INDEX

	Page
Bill of Complaint	1
Answer and Cross-Petition	6
Reply and Amended Answer to Cross-Petition	18
Conclusions of Vice-Chancellor	21
Decree Nisi	23
Notice of Appeal	25
Amended Notice of Appeal	27
Petition of Appeal	29
Notice of Argument	32
Order of Substitution	33
Notice	34
Petition for Alimony and Affidavits	35
Motion to Amend Pleadings	152

TESTIMONY.

For Complainant.

Sadie Gerber,		
	direct examination	40
	in rebuttal	44
	cross examination	46
	re-direct "	55
Charles Gerber,		
	direct examination	55
	cross "	60
	re-direct "	65
	re-cross "	67
Mrs. Tillie Rich,		
	direct examination	67
	cross "	93
(recalled)	further direct	111, 139, 154
	further cross	127, 156, 166
	re-direct	173
Bernard Lewis,		
	direct examination	176
(recalled)	direct "	179
Gustave Lewis,		
	direct examination	183

PAGE

For Defendant.

William Harris,
direct examination..... 177
cross " 178
(further) direct " 179
Emanuel P. Scheck,
direct examination..... 185
cross " 193
re-direct " 201
Isaac Schlessinger,
direct examination..... 203
cross " 203
Andrew Knef,
direct examination..... 204
Robert D. Grosman,
direct examination..... 207
cross " 209
Mrs. Rose Grosman,
direct examination..... 211
cross " 212
Dr. Michael Weinstock,
direct examination..... 215
Louis Rich,
direct examination..... 217
cross " 234
(further) direct " 262
Martha Rich,
direct examination..... 263

Complainant's Rebuttal.

Florence Simon,
direct examination..... 265
Mrs. Carrie Simon,
direct examination..... 268
cross " 270
Miss Anna Altman,
direct examination..... 274
Mrs. Tillie Rich,
direct examination..... 275

PAGE

EXHIBITS.

		Off'd	P't'd
D. 1.	Letter, Paris, Aug. 11, 1926	105	278
D. 2.	Letter, Paris, Aug. 16, 1926..	105	279
D. 3.	Letter, Oct. 27, 1926.....	105	281
D. 4.	Letter, Nov. 30, 1927.....	106	282
D. 5.	Letter, Sept. 1, 1928.....	106	282
D. 6.	Letter, Sept. 30, 1925.....	106	282
C. 1.	Business Card of Louis Rich	156	283
C. 2.	Notice in Newark Evening News	176	283
D. 1.	1/20/30, Letter, Dec. 3, 1927, William Harris to Emanuel Scheck	179	284
D. 2.	1/20/30, Letter, Dec. 5, 1927, E. P. Scheck to William Harris	202	285
D. 3.	1/20/30, Letter, Nov. 30, 1927, Louis to Tillie.....	202	286
Exhibit A for Defendant	Letter Sept. 19, 1928, M. E. Ruback to Nathan Bilder.....	277	286

BILL OF COMPLAINT.

Filed Oct. 9, 1928.

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, Tillie Rich, of the City of Newark, in the County of Essex and State of New Jersey:

1. On the 17th day of August, 1924, she was lawfully married to her present husband, Louis Rich, at Newark, in the State of New Jersey, by Jacob B. Pollock, a Jewish Rabbi.

2. After her said marriage, your oratrix and the defendant, her said husband, went to reside at 738 High street, in the City of Newark, County of Essex in this State, where they lived together for about thirteen months, and where they cohabited until the abandonment by the defendant of your oratrix, as hereinafter complained of.

3. No children have been born to your oratrix and her said husband, as the fruit of their marriage.

4. Prior to September, 1925, defendant, on a number of occasions, told your oratrix that he did not wish to live with her any longer. In or about August or September, 1925, defendant sent one of his employees to the apartment occupied by your oratrix and said defendant, to remove all of the personal belongings of defendant, and said employees did remove such personal belongings of defendant from said apartment.

On a subsequent date in September, 1925, defendant, without the previous knowledge or consent of your oratrix, brought a moving van to the above-mentioned place of residence of your oratrix and the defendant, and in your oratrix' absence, was about to remove and was in the act of removing all of the household furniture and effects from said apartment, when your oratrix arrived at the apartment and prevented such removal by her opposition. Your oratrix on that occasion asked defendant what he was going to do and defendant answered that he was going to move everything down to an apartment on Mulberry street. Your oratrix learned that said apartment was located in what is known as a cheap dwelling house in an inferior neighborhood. The apartment in which your oratrix had up to then been living with defendant was a high-class four-room apartment, the rent for which was $100.00 per month.

5. In or about September 1925 and prior to the last-mentioned occasion, the defendant had expressed a desire of occupying a less expensive apartment. Thereupon your oratrix suggested that they take a two-room apartment for which the rent was $60.00 in the same apartment house. After the occasion last above mentioned, and in the month of October, 1925, your oratrix moved out of the said four-room apartment into said two-room apartment.

6. In September, 1925, defendant separated himself from your oratrix, and your oratrix did not see said defendant again until the latter part of October, 1926.

7. On or about October 30, 1926 your oratrix met defendant at an appointed place in the City

of Newark, pursuant to a communication from defendant. On said occasion your oratrix and defendant had a talk about their affairs in which your oratrix expressed a desire that defendant and your oratrix should resume co-habitation. Although expressing a willingness to resume co-habitation, the defendant made no definite proposals in that regard, and when your oratrix and defendant parted on said occasion, no arrangement had been made for their living together.

8. Your oratrix did not see or hear from defendant until about February of 1927. Sometime in February defendant began to pay visits to your oratrix several times a week until sometime in April, 1927. After April, 1927, your oratrix did not see defendant until sometime in October, 1927. In October, 1927 defendant visited your oratrix and remained in her apartment over night. On that occasion the defendant expressed a desire to take up his residence again with your oratrix in said apartment. Your oratrix stated to defendant that she was entirely willing to live with him again in said apartment.

9. After leaving your oratrix on said occasion defendant, however, failed to return to said apartment, and did not visit your oratrix until sometime in January, 1928. In January, 1928, defendant again either visited your oratrix or met her by appointment.

10. In July of 1928 your oratrix notified defendant that your oratrix's lease on the above mentioned apartment was about to expire, and inquired of the defendant if he wished your oratrix to renew the lease. The defendant thereupon stated to your oratrix that he was not interested in the matter of the renewal of her

lease, and that she could do as she wished about it.

11. From and after September, 1925 defendant sent to your oratrix by mail each week a check for $30.00. From and after November, 1927, the defendant reduced his weekly payments to your oratrix from the sum of $30.00 to the sum of $20.00, and continued making such weekly payments of $20.00 until September 1, 1928. From and after that date defendant has been paying to your oratrix only $10.00 per week. On September 19, 1928 defendant, through his attorneys, Messrs. Leber & Ruback of Newark, New Jersey, notified your oratrix that from and after said date defendant would make no further payments to your oratrix.

12. Your oratrix shows and charges that ever since October 1925 aforesaid, defendant has abandoned your oratrix, without justifiable cause, and separated himself from her, and has refused and neglected, and still does refuse and neglect, to maintain and provide for her.

13. Your oratrix shows that she is now dependent for the support of herself upon loans made to her by her relatives.

14. Your oratrix charges that defendant is possessed of a large amount of real and personal property of the value of at least $100,000.00; your oratrix believes and alleges that defendant's income amounts to at least $150.00 per week, and that he is able to earn such by his personal attention to his business, and that defendant is abundantly able to maintain and support her in a manner suitable to her position.

In tender consideration thereof, and forasmuch as your oratrix can be relieved only in this court;

To the end, therefore, that the said Louis Rich may answer the premises, but without oath, and that he may be ordered and decreed to provide such suitable support and maintenance, to be paid and provided by him, or made out of his property, for your oratrix, and for such times as the nature of the case and the circumstances of the parties render suitable and proper; and that the said defendant may be compelled to give reasonable security for such maintenance and allowance, and to pay the same from time to time under the compulsory orders of this honorable court, as provided by the statute; and in case the defendant cannot be found in this State to be served with process, that his estate, property and effects in this State may be sequestered to compel his appearance and performance of any decree as shall seem fit to your Honor, and that the defendant may be required to pay to your oratrix a proper amount of counsel fees, and that she may have such further equity as to your Honor shall seem meet.

May it please your Honor, the premises considered, to grant unto your oratrix the State's writ of subpoena, issuing out of and under the seal of this honorable court, to be directed to the said Louis Rich, 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, etc.

BILDER & BILDER,
Solicitors for and of Counsel With Oratrix.

ANSWER AND CROSS-PETITION.

Filed December 13, 1928.

IN CHANCERY OF NEW JERSEY.

