why, he bought it with most of my money; that was left to me by my father and mother. And what improvements and what building is on it and the debt is on yet; he has never paid one cent.

Q. Is it a fact that he gave you that house?

A. Well, he ——

Q. Did John E. Walsh make a gift of that house to you?

A. Well, when he did it it was in my name on account of this money, and I never got a cent out of it in any way or shape until that time ——

Q. Who received the income? How long did you have that house, by the way?

A. Well, the date is on it; why, we have had that house, I guess, thirty-five years.

Q. And you never received any income?

A. Not a penny, any more than you did.

Q. Until when?

A. Until 1910, that I went to the tenants.

Q. Who received it before that?

A. Why, he did.

Q. Are you receiving the income from it now?

A. What little income I have, with the boy's help; but when I pay the interest and taxes and repairing, there is very little.

Q. You say that when you returned to Ewingville after you left in 1897, you had a store book?

A. Yes.

Q. With Nicholson?

A. I didn't have any store book after I left.

Q. But after you returned?

A. No, this was years ago.

Q. How long did that continue that Mr. Walsh provided you with a store book?

A. I guess five or six years. That was long before 1910.

Q. Has he, since 1910, provided you with ——

A. No, he gave me nothing; what I bought I bought myself.

Q. He provided you with a house to live in?

A. Yes.

Q. You lived there with your family?

A. Yes.

Q. Anything else?

A. The coal.

Q. Anything else?

A. No.

Q. Any supplies?

A. No.

Q. Any of the produce from the farm?

A. No.

Q. Do you know anything as to the property your husband has?

A. He's got enough to keep him.

Re-cross examination.

By Mr. Satterthwaite:

Q. About this stove, at the time he came up there didn't you remonstrate with him about taking the stove away?

A. Yes, I said to him, "Why don't you leave that stove and the engine in the cellar?" He says, "Well, I will for awhile if you give me that whiskey of mine." There was a lot of whiskey—about two dozen bottles—there, that I give to some hospital or some place; I intended to give it to a hospital or some place like that; then after that I gave him the whiskey. It was samples that he had.

Q. He did leave the stove there?

A. For awhile, three or four weeks.

Q. Didn't he say he would leave the stove there if you would vacate the house in a short time?

A. No, but he had an idea that I would leave; that's the reason he said about the linoleum and the curtains; he said, "When you leave, you leave the linoleum and the curtains."

Q. Why did he have to give you this stove to get his own whiskey; couldn't he get it?

A. No.

Q. Why?

A. Because I wouldn't give it to him. He got what belonged to him there; of course, the whiskey belonged to him because nobody else used it.

Q. And he couldn't get that whiskey from you without giving something in return?

A. No.

Q. And he couldn't get it because you wouldn't give it to him?

A. No.

Re-direct examination.

By Mr. Backes:

Q. You detailed or told us a while ago what was taken in the way of furniture from the house; was there anything left after he got through?

A. Only what I bought myself, Mr. Backes, with my own money. After I got the rents of the Monument House.

Q. What was the condition of that house after he had taken out everything there?

A. Well, two of the rooms are vacant now, that I have no furniture for.

Q. Did he strip the house?

A. He did. If you have the list there, you can see it was pretty near all that belonged to the house.

Q. Did he leave you any means of providing a fire in the house?

A. No.

Q. Or of obtaining water?

A. No, he took the engine and the oil stove and the few buckets of coal in the bin; the man is here that carted it in his wagon.

JOSEPHINE WALSH, a witness produced on behalf of the complainant, being duly sworn, testifies as follows:

Direct examination.

By Mr. Backes:

Q. You are the daughter of John E. Walsh and Margaret Walsh?

A. Yes.

Q. And where do you live?
A. Ewingville.
Q. With whom?
A. With my mother.
Q. Did your father ever live there?
A. Yes, for awhile.
Q. How long can you remember your father lived there?
A. Well, my father lived there mostly all the time, I can remember, with the exception of this time he went to town.
Q. What time was that?
A. He left in—I think he left in the spring some time, I forget the date.
Q. What year?
A. 1915.
Q. How long had he lived there before that?
A. Well, he had always lived there as long as I can remember.
Q. How long had you lived there before that?
A. Do you mean straight along without leaving?
Q. Yes.
A. About three years; about two and a half years since my mother moved back.
Q. Since you moved back from the Monument House?
A. Yes, since we moved back from the Monument House.
Q. And then your father and mother lived together?
A. Yes.
Q. Tell us in your own way what was the manner or conduct of your father towards your mother during the time they were living together in the house?
A. Well, all during my life that I can remember, my mother always feared my father, and she was

always afraid of him, and he would get drunk; he was a man that drank and he would come home and be awfully abusive.

Q. What would he do and what would he say, as you can recall?

A. For instance, he come home at night—he had no occupation, only his property, I suppose, he had to take care of that; he would come home at night under the influence and a man in that condition would pick a quarrel over nothing ——

Q. What would he say to your mother when he came home in that condition?

A. Well, for instance, over a trifling matter, a matter that wouldn't amount to anything, he would quarrel and swear at her.

Q. What did you ever hear him say to her?

A. Well, do you mean ——

Q. You say he swore at her; what did you ever hear him say?

A. Do you mean the swear words I heard?

Q. Yes.

A. Well, I heard him call her a "son of a ."

Q. Anything else?

A. I heard him "God-damn-her."

Q. How often did you hear that occur?

A. Most every night when he would come home.

Q. How long would it keep up?

A. Well, until he went to bed.

Q. Well, an hour or two hours?

A. Sometimes that, and sometimes longer.

Q. Would that be a nightly occurrence?

A. Very near; about three or four nights out of the week, I would say.

Q. Do you recall any time when he came home very much intoxicated?

A. Yes, I recall the time he came home from the Vigilant Society dinner.

Q. What occurred then that you heard?

A. Well, I was woke in the night; he came up on the twelve o'clock car, I guess; it was nearly one o'clock, and Mother said, "Jo, wake up, I'm afraid of your father; I think he's going to hurt me." She said she thought he had a revolver, and she said she had ——

Mr. Satterthwaite: I object to that, if the father was not present.

Q. Your mother came to your room?

A. Yes, and said she had been hiding under the bed.

Q. Did you see your father?

A. I asked where he was, and she said he was downstairs looking for her, and my sister and I came in the hall and we heard him down in the cellar, and finally he came up and my sister said, "Who are you looking for," and he said, "For your mother," so my sister says, "She is in here; what do you want her for," and he didn't say anything; he just went on in the next room, in his room.

Q. Did he say anything at all?

A. No.

Q. Was he in anger or composed?

A. He was awfully intoxicated; his face was flushed.

Q. Did he say anything?

A. He said he was just looking for her, and he had his hand behind his back, and of course I couldn't tell what he had in his hand.

Q. Did you ever see him in a similar condition?

By the Court:

Q. Was he staggering drunk or sober enough to walk straight?

A. Sober enough to walk straight, you know; I don't never really remember seeing him staggering; but drink affected him so he would get in an awfully vile mood.

By Mr. Backes:

Q. In violent tempers?

A. Yes, he had a bad temper.

Q. When he got into these drunken fits, what would he say or do; tell us something what he would say to your mother that you heard.

A. Well, for instance, he always picked on my brothers, but they would never bother with him; the reason was that he always abused Mother and they were afraid he would hurt her, and they always stood between him and Mother, and that was the trouble with him.

Q. That would incense him?

A. That would incense him, yes.

Q. What did you ever hear him say to your mother aside from what you told us a moment ago? Did you ever hear him swear at her?

A. Oh!

Q. How often?

A. Every time he would get in that condition.

Q. Tell us the nature of the oaths or swear words he used?

A. Well, he damned her to hell and called her a whore, and ——

Q. And you say that that occurred three or four times a week?

A. Perhaps not as bad as that every time, but that was about the average.

Q. Do you recall just before he left, how long had he been addicted to drinking?

A. The last time?

Q. Yes.

A. Well, I think my father was a man who always drank ever since I knew him.

Q. Who prepared the meals at the house?

A. Mother.

Q. And do you remember the dinner prepared for New Year's Day of the year he left?

A. Yes.

Q. Did he have dinner with you?

A. No, he went down to my brother's.

Q. Did you ask him to have dinner with you?

A. Yes, he was invited to have dinner.

Q. Did he take any meals at the house after that?

A. No, not after that; whenever meals were ready he had a room, a sort of a den, and we asked him to come, but he wouldn't come. He never said anything, but he just wouldn't come.

Q. How long did that continue?

A. From New Year's Day until the time he left for good.

Q. Where would he get his meals?

A. He went down town for them.

Q. And would return when?

A. Sometimes the same day and sometimes he wouldn't.

Q. Did he stay away overnight?

A. Sometimes.

Q. How often did that occur?

A. First, perhaps a few times, and then along towards the end he would stay down.

Q. Did he absent himself altogether?

A. Yes, he got a room down town at the Turkish Bath.

Q. How often would he come back then?

A. Perhaps, maybe, sometimes once or twice a week, maybe.

Q. Do you remember the morning of the day he left the house?

A. Yes.

Q. What occurred?

A. Well ——

Q. Did you see him that day?

A. I saw him with the suitcases and he said that he was through.

Q. Did he say anything else?

A. Not that I can remember.

Q. Did he have any talk with your mother on that day?

A. I don't remember.

Q. You say you saw him with the suitcases; do you know what the suitcases contained?

A. Yes, sir; they contained his clothing.

Q. How do you know that?

A. Well, his clothing was all gone from the closet and the bureau drawers.

Q. You girls and your mother always provided every comfort for him in the house, did you not?

A. Yes, sir, we tried to make things ——

Q. And you provided his meals?

A. Yes, sir.

Mr. Satterthwaite: That is objected to.

Q. After he left on that day, how did he come to Trenton?

A. By what conveyance?

Q. Yes, by what conveyance?

A. The trolley.

Q. When did you next see him after that?

A. I don't remember.

Q. Do you remember seeing him at the time you locked the house up?

A. Yes, we were all down town that day and my nephew and I came up on the three o'clock car, and he had been up beforehand and nailed the doors and windows and put a placard on the door and the tree and I got a key for the door and it wouldn't open; and my nephew pushed the door and we got in and went upstairs and John went to the front room and I went in my bedroom; so finally John got in and he said he thought his grandfather was home.

Q. Did your father come there?

A. Yes, he came across the street and unlocked the door and came in and ordered John out, and said if he didn't want to get arrested he should get out, and he said if I didn't want to get arrested I should come out.

Q. He ordered you out too?

A. Yes.

Q. When did you next see him?

A. I guess the next time—I saw him on and off, but there was nothing again until he came to put the telephone out.

Q. What occurred that day?

A. This man was putting the telephone in for us, and he was hurrying up to get it in before he came up; so one man looked out of the window and said, "Here he comes." My father came over, and asked him who gave him the right to put that in; they said, "Mother," and he said he owned the house and told them to take it out. He said, "Take it out right away." The man said, "No, he would go across the street, he had another telephone to install ——"

Q. When the man came back to install that one, what occurred?

A. My mother said, "I want this telephone; I need it," and we children needed it, and he said it was going to go out, so he grabbed it from Mother, and he grabbed it so hard and pulled it right up; that is, she pulled it right up to her and he pulled it hard, so that it hit him in the face, and I thought that he had hit her; so I went between them.

Q. Did he say anything to her while that was happening?

A. No, the main thing seemed to be to get the telephone out.

Q. He didn't say anything to her while they were tussling?

A. No, that seemed to be the main thing to get the telephone out; he pushed her.

Q. Did your mother strike him?

A. No.

Q. Did you see him kick your mother that day?

A. I saw him push her against the wall, and then he kicked the box of the telephone and I saw her go quickly against the wall; I don't know whether he kicked her or what.

Q. Who else were there at that time?

A. Well, just myself and my mother and father.

Q. When did you next see your father?

A. Well, the next time I saw him was when he had mother arrested. I saw him up in the corridor of the court house.

Q. Before the Grand Jury?

A. Yes, sir.

Q. Now, what was the conduct of your father when he would come home there, aside from being drunk? What was his manner? After these quarrels, what would he do?

A. Well, I used to have to ——

Q. What did you see him do?

A. He used to walk up and down and talk to himself, and whisper to himself, and then he used to whistle and hum and he never acted like that before.

Q. Did he do that as if he was happy?

A. No, he didn't seem under those conditions at all; they didn't seem normal, they seemed abnormal.

Q. Did he act as a rational man would?

A. He didn't seem to.

Q. You are a professional nurse?

A. Yes.

Q. And could you tell what the nature of that conduct was? What impression did it make on you?

Mr. Satterthwaite: That is objected; she may testify to what she saw.

Q. What did you see, aside from what you have already told, of your father's conduct about the house?

A. Well, I only know when he came home from Europe the time before last, he didn't act the same; he didn't seem to be—well, I don't know, I don't know how to explain it.

Q. Have you seen your father since he has returned from Europe?

A. Yes, often.

Q. Have you seen the young woman?

A. Only once. She came to the door when I went down to Pennington Avenue; I never spoke to her.

Q. How did you come to go?

A. My father had called down to the store where my sister was, and said he wanted to see me, and I guess a week or so after that I went down and a woman came to the door.

Q. What did your father want?

A. He said he wanted me to see what I thought of it. My disposition, or something, he wanted me to see what I thought of the affair.

Q. Of what?

A. To see—it was just before the matter that was put in the paper about Mother; she sued him and there was a long piece in the paper, and he wanted to see what I thought; he said, for evidence or something; perhaps it wasn't that, but that's what I took out of it.

Q. What is that?

A. He wanted to know what I thought.

Q. What did he want you to do?

A. He didn't ask me to do anything; and then I went down again after that.

Q. Did you know the condition of the house on Pennington Avenue?

A. Well, I saw the parlor and the back room.

Q. He didn't introduce you to this young woman?

A. No.

Q. Did you ask him who she was?

A. No, but we talked of her.

Q. What did he say about her?

A. Well, he said she was a waitress, and I said he couldn't expect Mother to come down there and live where that woman was, and he said she was a waitress, but he said she was a relative of some kind; I really don't know what relative he said.

Q. Did he say who brought her there?

A. I think she came there herself. He brought her, of course, over from Europe.

Q. Did he say he brought her from Europe?

A. I didn't hear him say that, but I understood she came from Europe.

Q. Did your father tell you how she came there?

A. No.

Cross-examination.

By Mr. Satterthwaite:

Q. Miss Walsh, at the time the man came to put the telephone in, you say your mother came in and said she wanted that telephone and she picked it up?

A. Yes, sir.

Q. And then you say your father grabbed it while it was still in her hands?

A. Yes.

Q. Did she hold on to it?

A. Yes.

Q. Did she let go of it?

A. When he wrenched it from her.

Q. And then you say he kicked the box that the telephone was in?

A. Yes, sir, at the bottom of the ——

Q. He kicked it out of doors?

A. He kicked it loose.

Q. Loose from the wall?

A. Yes.

Q. And is that all the kicking you saw him do?

A. Yes.

Q. Was your mother angry at the time?

A. No, not so angry as frightened, I guess.

Q. She didn't run away from him?

A. No, nor go to him; she had the telephone in her arms.

Q. But then, after he grabbed it loose from her, what did she do then?

A. After he grabbed it loose from her, I went between them, because when the telephone hit him on the face it would make him angry and he might hit her.

Q. His face was bleeding, wasn't it?

A. I didn't notice then; it bled afterwards.

Q. What did your mother do?

A. She just stood there.

Q. She didn't go away?

A. No, I stood in between, you know.

Q. You stood there too?

A. I stood there.

Q. The two of you alone stood there?

A. Oh, yes, we stood there; we were there and we stayed there.

Q. And what became of the telephone?

A. Father took the telephone and threw it across the porch out.

Q. He didn't molest either of you?

A. Unless you call trying to yank the telephone away from her.

Q. After that, he didn't molest you or either one of you?

A. No, he went on down to the trolley and went down, and went to my brother's.

Q. Did you go in the kitchen while this affair was going on?

A. No, I was right there in the room.

Q. Did you see your mother have anything in her hand?

A. No.

Q. In what way did the telephone go against his head?

A. Well, Mother is much shorter than my father and he reached down and yanked it up and she let go of it, easier I suppose, than he thought and he yanked it up to his face.

Q. How many times did they do that?

A. He got it away from her one time.

Q. Did your mother help that telephone to go towards his face?

A. She didn't want him to take it.

Q. When she found he was grabbing on to it, she then took and pushed it towards his face?

A. She hugged it to her; she didn't have it in her hands, she had it in her arms; she had her two arms around it.

Q. After he got it he didn't do anything with your mother?

A. No.

Q. You are a professional nurse, I believe?

A. Yes.

Q. While you were studying for that, did your father furnish the money to help support you?

A. I didn't need any support.

Q. Did he?

A. I used to write him and ask him for five dollars or ten dollars and he always gave it to me.

Q. He always gave you all you asked for?

A. Yes, sir.

Re-direct examination.

By Mr. Backes:

Q. Did you ever nurse your father?

A. Yes.

Q. While he was ill?

A. Yes.

Q. Now, how often were you summoned before the Grand Jury on the complaint made by your father against your mother?

A. Twice.

Q. At two different terms?

A. Yes.

Re-cross examination.

By Mr. Satterthwaite:

Q. There was nobody else a witness to this, except yourself?

A. A witness to what?

Q. To this episode in regard to the telephone?

A. Yes, sir, Mother and I and Father, that's all.

AGNES WALSH, a witness produced on behalf of the complainant, being duly sworn, testifies as follows:

Direct examination.

By Mr. Backes:

Mr. Backes: There was an action in the District Court of the city of Trenton, which was brought by John E. Walsh against Thomas Walsh, by Henry M. Stratton, guardian ad litem, and an order made dated the 27th day of April, 1915, of which I have a copy and which I will submit, directing the return of certain household goods and furniture and other appliances in the house, already testified to. The writ was issued April 8, 1915, and hearing was had April 27, 1915.

I offer the certified copy of that order.

(Said order is marked Exhibit C1.)

Q. Your name is Agnes Walsh?

A. Yes.

Q. And you are the daughter of John E. and Margaret Walsh?

A. Yes, sir.

Q. And live where?

A. At Ewingville.

Q. With your mother?

A. Yes.

Q. Were you living there in April of this present year?

A. Yes, sir.

Q. Or last year, April, 1915?

A. Yes.

Q. And how long before that time had you lived there?

A. I came when my mother did in September, 1913?

Q. And your father lived there with you from that time on?

A. Yes.

Q. What was the conduct of your father towards your mother during the time you lived together from 1913 to 1915?

A. It was always threatening.

Q. Tell us what occurred between them—the circumstances as you can remember.

A. On one occasion, for example, I will tell about; this one afternoon my father was over at the hotel and had been drinking all morning, and he was called to his lunch and we waited and he didn't come for an hour or an hour and a half, and mother kept the lunch waiting, and later on when he came over, she had got through all her lunch and we had and he sat at the table by himself, and as he came over my brother Harry was home sick from school, with the mumps; the professor had sent him home, and he asked her why he was home from school, and my

mother said he had the mumps. She told him that after he inquired why he was home. He was unreasonable about that, and said he should be sent back to school unless he had a note from the professor saying he couldn't go, and one word provoked another, and my mother saw his condition at last and she didn't answer him. She set the things on the table and waited on him. I was in the room adjoining, so during the conversation I heard my father call my mother a whore; he cursed and swore at her and I went in to stop them, and he got up and flew at me. Then my brothers were outside fixing the porch and they heard him, and they came in and went between my mother and him and my mother came in; so they pushed us in the next room and closed the door.

Q. When did that occur?

A. That was in 1910, when we left in June, 1910.

Q. I am asking you what occurred and what you heard between your mother and father after you came back in 1913?

By the Court:

Q. Give some concrete instances that occurred in the last period of the two years that they lived together. Tell some more occurrences.

A. Well, of course, I can only say what was before repeated, and about that occasion he came home after the dinner and what condition he was in.

Q. Then can you only recall two instances in which he came home drunk and raised a row during that two years that they were living together before the final separation?

A. No.

Q. Can you recall but two occasions?

A. No, during the day I worked; I was only home

in the evening, but in the evenings I know that he was mostly always intoxicated.

Q. Now, what would he do when he would get intoxicated? Can you not recall what he did? Did he do anything to make an impression upon your mind of such a nature that you can now remember what he did? You said that when he was intoxicated he was disagreeable and abusive. Can you state anything he did? It seems to me if I saw a man who was drunk and abusing his wife I would remember it for years, and if I saw it a dozen times, I believe I would remember each time; I think I would, maybe I would not. It seems to me if you saw a man abusing your mother, it would make an impression upon you, and I want to find out the truth?

A. I can't tell you what occurred before that time, because I was out working then.

Q. You were there evenings and that is when he would come home drunk?

A. Yes.

Q. I would like to know about the two years before he finally left.

A. Well, he always seemed to be in a quarrelsome mood when he came home, and the only reason why nothing serious happened was because we avoided that, and it was only through someone's tact that would go between them that something serious didn't happen, and I remember my brothers always got up there, and one night they came up for a family conference in order to settle or find out—he had no reason for acting like he did and we wanted to know why it was, and wanted my brothers and all of us to go away and leave my mother and him alone, and we all knew that would be dangerous; we didn't want to leave her alone even for a minute, any time, be-

cause just as soon as he would think nobody would be in the house he would go to her and commence this conversation about signing over the house, and they would come to the conclusion that she would have to do one thing or another, and she had nobody to protect her.

By Mr. Backes:

Q. What was his conduct when he would come home in this drunken quarrelsome mood; what was his conduct about the house? Would he keep quiet and go to bed, or raise a row?

A. He would raise a row about some trifling thing or another and he wouldn't have any excuse.

Q. With whom?

A. With my mother mostly.

Q. What would he say to her?

A. He would pick a quarrel and complain about something, and if she would answer him he would continue.

Q. What did you hear him say to her when they had a quarrel that way and he would be abusing her?

A. He would abuse her.

Q. Would he be abusive to her?

A. Yes, sir.

Q. Well, what would you hear him say; you have told us one thing?

A. It wasn't only once I saw that, it was a word he commonly used to her and accused her of wrong.

Q. How do you know that, if you only heard it once?

A. I said it wasn't only the once. He often used the other words, and the other words that mean the same thing.

Q. What were his expressions?

A. Son-of-a-bitch, and a God-damned whore, and language like that.

Q. Anything else? How often did you hear him say those terms to your mother during the last two years?

A. Well, maybe it was three or four times that I was present, at those times during that period, because, as I said, I wasn't home all the time.

By the Court:

Q. You said it was necessary for some one to be present to protect your mother? Can you tell me why it was necessary? Can you tell me anything that justifies you in reaching that conclusion?

A. We were afraid of him hurting her.

Q. What had he done to make you think he would hurt her? Had you ever seen him strike her?

A. There was always somebody there and prevented him. I saw him try to strike her.

Q. Under what circumstances did you see anybody attempt to prevent him from striking her?

A. Of course, it was started over some trifling thing. It was because my sister was going to school at that time, and they were kept in to write some envelopes for the church, and she came home, of course, late, and my father objected to that. It was about around four o'clock or five, and I remember the quarrel started over that because he wanted my mother to write a note to the sister, her teacher, and she didn't want to do that, and he flew in a passion and flew at my mother ——

Q. What do you mean by "flew at her"?

A. He grabbed hold of her to hurt her, and knocked her glasses off on that occasion, as I remember. My brother then came over and interfered then.

Q. What did he do? How did he interfere? How did your brother interfere?

A. Separated them; went between them.

Q. Did he actually take hold of them and press them apart?

A. Yes, and then again the occasion about when he was at the door that time, when he opened the lock; I was present on that occasion, and only then for my brother he would have hurt her, my mother, because he threatened her then with a screw-driver, and he was very near then; he was really close to her then; he wasn't over three or four feet away, and only for my brother being there, he would have hurt her.

By Mr. Backes:

Q. Did you ever hear him threaten her on any other occasion?

A. Yes, sir; another occasion, that was before the trolleys were up there; she wanted a horse and wagon; it was on Decoration Day and he had been down town in that memorial parade, and he had been to a dinner, and I suppose he was drinking, and she asked him if she could have the horse and wagon to go to her graveyard to put some flowers on her brother's grave. He first refused the horse and at last, I don't remember what words they had—it's some time ago—but I know he threatened to shoot her then.

By the Court:

Q. This instance that you have narrated, those other than the screw-driver incident, occurred before 1915?

A. Yes.

Q. Before they separated prior to the last time?
A. Yes.
Q. But the screw-driver instance was a later occasion?
A. Yes.

By Mr. Backes:

Q. Do you recall that dinner incident when your mother came to your room?
A. Yes.
Q. Did you hear anything of the occurrence between your father and mother on that night?
A. No, we were in bed and asleep when he came home.
Q. Did you hear him after you were awakened?
A. No, my mother came to my room.
Q. Did you hear your father after that? Your mother came to your room that night?
A. Yes, sir.
Q. Did you hear or see your father that night?
A. Yes, sir, I spoke to him; I asked him what he wanted. It was his attitude and condition that scared me. He wasn't slightly intoxicated; he seemed to be quiet and cunning; he mean't something wrong, I can't just explain it ——
Q. Well, you were always home at night?
A. Yes.
Q. And you said he would come home two or three times a week in this condition?
A. Yes.
Q. What would he do in that condition about the house, aside from what you have already told us?
A. Curse and swear around about something or other; trifling things, or about the boys. That was usually his pick.

Q. Would he curse and swear around the house every night? Who at?

A. My mother.

Q. Always at your mother?

A. Yes.

Q. What language would he use? You have already told us some?

A. Well, swear language of course he would always use.

Q. Was it other than what you have already testified to?

A. On the same lines, yes.

Q. How often would that occur?

A. Well, I couldn't say; it occurred three or four times a week. It wouldn't go so far as that, but we always had to be very careful and keep out of his way.

Q. Why did you keep out of his way?

A. For fear of bringing things to a crisis.

Q. Did your mother avoid him?

A. Yes.

Q. And you?

A. Yes, sir.

Q. Do you remember the occasion when you were locked out of the house?

A. Yes.

Q. Were you there?

A. I wasn't there.

Recess until two o'clock.

After Recess.

Cross-examination.

By Mr. Satterthwaite:

Q. When was this, Miss Walsh, that you say your father grabbed hold of your mother and her glasses dropped?

A. I don't remember just the date.

Q. What was the occasion?

A. Why, I explained the occasion.

Q. What was the cause of it?

A. Why, about my sister coming home late from school, as I explained before.

Q. And then how did it happen?

A. How did it happen?

Q. Yes.

A. As I said before, that she came home late from school and he wanted my mother to write a note to the teacher; he wouldn't take a word of my sister why she was kept in and he wanted my mother to write a letter to the teacher.

Q. And then what?

A. And she didn't think it was necessary, because it would put my sister as if she was suspicioned of doing something wrong; she didn't like to put her in that light to the teacher, so she objected to that and that is why he attacked her for that reason.

Q. How did he grab hold of your mother?

A. He ran towards her and grabbed her by the arm. I ran out, when I saw it was getting bad and ran across the street to the hotel and told my brother, when I saw how it was getting.

Q. You didn't see what happened?

A. Yes, I saw him go after her and take hold of her.

Q. This was prior to 1910?

A. Yes.

Q. This threatening to shoot her—was that prior to 1910?

A. Yes.

Q. That was prior to 1910 too?

A. Yes, sir.

Q. Now, Miss Walsh, you said you saw him out in the hall, I think, on the night of this Vigilant dinner?

A. Yes.

Q. And he had his hands behind him?

A. One hand.

Q. Did you see him after he was told that your mother was in your room and he went down the hall?

A. I didn't see him, no.

Q. You didn't see what it was?

A. No, he wouldn't let me; I tried to see what it was, to make sure.

Q. Did he turn to go into his room?

A. Yes, and he drew his hand in front of him.

Q. You thought your mother wasn't safe with your father because of this threatening?

A. Yes.

Q. And you didn't think she ought to be left alone?

A. No, not even a day or night or any time.

Q. During all this time, when that condition of affairs existed, did your mother and father room together?

A. Yes.

Q. They did?

A. Except, of course, the later part, just before he went away and left the house; of course, he used to go down town every night.

Q. But prior to that, while he was living there, they always roomed together?

A. Yes.

Q. And it didn't occur to any of you anything about his injuring her during the night?

A. Yes, we were on the alert; many times we didn't sleep.

Q. What did you do; they were alone in the room?

A. What could we do?

Q. They were alone in the room?

A. Yes.

Q. You didn't suggest to your mother it wasn't safe to room with him?

A. No, but we were always on the alert; of course, if anything occurred, it could be prevented right away.

Q. You remember that your mother used to make visits to Ewing in the year 1910, '12 and '13?

A. It was only in the latter part; just before we moved up there.

Q. When you lived on Murray Street?

A. No.

Q. Where were you living then, at the Monument House?

A. Yes.

Q. When she would come back, what would appear to be her condition?

A. The first time she ever went up there, she said she was going to go up there, and we tried to persuade her not to; we were afraid something would happen to her while she was there, and she left without the boys knowing she was going up there. They didn't believe she would come out safe if she went up.

Q. Had she used to come back in good spirits?

A. I am talking about the first time.

Q. Would she come back in good spirits?

A. Sometimes, but my mother never complained.

HARRY S. WALSH, a witness produced on behalf of the complainant, being duly sworn, testifies as follows:

Direct examination.

By Mr. Backes:

Q. You are a son of Capt. and Margaret Walsh?
A. Yes.
Q. Where do you live?
A. Ewingville.
Q. How long have you lived at Ewingville?
A. This last time, we have lived there a couple or three years, I guess.
Q. Do you remember your father returning from Europe, after you returned to the place?
A. Yes.
Q. What was his conduct towards your mother at that time?
A. For two or three months he seemed to act pretty decent, but during that time he wasn't drinking so heavily; but after that he started to be the same he used to be, coming home every night drunk. He would come in at supper time and sit down to the table, and my mother had beefsteak for supper, he would cut off a piece of beefsteak and chew it up and then throw it all over, and he would make it so nobody else could eat, and he would say the meat was embalmed, and he would hawk and spit all over, and then he would take his false teeth out and wash them and leave them set on the table; and if we had oyster soup he would take the lid off the pot and put his finger in the pot to see if it was hot, and then take a spoon and put it back again, so nobody could eat it.

Q. What did he say to your mother?

A. He talked to her about deeding the Monument House over when she went to bed. This happened several nights; one night I heard him talking something about it; I heard him say two or three times one thing or another, and son-of-a-bitch, so I got up and put my trousers on and walked out and stood near his door.

Q. What did you hear?

A. I heard him talking and arguing with her to sign over the Monument House; he said, "If you don't sign the Monument House over to me, so help me Christ," he would blow her brains out; and he had some kind of a bottle of gas of some kind and he would take the cork out and blow the house up.

Q. What else?

A. And another night I heard him arguing, you couldn't hear through the wall of the room, you could hear the mumble; and I could hear him on the same subject, and at that time he said, "As sure as Christ made little apples, I would blow your brains out if you don't sign the Monument House over to me." He heard me come out in the hall and he stopped as if he thought somebody was listening around, and he would take a walk up in the field five hundred yards away from the house ——

Q. How often would he come home drunk?

A. He would come home barreled up at least once a week, and every night he would have at least some aboard, every night in the week.

Q. What was his conduct when he would come in that condition, what was his conduct towards his wife?

A. If things didn't just suit him, he would always be quarrelsome and always looking for trouble; chewing the rag.

Q. How would he chew the rag?

A. He wanted her to chase us away from the house; he didn't even want the girls there. He wanted her to live in that home alone, and if he would go down town in the morning he would shut the heater off before he went out, and close the doors up and when he came home at night, if we had the heater burning, he would go down and urinate on the coal ashes and put them on the stove, so it would stink the house out.

Q. Did he call your mother vile names?

A. Yes, there wouldn't be a week but what he would call her a God-damn whore and son-of-a-bitch, and two or three times a week he would say that and all that stuff.

Q. Did he call her anything else besides that?

A. Every once in a while he would say, "So help me Christ, I'll end it all," and he had the instrument to do it with. He would make that boast.

Q. Did he say what he had?

A. The night we all went up there to try to straighten it out and have the thing fixed up, without going to all this notoriety, he admitted he had a permit to carry a revolver and that he had it with him, and he admitted that the reason he couldn't get along with us was because Mom wouldn't sign the Monument House over to him.

Q. Do you remember an occasion about Christmas 1914, when there was a disturbance?

A. Yes, that is the time I listened at his room door; you could get up most any night in the week and hear him trying to get her to sign the Monument House over; and that would be the thing he would talk about, and I have often heard her say to keep quiet, that she couldn't sleep.

Q. Did you ever hear him threatening to blow her brains out?

A. Yes.

Q. When?

A. He would say, "So help me Christ, if you don't sign the Monument House over, I'll blow your brains out," and this bottle of gas he would open it and kill everybody in the house.

Q. These disgusting habits you speak of—how often did that occur?

A. Going down and doing that on the coal—that would occur every night.

Q. How often would that happen?

A. Anybody will tell you that.

Q. And how often would he do those things with the foods?

A. That too; anybody will tell you that ever came there to eat; he would do something. If you had a friend there you thought something of, he would do something to shame you. One time there was a priest from Pennington, and he started to talk about a man going out with ——

By the Court:

Q. Did he urinate on the ashes more than once?

A. Yes, nearly every night, and the gas would come out.

By Mr. Backes:

Q. And permeate the room?

A. Yes, the whole house.

Q. And what did you do?

A. Then he would lock his room door and we would go down and open the furnace up and he would be listening for us, and he would go down and shut it up again and go into her and say we had to

get out. And that night that they all come up to settle the argument he wouldn't listen to nothing and he said at that time that we should get out of the house that night, and he admitted that what he wanted was the Monument House to settle it all.

Q. You are employed now?

A. Yes.

Q. How long have you been employed?

A. I work for my brother in the real estate business; I worked for him for the last couple of years; and the Mercer Automobile Company offered me a position to play on their baseball team.

Q. Do you contribute anything of your earnings to your mother?

A. Yes.

Q. And you have been ever since that time you mention employed?

A. Yes.

Cross-examination.

By Mr. Satterthwaite:

Q. You board with your mother, don't you?

A. Yes.

Q. You pay her board?

A. Yes.

Q. And that's the way you contribute?

A. And anything else. If she wants anything else, I give it to her.

Q. You pay her board?

A. Yes, to the extent of what we could, and if she wants it ——

Q. The trouble seemed to be some difficulty between your father and mother about you boys remaining at home?

A. Yes, he knew he couldn't get her to sign the Monument House while we were home. He couldn't scare her into it, and he could if he got her alone, and he might probably ——

Q. Never mind that. Now, you said if you boys weren't around there he would make her do it. Do you mean yourself and Tom?

A. Everybody.

Q. Who was home?

A. Frank and Tom.

Q. Who were employed at that time?

A. Frank was, and we were going to school.

Q. You were all away during the day?

A. Yes, but my sisters would be home.

Q. But he had abundant opportunity to be alone with your mother when you would be away?

A. Yes, but we could ——

Q. He had?

A. Yes.

Q. He had an opportunity to get with your mother alone?

A. No.

Q. So far as you boys were concerned?

A. Well, if he could get around it in any way without doing anything rash, he would do it, but he couldn't talk to her while anybody was in the house.

Q. But you boys were out?

A. My sisters were there.

Q. And he wanted to get rid of your sisters?

A. Yes, he wanted everybody to leave the house.

Q. The presence of you and your sisters was a bone of contention between him and your mother?

A. Yes, for that reason.

Q. As a fact, it was?

A. Yes.

Q. Your mother had declared she wouldn't sign over the Monument House, hadn't she?

A. Yes, sir, because when she signed away the hotel property he agreed to give her five thousand dollars ——

Q. And now, I ask you again, "She had, hadn't she"?

A. Why shouldn't she, it belonged to her.

Q. I am asking you that? You hadn't any fear that she would change her mind?

A. Yes, because when she went up to Ewing to sell another property she said she wouldn't do it, and when she came back the property was signed up.

Q. You heard his threaten to blow your mother's brains out?

A. Yes, sir.

Q. How recent was that?

A. Right before he left to go away.

Q. And did you rush into his room to prevent him from doing it?

A. No, he said he would do it if she didn't sign it over.

Q. She wouldn't sign it over?

A. He said he would do it if she didn't sign it away.

Q. Well, she wouldn't sign it away?

A. He was trying to scare her into it and we had a nephew up there and he would have him around there listening to see what we had to say, and then report to him.

Q. You didn't go in for fear he would carry out his threat?

A. If he made an attempt to ——

Q. You heard through the wall?

A. No, through the door.

Q. Through the crack in the door?

A. No, the open door.

Q. Did you see him?

A. Yes, it was about twelve or one o'clock.

Q. Did he have a revolver in his hand?
A. No, of course not.
Q. And he would be walking around?
A. Yes.
Q. How long would he walk that way?
A. He wouldn't have his clothes off.
Q. How long would he walk that way?
A. Fifteen minutes, a half an hour, an hour or two hours.
Q. Then what?
A. If somebody would cough or something, he would shut up.
Q. You say you saw him through the open door?
A. I wouldn't stand in the door, as if I wanted to see him; couldn't I look in there and see wherever he was?
Q. And he could see you, couldn't he?
A. No, he wouldn't be looking for me.
Q. Could you see his figure as he walked around?
A. Yes.
Q. Was there any light going?
A. No, he would always kick if you spent five cents for kerosene oil.
Q. How did you see him?
A. I had eyes to see and the windows were there.
Q. Did the light come in through the windows?
A. Yes.
Q. You have had trouble with your father?
A. Not at all.
Q. Have you not been bound over to keep the peace on his complaint?
A. He couldn't give any reason for it.
Q. But you have?
A. Yes, but he couldn't give any reason for it.
Q. Once?
A. Once, was all.

Q. It wasn't twice?
A. Once was all.
Q. When was that?
A. The spring he took the things away, 1915.
Q. This matter of the coal was every night?
A. Mostly every night he would come home.
Q. Well, now, how often was it?
A. It would happen three or four nights in the week.
Q. Every week?
A. Yes, week in and week out. He was always grumbling about how much coal we used, and he had a stove in his room, so he would be all right in his room.
Q. There was a toilet in the house?
A. Yes, he would do these tricks just to spite you.

Re-direct examination.

By Mr. Backes:

Q. Do you recall your father ever having drinking bouts at the house for companions?
A. Yes.
Q. How often?
A. Probably once every week.
Q. Have you any idea of how much liquor they would consume?
A. One night I remember particularly they drunk at least a quart of whiskey, and a case of beer and wine, and smoked up a lot of cigars, and that lasted from seven o'clock until twelve o'clock at night—the last car.
Q. Who was with him that night?
A. Pat Ryan.
Q. Did he abuse your mother that night?
A. That would be every night.

Q. You don't know, do you?

A. No.

Q. Were you at home when he came to take the furniture away?

A. No, we were all working.

Q. You have spoken about being bound over to keep the peace? What was the occasion for that?

A. We didn't know; we didn't know what we were bound over for; the constable come and asked me was my name Harry Walsh; I said "Yes." He said, "Come up," he wanted me to sign a bail bond or something.

Q. On the complaint of your father?

A. Yes, sir.

Q. Had you ever made any threats?

A. Never raised my hand to him in my life.

FRANK V. WALSH, a witness produced on behalf of complainant, being duly sworn, testifies as follows:

Direct examination.

By Mr. Backes:

Q. You are the son of John and Margaret Walsh?

A. Yes.

Q. Are you older than Harry?

A. Yes.

Q. Are you living with your mother now, at Ewingville?

A. I do in the summer, but in the winter months, on account of the trolley service, I come to Trenton.

Q. Were you living with her at any time after 1913?

A. Yes.

Q. Up to what time?

A. Up to last winter; last winter I came down.

Q. That was the first winter you came down?

A. Well, yes. No, I was down one winter, only a few weeks that time, because the weather wasn't particularly severe.

Q. Did you return with your mother to the Ewingville house in 1913?

A. Yes.

Q. When did your father come there?

A. He came home from Europe, and the house was fixed up so it was fit to live in, and he came there then; and he was to come back with the understanding that he would do better and try to live like people ought to live, and he did so for ——

Q. Yes, then what was his conduct towards your mother after that?

A. Well, he drank; he got drunk, so he wouldn't know what he was doing, and he was a man that would get up in the air.

Q. What do you mean by "getting up in the air"?

A. The least little thing would start him to do most anything.

Q. Was he a man of violent temper?

A. Yes, sir.

Q. Tell us about what his conduct was towards your mother after the spring of 1914—things that you observed?

A. Well, most of them I haven't seen. I have been out, but I have heard him curse at her at the dinner table and attempt to go after her, and I stood up for to protect her, and the reason I stood up—when I stood up he sat down again; as soon as I stood up he sat down, so I sat down.

Q. What did you hear him say at the dinner table?

A. Well, it was calling her sons-of-b's and stuff

like that, over stuff that had been cooked, and where she had bought it, and not to buy it off that certain party because it was embalmed.

Q. Would he find fault with the food?

A. Yes.

Q. Was that the reason for the outbreak?

A. Well, he would be drunk and that would be the reason.

Q. Did you hear your brother Harry testify to these disgusting habits?

A. Yes.

Q. What do you know about them?

A. That's the fact; I have seen him put meat in his mouth and chew it up and take it out in a lump and throw it on the table.

Q. How often would you see him do that? Would your mother be present?

A. Yes, sir, bringing things into the table, and that's when it would occur.

By the Court:

Q. Did you see him do that more than once?

A. Yes, sir, several times.

By Mr. Backes:

Q. Did you ever hear him threaten your mother? Threaten to do her bodily harm; did you ever hear him?

A. One time, when I was learning a trade, he took me out of school to learn a trade; I was making three dollars a week and he wanted to collect my wages, because I wasn't of age; and one time he come over a certain time to get my wages and if I didn't get it he was either going to put it onto me

or put it onto her, and she told him she let me keep the money to buy an overcoat and I bought it, and he said to cut the overcoat into shreds.

Q. Do you remember any occurrences at your house about Christmas, 1914? Quarreling between your father and your mother?

A. Let's see, that was—I don't just remember.

Q. Well, now, what was the nature of the threats he made against her, and how often did you hear him make them?

A. Well, in this one time in particular about the overcoat ——

Q. You told us about that; but after that, since he came back the last time?

A. Well, I wasn't just present at the time.

Q. Did you ever hear him threaten her?

A. Yes.

Q. What did you hear him say; tell me what he said.

A. This time, about the overcoat, he threatened to put it onto me or onto her, or he would get out.

Q. What was the language that he used?

A. He would knock the son-of-a-bitch's head off if he didn't come across, you might say, with the money.

Q. Did you hear him call her any vile names?

A. Yes, either her or I.

Q. Did you ever hear him call your mother any vile names, and if so, how often? Well, do you remember, or don't you remember?

A. Well, I don't just remember.

Q. Did you ever hear him call her a whore?

A. Yes, lots of times.

Q. When?

By the Court:

Q. Would you call that a vile name or not?
A. Yes.

By Mr. Backes:

Q. Did you ever hear him call her a son-of-a-bitch''?
A. Yes.
Q. How often and when?
A. When we would be eating at the table.
Q. Was that a common expression?
A. Yes, sir.
Q. Did you ever hear him threaten to blow her brains out?
A. Yes, he did, the night at a conference; they had a conference to try to straighten matters out and he wouldn't go half way to anything at all that was brought about; and he made a move as if he was going to walk towards the closet and he put his hand to his hip pocket, and a brother of mine grabbed hold of him and sat him down in the chair.
Q. Did he make that threat to you or your mother?
A. To my mother.

By the Court:

Q. You didn't name any threat, did you? What was said, what did he say?
A. It was talking about the Monument House; he always had a grudge against my brother Eddie. I asked him what was his reason for having that grudge against Eddie alone. He said it was because he had the running of the Monument House and for that reason he held it against Eddie.

Q. You spoke of these threats on the occasion of this attempted settlement or conference; what was the threat, if any, that you heard at that time? Did you mean a threat by his movements?

A. Yes, of his movements.

Q. Not what he said?

A. No.

Q. Do you know anything about his interfering with the heater or doing any indecent thing in the basement?

A. Well, he would—I am a plumber, and he used to ask me questions on that, and I would try to sidestep him and let things blow over, but I would never give him any satisfaction to go on with the things he did. He would bank the fire with these ashes and he would ask me things on it.

By Mr. Backes:

Q. The question that the Court asked you was whether he did do this act?

A. Yes.

Q. You know that to be a fact?

A. I know that to be a fact, yes.

Q. And how often did he do it?

A. It would be in the winter times and at times I would be up there; I haven't known it over a couple of times.

By the Court:

Q. He would urinate in the ashes and put them on the fire?

A. Yes, and when you come in out of the fresh air you would smell it, and the gas would catch you in the throat. I have done that myself, coming up from Trenton.

By Mr. Backes:

Q. It permeated the whole house?
A. Yes.
Q. Do you remember his coming there to take the furniture away?
A. Yes.
Q. Were you home at that time?
A. No, sir, I was at work.
Q. What do you know about it?
A. They were loading the stuff in the wagon, and he took the gasoline engine and the boiler and stove, the last load, and stored it in the store house.

By the Court:

Q. Tell us what you heard or saw while you were there, and nothing else.
A. Well, it was about all on the wagon when I reached home. It was pretty late.

By Mr. Backes:

Q. Your father brought suit against you in the District Court to recover the furniture?
A. He brought it against ——
Q. Well, never mind—do you know about him locking the house up?
A. Yes, I come home from work and he told my sister and nephew to go on out, or he would have them arrested; and my nephew brought up in the Juvenile Courts.
Q. You heard this conversation?
A. Well, they were on the porch when I came home and I didn't know anything was locked up; there was a big veranda. I went around to try the

two front doors and he had a lock on the door and the door was locked. He had a lock and chain on it, and I put my foot up against the door and pushed the door in.

Q. Was your father there?

A. He was there taking the time each one came home and putting it on the paper and he took the time when I pushed the door in.

Q. Did he make any complaint against you?

A. He had me arrested for breaking and entering, for doing that, and had me held over to keep the peace; but I never tried to lay a hand on him in my life.

Q. You have never been tried on that charge?

A. No.

Q. How long have you been employed?

A. I have been at the business and have not lost any time, nine years.

Q. After you returned with your mother in 1913, did you have any opportunity or did you take any part or contribute to the household?

A. Yes, sir.

Cross-examination.

By Mr. Satterthwaite:

Q. You are working?

A. Yes.

Q. And living with your mother?

A. Yes, sir.

Q. And paying your board?

A. Yes, I just came down for the winter.

Q. When you are living with her you pay your board?

A. Yes.

Q. You say you have noticed gases in the house when you came home?

A. Yes.

Q. Could you tell what that gas arose from?

A. Yes, the damper being shut off in the smoke pipe. It will do it on any boiler.

Q. Coal gas?

A. Yes. sir.

By the Court:

Q. How would you know he turned it off?

A. I several times saw him before fix it that way; I suppose he would be the one at the time I would get home. While I was there on several occasions he has fixed it that way.

Q. How do you know who did that?

A. He had done it before to make gas.

Q. How do you know he did that in order to make gas in the house rather than to be economical with the coal?

A. Well, he would put these ashes on there and I didn't see how that would cut down on the coal, because if you set the damper on the boiler and you know the drafts which should be on, which he knew and I knew, you could hold the fire as good as you could any other way or by putting ashes on it; by putting ashes on a boiler of that style you wouldn't smother the fire enough to save coal; you would put it either plumb out or you would do something else —you couldn't save any coal, and they are made to damper them off, so you can save the coal.

By Mr. Satterthwaite:

Q. I understood you that your father consulted you about putting those ashes on?

A. Yes.

Q. And you advised that ——

A. No, I didn't advise.

Q. What did he say to you?

A. He asked me the idea of running the boiler, and I wouldn't give him any satisfaction.

Q. Would he tell you he was putting ashes on to bank it with ashes?

A. I knew that.

Q You say he consulted you about that?

A. Yes, I told him it wasn't right.

Q. Was this at night?

A. Yes, sir.

By the Court:

Q. How do you know he urinated in the ashes?

A. You could smell it.

By Mr. Satterthwaite:

Q. Did you have any cats and dogs around that house?

A. We had one cat, but I don't think it was ever in the house.

Q. Did you have any dogs?

A. No, sir.

Q. Did you ever have experience to know how urine smelled when put on the fire?

A. Yes.

Q. When did you ever test it to know?

A. I have heard tell of it in houses where journeymen have been blamed for doing that on the coal, and they have been reported to the shop, and they have had some time of it, too.

Q. Where have you known that to be done, and

experienced the smell, so that you could recognize it?

A. When I would be testing out a boiler in a house on a job.

Q. You mean, you have experienced a certain odor?

A. Yes, sir.

Q. How would you know what that odor came from?

A. On account of the journeymen.

Q. Did you see them do it?

A. Yes.

Q. Did you see them urinate on that very coal that was put in there from which the odor was then coming?

A. Where it was right in the coal bin where they would be around, in the building where ——

Q. And then you would go upstairs to see what the odor was resulting from it?

A. I would be working in the basement when I would be firing up, and I could smell it right away. I haven't only once, but several times; that's the reason I know.

Q. Was this a regular thing at your house?

A. Banking the fire?

Q. No, this odor?

A. Well, maybe it wouldn't be every time, but a couple of times I have smelled it.

Q. Well, now, how generally was it you were home; all the time at nights, for awhile?

A. For awhile.

Q. During the time you were home, how often was it?

A. Maybe some nights it wouldn't be as strong as others.

Q. How often was it?

A. Every night it would be banked.

By the Court:

Q. How often have you noticed it within your knowledge—that is, the smell of urine?

A. Two or three times.

By Mr. Satterthwaite:

Q. Over how long a period?

A. In the bad weather, for two or three weeks I would be in Trenton.

Q. How long; over what period of time did you notice it?

A. Two or three weeks.

Q. Was that the only time?

A. That's the only year we had the boiler in.

By the Court:

Q. Did you ever speak to your father about that odor and ask him not to do it, and have a conversation on the subject of odors coming through the house?

A. No, not personally, about that; I never liked to talk to him about such things.

By Mr. Satterthwaite:

Q. You have seen him chew up the meat and throw it around the table?

A. Yes.

Q. How many times did you see that?

A. Very near any time we were having beef steak, or anything, he would put a piece in his mouth just like a man might take a cud of tobacco out of his mouth; it would look like the same thing, and throw it on the table.

Q. Beside his plate?

A. Yes, a sort of disgusted with it being embalmed.

Q. Did you ever see him throw it around the table?

A. Well, maybe it would hit up against the sugar bowl or something like that; he wouldn't put it on his plate, or at the edge of his plate.

Q. What was this threat the time you had this conference; what was the nature of it?

A. Why, my mother was telling him about some mortgage or something that was taken on this Monument House and was never taken off, and she told it right to him; everybody was right there; when he gets up out of the chair ——

Q. Told what to him?

A. About this mortgage, and it kind of got on his nerves.

By Mr. Backes:

Q. What did she tell him?

A. The mortgage had been put on and never taken off?

By Mr. Satterthwaite:

Q. Go ahead.

A. And it sort of made him mad enough to get up and go towards the closet and put his hands to his hip pocket, and my brother set him down in the chair again.

Q. Which brother was that?

A. Peter.

Q. He had no trouble in doing it, had he?

A. Well, he was a younger man.

Q. But he had no trouble?

A. Yes, he grabbed ahold of him and put him

down. Yes, he had so much trouble that he hit him on the nose.

Q. He hit him?

A. Yes, my father hit my brother on the nose.

Q. And then your brother sat him down?

A. Yes.

Q. You say he was going towards the closet?

A. Yes.

Q. And had his hand on his hip pocket?

A. Yes.

Q. He was not going towards the closet to get something out of his hip pocket?

A. No, he was ——

Q. Which do you regard as a threatening move?

A. With his hand on his hip pocket.

Q. Going towards the closet was not threatening?

A. No, unless he may believed it was not in his pocket and it might have been in the pocket.

Q. Did he take his hand out of his pocket?

A. He sat down at the same time.

Q. Your mother said something about a mortgage that had been placed on the Monument House and it had not been taken off?

A. Yes.

Q. She was reproaching your father for that?

A. No, I was the one that asked him why he had this feeling against Eddie, and he said it was account of him being the one that kept him from taking the Monument House over, and she told me at one time she let him pay a mortgage of one thousand dollars on the Monument House which was supposed to be taken off and which never had been.

Q. And then he, without any word, got up and walked towards the closet?

A. He got up; she told it right to him.

Q. He didn't say anything?

A. No, he didn't; he was in one of those moods that he wouldn't. He said, "Go ahead, you can have it your own way; have it your own way" because he was sort of melancholy, on account of letting it out before the rest of the family.

Q. How many were there?

A. The whole family went to try to straighten things out.

Q. And you regarded that movement toward the closet as a threat towards your mother?

A. Yes.

Q. Nothing was said while he was going there? Wasn't your father sitting in the rocking chair when your brother took ahold of him?

A. No, he was standing.

Q. Didn't your brother Peter pull your father up out of the rocking chair?

A. No, sir, he stood to his feet, and made a reach and that's the time he was pushed back.

THOMAS WALSH, a witness produced on behalf of complainant, being duly sworn, testifies as follows:

Direct examination.

By Mr. Backes:

Q. You are the son of John and Margaret Walsh?

A. Yes, sir.

Q. Living where?

A. Ewingville.

Q. With your mother?

A. Yes, sir.

Q. How long have you lived there with her?

A. All my life; but at Ewingville, say for a period of about two years. It is the only time I ever lived at Ewingville.

Q. Since she returned?

A. That was in the fall of 1913 that we returned. That was my last year at the high school.

Q. Do you remember when your father returned from Europe that year?

A. Yes.

Q. What was his conduct towards your mother?

A. All right until after Christmas, but then later on in around January, when we would bring a report home, if it was seventy or seventy-five in certain subjects, he would never sign the report; he would say we would have to take it back and get a higher mark, and there wouldn't be a possible chance.

Q. What did he do towards your mother?

A. He would tell her at night ——

By the Court:

Q. What did you see your father do and what did you hear him say?

A. He would say she was a damn fool for allowing us to stay in there and letting us board with her.

By Mr. Backes:

Q. What else did you hear him say?

A. Why, at the table in 1910, when he came over from trying to sell three horses, I was present there when he called her a whore.

Q. After the last time he came back commencing in January, 1914, I ask you what was his habit in coming home at night? What condition was he in as to sobriety?

A. I never saw him really what I could say sober, and he wouldn't never argue much in front of us. He knew there wasn't much chance; we would tell him to shut up, and he would argue with her at night.

Q. Did you ever hear him curse and swear at her at night?

A. Yes, sir; and at others too, and some of the cursing wasn't directly at her, calling her names.

Q. Did you ever hear him call her any names?

A. Yes, son-of-a-bitch, and like that.

Q. How often?

A. I heard him on those three occasions, and there was many more I know at night-time when I never heard it.

Q. At least, three occasions you recall?

A. Yes.

Q. What are his habits at the table? You heard the other boys testify to it?

A. At breakfast table he would get up about the time we would go to school, and he would take his false teeth out and wash them out; if he thought you were enjoying yourself, he would do things to disgust you, and he would blow his nose on the floor, even if you had a friend there from school he would do it, one came and stayed for a couple of weeks, and he disgusted him and made us feel bad. He would blow his nose when he would be at the breakfast table.

Q. What do you know about the heater?

A. I have seen him urinate in the ashes myself when he would go down to get a bottle of beer in the cellar or to fix the fire; and the year before he left the pipe leading to the chimney—it was pretty poor, and I have known him to go down and cut holes and they were rusted out bigger, and when we would

go down and put tin over it he would go down and take it off.

By the Court:

Q. Did you ever see him put those ashes on the fire that he had urinated in?

A. Yes, I think I have.

Q. When did you see that?

A. Like on the Saturday morning; maybe on some occasion when I would be down there at the same time, he would; I have seen him at least once or twice, and other times I know he did really do it, because of the circumstances surrounding it.

Q. Did you ever have any odors in the house?

A. I haven't the facilities to smell; that's the reason I couldn't smell.

Q. What?

A. I haven't the sense of smell, so I couldn't say.

By Mr. Backes:

Q. Do you remember your father coming up there and locking the house up—nailing it up?

A. Yes.

Q. Were you home at the time?

A. No, sir, I was working at the Mercer Auto.

Q. Are you the Thomas Walsh against whom he brought suit in replevin for restraining him from taking the furniture out of the house?

A. Yes, sir.

Q. What occurred at that time?

A. The day he came up to take the lock off, we always did have every door and window locked, and he knew that, so he brought over Mr. Lewis with a big screw-driver to take the lock off the door.

Q. Were you home?

A. Yes, and Mother walked in there and I walked behind her. She told him, Mr. Lewis, not to take the lock off the door, and Mr. Lewis said under such circumstances he wouldn't take it off; he didn't know about it. He said, "If you don't object, I will take it off," and he went to take it off and Mother stepped in between him and the door.

Q. Who said this?

A. Mr. Lewis said he wouldn't take it off under the circumstances, if my mother objected.

Q. What was done?

A. He said, under the circumstances he wouldn't take it off, and he said, "If you don't, I'll take it off," and that's when he went to take it off; and then Mother stepped in between him and the door, and he told her to ——

Q. What did he tell her?

A. He told her to get the hell out of the way, or he would drive it through her.

Q. Did he make any movement towards her?

A. Well, as he said it he drew back.

By the Court:

Q. Was he drunk at the time?

A. He wasn't staggering drunk; I wouldn't say that he was; but he was just in that kind of a mood.

By Mr. Backes:

Q. Had he been drinking?

A. It was in the morning; he always takes at least three or four.

Q. You knew that was his habit?

A. At least three in the morning.

Q. Every morning?

A. Pretty near every morning.

Q. How about his coming home that night? What was his condition as to sobriety?

A. I never knew him to be really sober, that you could say he was sober.

Q. Did you ever know he was drunk?

A. I only seen him staggering drunk once, but people that knew him said he could drink eight men drunk.

Q. But you never knew him to do that? Did you ever hear him boast?

A. I think I have heard him boast that that's the reason he was in the saloon business he could stay at the bar and drink with them.

Q. On any other occasion, do you remember your father making any threats to your mother?

A. Why, that occasion I spoke of in 1910, at the dinner table when he was drunk.

By the Court:

Q. You told us about that?

A. Yes, but I was present at that time, and he made the threat and he grabbed my hands.

Cross-examination.

By Mr. Satterthwaite:

Q. What threat was this?

A. He made the threat that was simply—I can't recall the exact words, but it was simply to the effect that he would shoot her, and he went down town and told one of my brothers that the blood of his mother would be on his head if he didn't take my mother out of there.

Q. Out of where?

A. Out of the house.

Q. Did you hear that?

A. No, sir, I didn't hear it; I wasn't present.

Q. These threats to injure your mother were rather frequent occurrences around the house?

A. I was actually present at two, and I heard of several.

Q. Was the cursing the mother and threatening her part of the daily conversation?

A. Well, I don't think there was a day he never cursed at her; he may not have called her a name, but it was us in front of her ——

Q. It was part of the daily conversation in the house?

A. Yes.

Q. And that included these threats?

A. Only on two occasions was I actually present.

Q. How long did you live there with him and only heard these two occasions?

A. All my life with my mother.

Q. And when were these two occasions?

A. One was at the door when he tried to take the lock off, and the other on the table when he come from trying to sell the horses.

Q. What year was that?

A. 1910 and 1914.

Q. There is only one time you have heard, since 1910, and that was the time with the screw-driver—only one threat?

A. That is what I heard myself personally, yes.

Q. That's what I want to know; do you know why your father was taking the lock off?

A. He thought he would take the furniture out of that door.

Q. And the other doors were locked?

A. The cellar door was locked.

Q. And he didn't take the lock off, did he?

A. He would have if he hadn't thought better of it that he shouldn't take it off.

Q. What was it that prevented him?

A. Well, he wouldn't have taken it off at the time.

Q. What prevented him?

A. Several reasons.

Q. What?

A. Well, he couldn't take it off of his own accord, anyway.

Q. What was there there to prevent him?

A. We would only use physical force to the extent that it wouldn't let him take it off; we wouldn't do bodily harm to him.

Q. Did you threaten him?

A. No, I would have done.

Q. What prevented him from taking it off?

A. He wasn't physically able to take it off.

Q. He was physically able to have the screw driver?

A. But not to take it off.

Q. Would you have stopped him from taking it off?

A. To the extent of stopping him from taking it off, we would have forced him.

Q. What did you do?

A. He knew differently.

Q. Didn't you say something to him that led him to stop?

A. I just stood back of my mother all the time. I stood in a position that I could get to him quicker than he could get to her.

Q. Didn't you say something to him what would happen to him if he took it off?

A. I said he wouldn't take it off; I would stop him from taking it off.

Q. And he then stopped?
A. He certainly stopped, yes.
Q. When you told him?
A. He might not at that time; he didn't go on with it; he didn't take it off.
Q. Did you say anything to him about taking the things out of the house?
A. No, sir.
Q. It was after that that he brought this replevin suit against you to get these goods, wasn't it?
A. Yes.
Q. Were you ever put under bond to keep the peace towards your father?
A. Yes.
Q. More than once?
A. No, sir, I think only once.

Re-direct examination.

By Mr. Backes:

Q. And that was the outcome of your preventing him from taking this furniture away?
A. No, sir, I don't think it was.

Re-cross examination.

By Mr. Satterthwaite:

Q What was the occasion of it?
A. I think it was that.

WILLIAM J. WALSH, a witness produced on behalf of complainant, being duly sworn, testifies as follows:

Direct examination.

By Mr. Backes:

Q. You are the son of John and Margaret Walsh?
A. Yes, sir.
Q. And a solicitor and counsellor of this court?
A. Yes.
Q. As to the conduct of your father towards your mother, tell the Court what you know about what the same has been for the last three years last past, and then prior to that time, and if during that time you have endeavored to bring about a reconciliation with him?
A. I know very little about the acts and occurrences that happened in the past three years. I know my father's temperament and I know his habits; and I know he is a man that drinks heavily, and when in that condition he is dangerous. From my earliest recollection I know what he has been in his attitude towards my mother. When he is sober he is all right, but when he has got liquor in him he is all wrong. I know that he has threatened my mother. He called me out of this building in 1910 to my office, when I was here at a trial of a case, and told me unless I got my mother and my sisters and brothers away from Ewingville that their blood would be upon my head. I immediately set to work and went up to Ewingville and got my mother and sisters and brought them down to my house on Pennington Avenue, where they lived and resided

for some time. That was the 1910 incident. That is how my mother came to leave there, because he came to my office and told me that their blood would be upon my head, and rather than have any trouble or bother, knowing his temperament, I went for them and brought them down to my house. Even after that, I went to the extent of trying to have them reconciled, and I went to him in his sober moods and then he is all right, and I tried in every way to get the proposition together.

Q. Did you bring about a reconciliation in 1913?

A. Yes, I did, I am the one that is responsible for that; not only that, my father owned the Ewingville Hotel property; they were living apart at the time; that was in 1911 or '12, I think; he had a chance to dispose of it to an advantage, and I secured my mother's consent to sign the deed upon his promise that he would recompense her to the extent of—my recollection is—$4,000. That I don't know anything about, whether he ever did or not. She did finally consent to sign that. Prior to that time there was a transfer of a property #9 Centre Street, to my brother. I succeeded in having her sign the deed.

Q. At whose request?

A. At the request of my father; the property was transferred to my brother, John.

Q. Were they living apart then?

A. Yes, that was during the period that she was living in the Monument House, and his attitude throughout all my recollection to my mother was, well, its—well, his attitude and his language was anything but gentlemanly; I've heard him call her a whore and a God damned prostitute, and accuse her of having something to do with the lowest kind of men.

Q. You knew your father was addicted to drink?

A. Yes.

Q. Habitually so?

A. Yes.

Q. Now, as to the value or worth of your father's estate, what can you say as to that, Mr. Walsh?

A. Well, he owns a row of houses on Pennington Avenue, five houses; he owns seven houses on Gordon Street, and he owns the place where my mother lives; he owns a lot on Chambers Street in Trenton; that's all the real estate that I know he owns.

Q. What is the value of the five Pennington Avenue houses?

A. My personal estimate?

Q. Your judgment?

A. I know he was refused ——

Mr. Satterthwaite: That is objected to.

Q. Do you know the values of properties in the community?

A. Yes.

Q. You have lived in the community?

A. Yes.

Mr. Satterthwaite: I am questioning his qualification.

A. I can tell you what he has refused for the house.

Mr. Backes: I think that would be competent.

The Court: Perhaps you had better have an expert, if you are going to show the values.

Q. Do you know whether there are any incumbrances against them?

A. Yes, I know there are.

Q. Have you ever dealt in real estate?

A. I have drawn deeds and mortgages for my brother who is in the real estate business.

Q. What encumbrances are there on the Pennington Avenue houses?

A. A mortgage of three thousand dollars on the Pennington Avenue and Gordon Street combined, and another of two thousand dollars and one of one thousand dollars on 74 Pennington Avenue, held by the trust company.

Q. Six thousand dollars?

A. Yes.

Q. And the lot on Chambers Street?

A. Nothing.

By Mr. Satterthwaite:

Q. Is this on the same property as the other mortgages?

A. No, there are five houses on Pennington Avenut, and seven on Gordon Street.

By Mr. Backes:

Q. And the seven houses are subject to the six thousand dollars?

A. Yes.

By the Court:

Q. The three thousand dollars and two thousand dollars are not encumbrances on the same property?

A. No, sir, they are straight mortgages.

By Mr. Backes:

Q. The lot on Chambers Street, has that any mortgage on it?

A. No, sir.

Q. The Ewingville property; is there any mortgage on that?

A. There was a mortgage of two thousand dollars, which he caused to have foreclosed. There is a confirmation of a sale now pending.