Between TILLIE RICH, *Complainant,* *and* LOUIS RICH, *Defendant.*	*On Bill for Maintenance. Answer and Cross-Petition.*

Defendant, residing in the City of Newark, County of Essex and State of New Jersey, answering the complaint herein exhibited against him says:

1. He admits the allegations of paragraph 1 of the complaint.

2. He admits the allegations of paragraph 2 of the complaint, except the allegation that complainant and defendant "cohabited until the abandonment by the defendant" of the complainant. Defendant says that he never abandoned the complainant, but that he and the complainant cohabited together until the 24th day of September, 1925, on which date, at the City of Newark, the complainant deserted the defendant, as is hereinafter more particularly alleged.

3. He admits the allegations of paragraph 3 of the complaint.

4. The defendant denies the allegation of paragraph 4 of the complaint to the effect that he, the defendant, on a number of occasions, told

complainant that he did not wish to live with her any longer. Defendant denies the allegation in said paragraph contained to the effect that in August or September of 1925 he sent one of his employees to the apartment occupied by complainant and defendant to remove the defendant's personal belongings and that said employee did remove from said apartment the defendant's personal belongings. Defendant says that on September 24, 1925, he, with the aid of an employee, caused to be removed from the apartment occupied by complainant and defendant at No. 738 High street, Newark, New Jersey, the defendant's personal wearing apparel, but that such removal was not contemplated, directed or accomplished by this defendant until the previous occurrence of the matters and things specifically set forth in paragraph 15 of this answer.

This defendant denies the allegation in said paragraph 4 that on a subsequent date in September, 1925, the defendant, without the previous knowledge or consent of the complainant, brought a moving van to premises No. 738 High street, Newark, New Jersey, and in complainant's absence, was about to remove all the household furniture and effects from the apartment occupied by complainant and defendant. This defendant says that his attempted removal from said apartment of the household furniture and effects therein contained was commenced and abandoned under the circumstances and occurrences particularly recited in paragraph 15 of this answer. This defendant admits the allegation contained in said paragraph 4 that the complainant asked him what he was going to do and that the defendant answered that he was going to move everything to an apartment on Mulberry

street. This defendant admits that the apartment to which he intended to remove said household furniture was in a dwelling house cheaper than the apartment house at No. 738 High street, Newark, New Jersey, and that the Mulberry street neighborhood is for residential purposes somewhat inferior to the High street locality. This defendant says that by reason of the matters and things hereinafter in paragraph 15 of this answer specified and related, this defendant was justified in making such proposed change in his place of residence and that it was the legal duty of the complainant to consent thereto and to go with the defendant to such proposed place of residence and there to abide with this defendant.

5. This defendant admits the allegations of paragraph 5 of the complaint, but says that when, in September, 1925, he expressed a desire of occupying a less expensive apartment, he also informed complainant that his state of health and his business interests required that he, the defendant, reside in the immediate neighborhood of the place of business then conducted by this defendant at No. 128 Mulberry street, Newark, New Jersey, at or near the corner of Market street and that the complainant did, prior to the 24th day of September, 1925, signify her willingness to move her home and household effects to any home established by this defendant in the vicinity of his said place of business.

6. The defendant denies the allegation in paragraph 6 of the complaint to the effect that in September, 1925, he separated himself from complainant and says that by reason of the matters and things hereinafter in paragraph 15 of this answer set forth, the complainant did, on

September 24, 1925, separate herself from this defendant and did, on that day, desert this defendant, which desertion has continued uninterrupted down to the present time.

This defendant admits the allegation of said paragraph 6 to the effect that complainant did not see him again until the latter part of October, 1926.

7. Defendant admits the allegation of paragraph 7 of complainant's bill that on or about October 30, 1926, he met with the complainant at an appointed place in the City of Newark, pursuant to a request for such appointment made by this defendant, and that at such meeting complainant and defendant discussed their affairs, but this defendant denies the allegation in said paragraph expressed to the effect that on said occasion complainant expressed a desire that she and this defendant should resume cohabitation and denies that he, the defendant, made no definite proposals in that regard. He admits that when he and complainant parted on said occasion, no arrangement had been made for their living together, but says that this was due to the refusal and rejection then and there expressed by complainant to the defendant's offer to establish a home and resume housekeeping and cohabitation.

8. This defendant denies the allegations of paragraph 8 of the complaint but says that from the early part of January, 1927, until the early part of October, 1927, he called upon complainant at her home on numerous occasions and solicited and requested her to take up her residence with him and to resume cohabitation with him, but that on most such occasions the complainant de-

clined and refused to comply with such request and on all other of such occasions, being several in number, complainant said that she would not resume cohabitation with defendant unless defendant furnished her with a surety bond to maintain her for all time thereafter in a high class and expensive apartment and with the services of a maid and the use of a private automobile, with which demands this defendant refused to comply for the reason that this defendant had not the means wherewith to satisfy such demands and for the further reason that complainant's station in life did not warrant or require the luxuries so as aforesaid demanded and insisted upon by complainant.

Defendant admits that in October, 1927, he called upon the complainant at her apartment, but denies that he remained there overnight.

9. Defendant admits the allegations of paragraph 9 of the complaint.

10. The allegations of paragraph 10 of the complaint are denied.

11. The allegations of paragraph 11 of the complaint are admitted, but this defendant says that upon the advice of members of his family and of counsel, he increased the weekly payments of $10.00 to $20.00 per week, paying and satisfying all shortages and deficiencies and that he, by his solicitors in this cause, consented to an order allowing the complainant $20.00 per week *pendente lite*. Defendant says that notwithstanding that he was not, in law, obliged to maintain and support complainant after the 24th day of September, 1925, he voluntarily continued making the payments set forth in paragraph 11 of the complaint, for the reason that complainant, in

September, 1925, and at divers other times thereafter, did threaten to drag the defendant's name through the courts and thereby embarrass and injure the defendant and his family in their social and business relations, which result this defendant had hoped to avoid. Defendant continued such payments for the further reason that he had hoped for a long while next following the 24th day of September, 1925, to prevail upon and persuade the complainant to resume housekeeping and cohabitation with the defendant. The defendant is the father of six children, all of whom are married and have families of their own, and the youngest of whom is about thirty years of age. One of the defendant's children, his son, Harry, is a practising physician in the City of Newark. Two of defendant's daughters are married to lawyers practising in the City of Newark. The defendant feared that if he refused after September 24, 1925 to make payments to complainant for her support, as lawfully he might refuse, public notoriety might result from ensuing litigation and that thereby his son, his sons-in-law and other members of his family might be mortified and embarassed. These payments were voluntarily continued by the defendant until September of 1928 when, owing to his reduced means, he sought to reduce and did reduce the weekly payments to $10.00, and upon complainant refusing to accept such reduction and threatening to institute suit, defendant, through counsel, notified complainant that he would make no further payments to complainant.

12. The allegations of paragraph 12 of the complaint are denied.

13. The allegations of paragraph 13 of the complaint are denied.

14. The allegations of paragraph 14 of the complaint are denied.

15. This defendant says that he is now sixty-one years of age; that when he married complainant, on August 17, 1924, he was a widower, his wife having died in the year 1922. Shortly before defendant's marriage to complainant defendant explained to her that he was engaged in the retail clothing business at No. 128 Mulberry street, near the corner of Market street in the City of Newark and that his business required that he be in his store from about ten in the morning until about nine at night and that defendant wished to live in the vicinity of his store so that he might enjoy his mid-day and his evening meal at home without having to travel any considerable distance from his store or absent himself therefrom for any considerable length of time. Complainant, who had never been married before, expressed a desire that for the first year of their married life she and the defendant reside on High street in the City of Newark, in some fairly modern and fashionable apartment house, so that she might impress her friends and acquaintances with the fact that she had made a comfortable match. She promised and agreed that after the first year she would move with defendant to any flat or apartment rented by him in the vicinity of his place of business, so that the defendant's convenience would be served and so that the defendant would not be put to a continued heavy rental. Thereafter, on August 17, 1924, complainant and defendant intermarried, as alleged in complainant's bill and

took up their joint residence in a four room apartment at 738 High street (same being an elevator apartment), which apartment had been rented by complainant, for which the defendant was obliged to pay a rental of $100.00 per month. They continued to reside there until September 24, 1925, under a lease which was limited to expire October 1, 1925. During this time defendant was obliged to take most of his mid-day and evening meals in restaurants located near his place of business, in consequence of which his health had suffered. In the early part of September, 1925, defendant told complainant that he had kept his promise to her and had given her the High street apartment for the first year of their married life and that his health and business now required that they move to the vicinity of his store. To this proposal the complainant first objected, saying that she was not obliged to move to inferior quarters and that in the vicinity of the defendant's store she would not be conveniently near her friends and acquaintances. Thereafter, however, on or about the 15th day of September, 1925, and after constant insistence by the defendant, complainant agreed to make the proposed change in residence and told defendant to rent an apartment near his place of business. The defendant located a four room apartment on the third floor of a brick building, situated at the southwesterly corner of Market and Mulberry streets in the City of Newark, directly opposite the defendant's store. Said apartment fronted on Market street and the rooms were large, light and airy. Defendant requested complainant to view the apartment, which complainant declined to do, telling the defendant to rent the same and that after she had lived there awhile, if she did