By the Court:

Q. What did it sell for?

A. $9,750.

Q. $5,000 over encumbrances?

A. No, seven over, and I know Mr. Walsh has refused $15,000 for it, and I know he has asked $1500 for a one-acre plot.

By Mr. Backes:

Q. Do you know who that property was sold to?

A. Yes, sir, to one Helen Walsh.

Q. Is that the woman he is living with?

A. Yes.

Q. In the same house?

A. Yes.

Q. Do you know what she did with it?

A. No, I couldn't say; there has been nothing done with it.

Q. Do you know whether the bid has been assigned, and if so, to whom?

A. It has been assigned to a corporation, a company.

Q. Of what?

A. Consisting of John E. Walsh, Helen Walsh and John F. Walsh.

Cross-examination.

By Mr. Satterthwaite:

Q. Who is John F. Walsh?
A. A brother.
Q. Of yours?
A. Yes.
Q. When he told you, Mr. Walsh, that if you didn't bring your mother and brothers and sisters their blood would be on your head, what did you understand?
A. What did I understand?
Q. Yes.
A. I knew the man; I knew he was liable to do something.
Q. Of course you do; but what did you understand?
A. I am telling you that he was liable to do something that would be very, very serious, and I tried to save both my mother and him from himself.
Q. Did you think he was likely to murder your mother?
A. I wouldn't put it past him, sir.
Q. What?
A. I wouldn't put it past him.
Q. I ask you whether you thought he was likely to murder them?
A. I wouldn't have gone up there and taken them away if I didn't think so; if I didn't think they were in danger of bodily harm.
Q. You did think they were in imminent danger of being murdered?
A. I certainly did.
Q. Did you understand what motive there could be for it?

A. No other motive than he generally had; I don't think my father was himself, I'll tell you that.

Q. Did you think your mother and sisters and brothers were generally in danger of being murdered by your father if he was living with them?

A. Yes, I do.

Q. Did you think that?

A. Yes, and I have had reason to think so later on.

Q. And that was not because of any particular motive he might have had then, but because of the general temperament and makeup of the man?

A. Yes.

Q. As you had come to know him, you felt he was likely at any time to break out that way because of his temperament?

A. Not only his temperament, but his habits.

Q. Has there been any change since then in your estimation of him, in that respect?

A. No.

Q. There is nothing that has occurred that has given you a better opinion of him since then?

A. In what way?

Q. His temperament?

A. No.

Q. You never thought him a less dangerous man since that time than before or at that time?

A. Yes.

Q. When?

A. Well, any man who will apply for a permit to carry a revolver where there is no necessity for anything of the kind is a dangerous man.

Q. I say, there has been no time since the occasion when he called you out of this court ——

A. Out of this building.

Q. Out of this building, and told you that if you

didn't get your mother and brothers and sisters their blood would be upon your head—there has been no time since then that you have thought him a less dangerous man than you thought him at that time?

A. When he is John E. Walsh and sober ——

Q. Oh, yes, I understand that, but you say when he would get drunk he would be dangerous?

A. Yes.

Q. But his habit has been all this time that he would get drunk?

A. Yes.

Q. Ever since ——

A. As long as I can remember.

Q. Ever since that time his habit has continued that he would drink?

A. He always drank.

Q. Answer the questions specifically, will you? (Stenographer repeats the question.)

A. Yes, sir.

Q. So he has continued that same dangerous man you thought him?

A. He is dangerous, yes, sir.

Q. He has continued the same dangerous man you then thought him to be?

A. Do you mean in that particular instance?

Q. You said you thought he was a dangerous man?

A. Yes, sir.

Q. Has he been ever since that time?

A. I don't know.

Q. You have known him since then?

A. Yes, but I have not had the opportunity for certain specific propositions; I know he is dangerous.

Q. You know, do you not, that he has kept up his drinking habits since that time?

A. Yes, sir.

Q. Then, according to your opinion, he has not been safe for your mother and sisters to be with, has he?

A. No, he has not.

Q. And you would think there was imminent danger that he might in one of his drunken passions murder them, is that right?

A. You are asking for opinions, conclusions?

Q. Yes.

A. My conclusion is, yes.

Q. What year was that; that was 1910?

A. Yes, and there has been several times since then.

Q. I take it that in 1913, you brought about a reconciliation and got them to live together?

A. I did.

JOHN F. WALSH, a witness produced on behalf of complainant, being duly sworn, testified as follows:

Direct examination.

By Mr. Backes:

Q. You are the son of John and Margaret Walsh?

A. Yes.

Q. You are married and away from home?

A. Yes.

Q. Have you ever been called here for the purpose of effecting a reconciliation between your father and mother?

A. I went on my own accord—that is, I tried to effect that myself personally, yes.

Q. When?

A. Well, recently; more recently than previous to that.

Q. How long since you left home?

A. Nine years.

Q. Before that, where did you live?

A. I lived with my mother and father and family.

Q. What was the general conduct of your father towards your mother?

A. Why, he was all right; I never saw anything particularly wrong with him.

Q. Was he a man of drinking habits?

A. Yes, he drank.

Q. To excess?

A. I never saw him stagger.

Q. He would be under the influence of liquor?

A. Yes.

Q. Would that change him?

A. It would change his disposition a little, yes.

Q. In what manner would it change his disposition?

A. It would make him a little talkative.

Q. And cross?

A. Not unless the occasion presented itself.

Q. But he would always pick the occasion?

A. He would talk with friends as well as with anybody else.

Q. With your mother, as you can recall it, did you ever hear him make any threats or abuse your mother?

A. I never heard him threaten her any bodily harm.

Q. Did you ever hear him call her any vile names?

A. I couldn't say that I did, no, sir.

Q. Were you ever called from the barroom for the purpose of preventing your mother from being bodily hurt? Were you ever called for the purpose of preventing your mother from having bodily harm inflicted upon her by your father?

A. Yes, I was called from the barroom one night and I went across the street and into the kitchen and there was loud talking and my father had hold of her by the arm. I rushed up to them and took him by the arm, and I said, "Pop, let loose of her," and he said "John, this don't concern you; this is between myself and my wife." I said, "All right, let loose of her," and he immediately let loose, and the argument terminated there.

Q. Did you see anything happen before that?

A. No, sir, I was called from the barroom.

Q. Were you compelled to strike your father in order to compel him to break his hold?

A. No, sir, I simply took him by the arm and then I made that remark to "break loose."

Q. What continued after that?

A. The argument continued to some extent, to a certain extent, and it finally went to nothing and I went across the street.

Q. What was the nature of the argument? What did you hear your father say to your mother?

A. I simply rushed in there, Counsellor; I was all excited; I was told to come over right away; I was the oldest one home at the time, and I simply ran over and the condition I found was not as serious as I thought it would be in the circumstances.

Q. Was he under the influence of liquor?

A. He had been drinking, yes.

Q. You tended bar for him, didn't you?

A. Yes.

Q. Do you know his capacity for drink?

A. Well, at that time he was a normal drinker.

Q. What do you mean?

A. He would drink every day ——

Q. How many drinks?

A. Well, there was times that it would affect him more than other times.

Q. How many drinks would he average a day?

A. Probably ten, as a general average. There was days he didn't drink at all, but other times he drank more.

Q. That would be the average of the days he did drink?

A. Of course, it was beer; he was a beer drinker; ten drinks it might mean bottles of beer, that didn't mean whiskey.

Q. After your father was in the habit of becoming under the influence of intoxicants daily, wasn't he?

A. I wouldn't say he was an habitual drinker; he was a man by his companionship and in the business he was in that made him drink more or less.

Q. And he did drink?

A. Yes.

Q. During the time of the separation, during 1910 and 1913, did you have any hand in bringing them together?

A. 1910 and 1913?

Q. Yes.

A. No, sir, I have been away for nine years. I have been always of a reconciling nature, and tried to bring them together.

Q. After the trouble they had in 1915, did you try to bring them together?

A. No, sir.

Q. Did you see your father after he returned from Europe in 1915?

A. Yes, he and I were always good friends.

Q. Do you know Helen Walsh?

A. I know of her, yes.

Q. Who is she?

A. Why, I was told she was a relative.

Q. Who told you?

A. My father and herself.

Q. And did you and Helen Walsh and your father organize this realty company?

A. My father came to me at Beach Haven, that's where I now reside, and asked me to sign the paper, which I did.

Q. To organize this realty company?

A. I didn't understand the disposition of the thing, but it has now developed that way.

Q. What did you understand?

A. Well, I simply signed the paper to bring about some kind of an agreement, probably to bring them together, or something like that.

Q. He came to you and asked you to sign a paper?

A. Yes, sir.

Q. Was that an agreement of settlement between your father and mother?

A. No.

Q. That was to take over the property that your mother had possession of?

A. No, he said he had to do that to be able to sell the lots and the property, or something.

Q. And the property was the property in question where your mother now resides?

A. Yes.

Q. The property that had been sold in the Headley Harper foreclosure?

A. Yes.

Q. You knew that?

A. I knew it, yes.

Q. And how many shares were taken in that company by you?

A. Shares? I don't know of any shares; I simply signed.

Q. You were a subscribing shareholder?

A. I didn't understand that part of the proposition at all.

Q. Have you got any shares in the company now?
A. I don't know nothing about a company.

Cross-examination.

By Mr. Satterthwaite:

Q. There has been no meeting of organization for the company, so far as you know?
A. My father came home to me at Beach Haven.

The Court: Answer the question.

(Stenographer repeats the question.)

A. No, sir, except my father and myself.
Q. Well, you mean the time he came to Beach Haven?
A. Yes.
Q. You mean you signed a certificate of incorporation?
A. Yes.
Q. And nothing further has been done towards the organization that you know of?
A. No.
Q. You understood that corporation was to take over the title of this property?
A. Yes.
Q. For the purpose of selling lots?
A. Yes.
Q. You know nothing to the contrary now?
A. No.

EDWARD H. WALSH, a witness produced on behalf of complainant, being duly sworn, testifies as follows:

Direct examination.

By Mr. Backes:

Q. You are the son of John and Margaret Walsh?
A. Yes.
Q. And are engaged in business in the city of Trenton?
A. Yes.
Q. What business?
A. Real estate business.
Q. For how long since?
A. Nine years.
Q. Are you residing at home now with your mother?
A. No, sir.
Q. Did you reside with your mother in 1913, when she returned to Ewingville?
A. No, sir.
Q. You have not resided there at any time since?
A. No.
Q. Do you recall when your father returned from Europe in 1913?
A. Yes.
Q. And can you, of your own knowledge, speak of his conduct towards your mother during the time he was living there with him, and up to the time that John E. Walsh left her?
A. Why ——
Q. Of your own knowledge—facts that occurred between them.

A. I was never present in that period; I was in periods before that. In the year 1903, my father and some other gentlemen were drinking in the hotel —drinking ale that had been frozen and thawed out, —and he was called to supper. He went over to supper and my brother John and I were in the bar-room and one of the younger boys came over and said my father was murdering my mother.

Mr. Satterthwaite: That is objected to.

Q. What did you see when you came over?
A. John went over; I and John went over, and my father had a melee with John; he had hold of my father and had him against the wall, and in the melee John struck my father and afterwards tore his watch that my father had given to him, and threw it across the room, and that matter was fixed up that night.

By the Court:

Q. Was this the occasion that John just described?
A. No, I wasn't here.

By Mr. Backes:

Q. In 1910, what happened, if anything?
A. In 1910, Decoration Day, my mother asked my father while standing on the front porch, if she could have some money to buy some flowers to place on my uncle's grave, Dr. Cantwell; and he said, "Not a nickel," and she asked for a horse to drive down, and he refused her. Then he stated that he would end it all and blow her brains out. I asked him the question "What," and then he walked away.

In about June of the same year I was in my office and my brother John was there and my father and he stated that if my brother William didn't get her out of the house the blood of his mother would be on his head, and he wanted to move out immediately, and he had secured some constables to go up.

By the Court:

Q. This was when?

A. In 1910, in June; and I and my brother John went up and got the boys to come down, and my mother had come down, and live in Trenton, and was supported practically by myself from 1910, in June, until 1913; September 30, 1913; and then, during the period he was away, she went up there and started housekeeping.

By Mr. Backes:

Q. Do you know how she happened to go up there?

A. Well, there was always quite a contention with the family to get them together. I wasn't on speaking terms with my father for about eight years, and I wasn't brought into any of those talks as to why she went up there. I know she moved up there against my idea of how to settle the matter.

Q. Did you ever hear your father call your mother any vile names?

A. Yes.

Q. What?

A. A God-damned whore and a rotten son-of-a-bitch; and started after her, and the two boys, including myself, pushed him back in the dining room.

Q. How often would you hear him do that?

A. Well, it was pretty nearly three or four times a

week; he would become intoxicated heavily, and there was always quite a nervousness around.

Q. What about his habits as to sobriety?

A. He was sober about forty days in the year—during Lent.

Q. During the Lenten period?

A. Yes.

Q. And what during the rest of the year?

A. He would always be under the influence of drink; sometimes not quite so much; he always drank.

Q. When under the influence of liquor, what were his habits?

A. He was disagreeable and fault finding, and anybody coming in contact with him he would always get into trouble.

Q. Quarrelsome?

A. Yes.

Q. You know nothing about the occurrences in 1914; you were not at home?

A. I wasn't at home at that time.

Q. You are a real estate man and have been engaged in business eight or nine years?

A. Yes.

Q. And are still in the real estate business in Trenton?

A. Yes.

Q. Do you know the property on Pennington Avenut and Gordon Street?

A. Yes.

Q. What, in your judgment, is the value of those properties?

A. Separate or ——

Q. In a lump, if you can?

A. About $28,000.

Q. Do you know where there is a lot on Chambers Street?

A. No, I don't know anything about the lot on Chambers Street; I didn't know he owned one.

Q. The Ewingville property that was sold, in the Headley-Harper foreclosure; what, in your judgment, is the value of that property?

A. It's worth $15,000, and if sold in small portions it's worth ten dollars a foot. It has about 2800 feet road front on two roads, that is, approximately, I don't know exactly.

Cross-examination.

By Mr. Satterthwaite:

Q. How many feet front is it?

A. About 2800 feet approximately.

Q. That is what it would be worth if you could sell it?

A. It is selling for it; I am in that line of business.

Q. You can go around Trenton about that same distance out of town in various directions, and you would put the same value substantially on similar property?

A. No, sir.

Q. You wouldn't?

A. No, sir; I have for the last seven years developed tracts and tracts adjoining my father's; I have developed them most in small portions and I know what ground is worth per foot.

Q. When you sell them, they sell for about that price?

A. Yes.

Q. There are lots selling in other sections about the same price?

A. Yes.

Q. If you were asked to put a value on those

tracts, you would say ten dollars a foot, and you would also know that those tracts can't be sold in the next twenty years for that price?

A. I know this can.

Q. How do you know?

A. I know it.

Q. All of it or only portions?

A. Just portions of it.

Q. And you might hold on to the rest a good long time?

A. No, I had a sixty acre tract and I sold it out entirely with the exception of three tracts within a year and a half, owned by Mr. Joseph Moore.

Q. Is that all built up?

A. No, not all.

Q. You bid on this property at the foreclosure sale?

A. Yes.

Q. And you bid it up to what you thought it was worth as a property together?

A. No, I didn't; I bid it up to the heighth of the money I had secured, so that if it was knocked down to me I could buy it.

Q. It brought over $400 an acre, didn't it?

A. Yes.

Q. And you didn't put the valuation on a tract of land undeveloped that you would put on it, that a man could get out of it, after going through the labor of selling it, after a course of years?

A. I don't get just what you mean.

Q. Isn't $400 an acre a pretty good price for that land by the lot?

A. For that particular tract, no; because every bit of the land is reached by a frontage giving the proper depth for lots sold along that road. You can utilize every foot of it.

Q. It is from the centre of the town about three and a half miles, isn't it?

A. Yes.

Q. And the only thing that makes it valuable is, there is a trolley there?

A. Yes.

Q. And the only town is Trenton near to it?

A. Yes.

Q. There is no town there?

A. No.

Q. It's in the country?

A. Yes, sir.

Q. And it brought over $400 an acre?

A. Yes.

Q. And you bid on it at the foreclosure sale?

A. Yes.

Q. Do you know what encumbrances there are on these Pennington Avenue and Gordon Street properties?

A. Yes, there's about $6,000 encumbrance on the Gordon Street.

Q. You say there was an equity of about $2,000?

A. Yes.

Q. What does the property rent for?

A. This?

Q. Yes.

A. About $1900.

Q. The aggregate rent is about $1900?

A. Yes.

Q. What do those houses rent for apiece, do you know?

A. One recently rented for $18; that's within the last couple of years; I have rented them myself, several of them.

Q. How many of them rent for that price, all of them?

A. Yes, every one; every one I ever rented rented for $18.

Q. What do the Gordon Street properties rent for?

A. $10 a piece, seven of them.

Q. Do you know what 82 Pennington Avenue has been renting for?

A. It has not been rented.

Q. Do you know what condition it is in?

A. I have never been in it; it looks all right to me outside.

Q. Your brother William lives in it?

A. Yes.

Q. Do you know what the taxes amount to on this property?

A. About $350 to $360.

Q. On the whole?

A. Yes.

Q. Do you know what the annual repairs would average?

A. As he repairs them?

Q. As anybody repairs them? Repairs to keep them in order; what would be the annual repairs to keep the property in order as they should be for renting?

A. Why, about $8 a year for the Pennington Avenue houses.

Q. Each house?

A. Each house.

Q. Five of them; that would be $40?

A. Yes, and about $3 for the Gordon Street.

Q. How many?

A. Seven.

Q. That would be $61 for repairs; now, do you know anything about what the insurance would be?

A. Yes, sir.

Q. What?

A. The amount of insurance he is carrying is about $7,000.

Q. What would be the annual cost of that?

A. About the annual cost per house would be about one dollar a year per house.

Q. That would be about twelve dollars a year?

A. Yes, sir.

Q. Then you would say that those houses, if rented, no rents being lost, would net about $1465 a year?

A. Well, I haven't carried the figures out.

Q. $360 you put the taxes?

A. Yes.

Q. Now, you have not been out there and heard any abusive language or threats for a number of years, have you?

A. Not for a number of years, not personally; I have heard of them.

Q. And you have not been on speaking terms with your father for a good many years; is that right?

A. That's right.

Q. You are not on speaking terms with him now?

A. Yes.

Q. How long have you been?

A. About two weeks.

Q. How came that about?

A. In an effort to effect a reconciliation.

Q. What did you contemplate in that reconciliation with them?

A. A settlement the best way we possibly could get one, with suggestions from my father. My mother has always been in fear of my father from violence on his part, and I wouldn't care to say that I was in favor of her living with him; it was entirely up to her.

Q. Did you contemplate as a possible basis of reconciliation that they should live together again?

A. No.

Q. What did it contemplate, a money payment by your father to your mother?

A. To support her, yes.

Q. You would not have been willing for them to live together?

A. I hadn't anything to do with that.

Q. You would not have opposed it, would you, if she had been willing?

A. I would not have opposed it, but I would feel uneasy.

Q. But not so uneasy that you would feel it your duty as a son to oppose it?

A. Yes, I think I would.

Q. Where did you see your father, to speak to him, within the last two weeks?

A. In his house, 78 Pennington Avenue.

Q. You went to see him?

A. Yes.

Q. You were in the house?

A. Yes.

Q. What sort of a house was it?

A. A three-story brick house.

Adjournment taken until Tuesday, the twenty-fourth day of October, 1916, at ten-thirty A. M., at the court house, Camden, N. J.

Resumed, before his Honor, E. B. Leaming, Vice-Chancellor, at the State House, Trenton, New Jersey, on Tuesday, October 24th, 1916.

APPEARANCES:
PETER BACKES, ESQ., for complainant.
LINTON SATTERTHWAITE, ESQ., and JOHN T. VAN CLEEF, ESQ., for defendant.

H. EDWARD WALSH, recalled.

Cross-examination.

By Mr. Satterthwaite:

Q. Mr. Walsh, did you ever see your father with a revolver in his hand?
A. No, sir.
Q. I beg your pardon?
A. No, sir.

By the Vice-Chancellor:

Q. Or in his pocket?
A. I have heard him say that he had a revolver in his pocket and I seen him make an attempt like this (indicating) to draw it but I never seen him draw it.

By Mr. Satterthwaite:

Q. You say you heard him say he had one in his pocket?
A. Yes, sir.

Q. When was that?

A. That was just prior to him leaving home the last time.

Q. What was the occasion of it?

A. Why, the folks all were up there to try and fix up matters, and he persisted in not fixing it up, and made the remark that he had a revolver to protect himself, and he reached in his pocket during the conversation taking place—reached to his rear pocket as though to pull a gun, we all believed that he had a gun. At one time my brother opened a trunk that was locked ——

Q. This is what you were told, what you are saying now?

A. What?

Q. This is what you were told, what you are saying now? You didn't see this?

A. Well, yes, I was told.

Q. Well, then, you wouldn't testify to that.

By the Vice-Chancellor:

Q. When he made a motion which indicated that he meant to pull a gun, what happened? What was done? What deterred him, if anything?

A. Why, the conversation was along the line—we were trying to fix the matter up, and he said that he was fully determined to go ahead with his ideas, that there wouldn't be any settlement of it, and he had a gun, and he reached to his rear pocket in order to demonstrate he had; I suppose, on second thought, he didn't draw it.

Q. Did anybody stop him from drawing it?

A. No. We were all present, all the boys were present, the whole family.

By Mr. Satterthwaite:

Q. You say this was in a conversation with the boys?

A. Yes.

Q. How many of the boys?

A. Every one in the family.

Q. They were all there? It was rather an animated conversation?

A. No, it was a conversation to—all of us had a meeting there to adjust matters, try and adjust matters.

Q. And was it by appointment with him, or did you just come together and see him?

A. We came of our own accord.

Q. Of your own accord?

A. Yes, sir.

Q. And the adjustment of the matters you were trying to bring about was to compel him to desist from his proposed plan of moving away from there, was it?

A. Yes; he was clearly determined to break things up.

Q. Well, what do you mean by breaking things up?

A. Why, to have the boys leave the house, and he said during that conversation that he would leave the boys remain in the house if my mother would sign a deed of the Monument House to him.

Q. And it was a pretty warm conversation, wasn't it?

A. Well, sometimes it was, yes.

Q. Did any of the boys make any threats to him?

A. Make any threats?

Q. Yes.

A. No, there wasn't any threats made.

Q. Was there any threatening move made by any of the boys?

A. Yes.

Q. There was?

A. Yes.

Q. What was the nature of it?

A. Why, when he attempted to pull the gun, why, one of the brothers grabbed him, grabbed his arm, and when he grabbed his arm my father struck this brother in the face.

Q. Which one was this?

A. Peter.

Q. And you didn't take the gun from him,—didn't make any effort to get the gun out of his pocket?

A. No, our intention was to—not to have any trouble, to keep it quiet.

Q. No, but after grabbing his arm that time did Peter let go of his arm then?

A. No; we all attempted to get hold of both of them and parted them.

Q. And then was your father let go free?

A. No, I was with my father and so was my brother, Harry.

Q. Well, while you were with him did you have hold of him?

A. Yes, took him around in the parlor.

Q. You had him under arrest, so to speak?

A. Yes, I was with him.

Q. I say, you had him under your physical, forcible control?

A. Well, we didn't have—we weren't intending to use any force. We wanted to have it peaceably settled, to straighten the matter out.

Q. But you did not take the precaution to reach in his hip pocket and take the gun out so he would be harmless?

A. Well, in the melee, why, we forgot about every-

thing, all but to get things quieted down, my mother and sisters were growing hysterical.

Q. You were very much frightened when he made this move to get his gun?

A. Well, yes, I believed he would use the gun.

Q. You thought he would use it?

A. Yes.

Q. And then when you got him in your power you forgot all about the gun?

A. Well, two or three of us was around—I was talking to him trying to get him to cool down, he was excited, too.

Q. I say, you forgot all about the gun when you got him in your power?

A. I didn't have him in my power.

Q. Didn't you have hold of him, you and one of the other brothers?

A. I was talking to him, standing in front of him, I didn't take hold of him.

Q. Didn't you say that you took him around in another room?

A. Yes, escorted him around in another room, tried to get the thing quiet.

Q. Did you have hold of him then?

A. May have taken hold of his arm to lead him around, wasn't any force about it.

Q. Was he protesting against what you were doing?

A. Oh, he was excited, he was objecting to being led around; we were talking to him in order to straighten the matter out, as I said before, we weren't arguing with him, there wasn't any argument, but he was excited and we were trying to appease him.

Q. Where was your father sitting when Pete grabbed him by the arm?

A. Sitting in a chair in the back sitting room.
Q. Back sitting room?
A. Yes.
Q. And what kind of a chair was he sitting in?
A. It was a reclining chair.
Q. Where were his feet?
A. Where was his feet?
Q. Yes; what was his position?
A. Just about like this (indicating).
Q. His feet were up, weren't they?
A. No, sir.
Q. And did he say what he proposed to do with the gun?
A. Yes, he made the threat that he had a gun and he would use it.
Q. Upon whom?
A. Why, we took it to use it on my mother or anybody.
Q. Well, your mother wasn't there, was she?
A. Yes, she was there, all of us was at the conference.
Q. But he didn't mention your mother?
A. Well, the conversation was—that is what we were there for, to straighten matters out between them.
Q. But when he threatened to use the gun he did not mention your mother?
A. She was present at the time and the conversation was with her, she was in the conversation.
Q. What did she say?
A. He asked her to turn this Monument House over to him and that would satisfy him, she refused, and during that melee, why, he attempted to draw the gun.
Q. But when he said he would use the gun he did not mention your mother?

A. Not particularly, no.

Q. On that occasion did he mention any person at all that he would use it on?

A. No, no, not that I know of.

Q. And the ones who were talking to him were the boys, were they not?

A. Yes.

Q. And the boys were telling him what he must do, were they not?

A. No, no; the boys were in a pleading attitude.

Q. Weren't they threatening him?

A. No, never threatened him.

Q. Wasn't this talk, Mr. Walsh, for the purpose of dissuading your father from having Harry, your brother, Harry, bound over to keep the peace?

A. No, sir; no attempt on that.

Q. And persuade him not to force Harry to leave the house?

A. No, sir.

By Mr. Backes:

Q. This was quite a stormy interview?

A. Yes, sir.

Q. Lots of squabbling back and forth?

A. Yes, sir.

Q. Lots of intemperate language used?

A. Yes, sir.

Q. What did your father say? Now, what was the nature of his language to you?

A. Well, he would "God damn" if he wouldn't have his own way, language of that sort, threatening language,—no one would stand in his way carrying out what he wanted to do.

Q. Did he tell you what he wanted to do?

A. Why, he wanted—he told—finally when he was

asked what was his condition, or what conditions he wished to have, he said that he would—he wanted the Monument House, it would be satisfactory to him if she signed a deed to him for the Monument House.

Q. Then the whole fight was to get possession of your mother's property?

A. That was the whole fight on his side, that seemed to be.

Q. And what did you go there for?

A. I went ——

Q. And the other boys?

A. We went there to sort—to get it straightened out.

Q. Well, what were you going to straighten out?

A. Why, the difficulty between my mother and my father.

Q. Well, what was the difficulty between your mother and your father, if you know?

A. Why, he was determined to have her leave the house, as she usually did on several occasions before, and there was a general upheaval there; he wouldn't eat his meals and was grumpy. We came up there to fix things up, as we had done before.

Q. Your father, then, had left the house, had he, before that?

A. No; he was there during that period, he would go away in the morning or evenings and then wouldn't come back sometimes for a couple of days, sometimes he would come back next morning.

Q. Did he say why he didn't come back?

A. No, never, this was—he had ceased to eat in the house.

Q. And the relationship was strained?

A. Yes.

Q. And you were trying to smooth it out?

A. Yes, sir.

By Mr. Satterthwaite:

Q. Now, I understood you, Mr. Walsh, to say the other day that for some years you hadn't been on speaking terms with your father?

A. Yes, sir.

Q. Prior to this time?

A. Yes, sir.

Q. And you came up to act as a conciliator between your mother and father?

A. My brothers were up there and I was there with the intention, if necessary, to speak with them and then we didn't have any conversation ——

Q. I say, you came up to act as conciliator between your father and your mother?

A. I was one of them going to, if necessary, speak with him and we didn't have a chance to.

By Mr. Backes:

Q. How long did this interview last?

A. Why, about two hours and a half.

Q. You are sure your mother was there?

A. Yes, sir, she was there.

Q. All the time?

A. Yes.

By Mr. Satterthwaite:

Q. Mr. Walsh, your full name is what?

A. Hugh Edward Walsh.

Q. Do you know where the "Hugh" came from?

A. Where the "Hugh" came from?

Mr. Backes: I object.

Q. How you came to be named Hugh?
A. Yes, sir, according to what I was told.
Q. For whom?

Mr. Backes: I object, if your Honor please. I do not see how that is material on this question of maintenance.

The Vice-Chancellor: It may be competent but I cannot see any possible service it can be, though. It may be competent, I cannot say that it will not be. I will let him answer it if you think it will be useful.

Mr. Satterthwaite: It might be.

Q. Who are you named after?
A. Why, a brother of my father. He died when he was nine months old, according to my father.

By Mr. Backes:

Q. That is what somebody told you?
A. Yes.

Headley B. Harper, a witness produced in behalf of the complainant, being duly sworn according to law, on his oath says ——

By Mr. Backes:

Q. You reside in the city of Trenton?
A. No, sir.
Q. Well, in Hamilton Township?
A. Township of Ewing.

Q. And you are the complainant in this case in this court wherein John E. Walsh and Margaret Walsh are defendants, on a bill to foreclose?

A. Not in this case, what I have heard last week. I foreclosed a mortgage.

Q. You foreclosed a mortgage?

A. Yes, sir.

Q. And filed a bill?

A. Yes, sir.

Mr. Backes: I produce the files, if your Honor please, showing the bill was filed on September 16th, 1915.

Mr. Satterthwaite: I think we must interpose an objection here, as not being relevant to the issue now before the Court.

Mr. Backes: Well, I will show the relevancy in a moment.

The Vice-Chancellor: It seems to me the whole question is whether or not extreme cruelty on the part of the defendant existed of such a nature as to justify the complainant to refuse to share his abode.

A. (Resuming) This is all news to me.

Mr. Backes: I desire to show by this witness that he has been the holder of a mortgage on this property in question where the parties resided, that just before the accruing of the interest payment he met this man, Walsh, who told him he was through paying interest, he would not pay any more, told him to foreclose, and that he had sent him to his, Walsh's, lawyer, Van Cleef, to bring a suit.

The Vice-Chancellor: Isn't the relevancy of that so remote that it can scarcely reach the real issues we are trying?

Mr. Backes: I desire to show by that the procedure on the part of Walsh to dispossess his wife from the property in question, which was her abode and his abode that he had previously left.

The Vice-Chancellor: I cannot say that it is not relevant. You may show it, if you choose. But I think the real question and the only question is whether or not his conduct justified her refusal to live with him, his conduct prior to the separation.

By Mr. Backes:

Q. Did you meet Captain Walsh before you filed this bill?

A. Yes, sir.

Q. To foreclose?

A. Yes, sir.

Q. Where?

A. On Warren Street.

Q. What did you say to him and what did he say to you?

A. He was coming up the street as I stepped out of the automobile, and I says, "Captain, I see by the papers you are going to Ireland, take another trip to Ireland." He says, "Yes." I says, "Your interest is due in a couple of days." Then he told me he was through paying interest.

Q. What did he say? Use his language. Do you know? Can you remember it?

A. That is all there is about it, any more than he showed me this cut in his face, his nose, his knuckles.

Q. Well, what did he say to you?

A. There wasn't much said.

Q. Why did he say he was through paying the interest?

A. Why did he say it?

Q. Yes.

A. Well, now, I don't know, I didn't ask him.

Q. Well, didn't you have further conversation with him?

A. Oh, yes; I told him I thought this was a good mortgage. I asked him if he had any preference as to who should foreclose, anybody who would do it any cheaper than anybody else, and he referred me to Mr. Van Cleef. I went to Mr. Van Cleef's office twice, Mr. Van Cleef wasn't there either time, and then I didn't go anywheres for a month or six weeks, thought maybe he would change his mind and come pay the interest, then I took the papers over to Mr. Montgomery.

Q. When was the interest due on this mortgage?

A. January and July the 16th. I met him about the 14th of July.

Q. You say that the captain was cut in his face at the time?

A. Why, black and blue, yes.

Q. Now, are you not mistaken as to the date? Wasn't it earlier than a few days prior to the interest payment being due?

A. A couple of days, I said.

Q. Wasn't it early in June?

A. In June?

Q. Yes.

A. I don't think so. I used the expression a couple of days. I don't know when this squabble was but he was black and blue then.