New Jersey State Library

not like it, a change could be made. Accordingly, the defendant rented said apartment from Larkey Realty Company for a term commencing October 1, 1925, and informed complainant of that fact and that it would be necessary to move forthwith to avoid the October first moving rush and to avoid liability as a holdover tenant of the High street apartment. On September 24th, after previous arrangement with complainant, the defendant sent a moving van to the High street apartment to remove the household effects therein contained to the new apartment so as aforesaid rented by the defendant. Defendant instructed the moving men to pack the things, whereupon complainant announced that she had changed her mind and that she would not move. She forbade the moving men from touching the furniture, placed herself bodily in their way, took packages out of their hands and told them to get out of the premises. Defendant attempted to persuade her to permit the moving and to come down to the new flat and assured her that, if after she had stayed there awhile she did not like her new residence, some satisfactory change would be arranged. Complainant shouted that she did not care to live with the defendant anyway and that she was going to stay right there, because she selected other rooms in the same house and would not move from that house. She shouted that she was through with this defendant and that all she wanted was to get back some money that she had given to the defendant. She thereupon telephoned for her brother, a Mr. Gus Lewis, and for her nephew, Mr. Jack Lewis, and for a police officer. They all arrived at about the same time. She also sent for the landlord of the High street apartment house who threatened to assault and

beat the defendant if any attempt were made to remove the furniture and effects. Complainant's said brother, upon his arrival, informed the owner of the High street apartment, that he, the said Gus Lewis, would be personally responsible for any rent that would accrue after the 1st of October, and that the complainant would continue to reside in said apartment house and would select another apartment therein, the rent for which he, the said Gus Lewis, would be legally responsible for. Defendant for a while persisted in his efforts to persuade the complainant to allow the removal of said furniture, all of which was refused by the complainant who, with the aid and assistance of her said brother and nephew, prevented the defendant and the moving men from moving the said household goods and effects. Defendant thereupon packed up his personal wearing apparel and left the premises.

Thereafter and on many occasions, as elsewhere above in this answer recited, the defendant entreated the complainant to resume housekeeping and cohabitation in some suitable and respectable home to be supplied by this defendant. On most of these occasions, complainant informed the defendant that she would not again live with the defendant and she was sorry that she had married and that she disliked the obligations of married life. On several occasions, however, she advised defendant that she would resume housekeeping with him if he first furnished a surety bond that he would maintain her in an apartment costing no less than $100.00 a month and that he would supply her with a maid and a private car. Defendant advised her that he could not afford to furnish the foregoing items demanded and that he could not yield to her with

respect thereto, to which complainant replied that only on those terms would she go back to live with defendant.

WHEREFORE, this defendant says that he has not abandoned the complainant and has not refused to furnish and supply unto her that support and maintenance which, by law, he was obliged to furnish and supply, but that, on the contrary, the complainant did, on September 24, 1925, desert the defendant and has ever since wilfully, continuedly and obstinately deserted this defendant, thereby disentitling herself to any support or maintenance from this defendant.

This defendant by way of cross-petition exhibited against the complainant, says:

1. This defendant was lawfully joined in the bonds of matrimony to his present wife, Tillie Rich, the complainant in this suit, on August 17, 1924, at Newark, New Jersey, by Jacob B. Pollock, a Rabbi of the Jewish Faith.

2. Defendant here repeats the allegations contained in paragraph 15 of his foregoing answer to complainant's bill.

3. By reason of the facts and occurrences aforementioned, this defendant charges that by the true intent and meaning of the Statute in such case made and provided, complainant deserted this defendant on the 24th day of September, 1925; ever since which time and for more than two years last past, said complainant has wilfully, continuedly and obstinately deserted this defendant.

4. Complainant and defendant have been bona fide residents of the State of New Jersey continuedly since their said marriage, the complainant continuously residing at No. 738 High street,

Newark, N. J., and the defendant residing until September 24, 1925, at No. 738 High street, Newark, N. J., and thereafter at No. 72 Girard Place, Newark, N. J.

5. No children were born of the marriage aforesaid.

6. This defendant prays that the marriage between him (as cross-petitioner) and the complainant (as defendant to said cross-petition) may be dissolved for the causes aforesaid, according to the Statute in such case made and provided.

And this defendant will ever pray, etc.

LOUIS RICH,
Defendant-Cross-Petitioner.

LEBER & RUBACK,
Solicitors for and of Counsel with
Defendant-Cross-Petitioner.

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

LOUIS RICH, of full age, being duly sworn according to law upon his oath, deposes and says that he is the cross petitioner named in the foregoing cross petition, and that his cross petition is not made by any collusion between him and the defendant in said cross petition, but in truth and good faith for the causes set forth in said cross petition.

LOUIS RICH.

Sworn and subscribed to before me
this 11th day of December, 1928.

SADIE HAUSMAN,
Notary Public of N. J.

REPLY AND ANSWER TO CROSS-PETITION.

Filed July 16, 1929.

IN CHANCERY OF NEW JERSEY.

Between TILLIE RICH, *Complainant,* *and* LOUIS RICH, *Defendant.*	*On Bill, &c.* *Reply and Answer to Cross-Petition.*

Complainant, replying to the answer of the defendant herein, says:

1. Complainant denies the allegations set forth in paragraph 2 of defendant's answer wherein the defendant states that "the complainant deserted the defendant as is hereinafter more particularly alleged."

2. Complainant denies the allegations set forth in paragraph 4 of defendant's answer.

3. Complainant denies the allegations set forth in paragraph 5 of defendant's answer.

4. Complainant denies the allegations set forth in paragraph 6 of defendant's answer.

5. Complainant denies the allegations set forth in paragraph 8 of defendant's answer.

6. Complainant denies the allegations set forth in paragraph 11 of defendant's answer.

7. Complainant denies the allegations set forth in paragraph 15 of defendant's answer.

Reply and Answer to Cross-Petition.

Complainant, answering defendant's cross-petition, says:

1. Complainant denies the allegations contained in paragraph 2 of defendant's cross-petition, which said paragraph repeats the allegations contained in paragraph 15 of defendant's answer to complainant's bill. Complainant alleges that before her marriage to the defendant herein, complainant was residing in the Hotel Riviera, in Newark, New Jersey; that defendant requested and approved the establishing of their marital domicile in an apartment on High street. Complainant alleges that the defendant requested that they live on High street in order that he could walk to his place of business and so get his exercise. Complainant further alleges that the furniture in said apartment belonged to her, and that defendant had for about two weeks prior to September 24, 1925 been moving his personal effects out of their apartment, and that at about that time he had no personal effects in the said apartment with the exception of some clothes. Complainant denies that there had been any previous arrangement between complainant and defendant whereby the defendant was to send the moving van to the High street apartment to remove the household effects therein contained to the new apartment rented by the said defendant.

2. Complainant further alleges that she has advanced to the defendant the sum of $5,000.00, which sum the defendant has promised to repay to the complainant but never has. Complainant further alleges that the defendant is the owner of a large and valuable piece of real estate in the City of Newark, and that defendant has fre-

quently requested that complainant release her rights in the said real estate and release her rights to dower therein. Complainant further states that the defendant frequently has refused to repay to complainant the said sum of $5,000.00, which complainant loaned to the defendant, unless she released her dower in the property aforesaid.

3. Complainant denies that she has ever deserted the defendant.

BILDER & BILDER,
Solicitors of Complainant.
January 31, 1928.

Consent is hereby given to the filing of the within Reply and Answer to Cross-Petition as within time.

LEBER & RUBACK,
Solicitors of Defendant.

REPLY AND AMENDED ANSWER TO CROSS-PETITION.

Filed ~~July 16, 1929.~~
January 30, 1930

IN CHANCERY OF NEW JERSEY.

Between	*On Bill, &c.*
TILLIE RICH, *Complainant,*	*Reply and Amended Answer to Cross Petition Filed by Leave of Court.*
and	
LOUIS RICH, *Defendant.*	

Complainant, replying to the answer of the defendant herein, says:

1. Complainant denies the allegations set forth in paragraph 2 of defendant's answer wherein the defendant states that "the complainant deserted the defendant as is hereinafter more particularly alleged."

2. Complainant denies the allegations set forth in paragraph 4 of defendant's answer.

3. Complainant denies the allegations set forth in paragraph 5 of defendant's answer.

4. Complainant denies the allegations set forth in paragraph 6 of defendant's answer.

5. Complainant denies the allegations set forth in paragraph 8 of defendant's answer.

6. Complainant denies the allegations set forth in paragraph 11 of defendant's answer.

Reply and Amended Answer to Cross-Petition.

7. Complainant denies the allegations set forth in paragraph 15 of defendant's answer.

Complainant, answering defendant's cross-petition, says:

1. Complainant denies the allegations contained in paragraph 2 of defendant's cross-petition, which said paragraph repeats the allegations contained in paragraph 15 of defendant's answer to complainant's bill. Complainant alleges that before her marriage to the defendant herein, complainant was residing in the Hotel Riviera in Newark, New Jersey; that defendant requested and approved the establishing of their marital domicile in an apartment on High street. Complainant alleges that the defendant requested that they live on High street in order that he could walk to his place of business and so get his exercise. Complainant further alleges that the furniture in said apartment belonged to her, and that defendant had for about two weeks prior to September 24, 1925, been moving his personal effects out of their apartment, and that at about that time he had no personal effects in the said apartment with the exception of some clothes. Complainant denies that there had been any previous arrangement between complainant and defendant whereby the defendant was to send the moving van to the High street apartment to remove the household effects therein contained to the new apartment rented by the said defendant.

2. Complainant further alleges that she has advanced to the defendant the sum of $5,000.00, which sum the defendant has promised to repay to the complainant but never has. Complainant further alleges that the defendant is the owner

of a large and valuable piece of real estate in the City of Newark, and that defendant has frequently requested that complainant release her rights in the said real estate and release her rights to dower therein. Complainant further states that the defendant frequently has refused to repay to complainant the said sum of $5,000.00, which complainant loaned to the defendant, unless she released her dower in the property aforesaid.

3. Complainant denies that she has ever deserted the defendant.

4. Complainant alleges that on July 19, 1929, complainant and defendant resumed cohabitation and on said date complainant and defendant had sexual relations at the apartment then occupied by complainant at 738 High street, in the City of Newark, New Jersey. Complainant alleges that on July 28, 1929, complainant and defendant again had sexual relations in complainant's said apartment.

BILDER & BILDER,
Solicitors of Complainant.

CONCLUSIONS OF VICE-CHANCELLOR.

Filed September 30, 1930.

IN CHANCERY OF NEW JERSEY.

Between TILLIE RICH, *Complainant,* *and* LOUIS RICH, *Defendant.*	*On Bill for Maintenance and Counterclaim for Divorce.* *Conclusions. Not to Be Printed in Any Report.*

Bilder & Bilder (Walter Bilder, Esq.), for complainant.

Leber & Ruback (Meyer E. Ruback, Esq.), for defendant.

BERRY, *V.-C.*

The bill is for separate maintenance on the ground of desertion of complainant by defendant on September 24, 1925, and there is a counterclaim by the defendant for divorce on the ground of his desertion by the complainant on the same date. It would serve no useful purpose to review the evidence in detail. Suffice it to say that in my judgment, under the circumstances of this case, the desertion charged by both parties was that of the complaining wife. The right of the husband to choose the marital domicile is unquestionable and under the circumstances of this case his demands were not, in my judgment, unreasonable. Assuming, for argument's sake, however, that the desertion was that of the de-

fendant husband, his subsequent advances, sincere and bona fide, as I believe they were, and complainant's refusal to submit to those advances, clearly make her the deserter in the final analysis. And even assuming that his original demand that his wife move to Mulberry street was unreasonable and unwarranted, his later demands on the occasion of his repeated attempts at a reconciliation cannot be the subject of criticism whether by the complainant or by this Court.

As to the complainant's defense of condonation, it was not originally pleaded, was plainly an afterthought, and is not supported by satisfactory or convincing evidence. It is an affirmative defense and the burden of proving it is on the one who asserts it. This burden has not been sustained by the complainant.

I will advise a decree dismissing the bill of complaint and awarding a divorce to the defendant on his counter-claim on the ground of desertion.

Decided September 24, 1930.

DECREE NISI.

Filed October 28, 1930.

IN CHANCERY OF NEW JERSEY.

Between TILLIE RICH, *Complainant,* *and* LOUIS RICH, *Defendant-Counter-Claimant,*	*On Bill for Maintenance.* *On Counter-Claim for Divorce.* *Decree Nisi.*

This cause coming on to be heard in the presence of Walter Bilder, Esq., of counsel with the complainant, and Meyer E. Ruback, Esq., of counsel with the defendant counter-claimant, upon the bill, answer, counter-claim, and answer and amended answer thereto, and upon proofs being taken in open court, and the Court having heard and considered the pleadings and proofs in this cause, and the argument of counsel, and it appearing that the complainant (defendant to the counter-claim) and the defendant counter-claimant were lawfully married on the 17th day of August, 1924, and that the complainant has failed by her proofs to sustain the allegations of her bill of complaint, and that the same should be dismissed; and it further appearing that the complainant (the defendant in the counter-claim) has been guilty of wilful, continued and obstinate desertion of the defendant counter-claimant for the term of two years as alleged in the said counter-claim, and that at the time the cause of action for divorce for the said desertion arose both the complainant and the defendant counter-

Decree Nisi.

claimant were bona fide residents of this State; and that they have continued so to be down to the time of the filing herein of the defendant's counter-claim for divorce, and that both parties have been, for the two years next preceding the filing of said counter-claim for divorce, bona fide residents of the State; and it further appearing that jurisdiction herein has been acquired by personal service of process upon the defendant within this State, as well as by the appearance and answer of the defendant and his counter-claim filed herein against the complainant, service of which answer and counter-claim was duly made upon the complainant:

It is thereupon, on this 28th day of October, 1930, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, ORDERED, ADJUDGED and DECREED, and the said Chancellor, by virtue and power of this court, and of the acts of the legislature in such case made and provided, does hereby ORDER, ADJUDGE and DECREE that the complainant's bill of complaint be dismissed, and that the said complainant, Tillie Rich, and the said defendant counter-claimant, Louis Rich, be divorced from the bonds of matrimony for the cause aforesaid, as charged in the counter-claim of the said Louis Rich, and that the said parties, and each of them be freed and discharged from the obligations thereof, unless within three months from the date hereof, sufficient cause should be shown why this decree should not be made absolute.

Respectfully advised,

MAJA LEON BERRY,
V.-C.

NOTICE OF APPEAL.

Filed November 6, 1930.

IN CHANCERY OF NEW JERSEY.

Between TILLIE RICH, *Complainant,* *and* LOUIS RICH, *Defendant.*	*On Bill for Separate Maintenance and Counter-claim for Divorce.* *Notice of Appeal.*

The complainant hereby appeals from so much of the decree nisi in consolidated causes made in this court in the above-stated cause on the 28th day of October, A. D. 1930, as orders, adjudges and decrees that the bill of complaint for separate maintenance filed by complainant, Tillie Rich, against the defendant, Louis Rich, be dismissed; and further orders, adjudges and decrees that the complainant, Tillie Rich, and the defendant, Louis Rich, be divorced from the bonds of matrimony for the cause of desertion, and that the said parties and each of them be freed and discharged from the obligations thereof, unless within three months from the date thereof sufficient cause be shown why said decree should not be made absolute, to the New Jersey Court of Errors and Appeals in the last resort in all causes.

BILDER & BILDER,
Solicitors of Complainant.

WALTER J. BILDER,
Of Counsel with said Complainant.

Notice of Appeal.

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

WALTER J. BILDER,
Of Counsel with Complainant.

Service of the within Notice of Appeal is hereby acknowledged this 5th day of November, A. D. 1930.

LEBER & RUBACK,
Solicitors of Defendant.

AMENDED NOTICE OF APPEAL.

Filed November 17, 1930.

IN CHANCERY OF NEW JERSEY.

Between TILLIE RICH, *Complainant,* *and* LOUIS RICH, *Defendant.*	*On Bill for Separate Maintenance and Counter-Claim for Divorce.* *Amended Notice of Appeal.*

The complainant hereby appeals from so much of the decree nisi in consolidated causes made by the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey, on the advice of Honorable Maja Leon Berry, Vice-Chancellor, in the above-stated cause on the 28th day of October, A. D. 1930, as orders, adjudges and decrees that the bill of complaint for separate maintenance filed by complainant, Tillie Rich, against the defendant, Louis Rich, be dismissed; and further orders, adjudges and decrees that the complainant, Tillie Rich, and the defendant, Louis Rich, be divorced from the bonds of matrimony for the cause of desertion, and that the said parties and each of them be freed and discharged from the obligations thereof, unless within three months from the date thereof sufficient cause be shown why said decree should not be made absolute, to

the New Jersey Court of Errors and Appeals in the last resort in all causes.

BILDER & BILDER,
Solicitors of Complainant.

WALTER J. BILDER,
Of Counsel with said Complainant.

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

WALTER J. BILDER,
Of Counsel with Complainant.

PETITION OF APPEAL.

Filed. NOVEMBER 7, 1930.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between	*On Bill for Separate Maintenance and Support and Counter-Claim for Divorce.*
TILLIE RICH, *Complainant-Appellant,*	
and	
LOUIS RICH, *Defendant-Respondent.*	*On Appeal from Chancery.*
	Petition of Appeal.