Q. You are sure that is all the interview you had with him at the time?

A. Why, about all, yes, all that I can remember.

Q. You can remember him saying that he wouldn't pay any more interest, and he was through with it, he wanted you to foreclose?

A. He said he was through paying interest.

Q. Didn't he ask you to foreclose that mortgage?

A. No.

Cross-examination.

By Mr. Satterthwaite:

Q. After you started foreclosure did you have a conversation with any member of the Walsh family over the phone?

A. Yes; the gentleman who was just here in the chair called up and wanted me to assign it, the mortgage, and I told him I would have to consult with the lawyer, and the next morning I went down to Mr. Montgomery and Mr. Montgomery wasn't in, and I went up to Mr. Kane and Kane tells me that I couldn't refuse the money, if it was offered to me that I would have to take it, but they couldn't compel me to assign it to some one else.

Q. Did you have any conversation with any other member of the family?

A. Well, one day when the foreclosure was going on ——

Q. No, since this case has commenced have you had conversation with any of the family?

A. This case?

Q. Yes.

A. Why, one of them served this subpoena on me last evening.

Q. Did you have any conversation over the phone two weeks ago?

A. No.

Q. Do you recall any one of them calling up over the phone some little time ago, excepting what you have already given?

A. When I was down to the sheriff's office the gentlemen there at the table—I don't hardly know their names, I ain't well enough acquainted with them in their names, don't know all their names—and we was talking there at the sheriff's office, he wanted to know if I was mean enough to go on.

Q. Was there any reference to Captain Walsh in that conversation?

A. Oh, yes, yes, but I don't usually talk the way the gentleman talked and I hung the phone up.

Q. What was the nature of what was said?

Mr. Backes: I object.

The Vice-Chancellor: I do not think any of it is of any weight.

Mr. Backes: With leave to examine one more witness when she comes in, we offer these papers and that is our case.

The Vice-Chancellor: Very well. Proceed with the defense.

ARTIE S. BLACKWELL, a witness produced in behalf of the defendant, being duly sworn according to law, on her oath says:

By Mr. Satterthwaite:

Q. Mrs. Blackwell, you reside where?
A. At Ewingville.
Q. And for the information of the Court, about how many houses are there in Ewingville?
A. Well, just directly around the corner?
Q. Just around on the part you live in. Six or eight?
A. Well, just about close around the corner, there are others but they are further away.
Q. It is a cross road?
A. Yes, sir.
Q. Used to be called Cross Keys?
A. Yes, sir.
Q. There is a hotel there?
A. Yes, sir.
Q. Blacksmith shop?
A. There was a blacksmith shop.
Q. A typical cross road place?
A. Yes.
Q. How long have you lived there?
A. I think about fourteen years.
Q. And you knew Captain Walsh and Mrs. Walsh when they lived there?
A. Yes, sir.
Q. Where did you live with reference to their place? How near there?
A. There was one house between us.
Q. And how far away was your house? You say there was one house between you. How much space was between the houses?
A. Oh, I think there was what you might call one

lot between our house and the next house, and the next house was just directly across the road.

Q. Can you remember Mrs. Walsh moving away with her children in the year 1910, or thereabouts?

A. Yes, sir.

Q. You remember the circumstances?

A. I remember that they went.

Q. Yes. Did you see Mrs. Walsh come up there after that time and visit the captain?

A. I saw her come up to the house; yes, sir.

Q. Do you remember about how soon after she moved away she began coming up?

A. No, sir, I don't remember that.

Q. Was it the same year?

A. I couldn't say that.

Q. Well, now, who lived there with the captain, if anybody?

A. Why, I think once or twice he had a housekeeper there, a woman come in to keep house.

Q. Part of the time did he live there alone?

A. Yes, sir.

Q. Now, how often would she come up and visit him that you noticed?

A. It would be on a Sunday when she did come and sometimes through the week, about the middle of the week.

Q. Would the captain be there when she came?

A. Sometimes he would be there and sometimes not. Now, there is one thing I want to say: There is the one house between us.

Q. Yes.

A. And where I live I am most always on the other side of the house. So as far as comings and goings—unless I was outside of the house I couldn't see the car, who did stop, unless I happened to be outside I didn't see.

Q. I am asking now what you did happen to see.

A. Yes, sir.

Q. Now, when she would come, would she and the captain be there alone in the house?

A. I think they were alone, yes, sir; when she came up she would come alone.

Q. Did you see them around the place, walking around?

A. Yes, sir.

Q. Now, did this thing keep up until she came back?

A. Yes, sir.

Q. Did you ever notice whether she took things back with her from the place?

A. I couldn't say. I don't believe I ever saw her take anything away from there.

Q. Now, you remember when she came back in 1913?

A. Yes, sir. That is, you mean just ——

Q. When they moved back?

A. When they moved back; yes, sir.

Q. Now, then, did these visits by her, these visits weekly and oftener, keep up until then?

A. As I remember them; yes, sir.

Q. Now, do you remember anything about the captain moving away again in 1915?

A. Why, you mean when he just simply, as I understand it, just went away.

Q. Well, you remember that he did go away?

A. He did go away, he wasn't around there.

Q. That is what I mean.

A. Yes.

Q. And Mrs. Walsh remained there—still there?

A. Yes, still there.

Q. Did you see anything of a rumpus when the

house was nailed up—some goods taken away and the house nailed up?

A. Why, no, I don't know that I did particularly. I knew they were moving things away but, as I say, I was on the other side of the house, I didn't see much that was going on.

Q. Do you remember an occasion when Captain came up there with some one and got some goods?

A. I remember that he did; yes, sir.

Q. And do you remember seeing any occurrence out in the road there then?

A. No, sir, not at that time.

Q. Well, any other time? Perhaps I got the wrong date.

A. Why, once, at the time that they were away and he fastened up the house.

Q. That is the time I mean. What did you see then?

A. Why, the house was fastened and the notices were posted, and when they came home why they tore the notices off of the house that were around and threw them out and kicked the door open and went in.

Q. Now, you said "they" did. Who do you mean?

A. The boys.

Q. Can you say which boys?

A. Why, the one who kicked the door in on our side was Tom, I think.

Q. And which other of the boys were there?

A. Frank and Harry.

Q. Now, was Captain still there when they came?

A. He was over on our side of the road, standing by a post.

Q. What was he doing, apparently?

A. Just stood there, just simply stood there at the post with his arms folded this way (indicating).

Q. Well, did he appear to have any business there?
A. You mean when he stood outside?
Q. Yes.
A. No, he just simply stood there looking over towards the house.
Q. And did the boys come out?
A. They were there in the road talking to him.
Q. Did you hear what they said to him?
A. Well, I don't know that I could hear every word, they were talking very excited and cross and calling names.
Q. Calling their father names, you mean?
A. Yes, sir.
Q. What sort of names?
A. Well, what would naturally be under the circumstances. I can't state just exactly what they were.
Q. Now, you say what would naturally be under the circumstances?
A. Well, under the circumstances of the case. They were excited, they were cross and angry.
Q. Do you mean profanity, or wasn't there any?
A. Well, yes.
Q. Did Captain answer them back?
A. Not that I heard.
Q. And when did Captain leave?
A. Soon after.
Q. How did he leave?
A. Went down on a car.
Q. Did he stand there until the trolley car came along?
A. Yes.
Q. Then he went?
A. Yes, sir.
Q. Now, during the time that Captain and Mrs.

Walsh lived up there have you been more or less acquainted with them?

A. Yes, sir.

Q. Both?

A. Yes, sir.

Q. Have you had frequent conversations with Mrs. Walsh?

A. Well, just as neighbors, we didn't go back and forth a great deal, it was always just pleasant, neighborly, we were always just neighbors.

Q. Did you ever hear of Captain Walsh threatening her with bodily harm?

A. No, sir.

Q. Did she ever complain to you of that?

A. Never.

Q. Did you call on her after she moved down to Trenton in 1910?

A. Yes, sir.

Q. Where was she living then?

A. I have forgotten the street but it was out.

Q. Out west?

A. Out west.

Q. Murray Street?

A. Yes.

Q. And made a little neighborly social call?

A. Yes, sir. Mrs. Cook was with me.

Q. Did any conversation turn off on the fact of her having moved down town?

A. Just simply speaking about how she liked it, she said she was pleasantly situated, or something of the kind.

Q. Did she say anything as to her choice of living in the town or in the country?

A. Well, she said it was pleasanter in there because things were quiet, that is, quiet family affairs, I suppose she meant.

Q. Did she make any complaint to you about any danger to herself from the captain or any fear of violence after she came away?

A. No, sir, she didn't say anything of the trouble at all.

Cross-examination.

By Mr. Backes:

Q. You knew she had trouble at home, didn't you?

A. Just the fact of the coming and going, they said nothing to me about it.

Q. Mrs. Walsh never complained?

A. No, sir.

Q. Did you ever hear the captain talk in a loud tone, using bad language around the house?

A. To the family?

Q. Yes.

A. No, sir.

Q. Never heard it at all?

A. No, I never did, that is, not to the family, aside from this once that they were out in the road.

Q. You didn't hear it on that occasion?

A. I did hear it on that occasion.

Q. And you know the captain quite well, don't you?

A. I have known him fourteen years.

Q. And you know he is addicted to that sort of language, don't you?

A. Well, what sort do you mean?

Q. Well, cursing and swearing?

A. Well, he does use language that is not exactly what you call straight.

Q. Uses a lot of profanity, doesn't he?

A. Occasionally.

Q. You have seen him under the influence of liquor, haven't you?

A. I have never seen him drunk.

Q. No, but you have seen him under the influence of liquor?

A. That is, that I knew that he was drunk.

Q. You knew that he was drinking daily?

A. More or less.

Q. How often did you visit the house?

A. What—up there?

Q. Yes.

A. Oh, I couldn't say. We didn't run back and forth as a good many neighbors did, but if there was any occasion going up, going back and forth on a little neighborly errand and in a sociable way we went.

Q. Now, you recall an occasion when the captain came up there and nailed the house up?

A. What is it?

(Question repeated.)

A. Yes, sir.

Q. You say that they were away. Who was away —the family?

A. The family was away, all of them.

Q. All the men?

A. All of them.

Q. The house was left alone?

A. Yes, sir.

Q. And the captain came up in their absence?

A. Yes, sir.

Q. What did he do? What did you see him do?

A. I didn't see him do anything.

Q. Well, when you saw the captain then did you take a look at the house and see what had been done?

A. No, sir; the way it happened is—as I say, there is one house between us, and I happened to go over to the next house, the one that is between us, on an errand, and that was when he came over, and the house had been nailed up, I didn't see him nail it up but it was and they were helping ——

Q. You heard him and the boys talk about this nailing up of the house?

A. No—just as I say, he came into the house, next door, where I was, and they were talking then about his having nailed up the house.

Q. The captain told you, then, that he had nailed up the house?

A. Not personally, no.

Q. Well, you heard him say that he had nailed up the house, did you?

A. Yes, sir.

Q. What did he say as to why he nailed it up?

A. Why, as I understand, he nailed the house up to keep them from getting in.

Q. What did he say?

A. It was to keep them from getting in.

Q. Who was he trying to keep from getting in?

A. The family.

Q. Including his wife?

A. Why, she wasn't mentioned especially, but just the family.

Q. And then you heard this angry controversy afterwards between him and the sons in the road?

A. Yes, sir.

Q. How long did that last?

A. Oh, not long; a few minutes.

Q. Did you hear Captain threaten the boys?

A. No, sir.

Q. Did the boys threaten the captain?

A. Well, not threaten with bodily harm, just calling unpleasant names.

Q. Just a talk fight?
A. Yes, sir, that is it exactly.
Q. Did Captain Walsh ever insult you?
A. Why, not what you would call an insult.
Q. Did he ever offer you an insult?
A. Not a direct insult.

JESSIE S. LEWIS, a witness produced in behalf of the defendant, being duly sworn according to law, on her oath says:

By Mr. Satterthwaite:

Q. Mrs. Lewis, you reside in Ewingville?
A. Yes, sir.
Q. Next door to Mrs. Blackwell?
A. Yes, sir.
Q. And how near do you reside to the house now occupied by Mrs. Walsh?
A. Just across the road.
Q. And how long have you lived there?
A. Five years last June.
Q. You moved there in 1910 or 1911?
A. Yes, sir, five years last June, which is 1910.
Q. That would be 1912, wouldn't it?
A. Well, it will be six years next June.
Q. When you moved there who lived in the Captain Walsh house which Mrs. Walsh now occupies?
A. Mr. Walsh alone.
Q. Did he have any housekeeper there then?
A. No, sir.
Q. Did you see Mrs. Walsh?
A. I used to see Mrs. Walsh come up.
Q. How often?
A. Well, sometimes in the week and every Sunday.

Q. Was she making those visits at the time you moved there?

A. Yes, sir.

Q. And how long did they continue?

A. Well, they continued—well, to the last affair, until Mr. Walsh went home to Ireland, and I never seen her but what she didn't come up on Sundays. There was a little while there she didn't come up, a few months, but after that she came up again.

Q. And were those visits continued until she moved back again with the children?

A. Yes, sir.

Q. And then when Captain returned from Ireland he came there?

A. Mr. Walsh came there.

Q. When Mrs. Walsh came up did she come up with any one or did she come alone?

A. She came alone, sir.

Q. Was she there alone with the captain?

A. I don't know as there was any one in the house, I didn't see any one, I understood Mr. Walsh was there alone.

Q. Did you see them around?

A. Mr. Walsh used to go to the car with her in the evenings.

Q. So far as you could observe were their relations friendly?

A. Seemed so, seemed very friendly.

Q. Did you ever at that time have any conversation with her? That is, up until they came back? Since 1910 you say you have been living there next to them or across the road from them?

A. I have always been very friendly with Mrs. Walsh, passed the time of day.

Q. Did you ever know of any assaults upon her or any threats of bodily harm?

A. No, sir; I never was over to see anything.

Q. Never heard of any?

A. Never heard of any.

Q. Did Mrs. Walsh ever complain to you of such?

A. Well, Mrs. Walsh has certainly said I didn't know Mr. Walsh as well as she did. Of course, I didn't expect to know Mr. Walsh as well as Mrs. Walsh did.

Q. But that was after Captain had moved down town away from her?

A. No, before Mr. Walsh had moved to town.

Q. Do you remember the occasion that the house was nailed up?

A. Yes, sir.

Q. What did you see then?

A. Why, Mr. Walsh nailed the windows and he nailed the doors and put signs up on a door, and Mrs. Walsh came home on a car, and she got off of the car and went to the house and it was locked, and Mr. Walsh's nephew—I think it was—he goes around back and gets in and lets Mrs. Walsh in. Mr. Walsh came back and he went over and asked Miss Josephine to—or, at least, I don't know what he said to her, but anyhow she came out on the porch and Mr. Walsh nailed it up again, and it stayed nailed up until the boys came home, and when the boys came home they knocked in the door and tore off the signs and throwed them out in the road. Mr. Walsh stood at the tie-post and he never moved nor said one word. And when the boys got them off they came down in the road and began to abuse their father, curse him.

Q. You say they cursed him?

A. Yes, they did curse him, because I was there and heard it, and when the car came down Mr. Walsh got on the car and went to town.

Q. What was the nature of their cursing?

A. Well, you would have thought they wanted to

fight, that is what they wanted to do. They took their coats off and everything and wanted to fight.

Q. Did they make any threats?

A. I didn't hear any threats at all.

Q. Did you hear any dares?

A. No, sir, I was in my room.

Q. Now, do you remember a time when a man came to put a telephone in the house?

A. Yes, sir, I do.

Q. And what did you see that day?

A. I didn't see anything only I seen them come into my place—they was to put me in a phone and they had been in to see where I was going to have it, and then they went over to Mr. Walsh's and they was working over there and the first thing I seen was the phone threw out into the road and Mr. Walsh came out with his face all bleeding and he got on a car and went down town. That is all I seen that day.

Q. You didn't learn anything more about what had happened?

A. No, I don't know how it happened or anything, I simply know that he came out with the blood on his face.

Cross-examination.

By Mr. Backes:

Q. You say the captain nailed up the house twice?

A. Well, when Miss Josephine came out he nailed up the door again.

Q. That was the second time, then?

A. Yes, sir.

Q. Then when the boys came home they opened the house?

A. Yes, sir.

Q. And you say you heard them cursing the father?

A. Yes, sir.

Q. How far were they away from their father?

A. Why, the father was at the tie-post and they was in the middle of the road.

Q. What did the father do to the boys?

A. The father didn't move or say one word, sir.

Q. He didn't curse back?

A. No, sir.

Q. Didn't have a tongue lashing?

A. No, sir, he didn't, no, sir.

Q. Was the captain in your house on that day?

A. He was in after he had nailed it up, sir.

Q. He had nailed the house up?

A. Yes, he was in my house.

Q. He came to your house before he went up to nail it up?

A. No, sir, he came out of the hotel and got the hammer.

Q. Didn't he bring drinks in your house from the hotel?

A. After he had locked up the house he came over and there were three ladies on the porch, there was me and the lady that lived in the house and her sister and Mrs. Blackwell.

Q. And you all had drinks together?

A. No, sir; we didn't have drinks. Mr. Walsh said, "Couldn't you ladies take a drink?" And I said, "No, sir." He said, "Well," he said, "I can," he says, and he went across the road and he brought over some bottles of beer in a bag and he put the beer on the porch, and by that time the car came up and Mrs. Walsh got off. Mr. Walsh says, "Ladies, aren't

you going to open the beer?" I said, "Mr. Walsh, I don't want it." And when the car went on I got up and I put the beer inside the hallway, for I wanted to see how Miss Joe would—what Miss Joe would say, and then when he had been over he came back into the house and he said, "Ladies, haven't you drank that beer?" and I said, "No, Mr. Walsh." And he went and got the bottles and opened them, and he found that—or he thought that it wasn't enough to go around and he says, "I will go and get two more." He goes back and gets two more, then he comes back into the room again and the beer was opened and there was just three bottles drank, and I didn't wet my lips.

Q. The captain drank it, I suppose?

A. No, sir, the captain didn't drink it; he drank one-half a bottle, Mrs. Blackwell drank a half a bottle and the other two ladies drank theirs, and as soon as my husband comes home from work Harry Walsh goes to the barn and tells my husband I had been drinking beer with Mr. Walsh the whole afternoon, and I didn't wet my lips, as sure as God is above me, I didn't wet my lips with Mr. Walsh.

WALTER D. POWNALL, a witness produced in behalf of the defendant, being duly sworn according to law, on his oath says:

By Mr. Satterthwaite:

Q. Mr. Pownall, you are a constable in the county of Mercer?

A. Yes, sir.

Q. You know Captain Walsh?

A. I do.

Q. Did you, at his request, go with him up to his place at Ewingville sometime during this last year or year before last?

A. In 1915 I did, with a writ of replevin.

Q. That was your first visit?

A. That was my first visit.

Q. The captain was with you?

A. Well, I met him there.

Q. And who did you see there?

A. Well, I was there two or three different times. The first time I think I saw Mrs. Walsh and one daughter, I didn't know her name, and one of the sons, I don't know his name. There was two or three about the same age and size apparently.

Q. Now, what took place?

A. Well, I had the writ of replevin to take out certain goods, and I took out as far as the captain decided to take that day. At the request of Mrs. Walsh some goods were left there.

Q. Which goods were they?

A. Well, there was a stove and pump, and, if I remember correctly, an oil stove, and two or three other articles, I have forgotten just what they were now.

Q. And Mrs. Walsh requested him—you heard her make the request?

A. Mr. Walsh and Mrs. Walsh went out of the room, I didn't hear the conversation, but as the result of that the captain told me he would leave those goods there for the present.

Q. How far were they away from you during this conversation?

A. In an adjoining room.

Q. The door open?

A. Well, it might have been, I don't remember now, but I paid no attention to the conversation.

Q. You didn't notice any loud altercation—anything like that?

A. No.

Q. You took the other goods away, did you?

A. I took the other goods away, yes.

Q. Was there anything said by the son who was there?

A. Well, at first he was inclined to get a little nervous but I told him that I was there as an officer and it was my duty to protect all interests, both sides, I couldn't have any trouble of any kind, and for that reason, why, I was protecting him and his mother as well as I was the captain, and he understood it that way and that was the end of it.

Q. Did he say anything to his father?

A. No, I wouldn't let him.

Q. Now, then, did Captain go away with you?

A. The captain went away with me.

Q. You say you were up there afterwards: What was the occasion of that?

A. Well, afterwards, the captain took out a subsequent replevin to get the goods that he had left there before.

Q. And when you went up that time who did you see?

A. I am not sure whether it was the same son or not but I saw the wife and the daughter and the son; probably it was the same son, I couldn't say; I wasn't acquainted with the sons.

Q. Well, what took place? What happened?

A. About the same as what it was on the previous occasion, was all.

Q. Did you bring the things away?

A. I did.

Q. And then were you there after that?

A. I don't think I was there after that.

Q. Was the captain with you on this occasion?

A. Both occasions.

Q. Was there any squabbling between him and his wife?

A. I wouldn't permit any; in fact, there wasn't any real indications of a squabble. There was about the same nervousness that there would be at any place where an action of that kind was taking place.

Q. Where did you take these goods to?

A. I loaded them on the wagon and I presume they were taken to ——

By Mr. Backes:

Q. Well, do you know?

A. No, I don't know.

By Mr. Satterthwaite:

Q. You delivered them into the possession of the captain?

A. I delivered them into the possession of the captain. I think it was Petry's man on the wagon.

Q. After the wagon was loaded how did you and the captain leave?

A. Came down on the trolley.

Q. Did you go over to the hotel to wait for the trolley?

A. We did.

Q. Now, did the captain's sons come over while you were over there?

A. I don't remember that.

Q. Don't remember the two of them coming over?

A. No.

Q. You don't recall?

A. I don't recall their being there; if they were there I don't recall it.

Cross-examination.

By Mr. Backes:

Q. You went to the house for the purpose of executing this writ of replevin, didn't you?
A. That was it.
Q. And that writ described the household goods contained in the house?
A. It described the goods that I was to take under it; yes, sir.
Q. Well, did they include nearly everything that was in the house?
A. No; there was quite a number of articles that were included in the writ and there was a lot of articles that were not.
Q. And the first time you left the pump and stove?
A. Left, I think, four or five articles, at the dictation of the captain.
Q. And after that you went back and secured them, didn't you?
A. Yes, sir.
Q. Any disturbance there at all?
A. I saw none, only, just as I said before, the natural nervousness that is always attending those occasions.

JESSE C. LEWIS, a witness produced in behalf of the defendant, being duly sworn according to law, on his oath says:

By Mr. Satterthwaite:

Q. Mr. Lewis, do you live in Ewingville?
A. Yes, sir.

Q. And are you the husband of Mrs. Lewis, who was on the stand?

A. Yes, sir.

Q. Do you know Captain Walsh?

A. Yes, sir.

Q. You have known him how long?

A. Five or six years.

Q. Do you remember an occasion sometime last year of going there to take off the lock of the door?

A. Yes, sir.

Q. How did you come to go over there?

A. Mr. Walsh came to me and asked me if I had a screw-driver, that he had a lock he wanted taken off. I said, "Yes." He asked me if I would help him take it off. I didn't know at the time that there was any fuss in the house or that there was to be any trouble over its removal, so I went over with him.

Q. Then who did you see there?

A. I saw Mrs. Walsh and Miss Walsh and Thomas Walsh.

Q. And what did you proceed to do?

A. After I got in there he asked me to take off the lock, and a little disturbance arose and I wouldn't touch the lock.

Q. Did you start to take it off?

A. No, I didn't start.

Q. You say a little disturbance arose. What do you mean?

A. An argument over taking off the lock.

Q. Well, who started it? Who said anything?

A. Why, Mr. Walsh was ——

Q. Mrs. Walsh?

A. Mrs. Walsh was the one.

Q. Who did she speak to,—Captain Walsh?

A. Spoke to me first.

Q. What did she tell you?

A. Told me not to touch the lock.

Q. And then what occurred?

A. The captain asked me for the screw-driver and I handed it over to him.

Q. Then what?

A. He attempted to take the lock off and Mrs. Walsh got possession of the screw-driver some way, I don't just remember, and I came out.

Q. After Captain took the screw-driver did he start to unscrew the lock?

A. He started to go towards the door, kneeled down to the door.

Q. He did kneel down to the door?

A. Yes, sir.

Q. And did he start to work the screw-driver?

A. I couldn't say.

Q. Did he take that position?

A. He took that position.

Q. Then who, if anybody, did anything to him?

A. Why, Mrs. Walsh seemed to get possession of the screw-driver, I don't know how she got possession, I didn't get the screw-driver for quite a few days afterward.

Q. Did you get it afterwards?

A. Yes, sir.

Q. From whom did you get it?

A. I couldn't say, it was returned to the house.

Q. You didn't get it from the captain?

A. No.

Q. Now, then, you were there until Mrs. Walsh got possession of the screw-driver, you say?

A. Yes, sir.

Q. How near Captain and Mrs. Walsh were you?

A. Why, we were all very close together.

Q. You heard everything that was going on?

A. Yes.

Q. Did the captain point the screw-driver at his wife and threaten to run it through her?

A. Not as I saw.

Q. What say?

A. Not as I saw.

Q. Did you see any such thing?

A. No, I didn't hear any such conversation.

Q. Were you near enough to hear it?

A. Oh, yes.

Q. Were you near enough to see if the motion had been made?

A. Yes, sir.

Cross-examination.

By Mr. Backes:

Q. You went to the house for the purpose of taking off the lock, didn't you?

A. Yes, sir.

Q. When you found there was trouble between the husband and wife you left, didn't you?

A. I got out, yes, as soon as I could.

Q. And you didn't see what was going on after that?

A. Well, the argument was pretty well over when I came out.

Q. And who carried on the argument?

A. Why, Mrs. Walsh was the only one seemed to say anything.

Q. And she protested against taking the lock off, did she?

A. Yes.

Q. What did you hear the captain say?

A. He didn't say much of anything as I heard.

Q. Stood by quietly?

A. Yes, sir, he asked me to take it off.

Q. Did you hear him make any threats?

A. No.

Q. Did you hear Mrs. Walsh make any threats?

A. No; she only asked Captain not to take the lock off.

Q. How did Mrs. Walsh get possession of the screw-driver?

A. I couldn't say.

Q. Was there any tussle?

A. There didn't seem to be any tussle.

Q. You don't remember what took place?

A. I remember an argument and Mrs. Walsh getting possession of the screw-driver.

Q. Well, when she got possession of the screw-driver what did she do?

A. I left at the time, I came out as soon as I could.

Q. How long were you there?

A. I suppose five minutes.

Q. Now, didn't you hear him say that if she didn't move out of his way he would drive the screw-driver through her?

A. Not while I was there.

Q. He might have said it?

A. Not while I was in there.

By Mr. Satterthwaite:

Q. But she already had the screw-driver before you left?

A. She had possession of the screw-driver when I came out.

Q. Do you know how long the captain remained in there?

A. I couldn't say.

Q. Do you recall whether the captain came out with you or not?

New Jersey State Library

A. I think he came as far as the door, as far as the porch.

Q. Did you notice whether he went back again or not?

A. I couldn't say.

Q. He didn't come out of the house?

A. He came as far as the door.

Q. Do you mean came out of the door?

A. I don't remember whether he came out on the porch, but he opened the door and I came out.

PATRICK RYAN, a witness produced in behalf of the defendant, being duly sworn according to law, on his oath says:

By Mr. Satterthwaite:

Q. Mr. Ryan, you live where?

A. I live in Hopewell Township.

Q. Your business is what?

A. I have a farm there.

Q. And how far do you live from Ewingville?

A. Somewheres about a mile, as near as I can tell you.

Q. Do you know Captain Walsh?

A. Yes, sir.

Q. How long have you known him?

A. I have known him quite a while, twelve or fifteen years, maybe more, maybe twenty years.

Q. When he lived at Ewingville did you see him frequently?

A. Yes, sir.

Q. How often would you see him on an average?

A. Well, every time I would pass by if he was

around I would see him, sometimes I came there to see him, sometimes I used to work there for him.

Q. Were you and he on friendly terms?

A. Yes, sir.

Q. Did you ever visit him in the evening?

A. Yes, sir.

Q. How often?

A. Well, when the family was away I suppose I used to come there perhaps once a week, perhaps once every two weeks.

Q. When the family was home?

A. Well, I used to come quite often then.

Q. Do you remember his being there during the years 1910 and 1911 and 1912 and part of 1913, when his family was away?

A. Yes, sir.

Q. And you visited him then quite often?

A. Yes, sir.

Q. Did you ever see Mrs. Walsh there during these times?

A. Yes, sir.

Q. How often would you see her there?

A. Well, I couldn't really say, I seen her quite often.

Q. Would anybody else be there except the captain and her?

A. Well, sometimes—I don't remember anybody else there, but she was there and the captain.

Q. What appeared to be there relations with each other when you saw them there?

A. Appeared to be very friendly, seemed to be.

Q. Were you a member of the Vigilance Society that the captain was a member of?

A. Yes, sir.

Q. Did that society have a banquet every year.

A. Well, I don't know they had it every year, they

had it quite often; they had it for the last five or six years, before that I don't remember, but I attended them all, anyhow.

Q. You did attend them all?

A. Yes, sir, as far as I remember.

Q. And do you remember attending one in 1914?

A. Well, I remember I attended them all.

Q. You did attend the one in 1914?

A. I think so; I have been to them all, anyhow.

Q. And was the captain there?

A. Yes, sir; he was chairman of the banquet committee.

Q. He was chairman of the banquet committee?

A. Yes, sir, he was one of them.

Q. And what time of day were these dinners held?

A. As a rule they were commenced between one and two o'clock, as far as I can remember.

Q. In the afternoon?

A. In the afternoon.

Q. And they would last up until what time?

A. Maybe four to half-past, maybe a little later, just depends; some would go after dinner, some would stay for quite a while.

Q. Yes, and who was toastmaster on this occasion in 1914? Do you remember?

A. I don't know whether the captain was or Mr. —I can't remember exactly which one, I don't remember exactly about that, I couldn't testify to that.

Q. And do you remember whether you went home with the captain from this dinner in 1914?

A. I don't remember whether I did or not.

Q. Do you remember seeing Captain there that day?

A. Yes, sir.

Q. What was his condition when he left that banquet as to sobriety?

A. Why, I couldn't say that his condition was any worse when he left, about the time we left, than it was when we first entered the banquet hall.

Q. Well, was he intoxicated?

A. No, sir.

Q. Was not?

A. No, sir.

Q. Did Captain speak at that banquet?

A. I believe we all made a remark, all of them that I seen.

The Vice-Chancellor: I do not believe this witness remembers the 1914 banquet so as to distinguish it from others, from what he has said.

Q. Do you or do you not recall the 1914 banquet distinctly? Do you know when Captain finally moved away from Ewingville leaving his family there?

A. When he moved away?

Q. Yes.

A. In 1915.

Q. Yes, do you remember that?

A. I do, sir.

Q. Now, do you recall the banquet held the year before that?

A. I do.

Q. Now, I am asking you about that one particularly, as to Captain's condition when he left that banquet?

A. Well, I don't know what his condition was, because maybe members left one at a time, I couldn't very well say, but I never seen him—I seen the captain always about the same; I can't tell you what time we left, maybe some of us went earlier than the others, maybe, went at different times.

Q. Did you stay there until the banquet was over?

A. I did, yes, sir.

Q. And up to the time you left what was the captain's condition as to intoxication?

A. I believe, as I remember right, he was talking to Mr. Donnell privately, Mr. Donnell was going away to New York, as far as I remember Mr. Walsh was talking to him when I left.

Q. Well, was he intoxicated?

A. No, sir.

Q. During the time you have known Captain about how often on an average would you see him,—come in contact with him?

A. I couldn't say that, I used to visit him about once every two weeks, and maybe I would see him through the week, for I was up and down with the team, I might see him in his own place or outside.

Q. Did you ever see him drunk?

A. No, sir.

Q. Did you ever drink anything with him at his home in the evenings?

A. Yes, sir.

Q. Did he drink to excess?

A. Well, I don't ever remember him drinking—I have knowed him to drink, but I never took any notice how much he did drink.

Q. Well, did he drink so that he got under its influence?

A. No, sir; I never seen Mr. Walsh intoxicated in my life.

Q. Did you one night at his house, you and he together, drink two boxes of beer and a quart of whiskey and some wine?

A. Well, I have never kept a tally of what we drank, but I do know that Mr. Walsh—I never seen him drink whiskey when there was any beer around, I never seen him take a drink of whiskey in my life when there was any beer; any whiskey to be drank I can drink it.

Q. Well, did you ever drink that quantity any one night?

A. Oh, I never did in my life, no.

Q. Did the captain in your presence?

A. I drank the whiskey and Captain drank beer, but I never drank a quart of whiskey—I never drank over three drinks in my life at a time.

Q. Now, Captain kept the hotel there in Ewingville for some time?

A. Yes, sir.

Q. And what other business did he do there, if you know?

A. Well, he used to be in the horse business, he kept—he boarded and trained horses when I first knew him, and kept some of his own, and he used to have them on the track and train them; that is quite some time ago, that is when I first knowed him.

Q. After he gave up the hotel did he do some farming?

A. Yes, sir.

Q. Did he work on the farm himself?

A. He did, yes, sir.

Q. You said you worked there some for him?

A. Well, we used to exchange work, at times I would help him, help him plant his potatoes and corn, he had only 24, 25 or 26 acres, and he would help me, I would help him, he would help me in exchange; that is when he had teams.

Q. And was he able to attend to his business?

A. Yes, sir.

Q. Did you ever see him so under the influence of liquor that he couldn't attend to his business?

A. Never. Since he had the sale, he sold all his horses, his work horses, then he had me to do the work on this pateh of ground and he used to pay me.

Cross-examination.

By Mr. Backes:

Q. How long have you known the captain?

A. Well, I suppose I remember the captain twenty or twenty-five years.

Q. Do you remember him when you used to stop at his hotel up there?

A. Yes, sir.

Q. That was your usual stopping place, wasn't it?

A. No, sir, I don't ——

Q. You always stopped there when you drove by?

A. Not one-half nor one-tenth, no, sir, very seldom I stopped with a team of horses, if I came there at all I came there ——

Q. That is all. You have seen the captain drink, haven't you?

A. Yes, sir.

Q. To excess?

A. Yes, sir,—I seen him drink with you.

Q. With me?

A. Yes, sir, up Pennington.

Q. You have seen him drink to excess, haven't you?

A. No, sir.

Q. He could drink a large quantity of whiskey or intoxicating drinks, couldn't he?

A. Well, I don't know, I never seen him under the influence, I have known him to drink quite some beer, but I didn't keep tally on him, I never thought I would need to.

Q. Now, the captain is sort of a horse jockey up there?

A. Well, I suppose so, he was in his younger days.

Q. And have you heard the captain curse and swear?

A. Sometimes.

Q. A very passionate man, wasn't he?

A. Well, I heard him swear.

Q. Easily aroused temper?

A. Well, it depends what the nature of the case may be.

Q. If he was crossed, why he was ready to fight, wasn't he?

A. Well, I never seen him fight.

Q. But you have seen him threaten to fight, haven't you?

A. I don't know as I did.

Q. Ever threaten you?

A. No, sir.

Q. Didn't you on several occasions threaten to take the teams out of the field there if he didn't do the work?

A. I never did.

Q. Never did?

A. No.

Q. Did you know Mrs. Walsh?

A. Yes, sir.

Q. Did you ever visit the house?

A. Yes, sir.

Q. What kind of a woman is she?

A. Well, I couldn't say anything, but she is a fine woman.

Q. A fine woman?

A. She is as nice a little lady as ever I run into; the whole family is nice as far as I know.

A. Reeder Green, a witness produced in behalf of the defendant, being duly sworn according to law, on his oath says:

By Mr. Satterthwaite:

Q. Mr. Green, where do you live?
A. I live at Ewingville.
Q. How long have you lived there?
A. All my life.
Q. Do you know Captain Walsh?
A. I do.
Q. Known him how long?
A. Why, I don't know, fifteen or twenty years.
Q. How often have you seen him during that time?
A. Well, I saw him most every week go by on the car, maybe two or three times a week.
Q. When he lived in Ewingville how often did you see him?
A. Well, saw him about once a week, something like that.
Q. Come in contact with him personally,—run across him personally?
A. Well, yes.
Q. And what was his habits as to sobriety?
A. Well, he was a man who drank, but I never seen him under the influence of liquor, never seen him stagger.
Q. Never did?
A. Not that I ever remember of.
Q. Ever see him what you would call drunk?
A. No.

Cross-examination.

By Mr. Backes:

Q. Never heard of him being drunk, did you?
A. What say?
Q. Did you ever hear of him being drunk?
A. No, I don't know as I ever heard of him being drunk?
Q. What were his habits when he was under the influence of liquor?
A. Well, I guess he used bad language.
Q. That was common with him, wasn't it?
A. Well, now, I couldn't say about that.
Q. Always ready and looking for a fight?
A. No, I couldn't say that, no.
Q. Well, you knew Mrs. Walsh, didn't you?
A. I did.
Q. What was her character, as to good conduct?
A. I thought she was a very nice little woman.

By the Vice-Chancellor:

Q. Do you remember whether Mr. Walsh was quarrelsome when he was drinking?
A. Not that I knew of, now, I never heard that, never heard him quarrel with any one.

By Mr. Backes:

Q. Are you a constable of Ewing Township?
A. Yes, sir,—no, not now.
Q. Were you a constable?
A. I used to be, yes.
Q. Did you ever arrest Captain Walsh for disorderly conduct?
A. I did not.
Q. Did you ever arrest him at all?
A. I did not.

EDGAR MAPLE, a witness produced in behalf of the defendant, being duly sworn according to law, on his oath says:

By Mr. Satterthwaite:

Q. Mr. Maple, where do you live?
A. I live in the city, now, of Trenton.
Q. You formerly lived in Ewingville?
A. I did a number of years ago.
Q. Did you know Captain Walsh?
A. Yes, sir.
Q. How long did you live there when you knew Captain Walsh?
A. I think it was about seven years before I moved away.
Q. And how often would you meet him?
A. Well, quite often, I was a neighbor at that time.
Q. Well, what was his habits as to sobriety?
A. Well, he was a good neighbor, he and I was always friends, always friendly with me.
Q. Well, I say, what was his habits as to sobriety, —getting drunk?
A. Well, I never saw him drunk.
Q. Never did?
A. No, I can say that.

Cross-examination.

By Mr. Backes:

Q. You never drank any, did you?
A. Very little.
Q. Well, do you know whether the captain drank or did not?
A. Oh, I have seen him take a drink.

Q. Have you seen anything of him in the last fifteen or twenty years?

A. We have met occasionally when he would be in the city.

Q. But not out in the immediate neighborhood of the house?

A. Not Ewingville, I haven't been up there.

Q. Then you don't know anything about him in the last fifteen or twenty years, do you?

A. Not his habits, no.

Q. Not of his habits?

A. No.

By Mr. Satterthwaite:

Q. When did you move away from Ewingville?

A. It was in 1916.

Q. Well, prior to that time you lived there how long?

A. I was raised there.

Q. Well, you say you moved from there in 1916?

A. Yes, sir.

Q. That is this year?

A. Oh, not 1916, I mean sixteen years ago.

Q. When you said 16 you didn't mean 1916?

A. No.

Q. Did you ever see Captain drunk?

A. I can't say that.

WILLIAM J. SANDFORD, a witness produced in behalf of the defendant, being duly sworn according to law, on his oath says:

By Mr. Satterthwaite:

Q. Mr. Sandford, where do you live?

A. Ewingville.

Q. And lived there how long?

A. Eight years.

Q. And do you know Captain Walsh?

A. Yes, sir.

Q. And knew him while you lived there?

A. Yes, sir.

Q. Are you a member of the Vigilance Society they have up there?

A. Yes, sir.

Q. Have you attended the banquets they held in recent years?

A. Attended them all.

Q. Do you remember one in 1914?

A. Yes, sir.

Q. Was Captain Walsh there?

A. Yes, sir.

Q. What part did he take in that banquet?

A. Captain Walsh has been chairman of the entertainment committee for—well, ever since I have been in the society, or of the banquet committee, I should say.

Q. At this 1914 banquet the captain was down for an address?

A. Yes, sir.

Q. Did he speak?

A. He speaks every year as chairman.

Q. Were you there when the banquet broke up?

A. Yes, sir.

Q. What time did it break up?

A. Well, they generally break up about half-past four.

Q. Well, did it at that time?

A. Well, I couldn't swear to that, whether it was half-past four, it was no later than five o'clock at any time.

Q. Did you see Captain Walsh leave?

A. Yes, sir.

Q. Did you leave with him?
A. Yes, sir.
Q. Where did he go?
A. Why, we took a walk around north Broad Street and waited for the six o'clock trolley.
Q. And did you take the trolley together?
A. Yes, sir.
Q. The banquet was held in Trenton?
A. Yes, sir.
Q. Now, you went back to Ewingville together?
A. Yes, sir.
Q. What time?
A. On the six o'clock car.
Q. What was Captain's condition then?
A. His condition was all right as far as I know about it.
Q. Well, you had an opportunity to know?
A. Sober.
Q. He was sober?
A. Yes, sir.
Q. And you were sober, I take it?
A. I hope so.
Q. And now, how often on an average would you meet Captain since you knew him up there?
A. Once or twice a week.
Q. What were his habits for sobriety as far as you observed?
A. Always sober.
Q. Ever see him drunk?
A. No, sir.

Cross-examination.

By Mr. Backes:

Q. How do you fix this banquet you attended with the captain in 1914?

A. By invitation.

Q. I know, but you recall attending a number of banquets, don't you?

A. Yes, sir, I have attended quite a few.

Q. The captain was at all of them?

A. Yes, sir.

Q. And you went home with him from all of them?

A. No, sir.

Q. How can you remember this 1914 banquet?

A. I remember it because we walked around the town for a while and I know it wasn't last year.

Q. And you know it wasn't the year before?

A. Yes, sir, I knew it wasn't the year before.

Q. How do you know it?

A. Because I remember it.

Q. You are sure it wasn't the year before that?

A. No, sir, it wasn't.

Q. You hold all your banquets at the Trenton House, don't you?

A. All except the first one.

Q. All the rest of them have been held at the Trenton House?

A. Yes.

Q. Now, after the banquet did you go around with the captain visiting other saloons?

A. No, sir.

Q. Had all the drinks you wanted at the banquet?

A. I didn't take so much of it myself.

Q. Well, how about the captain? Did you see the captain drinking?

A. Captain Walsh went in his home and we had a bottle of beer apiece.

Q. You had some more beer there?

A. Yes, sir.

Q. You say you saw him once or twice a week?

A. Yes, sir, about once or twice.

Q. Just a casual meeting?
A. Just a casual meeting.
Q. Never visited his house?
A. Yes, sir.
Q. Did you ever visit his house?
A. Yes, sir.
Q. Once or twice a week?
A. No, sir; once in a while.
Q. How often once in a while?
A. Well, not much above once a month, I shouldn't say.
Q. And did you ever see the captain drink in his own house?
A. Yes, sir.
Q. Did you ever see him under the influence of liquor?
A. No, sir.
Q. In his own house?
A. No, sir.
Q. Or anywhere?
A. No, sir.
Q. Now, what is the captain's habits when he gets under the influence of liquor? What are his characteristics?
A. I never saw him under the influence of liquor yet.

By the Vice-Chancellor:

Q. Well, when he is drinking?
A. Why, always jovial when I have been in his company.

By Mr. Backes:

Q. Not cross and annoyed?
A. No, sir.

Q. Boisterous?
A. No, sir.
Q. Ready to fight?
A. No, sir.
Q. Carrying a chip on his shoulder?
A. Never saw him.
Q. Did you ever see Mrs. Walsh?
A. Yes, sir.
Q. What do you say about Mrs. Walsh?
A. The only thing I can say about Mrs. Walsh is she is a perfect lady.

By Mr. Satterthwaite:

Q. What time did you leave Captain Walsh's house that night you say you and Mr. Walsh stopped in?
A. About half-past six.
Q. And you went home?
A. I went home.

Frank E. Cook, a witness produced in behalf of the defendant, being duly sworn according to law, on his oath says:

By Mr. Satterthwaite:

Q. Mr. Cook, you reside where?
A. Trenton.
Q. Did you formerly live at Ewingville?
A. Yes, sir.
Q. How long since you moved away from there?
A. About seven years.
Q. And how long did you live there?
A. Well, about fourteen or fifteen years.

Q. During that time did Captain Walsh live there?
A. He did.
Q. Did you know him then?
A. Yes, sir.
Q. Known him since?
A. Yes, sir.
Q. Would you meet him often?
A. When I lived up there?
Q. Yes.
A. Most every day.
Q. And did you meet him since?
A. Well, since I moved in town not so often.
Q. How often would you see him since?
A. Maybe once in a while, two or three weeks.
Q. What can you say as to his habits with regard to sobriety?
A. I never knew him to be drunk.
Q. Never did know him to be drunk?
A. No, sir.
Q. You knew he drank?
A. I know he drank; yes, sir.

Cross-examination.

By Mr. Backes:

Q. And drank to excess, didn't he?
A. I don't think so.
Q. Drank great quantities of intoxicants?
A. No, sir.
Q. How many drinks would he average a day when you were in his company?
A. Oh, I don't know. We used to work together some up there, I used to help him, he would drink maybe five or six bottles of beer a day.
Q. Is that all?
A. That is all.

Q. Drink anything else?

A. No, sir. Mr. Walsh is not a whiskey drinker.

Q. But you haven't seen anything of him in the last seven years?

A. Not so much.

Q. So you can't speak as to his habits since that time?

A. No, sir.

Q. Do you know Mrs. Walsh?

A. I do.

Q. Did you ever visit Walsh?

A. I have.

Q. Did you ever visit at the house?

A. Yes.

Q. What do you say as to Mrs. Walsh's character?

A. A perfect lady as far as I know.

By Mr. Satterthwaite:

Q. You spoke of his drinking five or six bottles of beer during the day: Would that be at one sitting?

A. No, that would be all day, he would be working, I used to help him, living right across the road from him.

JOHN E. WALSH, the defendant, being duly sworn according to law, on his oath says:

By Mr. Satterthwaite:

Q. Captain, you are the defendant in this case?

A. Yes, sir.

Q. You are a native of Ireland, Captain?

A. Yes, sir.

Q. And you married Mrs. Walsh, the complainant, some forty-two years ago, she has testified?

A. Yes, sir.

Q. And you have nine children?

A. Yes, sir.

Q. Where did you live before you moved up to Ewingville?

A. In Trenton.

Q. Where?

A. On Pennington Avenue.

Q. Whereabouts?

A. 82½ Pennington Avenue.

Q. And how long ago was that?

A. Well, twenty-eight or nine years ago, I guess, to the best of my memory.

Q. What business were you in then?

A. I was in the wholesale ale and beer business.

Q. Prior to that time did you conduct any other business?

A. Yes, sir.

Q. What?

A. I was in the horse business, training horses.

Q. And prior to that what?

A. I kept a saloon, kept a hotel.

Q. Where did you keep that?

A. Out where the Monument House is now, I also kept on South Feeder Street.

Q. Your wife lived with you those times you speak of?

A. Yes, sir.

Q. And during that period your children were being born and reared?

A. Yes, sir.

Q. When did you first move to Ewingville?

A. About twenty-eight or nine years ago.

Q. And you went there to keep that hotel?

A. Not at that time; no, sir.

Q. What did you do?

A. I bought the property where my wife is living now.

Q. And what business did you carry on then?

A. Why, I was still in the wholesale business and training horses. My object in going there was to get close by where the race track was.

Q. There was a track near Ewingville?

A. Yes, sir.

Q. Training track?

A. Yes, sir.

Q. And you bought this home there, the house with about 26 acres?

A. 24 acres, and I think 22 with the roads taken out.

Q. And your wife moved there with you?

A. Yes, sir.

Q. Then how long did you continue in that business before you began keeping the hotel in Ewing?

A. About two years and a half, two years, about two years.

Q. And then did you move into the hotel?

A. Yes, sir.

Q. And what did you do with the property you had there?

A. Why, I lived in it for quite a time, then afterwards it was rented, then it became vacant again for quite a long time.

Q. Well, did your family live with you over at the hotel?

A. Yes, sir.

Q. And how long did you keep that hotel?

A. I ran it about seven or eight years.

Q. And when did you give it up?

A. Why, when my wife wanted to come to town.

Q. What year was that?

A. I couldn't tell you just exactly the year.

Q. Well, was it prior to 1906?
A. Yes, sir.
Q. About how long before that?
A. About five or six years.
Q. And she came to town?
A. Yes, she came to town.
Q. Children with her?
A. Yes.
Q. And where did they go?
A. They went to 82½ Pennington Avenue, the house we occupied previously.
Q. Was it your house?
A. Yes, sir.
Q. And did you understand she was going to that house when she moved there?
A. Yes, sir.
Q. Did she go down with your consent?
A. No.
Q. Did you consent to her going?
A. I couldn't keep her.
Q. What I mean is this: It wasn't your desire she should go?
A. Oh, no, no, sir.
Q. Well, did you consent to her going?
A. No, I did not. I tried to persuade her not to go, but she wanted to come to town and she wanted to get the children to the parochial school, it was nothing but a hell-hole up there for her children, she told me, and she would rather live in the swamp than she would live in the best house in Ewingville.
Q. Was this house vacant of yours?
A. Yes, sir, it was vacant.
Q. Was it arranged between you she should move into that house?
A. No, sir.
Q. How came she to go in there?

A. She moved in it. She knew she was welcome to anything I had.

Q. She moved into it? You let her do it?

A. Yes, sir.

Q. How old was the eldest child?

A. He would be, I guess, about twenty years old, I guess.

Q. Was he attending school then?

A. Yes.

Q. Which one was this?

A. William.

Q. Where was he attending school?

A. In Trenton. I think at that time, if my memory serves me right, he was studying law under Judge Woodruff.

Q. He had quit school, then?

A. Yes.

Q. And who was supporting him?

A. I was.

Q. And the other children were all attending school?

A. Yes.

Q. You said their mother wanted them to go to the parochial school?

A. Yes, sir.

Q. And they did go there, so far as you know?

A. Yes, sir.

Q. At that time were there any trolleys at Ewingville?

A. No, sir.

Q. Between Trenton and Ewingville?

A. No, sir.

Q. How long did she stay in Trenton?

A. Why, near about two years, I think.

Q. While she was there who supported her and the children?

A. Sir?

(Question repeated.)

A. Why, she collected a good deal of the rent for the houses on Pennington Avenue.

Q. And you had at that time how many houses on Pennington Avenue?

A. I had just the same number as I have now, five.

Q. Well, were these houses on Gordon Street built at that time?

A. Yes, sir.

Q. You had those, too?

A. Yes, sir.

Q. Did you permit her to make the collection?

A. Did I forbid her?

Q. Did you permit her?

A. No. Really I didn't say yes nor no.

Q. Well, then, as a matter of fact how did she get her support?

A. From the moneys that she collected.

Q. What say?

A. From the moneys that she collected.

Q. And that was rent from your properties?

A. And when the children would meet me—they used to come up, they would always get a few dollars going down again.

Q. And she was living in your house?

A. Yes.

Q. Did you have any quarrel when she moved down there?

A. Sir?

(Question repeated.)

A. No, sir, no quarrels, but her anxiety to get to Trenton and I couldn't afford it, I couldn't ——

Q. Your business up there at that time was what?

A. Sir?

(Question repeated.)

A. Was hotelkeeper and training horses and farming as well.

Q. Now, then, you kept that up how long while she was away?

A. Almost two years, a year and a half, two years.

Q. And then did she come back?

A. Yes.

Q. Meanwhile were you still keeping the hotel?

A. Yes, sir.

Q. How long did you keep the hotel after she came back?

A. I think—my memory is not good upon those things, because there were affairs that were unpleasant and I wanted to forget them, there were occasions—affairs that were very unpleasant.

Q. Well, now, the question is how long you kept the hotel after she came back?

A. After she came back?

Q. Yes.

A. I really couldn't tell.

Q. Do you remember when you actually sold out the hotel?

A. Sir?

Q. Do you remember when you sold it?

A. Yes, sir, I remember the occasion.

Q. When was it?

A. The year I couldn't tell you.

Q. Beg pardon?

A. I couldn't tell you the year.

Q. Well, about how long ago?

A. Well, it must be fifteen or sixteen years ago.

By the Vice-Chancellor:

Q. How long?
A. Fifteen or sixteen years ago, perhaps, maybe a year more or maybe a year less.

By Mr. Satterthwaite:

Q. Now, while she was in Trenton with the children and you were up there keeping the hotel and training horses, what household did you have?
A. What household did I have?
Q. Yes.
A. Why, practically speaking, nothing, I didn't run anything but the bar.
Q. Did you have a housekeeper?
A. No, sir.
Q. How did you live?
A. My son, younger son, John, tended bar and we lived there together.
Q. Well, who did the cooking?
A. John.
Q. You cooked for yourselves, did you?
A. John did, yes, sir.
Q. And did you visit your wife while she was down in Trenton?
A. No, sir, I never went near her.
Q. Did she visit you up there?
A. No, sir.
Q. She did not?
A. No, sir.
Q. Were you on good terms at that time?
A. I was on good terms, so far as I was concerned.
Q. Now, when you sold out the hotel then where did you move?
A. Where did I move?

Q. Yes.

A. Right across the street to the house she is occupying now.

Q. And she went there with you?

A. No, sir; no, sir, she did not.

Q. Well, you did that before she came up?

A. Sir?

Q. You sold the hotel before she came up, then?

A. Oh, yes; I sold the hotel, sold the furniture at the hotel, before she went away and leased it.

Q. Yes, but I mean you sold out the hotel business before she came back to Ewingville to live?

A. I sold out the hotel business before she left there, that was one of the causes of me selling out the business.

Q. Then were you and your son John living in this house alone?

A. No. That refreshes my memory somewhat of the necessary changes that happened there. She persisted so much in going to come to town that I knew I couldn't keep a hotel without my wife or some help, and consequently I leased the property to a man named Dye.

Q. And then he ran the hotel?

A. He ran the hotel for quite some time, two or three years.

Q. Now, then, what business were you carrying on then?

A. Training horses and farming.

Q. Now, then, were you alone in this house, yourself?

A. Sir?

(Question repeated.)

A. I was alone in the house, yes, sir.

Q. Now, then, she did come back there with the children?

A. Yes, sir.

Q. She did move back there?

A. Yes, sir.

Q. How came she to do that?

A. Because I suppose she couldn't hold herself any longer.

Q. What do you mean by that?

A. Why, she had no feasible good ways or means of living.

Q. You said she had the rent from these houses?

A. Well, only a portion.

Q. Who was collecting the other portion?

A. I did.

Q. Then she came back there and the children with her?

A. Yes.

Q. And were the children then all attending school except the eldest, whom you said was studying law?

A. Yes, sir.

Q. Where did they go to school?

A. Down at St. Mary School.

Q. Did any of them go anywhere else?

A. Yes, some of them went to the Academy School, Joseph Wood School.

Q. Did any attend any other school?

A. Later on they went to the high school.

Q. And did any attend any other school than that?

A. Sir?

(Question repeated.)

A. The younger children, the two younger children, attended Ewingville School.

Q. Did any of them go to Pennington?

A. No,—Eddie went to Pennington Seminary.

Q. And was it after he came back that he went to Pennington Seminary?

A. Yes, sir.

Q. And how did he get there?

A. With a horse and carriage.

Q. You furnished him the horse and carriage?

A. Yes, sir; he had one of the best horses that I had.

Q. And how did the other children get to the Trenton School?

A. Horse and carriage.

Q. Did you furnish it?

A. Yes.

Q. Now, things went along, then, until 1910. How were you and your wife getting along?

A. We were getting along very nicely.

Q. Did you ever have any troubles?

A. No, sir, not to any—just the usual things liable to occur in almost any house.

Q. Did you have any spats?

A. Once in a while, very seldom, in fact, I didn't have time to have spats because I was working night and day.

Q. She left there again, did she?

A. Yes.

Q. When was that?

A. It was some time early in ——

Q. 1910?

A. Sir?

Q. In 1910?

A. Yes, sir.

Q. How came she to leave you at that time? What preceded her departure?

A. I came down to have her arrested.

By the Vice-Chancellor:

Q. What?
A. I came down town to have her arrested.

By Mr. Satterthwaite:

Q. For what?
A. For hitting me on the face and raising a—hitting me on the face with my derby hat and raising a cut, blacking my eyes, while I was sitting at the dinner table; I never opened my mouth to her at the time.
Q. Well, now, what happened then? You say you went down town to have her arrested?
A. On the occasion I was hard up for money, I had horses I wanted to sell, I had three of the finest horses ——

Mr. Backes: Well, now, I object to this. What are we going into?

The Vice-Chancellor: I do not know whether it is material or not; I will let it be answered.

Q. Go ahead, Captain.
A. A gentleman from Princeton, I think Russell was their name, I got acquainted with his coachman, and he used to pay any price for his horses, and I got him to come over there to my place with his team and hook my horses up. Then Tommy was the youngest boy and Harry was still a boy. So they came over this morning about half-past eight o'clock, we unhooked one of his horses, put mine to his carriage, and the coachman, this gentlemen—I think his name was ——

Q. Now, Captain, just come down to what happened.

A. Well, I will tell you in a moment. This gentleman—he drove and I sat alongside of him in the carriage, and after he had driven each horse to suit himself he would then hand the lines to me and I would get out on the road and do my best by him. We done that with all three of the horses, and it took us from about half-past eight o'clock until about quarter past twelve to do this job. And the boys went into the house and he went away and was satisfied about the price, and they had eaten their dinner just before I went in, and there was a dish of soup at the head of the table where my seat usually was. I sat down and one of the boys commenced to talk, I don't know whether it was Harry or Tom. He said, "Is that the gentleman that there was so much talk about being such a good reinsman?" I said, "Yes," I said, "he is quite a horseman." "Why," he says, "the horses didn't go near as fast with him or look as good as they done with you each time." And just at that my daughter Agnes came in the door from the sitting room to the dining room and she threw up her hands like that (indicating) and she said, "Oh, my God, Pop, you are all the time fighting."

Q. Well, you hadn't proposed any fighting, had you?

A. No. She says, "You are all the time fighting." Threw her hands up like that (indicating). She seemed to be in hysterics. "Why," she says, "I am just crazy." I says, "There is a place over on the other side of the township for people that are crazy." And I had no sooner said that than my wife came in, grabbed this derby hat and she hit me here on the eye with it and cut me and blacked my eyes, left a scar which is there still, and neither my wife nor I ex-

changed words with each other no more than we are doing this present moment, not a word was exchanged until the act was committed.

Q. Now, you say you went down to have her arrested?

A. Well, I says, "This has gone as far as it ever will go with me. I will see what I can do, if I can't put you in the stone jug." And I walked out of the house and came down town as soon as I got a car. In the meantime I got William on the phone and he met me at the corner of State and Broad Street when I jumped off of the car, and he looked at me, he says, "What is the matter?" I says, "Nothing." He says, "Where are you going?" I says, "I am going to get a warrant for your mother." He says, "Why, what is the matter with your eye?" And so we talked the matter over. He said, "Such a scandal," he says, "for to have your wife arrested," he says, "You want to get them out of there, I will have them out of there." I says, "When will you have them out?" He says, "In an hour." I says, "You will?" He says, "Yes," he says, "I will pledge you my word of honor that they will be out of there in an hour." Well, that was about one o'clock in the day. I didn't get back there—I didn't get back to the house until—it was about five o'clock when I went back to the house, there was nobody in the house, the house was empty.

Q. Did you say to your son William that if he did not get them out of there that the responsibility of their blood would be upon him?

A. I never thought of such a thing.

Q. Did you say any such thing?

A. No, sir.

Q. Well, now, then, previous to that occasion had she been talking about going down town?

A. Yes, sir.

Q. How often? How long?

A. Oh, I was just down town for breakfast, down town for dinner and down town for supper every time I would go.

Q. But did she give any reason for wanting to move down town?

A. No,—so as to be near to the church.

Q. Did she ask you to move down town?

A. Oh, she wanted me to go with her always.

Q. Well, she wanted the family to move down town?

A. And me to go with her. I couldn't go.

Q. Now, then, had you had any quarrels, spats, with her before this you have just told about, when she hit you?

A. No.

Q. When you left there you were angry, weren't you?

A. Which time?

Q. When you left the house that day.

A. I was.

Q. Well, now, when you went back she was gone?

A. Yes, sir.

Q. How long did your anger last?

A. Oh, perhaps it was an hour after I came back again, less than that.

Q. And when did you see her after that?

A. I couldn't say.

Q. Well, about how long?

A. Perhaps might have been a year, pretty near, maybe three-quarters of a year.

Q. Well, she testified to your coming over to the Monument House when she was there talking to one of the tenants. How soon after this was that?

A. How soon after?

Q. After she went away?

A. That I went to the Monument House?

Q. Yes, and met her there.
A. Perhaps two weeks to three weeks.
Q. You saw her there, then?
A. I saw her, yes.
Q. Did you have any conversation with her then?
A. No, I don't think I had any conversation.
Q. What took you there then?
A. I had heard that they wouldn't pay her the rent.
Q. And how did you hear that?
A. I couldn't tell you how I heard it—by some of the children.
Q. And your purpose there that morning was what?
A. I went there with the purpose that morning to tell those people to pay her the rent and by accident she happened to be there.
Q. And did you tell them to pay her the rent?
A. I told them that she was entitled to the rent and to pay it to her.
Q. Previous to that time who had been receiving the rent for the Monument House?
A. Sir?

(Question repeated.)

A. Who was collecting it?
Q. Yes, who had been receiving the rent?
A. I had.
Q. You had?
A. Yes.
Q. Since that time have you received any?
A. No, sir.
Q. Have you ever attempted to collect any since then?
A. No, sir.

Q. Well, now, then, did you see her again before she came up to see you, up to your place at Ewingville, after this visit at the Monument House?

A. Oh, yes.

Q. Where did you see her?

A. At Ewingville.

Q. I know, but before you saw her at Ewingville.

A. Oh, yes, I saw her, I think, once, with Mr. Ryan, upon an election day or there was something going on that neither carriages and automobiles stopped there in front of the place.

Q. She testified that she went to live, after stopping at your son William's house for awhile, on ——

A. Well, she went to live on Mary Street.

Q. Did you ever see her while she lived there?

A. Yes.

Q. Where did you see her?

A. Out at Ewingville.

Q. That was after she got to coming up there?

A. Yes.

Q. Now, how often did she come up to Ewing?

A. Well, every Sunday and usually every Wednesday.

Q. How did these visits start? Do you know?

A. Well, really, I couldn't tell you how they started.

Q. When she came for the first time did you know she was coming?

A. I couldn't tell you that.

Q. You don't know?

A. No. I don't want to tell you what I don't know.

Q. Now, when she did first come and you first saw her there what sort of a meeting did you have?

A. Very pleasant meeting. I was glad to see her.

Q. Anything said about past troubles?

A. No, sir, not a word.

Q. Never mentioned?

A. Not a word that I think of.

Q. Anything said about her coming back?

A. Not at that time, I don't think, nor for several times after.

Q. And how long did she stay?

A. She usually used to come up—well, on week days, one o'clock, sometimes two o'clock, on Sunday, why, it was usually about twelve, she would catch the twelve o'clock car.

Q. And then how long would she stay? How late before she would go home?

A. Usually went down on the nine o'clock car.

Q. You mean nine o'clock in the evening?

A. Yes, sir.

Q. And would she get anything when she was up there?

A. Anything to eat?

Q. Yes.

A. Yes, sir, she used to always bring me a lunch.

Q. And would she take anything away?

A. She would.

Q. What?

A. Eggs, chickens, fruit, anything that was there.

Q. And were the children living with her?

A. Yes.

Q. All of them?

A. Yes, I believe all of them that wasn't married.

Q. Well, what ones were married?

A. Tom was married, Harry was not married, Eddie was not married and Frank was not married.

Q. And the daughters were living with her then, were they?

A. Well, Agnes was, but I think Joe was at—

Joanne was at the hospital learning to be a trained nurse.

Q. St. Francis?

A. No, Monmouth Hospital.

Q. At which hospital?

A. Monmouth County Hospital.

Q. Now, when she would come there—did I ask you whether you and she were alone in the house?

A. Yes, sir.

Q. Did you ever have any difficulties at all?

A. Not a word.

Q. Did she ever complain to you about your treatment of her at that time?

A. No.

Q. And now, it is in evidence already, I think, that you went to Ireland in the year 1913?

A. Yes, sir.

Q. And did your wife move back with the children while you were gone?

A. Yes, sir.

Q. Was that arranged between you and her before you went away?

A. Yes, sir.

Q. It was?

A. It was.

Q. How came that to be so arranged?

A. Sir?

Q. How came that to be so arranged—that arrangement made?

A. Because—on account of her frequent visits up there.

Q. Who suggested it?

A. Sir?

Q. Who first suggested her coming back?

A. Herself.

Q. She did?

A. Yes.

Q. What did you say to her?

A. I believe I did,—now, I am not positive who made the suggestion first, I wouldn't say.

Q. Now, prior to her coming away in 1910 had there been any discussion between you about some of the children remaining home or getting out, or not?