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

The petition of Tillie Rich, the appellant in the above-stated cause, respectfully shows that your petitioner finds herself aggrieved by a decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the 28th day of October, 1930, in a cause above-entitled, which said cause is a consolidation of two causes pending in the said Court of Chancery, to wit, an action brought by your petitioner against Louis Rich for separate maintenance and support, and an action brought by the said Louis Rich against your petitioner for divorce on the ground of desertion, in this respect, to wit, that the said decree orders, adjudges and decrees that the bill of complaint for separate maintenance and sup-

port filed by your petitioner against the said Louis Rich be dismissed; and in this respect, to wit, that the said decree orders, adjudges and decrees that the said Louis Rich and your petitioner be divorced from the bonds of matrimony for the cause of desertion adjudicated to have been committed by your petitioner, and that the said parties and each of them be freed and discharged from the obligations thereof, unless within three months from the date of said decree sufficient cause be shown why the said decree should not be made absolute. Your petitioner humbly appeals from those portions of the decree upon the ground that the same is erroneous in that the evidence did not warrant the Court in finding that your petitioner was guilty of the charge of desertion; the evidence did require the Court to find that your petitioner had been so treated by the said Louis Rich and the said Louis Rich had so conducted himself in the premises that the said Louis Rich was not entitled to a decree for divorce against your petitioner on the ground of desertion; that the evidence did not warrant the Court in dismissing your petitioner's bill of complaint for separate maintenance and support; the evidence did require the Court to find that the said Louis Rich was guilty of such acts and conduct that your petitioner was entitled to a decree awarding to your petitioner separate maintenance and support by the said Louis Rich; that the evidence did not warrant the Court in awarding to said Louis Rich, respondent, a decree for divorce against your petitioner on the ground of desertion, but that the said court should have dismissed the petition of the said Louis Rich for divorce on the ground of desertion against your petitioner,

and should have granted the prayer of the bill of complaint of your petitioner filed against the said Louis Rich for separate maintenance and support.

Your petitioner therefore prays that the said decree of the said Chancellor may be, in the particulars aforesaid, reversed, set aside and for nothing holden, and that the record may be remitted to the said Court of Chancery with directions to dismiss the petition filed by the said Louis Rich, and to grant the prayer of the bill of complaint filed by your petitioner against said Louis Rich, with adequate provisions with respect to the support and maintenance of petitioner, and that your petitioner may have such other and further relief in the premises as to this Honorable Court shall seem meet.

BILDER & BILDER,
Solicitors of Appellant.

WALTER J. BILDER,
Of Counsel with Appellant.

NOTICE OF ARGUMENT.

FILED - DECEMBER 9, 1930

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

TILLIE RICH,
Complainant-Appellant,

and

LOUIS RICH,
Defendant-Respondent.

On Bill for Separate Maintenance and Support and Counter-Claim for Divorce.

On Appeal from Chancery.

Notice of Argument.

Sat below: HON. MAJA LEON BERRY.

To Leber & Ruback, Esqs., solicitors of defendant-respondent;

SIRS:

TAKE NOTICE of the argument of the issue joined in this cause before the New Jersey Court of Errors and Appeals, to be held at the State House, in the City of Trenton, State of New Jersey, on the first Tuesday of February, next, at ten o'clock in the forenoon, or as soon thereafter as the said Court can attend to the same.

Yours respectfully,

BILDER & BILDER,
Solicitors of Complainant-Appellant.

Dated December 4, 1930.

Order of Substitution.

Service of the within notice of argument is hereby acknowledged this 5th day of December, A. D. 1930.

LEBER & RUBACK,
Solicitors of Defendant-Respondent.

ORDER OF SUBSTITUTION.

Filed December 13, 1930.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between	*On Bill, etc.*
TILLIE RICH, *Complainant-Appellant,*	*On Decree Nisi.*
and	*Order of Substitution.*
LOUIS RICH, *Defendant-Respondent.*	

It is, on this 13th day of December, 1930, ORDERED that Messrs. Lum, Tamblyn & Colyer, be substituted as solicitors of complainant, Tillie Rich, in the above-entitled cause, in place of Messrs. Bilder & Bilder, the present solicitors of record of said complainant.

We hereby consent to the making and entry of the foregoing order.

BILDER & BILDER,
Solicitors for Petitioner.

NOTICE.

FILED - DECEMBER 13, 1930

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between	
TILLIE RICH, *Complainant-Appellant,*	*On Petition for Divorce.*
and	*On Decree Nisi.*
LOUIS RICH, *Defendant-Respondent.*	*Notice.*

To Leber and Ruback, Esqs., solicitors for and of counsel with defendant-respondent:

TAKE NOTICE, That on the 18th day of December, 1930, at the hour of ten o'clock in the forenoon, before the New Jersey Court of Errors and Appeals to be held at the State House in the City of Trenton and State of New Jersey, we shall apply for an Order requiring you to pay to your wife the above-named complainant-appellant, a proper allowance for her support and maintenance pending this appeal; and for a reasonable sum for counsel fees to enable her to prosecute the said appeal and for costs attendant thereto. Annexed hereto and served upon you herewith are true copies of the petition and affidavits upon which said application will be made.

LUM, TAMBLYN & COLYER,
Solicitors for Complainant-Appellant.

Dated December 11, 1930.

~~*Petition for Alimony and Affidavits.*~~

Subscribed and sworn to before
me this 11th day of December,
1930.

ELEANOR LOWENSTEIN-ZOOB,
~~A Master in Chancery of N. J.~~

TESTIMONY.

IN CHANCERY OF NEW JERSEY.

Between

TILLIE RICH,
Complainant,

and

LOUIS RICH,
Defendant.

Transcript of testimony taken in the above-entitled cause before Hon. Maja Leon Berry, Vice-Chancellor, at the Chancery Chambers, Newark, New Jersey, on Tuesday, January 14, 1930, at 10 A. M.

Appearances:

Messrs. Bilder & Bilder, by Walter Bilder, Esq., for complainant.

Messrs. Leber & Ruback, by Meyer E. Ruback, Esq., for defendant.

SADIE GERBER, sworn for complainant:

Direct examination by Mr. Bilder.

Q Where do you reside? A 738 High street, Newark.

Q Your husband is the landlord of the premises known as 738 High street? A Yes.

Q How long have you resided at that address? A Six years, since the building is up—1924, I believe.

Q Was your husband the landlord of these premises in September of 1925? A Yes.

Q You and your husband lived on those premises, did you? A Yes.

Q Do you recall whether or not Mr. and Mrs. Rich, the complainant and defendant in this action, lived at that address in 1925? A Yes.

Q And in September of that year? A Yes.

Q Do you recall being present in the month of September, 1925, in the apartment occupied by Mr. and Mrs. Rich, upon an occasion when they were present? A Yes.

Q And when others were present and some difficulty arose between them? A Yes.

Q Will you please state exactly what you saw and heard there? A I was there in the presence of Mr. and Mrs. Rich; it was sometime in the afternoon that I heard noise in the house. I didn't know where it was, but it was a loud noise, and I ran down to see what is going on there, and I ran down the second floor and I saw it was Mrs. Rich's apartment—the door was open; a lot of people were standing there, and a few moving men, colored people, and also Mr. and Mrs. Rich. The men got hold of a piece of furniture and wanted to take it down, and Mrs. Rich pulled it back. She said she wouldn't let the man take it, she doesn't know anything about moving. Mr. Rich pushed Mrs. Rich away and told the men to go on with the moving, and Mrs. Rich hollered, she wouldn't let him go, she didn't know anything about moving, and "he didn't tell me anything about moving this morning." She said, "If I know I have to move, I would pack my dishes and get ready; I didn't know anything about it." And she also said that that morning she tried to call someone to the phone, and the phone didn't work. She said, "Why did you stop the phone off this morning without telling me?"

He answered, "It is none of your business. I pay the bills and I did not have to tell you that I have to disconnect it." Then she also mentioned—she said—I think he mentioned that he couldn't afford to pay such a big rent, and he wants to move to a cheaper apartment. Mrs. Rich said, "All right, if you want to have a cheaper apartment, you go and look for a two-room apartment," which she did. That very same morning she asked me for the key to look at a two-room apartment, and she said "Mr. Rich will be in to look at an apartment which would be about sixty instead of a hundred."

Q What was the size of the apartment they were then in? A Four rooms.

Q Which amounted to how much a month? A One hundred dollars. I believe it was one hundred dollars.

Q What else happened? A Then she said, "If you don't want to live in a two-room apartment, I will go out and look for three rooms for fifty, if you don't want to live in the same building." She hollered; she was very excited, so was Mr. Rich, both of them were. I tried to appeal to them they should be quiet and not make so much noise, and he said, "It is none of your business; you leave yourself out." I said, "I don't want to butt into your affairs." All the tenants were in there asking what is the trouble. I didn't want to have this noise go on. He said, "Don't butt into anything between man and wife." She pulled the furniture, and while she was pulling a piece of furniture from the man's hand, he hollered, "You are crazy; you belong to Overbrook." I said to him, "According to the actions, I think you belong there." After all she is quiet, and then I saw a man rush in the house

there—I didn't know the man; he spoke to her on something about signing property, giving her five thousand dollars. I don't know what it was. He called her "Till"; I don't know if it is his or her family, but he called her "Till," and he called her aside and said, "Listen, Till, be quiet; talk to me in a nice way. If you get your five thousand dollars back, will you sign the property?" I don't know who it was, whether his family or her family. That is all I could tell. He told me that he was ready to move. I said, "If you are ready to move, I know something about moving furniture and other things, packing their dishes, taking curtains down." I said, "Why didn't you prepare?" She hollered she doesn't know anything about moving. Then he had another man with him that quarrelled around with her, a furniture man. I said to Mr. Rich, "I suppose you know that you have to be ready for a fight, because you brought someone with you," because I really took pity on the woman, she was so excited.