A. Until the children became boss there was no trouble between my wife and I.

Q. Well, then, up to her return in 1913 there was no trouble?

A. No, sir; nor since that, her and I hasn't had an angry word.

Q. You mean up to the time you left there in 1915?

A. Yes, sir.

Q. Now, then, when you returned from Ireland, you found them there as you expected to find them?

A. Yes, sir.

Q. What time of the year did you return?

A. About in October.

Q. And what did you do after that? What business were you in?

A. Working on the farm, attending to the farm.

Q. Any other business?

A. Collecting rent.

Q. Except looking after your properties?

A. Sir?

Q. Any other business except looking after your properties?

A. No.

Q. Were your children at school then?

A. Yes, sir.

Q. Which ones?

A. They were all,—all the younger children were in school, at the high school, I believe; there was

but two, the two youngest, Harry and Tom, was at the high school.

Q. What were the others doing?

A. The one older than Frank, he was learning the plumbing business, he wouldn't study and he wanted to go to work, and I says, "What would you like to do?" Well, he said he would like to be a plumber, he wouldn't study, and Mr. Willey, the professor of the school, I had to use my personal influence and friendship, which he and I was, lifelong friends, to give them extra sessions in order—provide extra sessions in order that he might pass or be able to pass them from his school to the high school, and it was the same at the high school, I had to ——

Mr. Backes: Well, now, I object.

Mr. Satterthwaite: Well, I don't want this in.

The Vice-Chancellor: I think you can narrow the scope of the examination, Mr. Satterthwaite.

Mr. Satterthwaite: I didn't ask the witness for all that. I want to get the general life, that is all.

Q. Well, now, between the time of your coming back in 1913 and your leaving there in 1915, did you and your wife have any quarrels?

A. No.

Q. Did you ever threaten to blow her brains out?

A. I never did.

Q. Or beat her brains out?

A. No, sir.

Q. Did not?

A. No, sir, I did not.

Q. Now, before you left in 1915 there was difficulty between you with regard to your children, was there not?

A. Yes, sir.

Q. What was the nature of that?

A. Why, they would neither stay at school nor they wouldn't work.

Q. Well, what did you do or attempt to do on that account?

A. When I would ask them to come to help me to do something on the farm they would tell me to go to hell and do it myself. They wouldn't work. I says, "Boy, what will become of you if you go out in the world? You have no vocation or no trade." "Well," he says, "My mother has got enough to keep us whether we work or not."

Q. Now, did you ask your wife to sign back the Monument House?

A. Never in my life. I wouldn't have it for a gift if it was worth forty times the amount what it is.

Q. Before we leave that, who bought the Monument House property?

A. I did.

Q. How long ago?

A. In 1880.

Q. 1880?

A. No. If my memory serves me right, in 1878 or 1879.

Q. And what sort of a building was there on it then?

A. A little, old, frame house.

Q. What did you pay for it?

A. I paid $2,850.

Q. Did you have any of your wife's money then?

A. I didn't have a cent of it.

Q. Had you had any of it?

A. I had.

Q. How much?
A. $800.
Q. And you paid $2,800 for it?
A. Yes.
Q. Now, you subsequently built upon that?
A. Yes, sir.
Q. The present building?
A. Yes, sir.
Q. Do you remember about when that was?
A. What?

(Question repeated.)

A. That was in 1893.
Q. 1893?
A. Yes, sir.
Q. And do you remember what the improvement cost,—what you paid for the improvement you put on it?
A. The exact amount I couldn't tell you.
Q. Well, about?
A. About thirteen to fourteen thousand dollars, twelve to fourteen thousand dollars.
Q. It has a large three-story building on it now, hasn't it?
A. Yes, sir.
Q. And stands up by the monument?
A. Yes, sir.
Q. And hence it is called the Monument House?
A. Yes, sir.
Q. And what is the first floor occupied as?
A. Why, now it is the Acme Tea Store, grocery store one part and a shoe store in the other.
Q. Two stores?
A. Yes, sir.
Q. And the upper two stories?

A. There is four flats, two flats on what is known as the Brunswick Avenue side and two flats upon what is known as the Pennington Avenue side.

Q. What mortgage is there upon that property?

A. There is $5,000 first mortgage. The Mutual Life Company of New York have that, and the Trenton Banking Company have a mortgage of $3,000 upon it and $1,000 was my own.

Q. Now, you say, $1,000 of your own. You mean what by that?

A. That I got from the Trenton Bank, have to pay.

Q. You mean you have given your individual note for it?

A. Sir?

(Question repeated.)

A. Yes, sir.

Q. And who pays the interest on that?

A. I do.

Q. Always have?

A. Yes.

Q. That makes all together how much? Does that make $8,000?

A. Why, $8,000 is all that she pays interest on.

Q. Then is this note that you gave secured?

A. That is secured by a $3,000 note.

Q. Well, what I want to get at is this: You say that $8,000 she pays interest on?

A. Yes.

Q. Is the $1,000 note which you owe secured by a lien on this building, too?

A. I believe it is.

Q. That would make $9,000 lien?

A. No, she don't pay it.

Q. I mean, it would make that much lien?
A. Yes.
Q. And that is your obligation?
A. Yes.
Q. Now, what is that property worth?
A. Well, it is worth about $28,000.
Q. Now, when you bought that it was put in your wife's name, wasn't it?
A. Yes.
Q. What was the purpose of that?
A. Sir?
Q. What was your purpose in putting it in her name?

Mr. Backes: I object. I do not see how this can be pertinent. He put it in his wife's name, that is sufficient.

The Vice-Chancellor: I think he may answer it, but I do not think it will do a particle of good. Answer, if you can.

Q. What was your object in putting it in your wife's name?
A. Because she had given me $800 of her money and it was spent or lost in business and I thought when I was making a little money that I would pay her back again, so that when things should happen —that if she would sell out she would have something to maintain herself the balance of her life.
Q. And then these improvements were made afterwards?
A. Yes, sir.
Q. Did any of her money go into these improvements?
A. Sir?

(Question repeated.)

A. Not a penny, no, sir.
Q. Did any of it actually go into the property?
A. Sir?

(Question repeated.)

A. Oh, not a penny, no, sir, there was none.

The Vice-Chancellor: How much did he say the encumbrances are on that property?

Mr. Backes: $9,000.

Q. You rented and collected the rent up to the time you speak of?
A. Yes, sir.
Q. What rents did you get out of that property then?
A. I got $100 for the store and $14 for the Brunswick Avenue first flat and $13 for the second flat, and $14 for the first flat on the Broad Street side and $12 for the one on the other side.
Q. You have said there were two stores. You only mention rent for one store?
A. Yes, sir, I meant two stores.
Q. You made two stores since this, when it was one store?
A. Yes.
Q. They were the rents you were getting up to 1910?
A. Yes, sir.
Q. You don't know what it has rented for since?
A. No; I understand ——

Mr. Backes: Never mind.

Q. Is that general neighborhood there, Captain, improving or not?

A. Sir?

(Question repeated.)

A. Oh, yes.

Q. Well, now, you left there in 1915, what time?

A. 1915?

Q. Yes.

A. Why, in February.

Q. And where did you go?

A. I came down to Trenton, 78 Pennington Avenue.

Q. Is that where you are living now?

A. Yes.

Q. One of your Pennington Avenue houses that has been spoken of?

A. Yes, sir.

Q. Did you speak to your wife about coming there before you moved?

A. I did.

Q. What did you say to her?

A. I told her on various occasions that I couldn't stand this thing any longer. There was no argument, no loud words, there was no hard feelings between her and I, no more than there is between you and I.

Q. You say you told her you couldn't stand this thing?

A. I told her—I said to her, "It is impossible for me or any person else to stand this stuff," I says, "any longer."

Q. Well, what stuff?

A. The abusing language and my sons threatened my life.

Q. Your sons threatened your life?

A. Yes, sir.

Q. Which sons did that?

A. Harry, Tommy and Frank.

Q. What was the occasion of that?

A. Sir?

Q. What caused that?

A. Because when they wouldn't do anything and when they would come home at twelve and one o'clock at night and leave every window in the house upstairs open night and day—they were great fellows for the—what do you call it?

Q. Fresh air?

A. Fresh air clubs, great athletes, baseball and football and every other ball that was going, they were first rate at all that, they were very good at that, but they were no good to do anything for themselves, and they would get up in the morning at half-past ten or eleven o'clock, and sometimes half-past eleven o'clock.

Q. What connection had this with their threatening your life, as you say?

A. Well, I daresn't walk across the floor that they wouldn't find fault.

Q. What did you do to them to cause that?

A. Not the first thing.

Q. But there was something, was there not, that led to this attitude?

A. Sir?

Q. Wasn't there something that led to this attitude on their part?

A. Nothing but the fact that they wouldn't work, they wouldn't do nothing.

Q. Well, what had that to do with it?

A. That had a whole lot to do with it; there was a big family there and very little earning.

Q. Did you try to get them to work?

A. I did.

Q. What did you say to them?

A. I got Harry a job over at the asylum, went and got him a job at the asylum, he says, "The hell with the asylum."

Q. Well, now, then, do I understand that the trouble arose between you and your boys because of their disinclination to work and your efforts to try to get them to work?

A. Yes, sir.

Q. And you became estranged?

A. Sir?

(Question repeated.)

A. Yes, sir.

Q. And you say they even threatened your life?

A. Yes, sir.

Q. Now, then, what did you say to your wife about it?

A. I said to her, "Mam,"—mother or—"Mam" was the word, not "mother," but "Mam, I can't stand this thing no longer. I am going to make a new home for you and I." Time and time again, when we would be sitting together, her and I, when I would ask them to do something they would tell me to go and do it. I have said to them, "You are not doing for me, you are not doing for your mother. Your mother has enough to keep her and I have enough to keep me, and what we now need to do is simply for us all to keep the little that we have got together until we get through and then it will be yours." I was an old fogey and—but I won't use the words.

Q. Well, now, what did your wife say about living in the new home?

A. She said, "Oh, they will get wiser when they get older."

Q. What did she say about your making a home down at Trenton?

A. I said, "I am going to make a home for you and I, Mam, so that we will spend the balance of our days together in some kind of peace and comfort."

Q. Well, what did she say?

A. "Forget that. Forget about it."

Q. How long did this thing last?

A. Oh, for quite awhile, for quite awhile; I don't know, I couldn't say how long, but this practically went on for a year or two.

Q. Now, before you went away from there did you quit eating at the family table?

A. Did I what?

Q. Quit eating at the family table.

A. I did, yes, sir.

Q. For how long?

A. From January I never eat nothing there.

Q. And why did you do that?

A. Why, because I was afraid of my life.

Q. Well, now, you say you were afraid if you sat down to the table with them they would take your life, do you mean that?

A. Sir?

Q. Do you mean that you were afraid to sit down at the table with them lest they would take your life?

A. Yes, sir.

Q. Do you mean that literally?

A. I was afraid of my life. They threatened my life if I put my foot—even go across the road.

Q. Well, but I am talking now about before you left the house, before you moved down to Trenton.

A. Yes.

Q. Did you take your meals apart then?

A. Most of the time, yes, all the time.

Q. I asked you why you did it then?

A. Why I did it?

Q. At that time, yes.

A. Because I didn't want to be in company with them.

Q. Well, now, why didn't you want to be in company with them?

A. Because I didn't know what time something would strike up and they would knock my head off.

Q. Were they abusive?

A. Yes.

Q. Now, which sons were home there?

A. Sir?

Q. Which sons were home there then?

A. Harry and Tom.

Q. Was Frank home?

A. Yes.

Q. Was Pete home?

A. Pete, no, sir.

Q. Now, when you left, did you tell your wife you were going—the day you went?

A. The day I went?

Q. Yes.

A. I told her several times before that. I served her with a notice of—a written notice, several different notices.

Q. How came you to serve her with written notice?

A. On the advice of my counsel.

Q. On the advice of your counsel?

A. Yes, sir.

Mr. Satterthwaite: Have you got those, Mr. Backes?

Mr. Backes: Have I those?

Mr. Satterthwaite: Yes.

Mr. Backes: I don't know.

Q. Well, now, when you moved down there what did you take with you?
A. Sir?

(Question repeated.)

A. I took—when I went down first I didn't take nothing, I couldn't get it.
Q. Why couldn't you get it?
A. Why, she wouldn't let me take nothing, I didn't attempt to take anything at all.
Q. Why wouldn't she let you take anything out?
A. Because she didn't want anything to leave there, she was going to keep it all.
Q. What did she say?
A. She said, "You can't get nothing out of here."
Q. She said what?
A. "You can't take nothing from here, there is nothing here belongs to you."
Q. Then what happened?
A. Then I had to bring suit in the court.
Q. Well, now, you got a writ of replevin, you mean?
A. Yes.
Q. That was against your son, Tom, wasn't it?
A. Well, that was in order to have some person outside of my wife.
Q. Well, was Tom there when they refused to let you have the goods?
A. Yes, sir.

Q. What did he say?

A. I cannot say what he said at the time, in fact, there wasn't much said at all. That is the day that I went to take the lock off of the door. The keys was all gone, I couldn't get the door open.

Q. You are speaking about the time when Mr. Lewis was in there?

A. Yes, sir.

Q. What was the occasion of taking the lock off of your door?

A. I wanted to get my things out, get the door open.

Q. Now, it has been testified here that your wife remonstrated and that you were threatening her with a screw-driver, threatened to run it through her if she interfered with you. Did you do that?

A. I went to Mr. Lewis ——

Q. Well, now, did you do that or didn't you do it?

A. I did not, no, sir.

Q. Was Mr. Lewis present?

A. He was.

Q. Who took this screw-driver? What became of the screw-driver?

A. My wife reached in over my shoulder—I was on my knee, down on the floor, to get at one of the screws that was in the lock, and I was on my knee and unscrewing it when she reached over the top of my shoulder and snatched the screw-driver out of my hand and that is the last I saw of it.

Q. That was the last you saw of it?

A. Yes; I had one knee on the floor and the other knee—my foot was on the floor.

Q. Did you make any threats to your wife at all at that time?

A. I never did.

Q. Never?
A. I never in my life threatened her.
Q. Now, what did you do after she took the screwdriver from you?
A. Sir?

(Question repeated.)

A. I came out with Mr. Lewis.
Q. Did you go back again?
A. Sir?
Q. Did you go back again?
A. Not then, no.
Q. Where did you go?
A. Took a car and came down here.
Q. Now, when did you go back again the next time?
A. After I brought my wife into court.
Q. After what?
A. I think I went back after I came back from court.
Q. After the replevin suit?
A. Yes, sir.
Q. Who was there then?
A. Thomas Walsh, the youngest son.
Q. Yes, and you went into the house with the officer, Mr. Pownall?
A. Yes, sir.
Q. And did you have any conversation there as to taking the goods away?
A. Nothing, only my son wouldn't allow us to keep the door open to get the goods out.
Q. Well, did you get the things out?
A. Yes, sir; we got them out finally.
Q. You say the son wouldn't let you. What do you mean?
A. He says, "You son-of-a-bitch, leave that door

open—open that door again to let the flies in and I will knock your God damned head off, you old bastard, you."

Q. Who said that?

A. My youngest son.

Q. Tom?

A. Yes.

Q. Now, did you take away the stuff?

A. I did, yes, sir.

Q. At that time?

A. Not all at that time, no.

Q. Now, what things did you leave there at that time?

A. I left the stove, both stoves there, and it was a raw, cold morning, too, and they took off the oil stove and had that in one of the vans, and my wife came in—there wasn't an angry word between us, not one said—she says, "John, are you going to take the range away, too?" I says, "Yes, Mam, I am." "Well," she says, "it is cold, can't you leave that?" she says "that belongs to the house," she says, "you shouldn't take that away." And Mr. Pownall says, "Mrs. Walsh, here is the list," he says, "that I have got," he says, "those things belong to your husband," he says, "I have got to take them." "Well," she says, "John," she says, "it is so cold," she says, "no fire here," she says. I says "Mam, what day do you expect to move? How soon do you expect to move?" She says, "The first of next week." I says, "What day?" She says, "It will be either Monday or Tuesday." I says, "Can't you move on or before Saturday?" She says, "Just as soon as I get a house." "Well," I says, "if you will give me your word that you will move on or before Saturday I won't push this." "Well," she says, "I will try to move on or before Saturday or I will Monday."

I said, "Tighten up that range again," I says, "and leave it here." "And, now," I says to her, "Will it be any benefit to you—will it help you any to have the little coal oil" ——

Q. Oil stove?

A. Yes,—"oil burner?" She says, "Yes, that would be very handy for getting my breakfast in the morning." I says, "If you want it, if it is any good to you you can have that, too."

Q. Did she say anything to you about not taking the stove, that she would give you the whiskey if you would leave the stove?

A. No.

Q. Did you ask her for the whiskey?

A. I did.

Q. Did you get it?

A. I did get it.

Q. You had some of it in the house?

A. Yes.

Q. But was that made a condition at all of your leaving that stove?

A. It was not. I asked her where it was. I went to the closet where we usually have it but there wasn't any of it there. I went all through the house looking for it, I couldn't see it, and I says, "Mam, where is it?" She says, "I don't know." I says, "You must know." She says, "Well, I don't." "Now," I says, "I know that you don't drink, I know none of the rest of them drinks in the house, and," I says, "it must be here." "Well," she says, "I will see." And after bit, why, she went and found it for me.

Q. You say, Captain, that you served written notices by advice of your counsel on your wife?

A. Yes, sir.

Q. Did you keep copies of those?

A. Yes, sir.

Mr. Backes: I object. We have no knowledge of any notice, nor have we any demand for a notice in 1915 served upon us. The demand, I think, is for a notice of 1914, but we have made search and I am assured by my client that we have no notice of any kind, either 1914 or 1915.

The Vice-Chancellor: Well, if there has been a demand made for the notice of 1915 there is no reason why you should not prove it now. Did you demand for 1914 or 1915?

Mr. Backes: 1914.

Mr. Satterthwaite: I do not recall.

Mr. Backes: There it is (reading demand), 1914.

Mr. Satterthwaite: That is an error in the year.

The Vice-Chancellor: You may introduce your copies and if counsel desires time to see whether he can find the originals, to ascertain whether these are correct or not, he may have it. Introduce them at this time on that condition, and if doubt arises in the mind of counsel as to their correctness he can have time to ascertain.

By Mr. Satterthwaite:

Q. Did you make a copy of those yourself?
A. I did.
Q. Are those three the copies you made (exhibiting to witness)?
A. Yes, sir.

Mr. Satterthwaite: I ask to have those marked.

(Said papers marked Exhibits D1, D2 and D3.)

Mr. Backes: I would like to see them.

Mr. Satterthwaite: Certainly (handing papers to counsel).

At this point a recess was taken until two o'clock P. M.

Hearing of the cause resumed after recess, in the presence of the respective counsel heretofore noted.

Mr. Satterthwaite: If the Court please, we have two witnesses here who are very busy men and I would like to call them out of turn.

The Vice-Chancellor: You may do so.

SAMUEL T. ATCHLEY, a witness produced in behalf of the defendant, being duly sworn according to law, on his oath says:

By Mr. Satterthwaite:

Q. Mr. Atchley, where do you reside?
A. I reside now at the New Jersey State Hospital.
Q. Have you a position there?
A. Warden.
Q. Prior to that you lived in Ewing Township?
A. I did.
Q. And formerly were sheriff of Mercer County?
A. Yes, sir.
Q. How near Ewingville did you live in Ewing Township?
A. Why, my farm, I suppose, is about probably

a quarter of a mile from Ewingville; my residence, where I lived a short time before I moved to the hospital, is about—oh, three—probably three hundred yards—three hundred or four hundred yards anyway.

Q. And did you know Captain Walsh while you lived there?

A. I did.

Q. How long have you known him?

A. Ever since he moved out and purchased the property at Ewingville.

Q. How long ago was that?

A. Well, I couldn't tell you, Mr. Satterthwaite, it has been quite some time.

Q. Twenty-five or thirty years?

A. How long?

Q. Twenty-five or thirty years?

A. Well, I should think it was somewheres near twenty-five years, I couldn't say exactly, it has been quite awhile, I know.

Q. During that time how often would you see Captain Walsh?

A. Well, the latter part of my time, from the fall of 1899 until 1907, I seen him quite frequently. I was doing business in the city of Trenton and I drove back and forth for a few years until the trolley was established and then took the trolley.

Q. What can you say as to his habits of sobriety so far as you observed?

A. Well, I have never seen Captain Walsh—I have seen Captain Walsh when he has probably taken a drink or two, as far as I knew.

Q. Ever see him intoxicated?

A. I have never seen Captain Walsh intoxicated to my knowledge in my life.

Cross-examination.

By Mr. Backes:

Q. Seen him under the influence of liquor, haven't you?

A. I have seen him when I thought he had taken a few drinks.

Q. And when he was in that condition what was his conduct as you observed it?

A. Why, I don't know that I was ever in his company, Mr. Backes, long enough to make any observation of his conduct any more than to hear him talk. What little time I was there I had no reason to be in his company any length of time.

Q. What was the manner of his speech when he was in that condition?

A. Well, I have noticed, probably, when he talked more sometimes than he did at others.

Q. Well, as to the choice of language, Sheriff?

A. Well, now, I tell you, it has been sometime since I have been in Captain Walsh's company when anything of this kind has happened, if it ever did. As I say, I think I remember such occasions, but I have been away from there for nine years, over nine years, and in that length of time I do not suppose I have been in the company of Captain Walsh a dozen times.

Q. Well, then, you have no personal knowledge and have not had for several years past as to the captain's conduct in the past?

A. I have not.

JOHN W. HENDRICKSON, a witness produced in behalf of the defendant, being duly sworn according to law, on his oath says:

By Mr. Satterthwaite:

Q. Mr. Hendrickson, you live in Ewing Township?
A. Yes, sir.
Q. Near Ewingville?
A. About one mile.
Q. Do you live on a farm there?
A. Yes, sir.
Q. Always have lived there?
A. Yes, sir.
Q. And did you know Captain Walsh when he lived out there?
A. Yes, sir.
Q. How often would you come in contact with him?
A. Well, not very often come in contact with him. I passed by his place maybe two or three times a week.
Q. Did you see him usually?
A. Well, quite often.
Q. Were you a member of the Vigilance Society out there?
A. Yes, sir.
Q. When Captain Walsh was a member?
A. Yes, sir.
Q. How often did they hold meetings?
A. Once a year, that is the annual meeting, not often any others.
Q. Well, now, from what you saw of him in your meetings what opinion would you form as to his habits of sobriety?

Mr. Backes: I object to his opinion. He is not an expert.

A. What did you say?

The Vice-Chancellor: Well, I think he can testify to what he has seen when Mr. Walsh has been present.

By the Vice-Chancellor:

Q. Do you know whether you have attended banquets when Captain Walsh was present?

A. Yes, sir. The banquets you have reference to now?

Q. Yes.

A. Yes, sir.

Q. Well, you may testify to his conduct at those banquets.

A. Well, I—of course, they had drink at the banquet, and, of course, I don't know what it was.

By Mr. Satterthwaite:

Q. You didn't sample it?

A. I didn't sample it, no, sir; I don't often sample those things; and I didn't see anything out of the way with Captain at the banquet while I was there, and, in fact, the banquet broke up when I left.

Q. Did you attend the one in 1914?

A. Yes, sir.

Q. Do you remember the captain being there at that time?

A. Yes, sir.

Q. He was chairman of the banquet committee, was he not?

A. Yes, sir.

Q. Did you see anything out of the way in his action or conduct then?

A. No, sir, not while he was in my presence.

Q. Well, you left there about what time?

A. Well, I don't know. Somewhere, I imagine, between four and five o'clock.

Q. And the banquet was over?

A. Yes, sir.

Q. Now at the other occasions you met Captain, have you seen him intoxicated?

A. No, sir, I never saw him what I would term an intoxicated man. Of course, I knew he—I know he takes a drink occasionally, I have seen him do that.

Q. Well, you didn't understand he was a total abstainer?

A. What say?

(Question repeated.)

A. No, sir; no.

Cross-examination.

By Mr. Backes:

Q. Ever see him under the influence of liquor?

A. Well, I wouldn't term it under the influence of liquor, no, I didn't see that he was any more talkative than he usually is.

Q. Well, you don't know much about the captain at all?

A. Not so much, no.

Q. Don't know anything of his private life at all?

A. Just as I saw him as I passed by and about what I have seen.

WILLIAM T. DUNN, a witness produced in behalf of the defendant, being duly sworn according to law, on his oath says:

By Mr. Satterthwaite:

Q. Mr. Dunn, where do you live?
A. 196 West Hanover.
Q. And what is your occupation?
A. Salesman.
Q. Did you ever have any relations with Captain Walsh?
A. Yes, sir; I was collector for him.
Q. Collector of rents, you mean?
A. Collector of rents.
Q. Did you go up to Ewingville with him any time in the year 1915?
A. I was up there one time, yes.
Q. What was the occasion of your visit?
A. Why, they were taking out a stove and an engine, I think.
Q. Did you go into the house?
A. I was in the house, yes.
Q. Who else was there?
A. I think Mr. Pownall.
Q. The constable, you mean?
A. Yes, and Mr. Walsh, and ——
Q. Mrs. Walsh?
A. Mrs. Walsh and one of the girls.
Q. Yes; one of the sons?
A. And one of the sons, I think.
Q. Now, what took place in there that you saw or heard?
A. What—in the house?
Q. Yes, while you were there.
A. Well, there was nothing much to take place.

There was a sort of a door that he wanted open and the son wanted the door shut, and that is the only trouble I seen in the house.

Q. Well, what trouble was there about that? What happened?

A. Some words, that was all.

Q. Between whom?

A. Between Mr. Walsh and the son.

Q. And the son?

A. Yes.

Q. Any between Mr. Walsh and Mrs. Walsh?

A. No, sir.

Q. And what was the language? Mrs. Walsh was present?

A. I think so, yes.

Q. What did the son say to Captain Walsh?

A. I couldn't exactly recall what he did say. It was pretty harsh language, I should imagine.

Q. What?

A. Harsh language.

Q. What called it forth—do you know?

A. How is that?

Q. What called forth the harsh language, as you call it?

A. On account of the opening of the door.

Q. Well, now, what was the difficulty? Were some of the goods taken away?

A. The stove and the engine.

Q. They were taken?

A. Yes, sir.

Q. After they were taken did you see anything more of the captain's son?

A. Just as we was getting on the car, standing in front of the hotel, two of them came over there then.

Q. What did they do?

A. They started a mix-up.

Q. Well, what do you mean?
A. They started to call the captain some names.
Q. What kind of names?
A. A gray-headed bastard, something like that, some words to that effect.
Q. What did the captain do?
A. He didn't do nothing. Mr. Pownall got in between them.
Q. Now, were you up there after that time?
A. Was I?
Q. Yes, with Captain—up there at any later date?
A. I think that was the last—no, I was up there, not with the captain.
Q. Did the son say anything else to him? Any threats made?
A. Knock his block off, or something like that. I couldn't give you the exact words now.
Q. And Pownall, you say, stepped between them?
A. Yes.
Q. Where was Captain when they came up?
A. Standing on the portico of the hotel.
Q. Were you waiting for a car to come down?
A. Yes.
Q. Were you up there any other time, Mr. Dunn?
A. How is that?

(Question repeated.)

A. I was up there prior to that,—I don't know whether it was prior to that or after that, when the captain got—when they were taking the telephone out.
Q. Did you go up with Captain?
A. I went on the same car, yes; I went on up to

Q. You happened to go on the same car, did you?

A. Yes; when I came back the captain was out in the road all over blood.

Q. Did you see anybody else?

A. There were two men there, two telephone men.

Q. Did you see any one else?

A. I saw—I think, Miss Walsh was on the outside.

Q. You saw Miss or Mrs.?

A. Miss.

Q. Did you see Captain come out of the house?

A. No, he was out when I got there.

Q. Did you see either of the sons that day?

A. I did not.

Q. Now, did you belong to this Vigilance Society, Mr. Dunn?

A. Vigilance Society?

Q. Yes.

A. I am not a member; I was to one of the banquets.

Q. Were you at the banquet in 1914?

A. No.

Q. Any other banquets?

A. 1915.

Q. See the captain there then?

A. Yes, sir.

Q. Did you stay until the banquet was over?

A. I did.

Q. And what time of year was that held?

A. Why, I think in February.

Q. In February?

A. Yes.

Q. And what was the captain's condition then?

Mr. Backes: Now, I object, if your Honor please. The question relates to 1915.

The Vice-Chancellor: I think it may be competent to show what his drinking habits are. Answer the question.

A. Why, the captain was sober, as far as I know.
Q. He drank some there, didn't he?
A. Yes.
Q. You were there when he left?
A. Yes.
Q. Did you leave with him?
A. I did.
Q. You were sober?
A. I was; yes, sir.
Q. And so you could judge whether he was or not?
A. Yes, sir.
Q. Who presided at that banquet?
A. Why, a Mr. Donnell, I think, was the head of the table.
Q. Now, Mr. Donnell's name has been mentioned several times. Who is he?
A. He is the president of the Hanover Bank, New York.
Q. And has a country place up there?
A. Up in Ewing Township.
Q. Near Ewingville?
A. Yes, sir.
Q. And about the membership of this Vigilance Society: Do you know about who they were? What class of men they were?
A. Why, they were all the farmers from Hopewell and Ewing Township.

Cross-examination.

By Mr. Backes:

Q. You went up on this occasion when the captain was removing the stoves and the engine from the house?

A. Yes, sir.

Q. The stove was for heating the house and the engine the water supply, wasn't it?

A. I think that was it; yes, sir.

Q. And the boys were simply taking the mother's part, weren't they?

A. There was only one boy there.

Q. Well, that boy was taking the mother's part, protecting the mother, wasn't he?

A. I don't think the mother had to be protected. There was nothing occurred there.

Q. Well, the boy tried to prevent the father from dismantling the house?

A. I think that was it; yes, sir.

JOHN E. WALSH, recalled.

By Mr. Satterthwaite:

Q. Now, did you hand those to Mrs. Walsh (exhibiting papers, Exhibit D1, D2 and D3, to witness), without this part pasted on them?

A. Yes, sir.

Q. Did she read them when you handed them to her?

A. She did; yes, sir.

Q. Did she make any reply or comment?

A. Only the word, "Forget about it."

Q. What was the purpose of taking these things you took from there, Captain?

A. I don't understand.

Q. These articles you took away by replevin, what was your purpose in taking them?

A. My purpose in taking them was to protect them, save them.

Q. Well, what use were you going to make of them?

A. What use?

Q. Yes. What use did you make of them?

A. Why, I used them in the house where I came to live.

Q. Where you came to live?

A. Yes, sir, the home where—I made for my wife and myself.

Q. Are they there now?

A. Yes, sir.

Q. Now, did you go up there one day when you found a man putting a telephone in?

A. Yes, sir.

Q. And how came you to go that day?

A. I really couldn't tell you why I went up there that day. It was to see something about some of my hay or things around there, to see how things was around there.

Q. Yes, and you went into the house?

A. The door was open, I saw the wagon, this gentleman's wagon in the front of the door, and I knew they were telephone men, and I didn't see any of them outside, and the sitting room door being open I went inside, and they were boring holes between the sitting room and the hall with an auger.

Q. Who else was there?

A. There wasn't any person there when I went in, at the time, but these men working.

Q. Your wife wasn't there?

A. My wife came in a few moments afterward.

Q. In the meanwhile, what had you done?

A. I told these men—I asked them what they were doing. Why, they said, they were putting in a telephone. I says, "There is no telephone system goes into this house. Your company and I has entered into an agreement that no telephone shall be put into this house until I tell them to do so. My counsel also advised them to the same effect and they agreed to do it."

Q. Yes. Well, now, then, what took place?

A. He says, "My company sent me here to do it." I says, "I don't care anything about what your company sent you here to do. I want you to understand this is my property and you are not wanted here." Then my wife came in and she says, "John," she says, "I want the telephone in." "Well," I says, "Mam," I says, "don't ask it now, you can't have it now, in a short time perhaps you can." That was the only word passed between her and I.

Q. Then what happened?

A. I says to these men, "Take this thing away out of here." A long box was down along the washboard, a little box about that size (indicating), a little wooden box, and I says, "Take this out of here." "Well," he says, "I will take it out by and by." I says, "Take it out now." And I went over and give it a kick and he says, "Well," he says, "don't break it." "If you don't take it out," I says, "I certainly will break it, because your company has been notified not only by myself but also," I says, "by my attorney that you shall not put any telephone in here." So he took it out. My

wife left without saying anything, without saying another word. She went through the door of the sitting room and into the dining room and into the kitchen, and she came back with something in her apron, and I didn't think for a moment that there was anything wrong, because there wasn't an angry word between her and me, and all at once she drew out a white stick about two foot and a half long and about an inch and three-quarters thick, it was a clean, white piece of wood, and the first thing I knew she hit me over the nose here, cut my nose across here, and then cut a piece out of my eyebrow here (indicating), and she cut me down the cheek upon the other side, and she cut my hands all up with this club, and Joe, my daughter, came in at the time, came in through the hall, and my daughter says, "Oh, my God, Mom, don't do that." That was the only word that was said.