Mr. Ruback: I ask that that be stricken out.

The Court: What do you ask to have stricken out?

Mr. Ruback: The witness' expression of her sentiment toward this complainant.

The Court: Strike it out.

You mean she felt pity for her?

Mr. Ruback: Yes.

The Court: Strike it out.

Q Anything else you heard there? A That is all. I wish I didn't hear that.

Q Did you hear Mr. Rich say anything on that occasion with reference to his attitude toward living with Mrs. Rich? A Yes, I think I mentioned it, didn't I? She said she is ready to take cheaper rooms, and he said, "I don't want to live with you; I don't want cheaper rooms."

Q What else did he say? A He said, "I don't want to live with you; I don't want cheaper rooms."

Mr. Bilder: That is all for this witness on the complainant's case, except that I anticipate that she has testimony which is material on the complainant's defense on the cross-petition, and I understand that this lady has a sister who is sick at her home now and is alone, unattended, and I was wondering whether I might change the order and anticipate and have her state what I would have her state after the cross petitioner comes forward with proof. The cross petitioner alleges that on this particular date there was a desertion of him by his wife, the complainant, and on that I have some pertinent testimony by this lady, and I was wondering whether I could put it in, or call her back later in the day.

Mr. Ruback: No objection; go ahead.

Examination in Rebuttal by Mr. Bilder.

Q Mrs. Gerber, did you see Mr. Rich in that apartment while Mrs. Rich was still living there, or in that apartment house while Mrs. Rich was still living there, on a later date, after this particular occasion, the date that you have spoken of? A Yes, I saw him several times walk into

the apartment. I did not want to put the man in a position that he should not like to come in, but once I saw him in the apartment, late in the evening—

Mr. Ruback: I am constrained to object. I can see only one purpose in this testimony, and that is, to prove possible condonation. We have pleaded a matrimonial offense, desertion in 1925. If this testimony is intended to establish condonation of that offense, it cannot be heard here, because condonation hasn't been pleaded to our cross-petition. The cases hold that it is an affirmative defense and has to be specially pleaded. We are not prepared to meet—and under the cases we should not be asked to meet, that defense of condonation, unless we have been apprised of it.

The Court: I don't know what the purpose is. What is it?

Mr. Bilder: The purpose is not condonation. The purpose is to show that the alleged continuous separation was broken. It goes to the element of obstinacy—we deny the desertion absolutely.

The Court: The objection is overruled.

Q Will you say how long after September, 1925, that was? A I don't quite remember the dates, but I think it was about a year later, or year and a half; one evening, about ten or ten-thirty, or eleven o'clock, I walked in the house—Mrs. Rich's apartment is right in the front; you can see everybody through the window, and I happened to look up and I saw Mr. Rich sitting on a chair near the window. I looked down again,

not to see that he should see me. That is the only time I saw him in Mrs. Rich's apartment. I saw him a couple of times a week go into the apartment building; I don't know where he went.

Q Can you describe how he was attired at that time? A He was in a very comfortable position; his jacket off, his sleeves rolled up, without collar. I thought first it was Mrs. Rich's brother.

Mr. Ruback: I object and ask that it be stricken out.

The Court: No.

A (Continuing.) And I looked up and again saw it was Mr. Rich. I didn't even tell Mrs. Rich that I knew about it, he was in there.

Q On that occasion in September that you have described, did you see Mr. Rich come in contact physically with Mrs. Rich on the occasion of this excitement in September? A No, not physically. I just saw Mrs. Rich pulling on a piece of furniture, and the expressman should not take it, and Mr. Rich told the man to go ahead, take it; he just pushed her away.

Q Did he push her as it seemed to you with some force, or wave her away? A He pushed her with his hand, she should take her hands off the furniture.

Cross examination by Mr. Ruback.

Q Where was your husband while you were in this apartment during the quarrel? A I cannot tell you where he was.

Q How long were you in the apartment during the course of this trouble? A Quite a long time.

Q How long? A About two hours; about a couple of hours.

Q Was your husband there during that time? A Yes, he came up later.

Q Did your husband remain in the Rich apartment during any portion of this trouble? A He did.

Q How long? A I don't remember how long.

Q Were you there while he was there? A Yes.

Q Were you there when the moving man left? A I don't know if he left from the outside, but he left from the building—yes, from Mrs. Rich's apartment.

Q Were you there when Mr. Rich left? A I don't think so, because there was a couple of minutes that the affairs were settled and I went out. I went when it is quiet.

Q How long altogether did you remain in the Rich apartment from the first time you came in there? A I told you I don't remember how long; several hours.

Q Were you there when Mr. Rich picked up his clothes and left, towards the end of the afternoon? A Not until he left; I saw him take a sheet and packing his things.

Q Were you there when Mr. Scheck left? A Yes. I don't know if it is Mr. Scheck. I know this man, and he called Mr. Rich "Pa."

Q A young man? A Yes, a young dark man I think.

Q Were you there during that entire period that Mr. Scheck remained in the apartment? A I believe so, because it was only a couple of minutes after they left, I left.

Q You have testified about some man talked to Mrs. Rich, this complainant, and called her

"Till," calling her aside. Is that Mr. Scheck? A I don't know if it is Mr. Scheck.

Q Is it the same young man who called Mr. Rich "Pa"? A Yes.

Q Did you hear a conversation between Mr. Scheck and Mrs. Rich? A Not all the conversation, but I heard a few words. I wasn't interested in private conversations.

Q Was any of that conversation carried on in another room in which you were not then? A I don't know.

Q Did you see them go into another room? A Yes, they walked into a living room.

Q Where were you? A I was in the dining room. It is a combination of two rooms, like one open room; they were not closed; when you stand in the dining room you can hear and see what is doing in the living room.

Q Did you hear Mr. Scheck—this young man who you say called Mr. Rich "Pa"? A Yes.

Q —try to induce Mrs. Rich to come down town to look at another apartment? A No.

Q Did he tell her there was an apartment for her to look at? A No, not that I heard.

Q There were portions of the conversation which you didn't hear? A I suppose so.

Q You say that this gentleman spoke to her about property, five thousand dollars, and signing off, something with respect to property? A Yes.

Q In what room was that conversation carried on? A In the living room.

Q And who beside yourself and this gentleman, whom we will call Mr. Scheck, and Mrs. Rich, were present? A I don't remember.

Q Were you there when Mrs. Rich's brother, Mr. Gus Lewis, arrived? A Yes.

Q Were you there when her nephew, Mr. Jack Lewis came? A Yes.

Q Were you there during the entire period that those two gentlemen stayed? A I was there when they left, and I was there a few minutes before they arrived.

Q Did your husband arrive at that apartment while the two Lewis gentlemen were still there? A Yes.

Q Did your husband talk to them? A I don't remember if he talked to them or not. I didn't watch everybody.

Q Did you hear your husband talking to Mr. Lewis? A I heard him talk to several people there, but I didn't notice to whom he was talking.

Q (Last question repeated) A I said "I don't remember."

Q Do you know Mr. Lewis? A Yes. I met him in Mrs. Rich's apartment that day, the first time.

Q You say that earlier that day Mrs. Rich had selected a smaller apartment? A She didn't select it; she looked at an apartment.

Q That afternoon during the course of the trouble, while Mr. Lewis was in the apartment, was there any arrangement made between your husband and Mr. Lewis in your presence, regarding the rent for a smaller apartment? A I don't know a thing about it.

Q You didn't hear any portion of it? A No.

Q You didn't hear Mr. Gus Lewis undertake to pay the rent for a smaller apartment? A No.

Q Did you hear Mr. Scheck talk to your husband about the rent after the first of October? A He talked to him but I couldn't hear clear what

he said. I don't know what they spoke about together.

Q Were you in the same chamber when your husband and Mr. Scheck were talking about the rent? A No.

Q Where were you? A I was in the building but I don't remember—they talked together, but I don't remember what they said.

Q Were you in the same apartment? A I was in the same apartment, but my object was to quiet down Mrs. Rich, because she was so very excited.

Q You said that you remarked to Mr. Rich that you supposed that he had come prepared for a fight, because he had brought someone with him. Do you see that somebody in this court room? Is that person here? A Yes; there is the man there (indicating).

Q Is that the gentleman you mean (indicating Mr. LaRocco)? A Yes, that is the man.

Q Did Mr. LaRocco strike anybody that afternoon? A Not that I know of.

Q Threaten to strike anybody? A Not that I know.

Q Did your husband threaten to strike anybody in the course of that quarrel? A No. What has my husband a right to do so?

Q Did your husband threaten to strike Mr. Rich? A No, never. There was no reason for it; no fights going on there.

Q Who sent for the policeman? A I did.

Q Why? A Because there was so much noise and the expressman kept pulling the furniture, and Mrs. Rich was hollering, and Mr. Rich pulling it away. I didn't know what to do; I thought I would bring the policeman and stop the fight.