Q. Then what did you do?

A. I turned my back to her and walked towards the door and she still belting me with the stick, and for three months afterwards it hurt even down to my heels and the calves of my legs thick.

Q. Then what did you do?

A. I didn't do anything.

Q. Did you go down town?

A. I came down town to get a warrant for her arrest.

Q. You then swore out a complaint?

A. I did.

Q. You were angry at your wife at that time?

A. Yes; who wouldn't be?

Q. Now, did she have hold of the telephone and you have hold of it?

A. I never saw any telephone at all; there was none there that I saw.

Q. Did the telephone fly up and hit you in the face?

A. There wasn't any there to fly up, as far as I know, there was nothing but the string.

Q. You heard the testimony of your wife and your daughter in that respect: You say that is not correct?

A. I don't like to say what my wife and daughter swore to is not—I don't want to say that, but God forgive me—God forbid that I would swear to it.

Q. After that when next did you see your wife, if at all?

A. I didn't see her.

Q. Did you have any talk with her at all after that?

A. No, sir, no talk.

Q. Prior to this, after you had left there, after you had moved down to Pennington Avenue, did you have a conversation with your wife?

A. Prior to what?

Q. Prior to this telephone incident but after you had left?

A. After I had left?

Q. Yes.

A. I really don't know whether I did or not.

Q. Did you have a conversation in which she said anything about coming back?

A. Oh, yes, yes. She told me to come back. She says, "You come back." Yes, we had a conversation once. "You come back, John, they won't molest you. I will see that they won't molest you."

Q. Who did you understand she referred to by "they won't molest you"?

A. Why, our sons, of course.

Q. Now, during the period between 1910 and 1915, or even before that time, were you in the habit of

calling your wife a God damned whore and son-of-a-bitch?

A. No. I never used such a word.

Q. Did you ever call her a God damned whore or son-of-a-bitch?

A. Never in my life.

Q. Did you ever threaten to blow her brains out?

A. I never did; no, sir.

Q. You remember the Vigilance Society dinner of 1914?

A. Sir?

(Question repeated.)

A. I do, yes, sir.

Q. Do you remember coming home from that?

A. I do; yes, sir.

Q. Who came with you?

A. Mr. Sandford.

Q. Now, did you, that night, chase your wife around, and did one of your daughters come out of the room and ask you what you wanted and you say you wanted her mother and she say, "She is in our room"?

A. I did not; no, sir.

Q. Did you at that time or at other times demand that she sign over the Monument House and then curse and swear at her because she refused?

A. I never did, sir; instead of that I paid the taxes for her when she couldn't pay them herself.

By the Vice-Chancellor:

Q. Do you mean to say you never asked her to sign that over to you?

A. No, sir; I wouldn't have it if she would give it to me.

Q. You never wanted it and you never asked for it?

A. No, sir; I wouldn't have it under any circumstances. I bought it and worked hard for it and give it to her.

By Mr. Satterthwaite:

Q. And you say you paid the interest on it—some?

A. I did, yes, sir, since that.

Q. Since she has been collecting the rent?

A. Yes, sir, since that, and I have her note for it. She said she would give me a note for it. The note is still there yet.

Q. It has never been paid to you?

A. No, sir; I never asked for it neither.

Q. Did you go into your room and lock your door that night after talking to your daughter?

A. There never was a lock upon my door that I knowed of.

Q. There wasn't a lock?

A. No, sir.

Q. Were you in the habit of going down town at night and not coming back until morning?

A. I don't believe in all the time that I was living in Ewingville that I was ever a night out of my own house unless I was away with my horses or some place upon business.

Q. Now, it has been testified you nailed up the windows and doors and put a placard on the house "No trespassing."

A. I did, yes, sir.

Q. How came you to do that?

A. I came to do that under the advice and through

the direction of my attorney, when they wouldn't leave the house, that if I got the empty house, without any person living in it, that I could take the possession by nailing the doors up and windows and locking them.

Q. And you did that?

A. I did that; yes, sir.

Q. And that is the time when it has been testified that your family came home and your sons broke open the door?

A. Yes, sir.

Q. That was after you had left yourself?

A. Yes, sir.

Q. Did you ever call your wife a prostitute?

A. No, nor I wouldn't permit any person else to do it.

Q. And your wife testified that it was a continual quarrel from the first of the year until you left. Was that so?

A. I didn't understand what you said.

(Question repeated.)

A. No, sir; there was never any quarrel between my wife and myself.

Q. Well, what was the cause of trouble in your household, Captain?

A. The primary cause was that my sons was idling and would do nothing for themselves nor any person else, and they would come to town and come back at twelve and one o'clock at night, and sometimes too late for the cars, they would have to walk, and as for them getting up for breakfast, they never got up before half-past ten and half-past eleven o'clock.

Q. Well, did you remonstrate with them about that?

A. I did, yes, sir; I wanted them to do something for themselves.

Q. And then did a feeling of estrangement grow up between you and your sons?

A. Yes, sir.

Q. And their conduct towards you was what?

A. What is that?

Q. What was their conduct towards you?

A. Their conduct?

Q. I say, what was their conduct towards you?

A. It was bad, extremely bad. The best word that they had for me was, they would say to me, "You old gray-headed bastard, you old son-of-a-bitch, stand up and see how I can smash your jaw for you. You say you can lick a man. You can't lick a postage stamp. Stand up and see how I can smash your damned old jaw for you."

Q. Were you in the habit of becoming intoxicated three or four times a week, or as often as once a week, either at home or come home in that condition?

A. I desire to state to you that I drank almost every day in the year and I am just about as drunk now as I have ever been in my life. I don't drink whiskey. I don't believe in all my life that I drank two quarts of whiskey, in all my life—put it together, since the day I was born up to the present time, but I have drank plenty of beer.

Q. Your son, John, testified to an incident when he was called from the bar ——

A. Yes.

Q. And came to the kitchen and found you in the kitchen having a hold of your wife's arm. Just describe that incident.

A. I don't recall the cause but I do recall the occasion. She went to hit me with her fist and I grabbed

her by the wrist to stop her from hitting me with her fist, and then they let up a cry that I was going to hit their mother.

Q. Did you hit her, as a matter of fact?

A. I never hit her in my life, I never put a finger upon a woman in my life since the day I was born.

Q. You and she had been having some scrap at that time, evidently?

A. Yes, and I despise any man that does.

Q. I say, you and she had been having some scrap at that time?

A. Yes, sir.

Q. Now, on Decoration Day, 1910, do you remember your wife asking for a horse and carriage and some money to get flowers to go and place them on her brother's grave?

A. She never did, and she never asked for anything she didn't get, and, in fact, all the money that I had while I was in the house was always in my pocket until I had enough gathered to put in the bank, and it was put in the safe until there was sufficient gathered to be worth while to be put in the bank, and there was no person in the house had the combination of the safe but her and I, and ninety times out of a hundred, because her eyesight was better than mine, I would ask her to open the safe for me and she always did, in fact, so much so that I forgot all about the combination of the safe myself.

Q. Did you ever refuse her the use of a horse and carriage?

A. Which?

(Question repeated.)

A. No, sir, nor none of my children.

Q. Did you threaten to shoot her on this occasion?

A. No, sir, I certainly did not. I never had anything to shoot anybody with.

Q. Did you ever carry a revolver?

A. I haven't even saw a revolver, neither in a window or in any person's hand, for not less than eighteen years, and perhaps twenty-two, never even saw one.

Q. Do you remember the occasion of your sons' coming up to Ewingville before you left there when, as they testify, they tried to straighten matters out, and you had an interview with them up there?

A. Yes, sir.

Q. Did you say anything then about having a revolver, and that you would shoot them?

A. No, sir, I was sitting in the chair, a big rocking-chair, I don't know what they call it, but it is a big leather chair, it falls away back.

Q. Morris chair, was it?

A. It is a chair that I bought from the Woodrow Wilson's Club, it is an extraordinary big chair, leather, and falls way back, far back, and I used that in what is known as my den, which they set aside for me. I had a secretary in there and the secretary was upon the right-hand side and it was just a nice height for me to set my feet upon and read. That was the position every night that I took, and I sat there every night alone, by myself, unless my grandson would be in there studying his lessons. Upon this occasion the boy and I was there, and about eight o'clock at night the door was opened and in came every one of them, John, Tom, Harry, Pete, Will and Eddie and Frank, and John opened the story by stating that he came for to have this matter straightened up, settled up. The occasion of that visit was that Harry had used such abusive language to me

that I forbid him coming to the house any more, and I stated that either he or I would leave that house, and they came up for that purpose, for to straighten the matter up,—came up of their own accord. My statement first was that I wanted him to leave the house permanently, you understand, but through their conversation I agreed to come down to two weeks but he must leave for that length of time. My object was that I would have some say in my own house. And everybody was satisfied with it with the exception of Peter, and he was in the rear room, what was the front sitting room, which, of course, was in the front of the one that we were sitting in then. I still remained sitting in this rocking-chair, when I said to my nephew or to—yes, my grandson, "Won't you go down to the cellar and fetch me up a bottle of beer?" They was there—well, I guess about an hour or an hour and a half at the time. The boy went down and fetched me up a bottle of beer, and I had the bottle of beer in my hand with my feet up on this secretary, and they were all pleased at my coming down to the two weeks. They says, "Well, you can come down to my house and stay that length of time, that is all right." Just then Peter, on the impulse of the moment, came through from the rear and he grabbed the bottle of beer out of my hand and throwed it down on the floor and grabbed hold of my coat on both sides and in an instant, why, jerked me up off of the chair, and he is strong and the hold that he had there, why, choked me and accidentally, why, I sent my right hand over across his arm and cut him on the nose or face, and in an instant they were all in together, and, of course, he being so much stronger and active than I was, every one of them—I will give them credit for that,—they all came in to save me, but I was thrown on the floor at least.

Q. Did you put your hands in your hip-pocket and threaten to draw a gun?

A. I didn't have no hands to put there.

Q. As a matter of fact, did you?

A. No, sir, I did not.

By the Vice-Chancellor:

Q. What did Peter grab you for?

A. On the impulse of the moment. He can't even explain himself why he did, the boy couldn't even explain himself why he did. But he came in from the rear of the bunch, they were all standing, and he came in from the other room, from the rear of them, and he grabbed me, he says, "You old son-of-a-bitch," and he grabbed me and jerked me up out of the chair. I am satisfied—Peter is here, and I am satisfied that Peter is truthful and he will tell the story straight—and the only one.

By Mr. Satterthwaite:

Q. Do you know what day of the week this was, Captain?

A. I don't indeed.

Q. Was it Sunday?

A. No, it was not, no, it was in the early part of the week.

Q. Did you have difficulty generally in getting along peaceably with the boys in the house?

A. Occasionally, when I would get tired of them loafing and laying in bed until half-past ten, until eleven o'clock, and even have to get the ashes from the heater in the cellar—have to hire a man to take them out when they wouldn't take them out.

Q. Now, did you ever go down cellar and bank up the fires to put them out?

A. I have banked the fires up several times, yes, sir.

Q. Well, to put the fires out?

A. No, before I went to bed for to keep it until morning.

Q. Did you ever take off any tin—repairs made to the pipe?

A. Nothing to do it with.

Q. Did you ever urinate on the coal there so as to make an odor through the house?

A. No, sir.

Q. Has your house got a bathroom in?

A. It has, yes, a beautiful one.

Q. And a toilet?

A. Yes, sir.

Q. An ordinary toilet?

A. Yes, sir, and if it was at night, and day even, if you didn't want to go upstairs you didn't have to.

By the Vice-Chancellor:

Q. Mr. Walsh, on this occasion which you have just described, when your sons came in a body in the evening to see whether there could not be an adjustment ——

A. Yes, sir.

Q. Was there anything said about Monument House?

A. Not a word then, not a word. I don't think either one or the other thought of anything of the kind. That is an entire falsehood.

Q. And the reconciliation that was under discussion, and the only reconciliation under discussion, was your order that your son should leave your house?

A. Yes, sir.

By Mr. Satterthwaite:

Q. And this son was how old then, Captain?

A. Oh, I guess twenty-two or twenty-three years old.

By the Vice-Chancellor:

Q. What is his name?

A. Harry, Henry or Harry.

By Mr. Satterthwaite:

Q. You kept them at school until what age?

A. Why, until they were twenty-one or twenty-two, some of them nineteen to twenty-one, I don't think there was any of them left school before they were nineteen.

Q. What kind of a home is this which you have on Pennington Avenue to which you have invited your wife?

A. It is a three-story frame house, one of the best houses within three blocks of it. It has a bathroom, it has hot and cold water, and has eight rooms.

Q. What of the neighborhood?

A. The neighborhood is a beautiful neighborhood.

Q. Your son, William, lived in one of this row of houses?

A. Yes, sir, he lived in it for pretty nearly nineteen years and never paid any rent.

Q. He lived there?

A. Yes, sir.

Q. A similar house to this?

A. Sir?

(Question repeated.)

A. Yes. Now, I didn't get that. Will you pardon me?

Q. I say, a similar house to this?

A. Yes, the house that we lived in before we went up to Ewingville.

Q. And what condition is it in? What order is it in?

A. Which house do you mean, now?

Q. The one you live in now.

A. It is in fine order. When I came down I had it papered and part of it painted. The object was for to make it as comfortable and presentable for my wife, to make a nice home.

Q. Did you expect her to come there, then?

A. I did and I still expect her to come and I sincerely hope she will.

Q. Now, they have spoken about one Ellen Walsh who was there with you: Had you such a woman with you?

A. Who?

Q. Ellen Walsh.

A. Yes, sir.

Q. What is she doing now?

A. She is housekeeper there.

Q. You brought her over from Ireland?

A. I did; yes, sir.

Q. When?

A. Last October a year, or this October a year.

Q. And who was she?

A. She is, why, as I understand the relationship, her father and—her grandfather and my father was brothers.

Q. Did you know her father?

A. Yes, sir, I knew him.

Q. Knew him before you left Ireland?

A. Oh, no, not before I left Ireland.

Q. But in these visits back you became acquainted with him?

A. Yes, sir.

Q. Your visit was to your old home?

A. Yes, sir.

Q. And how many brothers and sisters has Ellen?

A. She has—I think it is four brothers and four sisters.

Q. And when you were over there how did they address you?

A. Always anxious to hear tell of me coming.

Q. I know, but how were the children taught to address you?

A. Why, their uncle, from America.

Q. They were taught to call you uncle?

A. Yes, their uncle from America.

Q. Now, what occupation was Ellen following when you were over there?

A. She was a waitress in a hotel.

Q. What town?

A. Ballybofey.

Q. Now, she came over here for what purpose?

A. For the purpose of being a servant of my wife or Colonel Van Cleef.

Q. Now, if your wife comes to live with you at whose disposal will Ellen's services be?

A. At my wife's disposal.

Q. If your wife chooses to come there and does not desire Ellen's services or desire Ellen's presence, what then?

A. In five minutes the girl will leave.

Q. Your wife will be absolutely mistress of the house?

A. Most assuredly, no other woman dare be.

Q. You have no desire to retain Ellen there?

A. Positively not, the slightest objections from my wife—nobody can be there besides my wife.

Q. Now, Captain, you have how many houses there at Pennington and Gordon Street?

A. There are five houses on Pennington Avenue and seven houses on Gordon Street.

Q. Now, what are they worth?

A. The Pennington Avenue house is worth about twenty-five to twenty-eight hundred dollars.

Q. Apiece, you mean?

A. Yes, sir. I do not believe that they would bring more than $2,500 today.

Q. And the Gordon Street houses?

A. They are worth about $1,200 each.

Q. Seven of them?

A. Yes, sir.

Q. Now, what mortgages are there on those twelve houses?

A. There are $3,000 mortgage—Mr. Baker, of New York, holds a $3,000 mortgage upon three or four, Mr. Thomas, the druggist, holds a $2,000 mortgage, the Central Trust & Safe Deposit Company holds $1,000.

By the Vice-Chancellor:

Q. Can't you give the total encumbrance?

A. Sir?

Q. Can't you give the total encumbrance on all the property?

A. That is all.

Q. Well, how much is that?

Mr. Satterthwaite: $6,000.

A. Seven thousand, five hundred, seven thousand, six hundred, isn't it?

By Mr. Satterthwaite:

Q. Then there is one you haven't mentioned.
A. There is a thousand dollars—oh, yes ——
Q. Well, you say there is $7,500 all together?
A. $6,600. Pardon me.
Q. Now, what is the net income of those houses?
A. There are some of them rents for $10 a month, the Gordon Street houses rent for $1 a month; 74 Pennington Avenue rents for $18; 76 rents for $15; 78 I live in; 80½ rents for $18 a month; 82½, for almost nineteen years, nothing at all.
Q. That is the one your son occupied?
A. Yes, sir; not even the water rent, I had to pay the water rent.
Q. That is vacant now?
A. Sir?

(Question repeated.)

A. That is still vacant now. It will cost about $375 to put it into repair before anybody can go into it.
Q. Now, did you pay the water rent?
A. Yes, sir.
Q. And what about the taxes?
A. I paid the taxes, too.
Q. How much are the taxes?
A. Why, you will see a slip there. $356, or—there is a slip there with all those in.
Q. Well, about $360?
A. Yes, sir.
Q. Did you make a memorandum of what your income was for the year 1915 for this property?
A. Yes, sir.
Q. Is that it (exhibiting paper to witness)?
A. Yes, sir.

Q. You made that yourself?
A. No, Mr. Dunn took this off of his books.
Q. Do you know whether it is correct or not?
A. Yes, sir.
Q. Tell us what your net income was.
A. What is to be deducted from this is the insurance and the interest upon the mortgages.
Q. Well, isn't that deducted there?
A. This is a true statement.
Q. I know, but isn't the interest deducted on it?
A. No.
Q. No. Well, that shows a net income of what?
A. This shows a net income of $807.20.
Q. You say the interest on the mortgage is to come out of that?
A. What say?
Q. You say the interest on the mortgage is to come out of that and the insurance?
A. The interest on the mortgage is to be deducted from that $807.20.
Q. You live in one of these houses?
A. I do; yes, sir.
Q. And your son, William, was living in another and you got no rent for that?
A. No rent for either one of them.
Q. So if his house was rented it would increase the income a month?
A. Yes, sir.
Q. Now, the Ewingville property,—what income have you had from that?
A. The Ewingville property barely makes ends meet.
Q. Your wife is living in there?
A. She is living in there and I can't get anything out of it.
Q. And, of course, you get no rent from her?
A. I don't want no rent from my wife.

Q. I say, you don't get any rent. What about the land?

A. That is what I am talking about. It barely makes ends meet.

Q. Did you farm the land this last year?

A. I did, yes, sir, and had to hire teams and hire help for to do it.

Q. You were angry with your wife when you went and made that complaint against her, Captain? How do you feel towards her now?

A. I love her today just as much as ever.

Q. Well, you say "as much as ever." What do you mean?

A. Just as when we were young people sparking.

Q. Well, would you treat her kindly if she would come and live with you?

A. Sir?

(Question repeated.)

A. I wouldn't see her want for nothing. If she had nothing and I had nothing I would get a job sweeping the streets.

By the Vice-Chancellor:

Q. You did not answer his question—whether you would treat her kindly or not.

A. Oh, yes, sir, most assuredly.

By Mr. Satterthwaite:

Q. Now, Captain, have you ever threatened to blow her brains out or made any threats of that kind at all?

A. I never, as God is my Judge, have mentioned

such a thing, never; I never had anything to do it with.

Q. Were you in the habit sometimes of walking up and down the house and talking to yourself?

A. I was, yes, sir.

Q. Just explain that.

A. I say, sir, I done that upon several occasions.

Q. What led you to do it?

A. Some of them were—the Vigilance Society banquet affair. We had an annual banquet there, and Mr. Donnell, he was chairman of the committee, he and I done the work, he and I done the work together. And I was always looked forward to as being able to make an interesting speech. Judge Reed, the Honorable Judge Reed, sat upon Mr. Donnell's left-hand and I sat right next to him at the head of the table. Judge Reed was afflicted with bronchial trouble, and when Mr. Donnell would mention Judge Reed's name for a speech, Judge Reed would have a little card and he wrote upon the card and handed it to Mr. Donnell, asking his old friend, Captain Walsh, to take his place, and then he would announce it.

Q. Well, now, then, you were preparing in advance remarks for such an occasion as this?

A. Most assuredly, yes, sir; and I will admit that I have walked the floor upon several occasions, and in the field and on the cars when I would be riding on the cars I would put something together, and maybe when I would have perfected it, I thought, the next time I would look it over something would be wrong with it and I would go over it ten times.

Q. This mumbling or talking to yourself was not because you were in an intoxicated condition, didn't know what you were about, was it?

A. Oh, my heavens, no, no.

By the Vice-Chancellor:

Q. Well, did you finally get the speech so you could get it off in good shape?

A. I did, sir, always. And there are gentlemen here that will tell you that they always looked to me for it, and I believe there are some of my speeches there in that paper. I was chairman of the committee, and also appointed chairman of the banquet committee.

Mr. Backes: I should like to have the speech if your Honor will permit it.

The Vice-Chancellor: No, I think we can get along without it.

Q. Captain, it has been testified here that you would chew meat and then throw it all over the table, that you would take out your false teeth and wash them at the table, and do things to disgust people.

A. I have never taken out no false teeth at the table in my life, but I have taken pieces of meat and when I couldn't masticate, when I wouldn't have no teeth, why I would rumble it around in my mouth and get the juice out of it, and as soon as I got the juice out of it I would take it in my fingers and put it upon the plate. I have done that in several places.

Q. The testimony has been that you would scatter it on the table.

A. Oh, I wouldn't be guilty of such a thing.

By Mr. Satterthwaite:

Q. That you deny?

A. No gentleman would.

Q. Well, did you do anything to shame your children when they had friends there?

A. Never in my life. The height of my ambition was to do everything in God's world that I could to promote them.

Q. Was there any reason at all why you and your wife could not live together with a reasonable degree of harmony and happiness excepting these boys?

A. After they grew up—there never was a word between my wife and I while they were under my control, but just as soon as they grew up and became what they thought was men there was no living for me. The best word Tom had, the best word Harry had, the best word Frank had was, "You old bastard, you old, gray-headed son-of-a-bitch," and I will tell you it didn't go down very well with an old man working as hard as I did.

Cross-examination.

By Mr. Backes:

Q. How old a man are you, Captain?
A. About seventy-four years.
Q. Are you still wearing white wings?
A. Sir?
Q. Do you still wear the wings?
A. I don't understand.

Mr. Satterthwaite: What is the purpose of the question?

Mr. Backes: Well, I thought maybe he had wings, ready to fly, you know.

Q. You know Ellen Walsh, don't you, Captain?
A. I do; yes, sir.
Q. How long have you known her?
A. About seven years or eight years.
Q. How often did you go to Ireland to see her?
A. Never.
Q. How often did you go to Ireland within the last three or four years?
A. Twice or three times.
Q. And where was she a waitress or a barmaid?
A. She never was a barmaid that I ever knew of.
Q. She was at a hotel that you were stopping at?
A. Yes, sir.
Q. She was your waitress, was she, at the table?
A. She wasn't mine, no, sir.
Q. She was there at that hotel?
A. She was there at that hotel and waited upon every person just the same as me.
Q. And you became quite intimate with her, didn't you?
A. No, sir.
Q. You say you did not?
A. What is that?
Q. Didn't you become intimate with her?
A. What do you mean by "intimate"?
Q. Well, what do you mean?
A. I want to understand what you mean by it. Did I know her?
Q. Well, you said you did.
A. I do.
Q. How did you address her?
A. Miss Walsh.
Q. What?
A. Miss Walsh.
Q. Miss Walsh?
A. Yes.

Q. Did you ever give her any pet names?
A. No, sir.
Q. Did she call you any?
A. No, sir.
Q. Did you ever write any notes to her?
A. Any notes to her?
Q. Yes.
A. I don't know whether I did or not. I guess I did. I wrote notes to all the sisters and to her mother.
Q. Ellen, particularly—did you ever write her any notes?
A. Particularly, no.
Q. Did she ever have any correspondence with you after you returned here?
A. Yes, sir.
Q. How did you come to bring her here to this country?
A. To better her condition.
Q. Did she ask you to bring her?
A. She didn't ask me to bring her. She paid her own fare.
Q. Who furnished the money for it?
A. She did.
Q. Borrow it from you?
A. No, sir.
Q. Before she came did you ever have any letters from her?
A. Before she came here?
Q. Yes.
A. I think that I had a letter from her and one from her mother and one from the two of her sisters and one or two from her brother.
Q. Ever have any postal cards from her?
A. I think that one was a postal card.
Q. Well, I will show you the postal card. See if

you can recognize it (handing to witness). Is that the card you received from her?

A. I couldn't say, upon my word I couldn't say. Oh, I believe it is, and I will explain that there.

Q. Never mind, I don't want any explanation. You believe that is the card you received from her?

A. I think it is.

Mr. Backes: I will offer this card in evidence.

A. (Continuing) I don't know whether that is or not. I think that is a card from her sister. I don't think that is her writing; I think it is Theresa's writing. I don't think that is Miss Walsh's writing.

Q. Now, you said you recognized this card as being from her because of something that is written on it?

A. Well, I think that was from her sister, Theresa. I don't think it is from her.

Q. Well, let us see. You say she never gave you any endearing terms, eh?

A. No, sir.

Q. She never called you an old devil and said, "Let me alone," did she?

A. That is Mr. Magee's niece—a saying, Mr. Magee's nephew had a little boy four years old.

Q. What did she mean by saying to you, "Hope this will find you ever so well. Let me alone, you old devil"?

A. I used to plague the little boy and that is what he used to say to me, and I got it—a by-word around the hotel.

Q. That writing there is not a little boy's writing, is it?

A. No, but that is the word.

Q. That is the way this Ellen addressed you, didn't she?

A. Which way?

Q. Ellen?

A. No; no, sir.

Q. Didn't she ever say to you, "Let me alone, you devil, you"?

A. Never, never, sir.

Q. Never any intimacy between you?

A. No, sir; no, sir. This is what the little boy would say. He couldn't speak very plain at that. He used to say when I would plague him, "Leave me alone, you old devil, you."

Q. And that is what Ellen said to you, wasn't it?

A. No, sir; no, sir; positively not.

Q. Now, Captain, when did you and your wife first separate?

A. It is a good while ago, I really can't tell you the year.

Q. As far back as 1897?

A. 1897?

Q. Yes.

A. Yes, sir; oh, yes, 1897?

Q. Yes.

A. Well, it might be about that time, yes.

Q. Your children were all small then, were they not?

A. Yes, sir, they were, yes, sir.

Q. And she was compelled to leave you that time, wasn't she?

A. No, sir, she wasn't.

Q. Up to that time had you provided a home for her?

A. Always.

Q. Provided the household necessaries?

A. Everything.

Q. So that she wasn't in want?

A. No, sir.

Q. How long was she away from you at that time?

A. Well, really, I couldn't tell you, it was quite a while.

Q. Several years?

A. A year or two.

Q. Several years you weren't living together, were you?

A. A year or two.

By the Vice-Chancellor:

Q. Let me ask the cause of that separation.

A. Sir?

Q. What was the cause of it?

A. The cause of that separation was that our public schools up there—she wouldn't permit the children to go to the public schools, she said they might as well go to hell, and she wanted to be in Trenton where the children could go to a parochial school, and that she would rather live in a swamp than she would live in the best house in the town.

By Mr. Backes:

Q. I thought that was in 1910.

A. That was the cause of our first separation, and I couldn't go, I had too much interest there; in fact, all I had in the world was that business.

Q. You had lived in the swamp before that, hadn't you?

A. Me?

Q. Yes.

A. No, sir.

Q. Kept a saloon there, didn't you?
A. No, sir, I did not.
Q. On South Feeder Street?
A. Yes, sir.
Q. Your business was that of a driver of an ale wagon, wasn't it?
A. I was a wholesale agent.
Q. Drove your wagon yourself?
A. Yes, sir.
Q. And in that way you became addicted to drinking?
A. No, sir.
Q. You were always more or less a drinking man, were you not?
A. Always took a glass of beer when I felt like it.
Q. And you drink it daily, don't you?
A. Daily with the exception of certain seasons of the year.
Q. Lenten season you abstain?
A. I do, and even for two or three months afterwards I won't have a drink.
Q. But you would always have a quantity of intoxicants in your house?
A. Always.
Q. You say you never drank liquor?
A. No, sir.
Q. Why did you buy liquor by the quantity and keep it in the house?
A. Why, for my friends.
Q. Not for your own consumption?
A. A quart of whiskey would last me a year or more for my own drinking.
Q. Now, after a year or two your wife returned to you?
A. Yes, sir.

Q. And the children with her?

A. Yes, sir.

Q. They were all small still?

A. No, they had grown quite some.

Q. And you lived together at Ewingville where you conducted the hotel, didn't you?

A. Yes, sir.

Q. Is that right?

A. What?

Q. Did you live at Ewingville after that, at the hotel?

A. No, I don't think it was the hotel.

Q. She had left before you quit the hotel business, hadn't she?

A. It was because of her leaving that caused me to have to sell the business out. Nothing would stop her from going to town.

Q. Now, in 1910 you separated again?

A. Yes.

Q. Now, what was the cause of that separation?

A. The cause of that separation was that I was selling horses, or trying to sell them, and upon that day we came in—we started about ——

Q. Well, you told us about that. Now, Captain, was that the only cause?

A. That is the only cause.

Q. You had no row with your wife?

A. Not a word any more than I have told you, now, Mr. Backes.

Q. Did you ever have any rows with your wife?

A. Ever have?

Q. Yes.

By the Vice-Chancellor:

Q. Mr. Walsh, was the separation of 1910 by mutual agreement between you?

A. No, sir. She came in and picked up my hat and hit me across the face, the mark is there still; it cut me and blacked my eye; and my eldest daughter came in and first she says, "My God, Pop, you are all the time fighting." And my boys was complimenting me upon my driving the horses better than this gentleman who was such a racing man.

By Mr. Backes:

Q. Why did your wife hit you with your hat?
A. Sir?
Q. Why did your wife hit you if you weren't quarreling?
A. At that time, 1910, that was the cause of the separation.
Q. Well, why did she hit you?

By the Vice-Chancellor:

Q. She left you, didn't she?
A. Yes, sir, she left me.
Q. Because she hit you with the hat?
A. Yes, sir.

By Mr. Backes:

Q. And you came down and had her arrested?
A. No, but I came to do it.
Q. And you were persuaded by your son not to do it?
A. Yes, sir.
Q. And then you were angry at her?
A. I was, yes.
Q. She was angry at you when she hit you?
A. She must have been.

Q. Were you ever angry at your wife before?
A. Eh?
Q. Were you ever angry at your wife?
A. Oh, yes, I was.
Q. Frequently?
A. No, not frequently, no.
Q. You were a man of very passionate temper, were you?
A. No, sir.
Q. What?
A. No, sir.
Q. Easily vexed?
A. No, sir.
Q. And when crossed ready to fight?
A. No, sir.
Q. You have a reputation in the community as a fighter, haven't you?
A. No, sir.
Q. Haven't you been arrested for assault and battery innumerable times?
A. No, sir.
Q. Haven't you been indicted for assault and battery?
A. Indicted for assault and battery?
Q. Yes.
A. No, sir.
Q. And been convicted over here in our court?
A. Why, wait, now.
Q. Well, have you or have you not?
A. Just let me recollect, so I can answer you intelligently.
Q. All right.
A. Why, during Hancock's campaign, that is a good while ago, I had a wigwam there, and that was in 1888.

Mr. Satterthwaite: 1880.

A. (Continuing) It was something like that. We used to have great campaign clubs then, and I had one over on Feeder Street, and we used to have all kind of characters come there, and a fellow came in one night and got some drink from my wife and wouldn't pay for it. I came in and asked him—I says—everybody was quiet—I says, "Why, who treated last?" John Berg, I think, a gentleman by the name of Berg, came down to the police station—he told me there was a fellow up there raising thunder in the house, and I went up and everything was quiet when I went in, and I says, "Why, who treated last?" This fellow says—the stranger to me says, "I did, and that damned bitch," he says, "won't give me any more." My wife was tending bar. "Why," I says, "that is pretty strong language, my friend." He says, "Yes, it is not because I haven't got the money," he says, "I have got it, but you won't get it, you will get none from me." I says, "You had better pay it." He says, "Why?" I says, "You are a gentleman, you ought to pay." He says, "You seem to be taking a great deal of interest in this place." I says, "I am interested as a friend." I says, "You have got to pay it, as long as you have got it." He says, "I will fight you for it." "Well," I says, "pay the lady and go about your business." He wouldn't do it and the result of it was that we went out to the wigwam and stripped to have a straight stand-up fight. He says, "I will put an eye upon you." I says, "All right. I may loosen you up while you are doing it." The result of it was the fellow got licked, and he wouldn't give in, he wouldn't quit, and Berg and a lot of them was in there.

Q. Is that the only occasion for it?
A. That was the only occasion, yes, sir.
Q. There never was any trouble before that?
A. No, sir.
Q. You say you permitted your wife to serve drinks?
A. What?
Q. Did your wife tend bar?
A. She did; yes, sir.
Q. In this Feeder Street place?
A. Yes, sir.

By the Vice-Chancellor:

Q. And were you indicted for assault and battery for that offence and convicted?
A. Yes, sir.
Q. Is that the only time?
A. That is the only time, yes, sir. A policeman or any other man never had his hand upon my shoulder to place me under arrest.
Q. When was that?
A. That was during Hancock's campaign.

By Mr. Backes:

Q. Now, did you obtain from the police department of the city of Trenton a permit to carry a revolver?
A. I did, yes, sir.
Q. You did?
A. Yes, sir.
Q. Why did you do that?
A. I done that for to protect my own life.
Q. You say you haven't looked on a revolver even in a store window for twenty-two years?
A. That is true. A permit is not a revolver.

By the Vice-Chancellor:

Q. When was that?
A. A little more than a year ago, better than a year ago, I guess a year and a half ago.

By Mr. Backes:

Q. How many boys have you?
A. Seven boys.
Q. None of them drink, do they?
A. No, not even that one alongside of you there.
Q. And when they testify to these various acts, this conduct of yours at home, you say that they are not telling what is true?
A. What?
Q. You say that they are telling an untruth?
A. I say, "May the Almighty God forgive them for what they swore to," and I certainly do.
Q. Now, coming back to the separation in 1910: How long was your wife gone then?
A. In 1910?
Q. Yes.
A. That was the time she went away.
Q. Yes, that is the second time she went away.
A. The second time.
Q. The second time you drove her out, isn't it?
A. No, sir, I never drove her out.
Q. You testified that your wife came to see you every week in 1910?
A. Yes, sir.
Q. And you talked your affairs over?
A. Yes.
Q. You did have some trouble, then, to talk over?
A. Not half as much as I have now.
Q. Yes; you did, then, have some trouble?
A. No.

Q. What?

A. Our trouble was of a very minor character then.

Q. Well, your children then were all small, were they not?

A. Well, not so very small, there was some of them grown up.

Q. What boys were home with your wife then?

A. There was Frank, Harry and Tom.

Q. How old is Frank?

A. I couldn't tell you really how old he was.

Q. How old was Harry?

A. He was two years younger than Frank.

Q. How old was Tom?

A. Two years younger than Harry.

Q. How old is Tom now,—do you know?

A. He is in his twenty-first or twenty-second year.

Q. So that he could not have been over fifteen years old then?

A. Something like that.

Q. And Harry was only seventeen years old in 1910? They didn't threaten you then, did they?

A. There was nothing the matter with the boys then.

Q. They were all good boys, weren't they?

A. Well, they were good of the kind.

Q. Good of the kind?

A. Yes.

Q. Like the father?

A. Yes.

Q. Took after the father, didn't they?

A. I don't know whether they did or not.

Q. Do you think they took after the mother?

A. No, I am afraid they did not. I am very much afraid they will never have the standing of the father.

Q. The father's standing in the community is very good?

A. It is, sir.

Q. You made an effort to get your wife back after she left in 1910?

A. I was always anxious for my wife to be back.

Q. Now, you haven't told us yet the reason she left you in 1910?

A. Oh, yes, I did.

Q. Well, now, tell us again. Why did she leave you in 1910?

A. Because I came down to have her arrested.

Q. That was the only reason for it?

A. That was the only reason.

Q. And she stayed away for that reason for three years?

A. She did; yes, sir;—whatever length of time it is.

Q. I ask you whether you have ever seen that letter (exhibiting paper to witness)? Is that your letter?

A. That looks like my writing, but I don't remember.

Q. Isn't that your signature?

A. It looks like it; it may and it may not be.

Q. Well, read it and tell me if it is your letter.

A. (Witness examines paper.)

Q. Did you write her such a note as that?

A. It is possible.

Q. Well, now, if you had no quarrel with your wife then, except that which you have spoken of, being struck with a hat, why did you need to go to the lawyer's office? What had you to straighten out?

A. I didn't go to no lawyer's office. That don't say that I was going to any lawyer's office.

Mr. Backes: I offer the letter.

(Said paper marked Exhibit C1, 10/24/16.)

Q. Now, Captain, these three copies of letters dated March 5th, March 17th and March 21st, 1915: Did you write three separate letters?

A. I did, sir.

Q. Who did you hand them to?

A. I handed them to my wife.

Q. Where?

A. In the sitting room in our home at Ewingville.

Q. You are positive you handed them to her?

A. Sir?

Q. You are positive you gave them to your wife?

A. Why, most assuredly.

Q. Did you give her these?

A. Give her those? No, I didn't give her those. I give her a copy of them.

Q. Gave her copies of them?

A. I didn't give her them, that is what I retained.

Q. You and your wife were on friendly terms, then, were you not?

A. Yes.

Q. What was the necessity of giving her copies of them if you were living at the house there?

A. Because I was going to move.

Q. You had been going in and out of the house,—your own house?

A. I was going to move and make a new home for her, and I told her my intentions, under the directions of my counsel. There is a witness here in the court room ——

Q. Now, Captain, you have answered me. The Ewingville house was your home at this time, was it not?

A. Yes.

Q. You hadn't made any new home?

A. Not yet, no, sir.

Q. And you went back and forth from and to that home every day, did you not?

A. Yes.

Q. And continued to do so until April of 1915?

A. I did until I got my house ready.

Q. You continued to go back and forth in that house, although not eating at the family table, until you left in April, 1915, April 6th, did you or did you not?

A. Continued to go to what house?

Q. To the house at Ewingville.

A. Until the 15th of April?

Q. Until the 6th of April.

A. No, I don't think so. I think that I came down town and had a room at the bath, Turkish baths.

Q. You came down town, then, you left your home up there, did you?

A. Yes, sir, getting this home ready down here for my wife.

Q. You lived down town, then?

A. No, I didn't live down town, but I was working down town.

Q. What were you working at?

A. Working at this house, getting it ready for my wife to come down and make her home.

Q. Did you tell her you were doing that?

A. I did, sir.

Q. Did you tell your wife what was in these letters when you handed them to her?

A. I told her when I handed her each one.

Q. What did you say to her when you handed her the first one?

A. Just what is in that letter.

Q. Word for word?

A. Yes, sir.

Q. And read it to her?

A. I read it to her and handed it to her personally.

Q. And when you gave her the second one?

A. I done the very same thing.

Q. And the third one?
A. I done the very same thing.
Q. Read every bit of that letter?
A. Yes. They aren't very long.

Mr. Backes: I offer this postal card previously shown to witness.

(Said card marked Exhibit C2, 10/24/16.)

Q. Now, you are quite positive, Captain, that you handed your wife copies of these letters?
A. Sir?
Q. If your wife says she never received any of these letters ——
A. I can't help that.
Q. You are quite positive you gave them to her?
A. I am; yes, sir.
Q. You are sure you didn't prepare these for your own use and not serve your wife a copy?
A. Immediately after each one of those was served I fetched them to my counsel and placed them in his charge, and he had them in his charge up to this time.
Q. When did you write these notes?
A. On the 5th of February, 1915, and the 11th, I think, and 17th, or 13th and 17th, something like that.
Q. Of what month?
A. February.
Q. February?
A. I think so.
Q. Quite sure it was in February?
A. I think so.
Q. Now, how soon after you had written them did you hand them to your wife?
A. Immediately.
Q. And you are positive that immediately after writing them you handed them to her?

A. I answered you, yes, sir.

Q. Did you ever write her any other letters?

A. Love letters?

Q. Any other letters than these?

A. Oh, I might have some other time, years ago, many years ago, when I was a young fellow, I might have.

Q. Well, after your separation in 1910 did you write her any letters?

A. Not that I recollect.

Q. Didn't you write to her a number of letters appealing her to come back?

A. No, sir, not that I remember. No, I don't think I ever wrote her any.

Q. Never wrote any?

A. I don't think so.

The Vice-Chancellor: Has Mrs. Walsh seen these?

Mr. Backes: Yes, she has. I will put her on the stand.

The Vice-Chancellor: Perhaps we might not have time this afternoon to finish your cross-examination, and, to save her coming back, you might ask her that single question now.

MARGARET WALSH, recalled.

By Mr. Backes:

Q. Mrs. Walsh, at recess time I showed you these three letters, marked Exhibits D1, 2 and 3, purporting to be copies of letters written by John E. Walsh

to you, and, as you have just heard him testify, handed by him to you on three separate occasions in your sitting room at your house in Ewingville. Did you or did you not ever receive any letters of that kind or character from your husband?

A. No, sir, I haven't.

Q. At any time?

A. At any time, only them letters that I gave you —in 1910.

Q. Did you ever see these or what purported to be copies of these letters before I showed them to you at recess?

A. No, sir, I did not.

Q. And if they had been served on you would you have those letters in your possession?

A. I would, as well as the others.

Q. And you would have preserved them?

A. I certainly would.

Cross-examination.

By Mr. Satterthwaite:

Q. Whether you received those letters or letters of which they purport to be copies or not, before Captain went away he told you he was going to make a home on Pennington Avenue for himself and you?

A. Well, I will tell you: At one time he said, "If you want to come you can come, if you don't you can stay." And I thought the way he said it I wouldn't be very welcome.

Q. Didn't he tell you that more than once?

A. No.

Q. Didn't he tell you ——

A. Oh, I asked him a couple of times to give up his foolishness of tearing up the house, I said that no-

body would interfere with him, and nobody has ever interfered with him.

Q. You asked him that a couple of times. How late was that that you asked him this?

A. Even after he took the furniture.

Q. Was that after the telephone incident?

A. Yes.

Q. Even after that?

A. He came to the house, nobody was in the house but the children and I, and he climbed up on the roof and got in through the window, the stairs.

Q. Never mind that. Now, did he tell you that he had got this house fixed up after he had it fixed up?

A. No, he never did, nor he never fixed it until he came back from Europe. He stored the furniture there,—I don't know whether he stowed the stove and engine, I don't know whether he stowed them.

Q. He went over to Europe after he left?

A. Yes.

Q. Now, you say he did not fix it up until after he came back. How do you know that,—how did you know?

A. Only by hearsay, when he brought that woman.

Q. Well, did he ever tell you that he hadn't it fixed up before?

A. No.

Q. Did anybody who had been there tell you that?

A. No.

Q. Merely hearsay talk?

A. Hearsay talk.

Q. Now, when you asked him to come back—you said twice—you told him that nobody would harm him?

A. Sir?

Q. You told him that nobody would harm him?

A. Yes, nobody was harming him.

Q. I say that that was what you told him on each occasion?

A. Yes.

By Mr. Backes:

Q. Did you ask the captain to bring a housekeeper from Ireland for you?

A. Oh, no, no.

Q. Did you ever have any housekeeper?

A. No, he never could keep a housekeeper.

Q. Why?

A. Why, because he would make—he was too free with them.

By Mr. Satterthwaite:

Q. Did you ever have any trouble with his being too free with a housekeeper?

A. All the time.

Q. Well, when was it?

A. During the time I was in the hotel.

Q. Who was the housekeeper then that he made too free with?

A. They were hired girls, both colored and white.

Q. Do you know their names?

A. One was Mrs. Jones.

Q. Lucy Jones?

A. Yes.

Q. Do you know where she is now?

A. No, I don't. I haven't seen her these last few years.

Q. What was the name of one of the others?

A. Mary Ramsey. I don't know where she is either.

Q. Are these both white?

A. One is white and one is colored.

Q. Which is white?
A. Ramsey.
Q. Ramsey is white and Mrs. Jones colored?
A. Yes.
Q. Did you know where they lived at that time?
A. Where they lived at that time?
Q. Yes.
A. Why, when they worked for me they lived at the house.
Q. You haven't any idea where either of these people are now?
A. No, I haven't heard from them in years, but they both came to me and told me of the actions, but I never said anything, I thought I would let things go by, if possible, until the end.
Q. You never saw anything yourself?
A. Well, no, I didn't look for things like that.
Q. And you didn't make any fuss about it?
A. No.
Q. Didn't say anything to the captain about it?
A. No, I never did. And there was another woman named Murdock.
Q. What is her first name?
A. I don't know what her first name is.
Q. Have you any idea where she is now?
A. No.
Q. Ever say anything to the captain about her?
A. No, I did not.
Q. Did you send them away?
A. Send them away?
Q. These girls?
A. Yes, she went away.
Q. Well, did you send them away or did they go away?
A. I sent them away, I told them I didn't want —
Q. Sent them away when they told you this?
A. Yes.

Q. At once?
A. Yes.
Q. Were they both there at the same time?
A. No.
Q. How came they to tell you? Were you questioning them?
A. No; they came to me and told me, and that was the time when I came to Trenton with the children to go to school.

The Vice-Chancellor: Suppose, you finish cross-examining the defendant, Mr. Backes, before a Master or before any stenographer you agree on, and then read it to me at the next hearing in Camden.

Mr. Backes: That is perfectly satisfactory to counsel.

At this point a recess was taken until Friday, October 27th, 1916, at ten o'clock A. M., at Camden, Chancery Chambers, Camden, N. J.

Resumed, before his Honor, E. B. Leaming, Vice-Chancellor, at the Chancery Chambers, Camden, New Jersey, on Friday, October 27th, 1916.

Appearances:
Peter Backes, Esq., for complainant.
Linton Satterthwaite, Esq., and John T. Van Cleef, Esq., for defendant.

Mr. Backes: We find ourselves in this situation this morning, if your Honor please. The stenographer failed to supply us with a copy of the cross-examination that was taken the other day, promising yesterday that we should have it this morning, but we had to leave on the early train. However, in talking over the matter with Mr. Satterthwaite I think we can briefly state and agree upon what the cross-examination disclosed.

The Vice-Chancellor: I had hoped to decide the case, if possible, at the conclusion of the arguments, but I couldn't do that in the absence of the cross-examination unless you substitute a stipulation.

Mr. Satterthwaite: I think we can agree.

The Vice-Chancellor: Suppose you dictate to the stenographer the substance of what was testified to and let it stand as an agreement between counsel.

Mr. Backes: I will try and state it and have the other side correct me. The cross-examination of Captain Walsh disclosed that he removed from the Ewingville house the household goods which are described in Exhibit C2 under a writ of replevin. This removal was sometime in the month of May. That he stored this furniture in No. 87 Pennington Avenue. That late in June or early in July the captain went to Europe. He removed the furniture out of the Pennington Avenue house, or had his son do it by his direction, and during his absence rented the house, storing the furniture in the storage warehouse, the house being occupied by a tenant until Captain returned sometime in the month of October, and then he had the furniture brought back to the

house and took up his habitation in that house with this Ellen Walsh, the woman he brought with him from Ireland. The further testimony shows that the captain had about $1,800 in bank, ready cash; that is about all the property that he now has, in addition to the real estate described the other day. He also disclosed how he had parted with the property at Ewingville known as the hotel property, and how he had paid his debts and how he had only received about $1,000 net out of the sale of $16,000. And he disclosed how he had sold the property on Center Street and had paid some of his debts, and the money in bank now is the result of that sale, according to his testimony. Your Honor will recall that both those properties were conveyed while the wife was absent from him and she joined in the conveyance. There was some testimony to that effect at the former hearing. As to the question of the invitation to the wife, the captain's testimony is that he repeatedly, through his children, sent word to his wife that she should come back. He does not designate with whom he sent the message, but he said it was understood by the children. The testimony disclosed that only one of the children, namely, Edward, called on him on three different occasions, and the captain admits that Edward called on him about a week before the day set for the first hearing for the purpose of bringing about a reconciliation between the father and mother. He says that he went there at the request of the captain, the message coming through a sister, a younger sister, who was on the stand. The sister also called on the captain. But as a result of the three conferences had with the captain, in the presence of an older brother, John, who was also on the stand, no conclusion was reached and nothing was done. The captain says, "I told them that she

could come back." Edward was put on the witness stand and, after hearing the testimony of his father, absolutely denied that the father at any time during those interviews even indicated that his mother could come back or should come back or extended any invitation to her to come back. I think in substance that was the testimony, as I recall it. Now, it may be added to if the other side can recall anything further.

Mr. Satterthwaite: If the Court please, what counsel has said I think we are willing to have stand as a stipulation with a slight alteration to which I think he will agree. He stated, I think, that Captain Walsh stored his goods in the Pennington Avenue house before going to Ireland. His testimony was, as I recollect it, that he put them in there, furnished the house, and then when he went to Ireland he had the goods stored and the house rented during his absence, and that when he came back he then refurnished the house with these same goods and had the home open for his wife to come. The difference is as to the storing of the goods in the house and actually furnishing the house, a slight difference.

Mr. Backes: I think the testimony shows that he put them in the house. Whether it was prepared for housekeeping I don't think appears.

Mr. Satterthwaite: Now, in regard to the testimony of Edward, the son, on cross-examination he was examined about her, asked whether or not something was not said about his mother coming back there during the interview there and he said no, but he said the interview lasted something like two hours, I think, and he was asked what they talked about.

Well, he said his father spoke about the number of bed-bugs in the house there, which had been recently vacated, and the bugs he found in that house when he came there, and he was asked the question whether they did not all the time they were there talk about the main object of the visit, which was reconciliations between his father and his mother, and the testimony substantially stands that way, that nothing was said about his mother coming back there, but they went for that purpose, namely, about some kind of a settlement, but that that wasn't mentioned during that two hours.

Mr. Backes: Now, Mr. Satterthwaite, on this statement of the income of the Monument property?

Mr. Satterthwaite: Have you got that statement here?

Mr. Backes: That is a copy of it.

Mr. Satterthwaite: This statement shows a rent loss of $190 during last year because of houses being vacant, but he said on cross-examination they were all rented now.

The Vice-Chancellor: You mean this statement that you file showing the income the captain has?

Mr. Satterthwaite: Then he has also here on this statement improvements ordered by the mortgagee, and on cross-examination he admitted these were improvements that would not be annual, but were extraordinary expenditures.

Mr. Backes: This statement shows all income of

Mrs. Walsh's house—for the Monument house property?

Mr. Satterthwaite: Yes.

The Vice-Chancellor: What is approximately the net income it shows?

Mr. Backes: $293, according to that statement, last year.

The Vice-Chancellor: Her approximate net income?

Mr. Backes: $293 last year, from October 1st, 1915, to October 1st, 1916.

Mr. Satterthwaite: And it shows that if that $190 should be collected, all being rented now, it would be $483.

The Vice-Chancellor: If it was at its maximum?

Mr. Satterthwaite: That it now is all rented. And the statement also shows $30 deducted for commissions for renting.

(Said statement marked Exhibit D1, 10/27/16.)

Mr. Backes: I think in substance, if your Honor please, that that was all the testimony disclosed.

Mr. Satterthwaite: Now, I ask the privilege of putting the captain on the stand for one moment. I forgot on re-direct examination to ask him a question regarding Mrs. Walsh's testimony concerning the women. At the close of the testimony she said she could not keep a housekeeper, you will remember.

The Vice-Chancellor: That is competent rebuttal.

JOHN E. WALSH, recalled.

By Mr. Satterthwaite:

Q. Captain, Mrs. Walsh testified the other day that she could not keep a housekeeper because of your conduct towards the women, and she mentioned three women, I think, Lucy Jones, colored, Mary Ramsey, white, and a woman named Murdock. Was there any trouble between you and your wife growing out of the presence of those women in your household or your conduct towards them?

The Vice-Chancellor: She said she did not acquaint him with the fact, that she refrained from doing that.

Mr. Backes: Yes.

Mr. Satterthwaite: I will change the question, then.

Q. Did you indulge in any familiarity in any way with any of these women?

A. Never in my life; no, sir.

Cross-examination.

By Mr. Backes:

Q. Didn't you frequently have trouble with women while they were in the employ of your wife?

A. Never in my life had a word with one of them.

Q. Didn't you have housekeepers sent to you when you were keeping house yourself in Ewingville who would not remain with you?

A. No, sir.
Q. Because of your conduct towards the women?
A. No, sir, positively no.

The Vice-Chancellor: This case is one that is distressing in every respect, and I have been unable to avoid the hope, during the progress of the case, that some adjustment could be brought about that might reconcile these unfortunate parties. After living together so many years and raising so large a family of children, who have now all reached manhood and womanhood, it is distressing to see the end of their lives clouded by a domestic controversy of this kind, culminating in a separation and a destruction of their home. I have during the progress of the case at moments been almost tempted to ask counsel whether it might not be prudent to make some further efforts—as I understand some have already been made—to bring about a reconciliation, but I refrained from such a suggestion up to this time. If at this time counsel can give me any possible hope that a reconciliation or adjustment of some nature might be brought about I would be more than glad to share in that effort, but if counsel on both sides at this time feel that it is impossible, that such an effort would be hopeless, then it will be necessary, of course, for me to dispose of the case as it now stands. (After consultation between counsel and defendant, and argument of counsel.) I will ask counsel to do this: A week, I should think, ought to be long enough to ascertain what ought to be done.

Mr. Satterthwaite: It ought to be and yet sometimes it takes just a little time for a person to get

down from a certain perch. Perhaps two weeks would be better.

The Vice-Chancellor: Well, perhaps two weeks might be better. I will let the matter stand over for two weeks, unless counsel sooner acquaint me with the fact that there is no necessity of holding it over longer, that there is no hope of anything being done. If at the end of two weeks, or sooner, counsel apprise me that no adjustment can be reached, then I will proceed with the decision of the case. If an adjustment is reached the case may stand over indefinitely, with leave on the part of counsel or either side to have it reopened and testimony of all that has transpired in the meantime can then be taken. I confess the case has given me a great amount of trouble. I had hoped that the arguments of counsel would clear away some of my trouble, but I confess that it has not entirely done so. I do not say that in disparagement of the arguments, but I say it by reason of the frightful conflict of testimony in the case. The arguments have been all that could be asked. Let us leave it in that shape, and when I hear from counsel, one way or the other, I will do as your directions indicate I should. (To the defendant) And, now, I hope, Mr. Walsh, that if this reconciliation is brought about, if your wife and daughters come back to you, that your conduct in your home in the future will be everything that the conduct of a husband should be.

The Defendant: Yes, sir.

The Vice-Chancellor: If your daughters come to me, with their counsel, and tell me that you have not behaved yourself as you should there will be no way possible to save you from the consequence of that conduct.

The Defendant: Yes, sir.

The Vice-Chancellor: I fully believe, Mr. Walsh, that if you go back into that home, constituted as we are hoping it may be, you will in the future give no cause for complaint. I entertain that hope and I entertain that belief. I believe you will behave yourself there, and I hope that you may be given a trial.

The Defendant: Yes, sir.

Mr. Satterthwaite: You understood what the Court said?

The Defendant: Part of it I did and part of it I did not.

The Vice-Chancellor: Come a little closer, Captain. (Defendant complies.) In case an adjustment is brought about, ——

The Defendant: Yes, sir.

The Vice-Chancellor: Whereby you and your wife and your two daughters live together ——

The Defendant: Yes, sir.

The Vice-Chancellor: Either at Ewingville or at Trenton, this case will be held open, and your future happiness or misery will be dependent on your future conduct.

The Defendant: Yes, sir.

The Vice-Chancellor: If you treat your wife as a husband should treat his wife there will be no more trouble.

The Defendant: Yes, sir.

The Vice-Chancellor: But if you treat her badly, your daughters will come to me, with their counsel, and apprise me of the fact and you will necessarily suffer from your conduct. I just stated to counsel that I believed if you did go back with them that you will behave yourself like a good husband. If I did not believe it I would not suggest it. I think, in view of all that has transpired, that there is no doubt that if there is a reconciliation it will be a good thing and that you will be a good husband and she a good wife, and I hope that will come about, and I ask you to do everything you can to bring that about.

The Defendant: Thank you. I will, your Honor.

The Vice-Chancellor: Your lawyers are going to try to bring it about, and if they fail to do so, if either of you are unwilling to do so, then I am going to proceed and decide the case under the present testimony.

The Defendant: Thank you.

CONCLUSIONS.

(Filed Nov. 24, 1916)

IN CHANCERY OF NEW JERSEY.

Between
MARGARET WALSH,
Complainant,
and
JOHN E. WALSH,
Defendant.

Final Hearing on Bill for Maintenance.

CONCLUSIONS.

PETER BACKES, ESQ., for complainant.
JOHN T. VANCLEEF, ESQ., and LINTON SATTERTHWAITE, ESQ., for defendant.

LEAMING, V. C.

The evidence in this suit fully establishes the fact that defendant's conduct toward his wife has been such as to deny to him the right to now require her to share his home.

In this state to justify a wife in leaving her husband's home or in refusing to share the home of his selection on account of his cruelty, physical violence need not be shown, but such conduct of the husband must be shown as will reasonably convince the Court that at or prior to the time of their separation her

life or health was in danger, or that her life was by his conduct 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 those conditions. Unless complainant and the several children of the marriage who have testified in her behalf have wilfully and deliberately testified to falsehoods touching the defendant's conduct the very conditions above suggested existed in defendant's home at the time of the separation. I am unable to doubt the truth of their statements and am equally unable to believe the denials of defendant.

A review of the testimony seems unnecessary. Much of defendant's misconduct may be attributed to the influence of alcohol and his dissatisfaction with some of his children and their presence in his home; but that fact affords no justification for his misconduct. I am convinced that the children fully believed that their presence in the home was necessary for their mother's safety, and I share with them that belief.

It follows that an order must be made compelling defendant to contribute to complainant's support.

In making an order of that nature I believe it to be the duty of a Court to carefully limit the order to the demands of necessity as discerned by the condition and station in life of complainant and the ability of defendant to pay. An order for an amount calculated to render separation attractive to complainant is, in my judgment, unwarranted by a statute that favors cohabitation and contemplates only suitable support and maintenance during the period of separation. Complainant has some means of her own; defendant's income is limited. At this time complainant is occupying a property owned by de-

fendant and is paying no rent. I will advise an order for the payment of ten dollars per week. In the event of complainant being denied the occupancy of the property where she now lives the amount may be suitably increased. Complainant's solicitor may be allowed a counsel fee of one hundred dollars.

Submitted: November 9, 1916.
Determined: November 22, 1916.

DECREE.

(Filed Dec. 1, 1916)

IN CHANCERY OF NEW JERSEY.

MARGARET WALSH, *Complainant,* vs. JOHN E. WALSH, *Defendant.*	On Bill for Maintenance. DECREE.

This cause coming on to be heard in the presence of Peter Backes, solicitor for and of counsel with the complainant, and John T. VanCleef, solicitor and counsel, and Linton Satterthwaite, of counsel with the defendant, the pleadings being read and the proofs of the parties taken in open court and the argument of respective counsel having been heard and considered.

And it appearing that the complainant and defendant were lawfully married on the 7th day of January, 1874, and that both parties are residents of this state; that the complainant now resides and has continued for a number of years past to reside in her present home, the property of the defendant, situate at Ewingville, in the county of Mercer, and that the defendant left said home and requested the complainant to join him in a new home in the city of Trenton, and that the complainant refused said offer alleging misconduct on the part of the defendant, which justified her in living apart from the defendant, and that under all existing circumstances she should not be compelled to live with him and that the defendant should be compelled to maintain and provide for her.

It is thereupon on this 29th day of November, 1916, by his Honor Edwin R. Walker, Chancellor of the state of New Jersey, ordered, adjudged and decreed, that so long as the complainant is permitted to remain and continue to remain in the occupancy and enjoyment of her present home and is not disturbed in the occupancy and enjoyment of the same, the defendant shall, forthwith pay to the complainant or to her solicitor, the sum of $10.00 per week, payable weekly, on the last day of each and every week, until the further order of this Court.

And it is further ordered that if the complainant be deprived of the enjoyment, occupancy and possession of her present home, and dispossessed therefrom, that she then have leave to apply to this Court for further relief.

And it is further ordered, adjudged and decreed that a copy of this decree be served forthwith upon the defendant, or his solicitor, and that within ten days after said service, the defendant do give bond

to the said complainant in the sum of $1000.00, with sufficient surety or sureties, to be approved as to form and security by the Hon. Frederick W. Gnichtel, one of the special masters of this court, for the punctual payments of the alimony and maintenance by this decree awarded to be paid, at the time and in the manner in this decree directed; and upon neglect or refusal of said defendant to give said bond, within the time so specified, or upon his default or that of his surety or sureties to pay the said sum or sums when the same shall fall due according to this decree, that the complainant be at liberty to apply to this Court to award and issue process of sequestration, or for such other process or order, as this Court may, under the circumstances, deem equitable and just, and as may be consistent with the power and authority of this Court.

And it is further ordered, adjudged and decreed that the said defendant do further pay to the complainant, or her solicitor, the costs of this suit to be taxed, and also the sum of $100 which is hereby adjudged and decreed to be a reasonable counsel fee for the counsel of said complainant; and that the said complainant do have execution for said costs and counsel fee according to the practice of this court.

And it is further ordered, adjudged and decreed, that either party shall be at liberty to apply, upon a further change of circumstances of the parties, for a variance or a modification of that decree touching said alimony and maintenance as shall be just and equitable.

E. R. Walker,
C.

Respectfully advised,
E. B. Leaming, *V. C.*

I consent to the above decree as to form.

JOHN T. VANCLEEF,
Sol'r for Defendant.
LINTON SATTERTHWAITE,
Of Counsel.

NOTICE OF APPEAL.

(Filed Dec. 15, 1916)

IN CHANCERY OF NEW JERSEY.

Between MARGARET WALSH, *Complainant,* and JOHN E. WALSH, *Defendant.*	ON BILL, &c. NOTICE OF APPEAL.

The defendant above named hereby appeals from the whole and every part of the final decree entered on the twenty-ninth day of November, nineteen hundred and sixteen, in the above-stated cause, to the Court of Errors and Appeals, in the last resort in all causes.

JOHN T. VANCLEEF,
Solicitor of Counsel with Defendant-Appellant.

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

LINTON SATTERTHWAITE,
Of Counsel with Defendant-Appellant.

Service of a copy of the foregoing notice of appeal, acknowledged this 12th day of December, 1916.

PETER BACKES,
H. W. BACKES,
Solicitor of Complainant-Respondent.

PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between
MARGARET WALSH,
Complainant-Respondent,
and
JOHN E. WALSH,
Defendant-Appellant.

PETITION OF APPEAL.

The petition of John E. Walsh, the appellant in the above-stated cause, respectfully shows that your petitioner finds himself aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the state of New Jersey, bearing date the twenty-ninth day of November, nineteen hundred and sixteen, in a cause wherein the said Margaret Walsh was complainant, and the said John E. Walsh was defendant, in this respect, to wit:

That the said decree adjudges that the defendant-appellant should forthwith pay to the complainant-respondent, or to her solicitor, the sum of ten dollars per week weekly, so long as she is permitted to remain and continues to remain in the occupancy and enjoyment of her present home; that it further orders, adjudges and decrees that the defendant-appellant give bond to the complainant-respondent in the sum of one thousand dollars, for the payment of the alimony and maintenance awarded by said decree; and that it further orders, adjudges and decrees that the defendant-appellant pay one hundred dollars counsel fee to the solicitor of the complainant-respondent; and your petitioner humbly appeals from the whole of said decree, upon the ground that the same is erroneous, for that the bill of the complainant-respondent should have been dismissed.

Your petitioner therefore prays that the decree of the said Chancellor may be in all respects reversed, set aside and for nothing holden, and that your petitioner may such further relief in the premises as to this Honorable Court shall seem meet.

Solicitor of Defendant-Appellant.
LINTON SATTERTHWAITE,
Of Counsel with Defendant-Appellant.

I conceive there is good grounds of appeal in the above-stated cause.

LINTON SATTERTHWAITE,
Of Counsel.

Service of a copy of the foregoing petition of appeal, acknowledged this day of December, 1916.

PETER BACKES,
Solicitor of Complainant-Respondent.

EXHIBITS.

EXHIBIT D1 10/24/16.

Ewingville N. J.
March 5. 15

To My Wife
Mrs Margaret Walsh

Now, Mam, I am writing this Note to tell you that I am More than willing to Provid and Maintain a Home for you, and any one else that is depending on us yet for a Living But I will not have any one else in our Home. Because I canot stand their abuse and threats upon my Life any longer. You can gow to visit them as long and often as you Please but they must not come Here under any Circumstances. unless Invited by Me Personaly

Hoping this will Meet with your aprooval
I am Your Loving Husband

J. E. Walsh

EXHIBIT D2 10/24/16.

Ewingville N J
Mar 17. 15

To My Wife
Mrs Marget Walsh

Now Mam this is to Inform you that I am going to Make a New Home for you and me.

Aways from all Those that has made So Mutch Disturbance and Discontent Between us we wont have them any More I am Going to Moove My Things and Close this House up as I Canot live Here any More.