Q Was your husband in the Rich apartment at the time you sent for the police officer? A No, my husband came to our apartment; he didn't find me, and he heard noise and came down to the Rich apartment.

Q Was the officer in the Rich apartment when your husband arrived there? A I don't remember; I think he was, but I don't remember.

Q Didn't you send for the police officer because there were some threatened blows between your husband and Mr. Rich? A No; my husband came later; later, after that; after the officer was in there. Mr. Rich thought my husband had nothing to do there.

Q What was it that Mr. Scheck said to Mrs. Rich about property? Repeat as well as you can exactly what he said. A He said, "Till, do you want to speak to me? Be quiet. Do you want to speak to me?" He took her hand and walked in and sat down with her on a couch there and he said, "If you get your five thousand back, will you assign the property?" And she said, "I won't do anything without Billie." I don't know who it was; that is all I heard.

Q Mr. Scheck was quite tender towards her? A Yes, he was nice.

Q When he took her into the other room? A Yes.

Q Gentle with her? A Yes.

Q Spoke softly to her? A Yes; in fact, I thought it was a brother or someone else.

Q Where was Mr. Rich while this conversation between Mr. Scheck and Mrs. Rich was being carried on? A He was in the apartment; I don't remember exactly what room he was in, but he was in there.

Q All these rooms in that apartment are open, are they not; no doors between the rooms? A No. I know the living room and dining room is like one room, and the brothers and Scheck and Mr. Rich and Mrs. Rich, they were all in the two rooms.

Q Mrs. Gerber, you think it was within the first year after this trouble in 1925, that you saw Mr. Rich in the apartment late at night with his coat removed; it that right? A Yes.

Q What season of the year was it? A It was in the summer time, late in the summer, something like September, December or October, I don't remember dates.

Q You say it was in the summer, September or December? A I am not sure; it was warm up there; people were without coats, or October or September I don't remember the month.

Q Was it a hot night? A I don't remember whether it was hot or cold, but it was the end of the summer.

Q You saw Mr. Rich through a window? A Yes, through a window.

Q What was he sitting on, a couch or chair? A I couldn't say what he was sitting on, but I know I saw him sitting on a chair.

Q Where was Mrs. Rich? A Mrs. Rich sitting on the other side.

Q But the other side of the room? A Let us say this corner (indicating) I saw Mrs. Rich, and Mr. Rich a little further.

Q At some distance? A I didn't mention the distance.

Q She was attired and dressed? A I don't remember. He struck my attention, because I am not used to seeing a man in Mrs. Rich's apartment.

Q That is the only thing about his presence that attracted your attention, the fact that there was a man in the apartment? A Yes. I wanted to see who it was. He looked familiar.

Q There was nothing about his dress that called your attention— A According to my knowledge, they can be in their apartment when they want, but I noticed a man, with his collar off and sleeves rolled up, and sitting in the window; I thought it was Mrs. Rich's brother, and then I saw it was Mr. Rich.

Q Did he wear his vest? A No, his shirt on; he was without his collar and sleeves rolled up.

Q Could you see below the waist line? A No, just up to here (indicating), when he was sitting near the window, I couldn't see his whole body.

Q You say he had his collar off? A Yes.

Q From where you looked into the room you couldn't see Mrs. Rich at all? A Yes, I told you that I saw Mrs. Rich.

Q How was she dressed? A She was dressed; I don't remember the color of the dress.

Q She wore a dress? A I don't remember whether a dress or bathrobe or what; I wasn't interested to see what they wore.

Q You with great detail remember that Mr. Rich had his collar off and his sleeves rolled up? A Yes.

Q And his coat off and wore no vest and sat in his shirt sleeves, and that you couldn't see below the waist line, but you don't remember whether Mrs. Rich wore a dress or bathrobe? A Yes, you can see the difference between a coat and shirt, but not the difference between a bathrobe and dress, unless you are very in-

terested to see that. I wasn't very interested to see what they wore.

Q You said you never told Mrs. Rich about this observation of yours through the window? A No.

Q You never told her that you even knew about it? A No, I didn't.

Q You still say that, do you? A I do.

Q You have never told Mrs. Rich? A Not until lately.

Q How late? A A couple of weeks, when she asked me; I said, "Yes, I saw him once."

Q Just until a couple of weeks ago? A I didn't think any harm about it.

Q That was the first time you told Mrs. Rich that you had seen him at the apartment? A Yes.

Q You did see Mr. Rich come to the apartment on other occasions? A Yes, several times. I saw him once pass the apartment and look up to Mrs. Rich's apartment, and he walked away.

Q Are you reasonably sure that this was during the first year that they were separated? A No, I am not sure. I know it was late after they were separated, but I don't remember dates.

Q It was not later than the following summer? A I don't quite remember dates; I cannot tell. I think it was much later than the following summer; I know he went to Europe and it was later, a whole lot later when he came from Europe.

Q Do you fix the time because of the fact that you know of the trip to Europe? A No, he couldn't be there before he went to Europe.

Q When did you first learn that Mr. Rich had been to Europe? A When he came back.

Q And this happened after he came back? A Yes.

Q Soon after he came back? A I don't remember. There was somebody else in the house asked me if Mr. Rich is back from Europe; I said, "I don't know that he went to Europe."

Q Have you any way of telling us what day of the week this was? A No, I don't know.

Re-direct examination by Mr. Bilder.

Q Mrs. Gerber, this gentleman that you saw, you heard talking to Mrs. Rich about five thousand dollars and signing off property, did you see whether or not he had any papers in his hand at the time he was talking? A I think he had a brief case or papers and he had some papers and pencil; I don't remember what exactly.

Q But you saw papers? A Yes, I saw he had some papers.

CHARLES GERBER, sworn for complainant.

Direct examination by Mr. Bilder.

Q You are the husband of Mrs. Gerber, the witness who just left the stand? A Yes.

Q And you reside at 738 High street, Newark, New Jersey? A Yes.

Q How long have you resided there? A About six years.

Q You were the landlord of these premises, were you not, in September, 1925? A Yes.

Q And Mr. and Mrs. Rich, the complainant and defendant in this action, were tenants of yours? A Yes.

Q How large an apartment did they occupy? A Four rooms.

Q Where were they located? A As you go in the foyer, the bedroom is one side and then you walk in the kitchen and then living room and dining room.

Q Did they face the front? A One room faces front.

Q What rent did they pay? A One hundred dollars.

Q How long had they been living there in September, 1925; when did they come there? A They took their apartment, signed it for one year's lease.

Q Beginning when? A That was beginning October—I don't remember exactly.

Q Do you know how long they had been there by September, 1925? A They had been there for a year.

Q Do you remember being present in that apartment in September of 1925, at a time when Mr. and Mrs. Rich were there, and other persons were there, when there was some noisy occurrence that took place? A Yes.

Q Will you state what you saw and heard there on that occasion? Who were present? A They were making a lot of noise down there with a moving man.

Q Tell us all the persons you saw. A Mr. Rich had a moving man in there, and there were two or three colored fellows with Mr. Rich, and one of his clerks, one of his men that works for him.

Q Who else was there? A When I come down there there was a lot of noise. I ran down to see what the trouble was, because I was in some part of the building, so I ran down there;

I saw they were pulling the furniture. Mrs. Rich didn't let him take some of the furniture.

Q Who was there? A Mr. Rich was there. Then one of the brothers come up there, one or two—the two of them there.

Q Mrs. Rich's brothers? A Yes.

Q Did you have any talk with Mr. Rich on that occasion? A I didn't talk before to him, but when the trouble was going on, when I came in there, they quieted down; but I said, "Don't make so much noise; I have an apartment here with some people here; don't make such a racket in this apartment." So Mr. Rich said, "You get out; your rent is paid, you get out of here," so I got sore, and I said, "I know, Mr. Rich, what you told me in the lobby," and then I called him a name; that is all.

Q What did you refer to when you said to Mr. Rich—when you made some reference to what Mr. Rich said to you in the lobby, what are you referring to? A Mr. Rich met me one night, he was coming up from his business from the store, that was half-past nine or ten o'clock or half-past ten.

Q Where? A Down in the lobby downstairs; he said, "Mr. Gerber, you know I am moving."

Q First, when was this, with reference to this date that the moving was attempted? A It was a couple of weeks before they had the trouble, a week or two before.

Q What was said? A Mr. Rich said to me, "I am going to move. You are not going to hold me liable for the lease?" I said, "What is the trouble? Why do you move?" Because I am always trying to hold my tenants after their lease expires, so he said to me, "I cannot live with my wife." I said, "Why can't you live with

your wife; you just got married." "I cannot; I am going to take her down to Mulberry street, according to law, make her life miserable, so that she will go and leave herself."

Q After that day when you say there was some man in the apartment and there was some noise in the presence of Mrs. Rich—after that occasion did you see Mr. Rich in the apartment where Mrs. Rich was residing thereafter in that apartment house? A Yes, I saw him once come out; it was only half-past eight in the morning; I don't know how long ago it was.

Q Do you remember how long after this September occurrence it was? A A year after or two years, or year and a half, I don't know exactly.

Q Did he see you? A Yes, he did see me, because I passed right in the front, and I went down in the basement. Mr. Rich went away.

Q Did you make any mention to your wife of the fact that you saw Mr. Rich come out of that apartment? A No, I never told my wife.

Q Did she make any mention—did your wife state to you anything about seeing Mr. Rich—

Mr. Ruback: I object.

Q —in that apartment after this September occurrence in 1925?

Mr. Ruback: I object. It is clearly an attempt to get in hearsay evidence. What Mrs. Gerber told Mr. Gerber as to her observation is not competent.

Mr. Bilder: I am trying to show if it is true, the coincidence of two observations of two different witnesses, and their reference in time. It is not intended to prove the truth

of what either witness said, but it is an attempt to show that what they allege they saw was said—reported by one to the other coincidentally as to time.

The Court: I will permit it on the ground that it may be corroborative of her testimony, but not admitted for the purpose of proving the incident, but it is admitted to prove the comment on the incident at the time, which would be a perfectly natural comment to have made, if it did occur. You may answer the question.

A Yes, she did; I remember she did mention it to me, she saw Mr. Rich.

Q On what date did your wife mention that fact to you with reference to the date on which you saw Mr. Rich come out of the apartment? A I tell you the truth I don't know what date.

Q Bearing in mind the time when your wife told you, as you say, that she saw Mr. Rich in that apartment and the time when you now say when you saw him come out of the apartment; can you say what relation there was between the two times? A I saw them later than that; I saw them later than that. I saw them later.

Q I mean you said you saw Mr. Rich come out of the apartment early one morning? A Yes.

Q You also say that your wife mentioned to you that she had seen Mr. Rich in the apartment? A Yes.

Q Do you remember any relation as to time between the time you saw Mr. Rich and the time when your wife mentioned that she saw him? A The length of time you mean?

Q Yes. A I don't know how long, would it be a couple of months or six months; she mentioned it, that is all.

Cross examination by Mr. Ruback.

Q Mrs. Rich still lives in your apartment? A Yes.

Q You still own the apartment? A Yes.

Q Who pays the rent? A I am going to look to one of the brothers.

Q Which one? A I don't know which one.

Q Mr. Gus Lewis? A I cannot tell you.

Q A Mr. Lewis? A Is it Mr. Lewis? I saw the check and deposited it, that is all.

Q That has been going on since October 1, 1925? A No, Mrs. Rich used to pay herself the rent before.

Q For how long? A If she paid herself two years, I don't remember.

Q On September 24, 1925, which is the day of the quarrel in the apartment house between Mr. and Mrs. Rich, did you make arrangements with Mr. Gus Lewis to accept his responsibility for the rent? A No.

Q In the conversation that day between you and Mr. Lewis as to who would pay the rent on and after October 1st? A No.

Q The subject wasn't at all discussed? A No, it wasn't discussed. It wasn't mentioned anything about the apartment at that time.

Q Did Mr. Rich that afternoon inform you that he would not be responsible for the rent after the 1st of October? A Inform me?

Q Tell you? A Yes, he did; down in the lobby.

Q Did Mr. Scheck tell you that afternoon that Mr. Rich would not pay the rent after October

1st? A That is right; Mr. Scheck told me after, down in the apartment.

Q Was it not at the same time that Mr. Lewis said to you that he would be responsible for the rent, for a smaller apartment? A For a smaller apartment?

Q Yes. A Nothing was mentioned; it was only mentioned for the big apartment, that Mr. Rich is not going to be liable for the rent for the big apartment.

Q That was discussed that afternoon? A Yes.

Q And was anything said as to who would be liable for the rent for that apartment from October 1st on? A I don't know.

Q You knew in the course of that quarrel that Mr. Rich was moving, and Mrs. Rich was staying; were you not interested to know who would pay your rent? A I wasn't thinking who was going to pay the rent, which one will pay the rent; the only thing, there was trouble there, and I was in there and I heard the conversation. Mr. Scheck said that Mr. Rich is not going to be liable for that rent from now on.

Q Did you not say that you would be willing to take Mr. Gus Lewis' responsibility for the rent? A No, I didn't say that. I remember now that Mr. Rich start to holler at me and call me names, or anything of that sort, and I got sore, and called him a name back, and I told him what I told him in the lobby; I told him what I was thinking about him.

Q Let us get back to the matter of rent; that is all we are talking about. Did you that afternoon say you were willing to accept Mr. Gus Lewis' responsibility for the rent? A No.

Q Did you that afternoon say that you knew Mr. Lewis and knew that he was perfectly all right for the rent? A I never knew Mr. Lewis since they come there in the apartment.

Q Did you say that afternoon that you knew him? A I don't know what you mean, did I say it.

The Court: Isn't it plain? Did you say that you did know him?

The Witness: I never yet met before.

The Court: Did you say you did?

The Witness: No, I didn't say anything.

Q Did Mr. Lewis tell you that afternoon that he would take a lease from you for an apartment from the 1st of October? A No.

Q Did Mr. Lewis tell you that he would see to it that the furniture would be moved from one apartment in the house to another apartment in the house, and that he would sign your lease? A He didn't say anything; it wasn't mentioned anything about a lease.

Q Did you talk to Mr. Lewis at all that afternoon? A Nothing about a lease.

Q Did you threaten to strike Mr. Rich that afternoon? A No.

Q Did you raise your voice toward him? A No, never raised it.

Q Anybody get between you and Mr. Rich to prevent contact— A Nobody was there to prevent, and I have no business to get in a fight with Mr. Rich.

Q What was the name you say you called him? A I called him with a name that he is. I don't want to use that expression here.

Q What was it? A I got sore because—

Q What was the name you called him? A I told him he is a dirty skunk; that is what I told him, and nothing else, and there was no mention anything about a fight.

Q You said that because he wanted to move the furniture? A Not on account of because he wanted to move the furniture. I said because he told me in the lobby what he was planning about his wife. That is why I called him a name, and I told him if he were to pay me two hundred dollars for an apartment, I wouldn't keep him in the building.

Q You called him the name that you have testified to only because he had told you in the apartment that he was going to take his wife down to Mulberry street and make life miserable for her; is that right? A He told me that in the lobby.

Q That is why you called him a skunk? A He told me to get out of his house. He said, "You have no business here." I said, "It is true I have no business here, but I don't want any noise around here."

Q On that earlier occasion, when he told you that he wanted to move his wife down to Mulberry street and make life miserable for her, did you also call him a skunk? A No. He told me— I didn't ask him anything; he told me himself.

Q The first time you called him any name— any offensive name, was that afternoon? A I got sore, because he told me to get out.

Q Was that the afternoon of September 24? A I didn't mark down any date.

Q Did you ever call him any offensive names before that afternoon? A No.

Q Did you physically prevent or attempt to prevent the removal of any furniture? A No.

Q Did you interfere with the moving men? A Nothing of the kind. I told them to be quiet; they should not make any noise.

Q Did Mr. Scheck tell you that afternoon that you need expect no rent from Mr. Rich, but you could look to your new tenant, Mr. Gus Lewis? A That was in the same apartment.

The Court: It is not a question of where it was. The question is, did he tell you that.

The Witness: He told me that Mr. Rich is not going to be liable for this apartment, to pay the rent.

Q When did you first mention to any person this conversation which you say you had with Mr. Rich in the lobby of the apartment house one morning several weeks before the quarrel? A When I mentioned that—I mentioned that right in the apartment, when I was there; I told Mr. Rich myself.

Q Was Mrs. Rich present? A Yes.

Q The morning that you saw Mr. Rich about 8:30 in the apartment house, was he leaving the apartment house? A I saw him outside, walking out of the apartment.

Q You saw him leaving the apartment? A Yes, leaving the apartment.

Q How long did you remain in the Rich apartment that afternoon? A I should say I was in once and went out, and I went in the second time.

Q How long did you stay the first time? A The first time, I maybe was there for five or ten minutes.

Q And the second time, how long? A The second time, I go in, was the same way.

Charles Gerber, for complainant, re-direct.

Q On either of those two visits did you see Mr. Scheck call Mrs. Rich aside in another room and talk to her? A I didn't see anything between Mr. Scheck and Mrs. Rich.

Q Did you know Mr. Scheck? A I saw him down in the apartment, but I don't know if I remember him now.

Q Did you hear a young man talking to Mrs. Rich, call her "Till," and ask her to go down to Mulberry street and look at an apartment? A I didn't hear anything of the kind.

Q You didn't hear anything of the kind? A No.

Q Did anybody that afternoon in your hearing say to Mrs. Rich that she should go down and look at the apartment, and if she didn't like it, she didn't have to take it? A I didn't hear that.

Re-direct examination by Mr. Bilder.

Q Mr. Gerber, on this occasion when you say you saw Mr. Rich coming out early in the morning from the apartment, do you mean to say you saw him coming out of the building or out of Mrs. Rich's apartment? A He went out in the lobby and went out.

Q Where did you see him coming from? A I cannot tell you; I don't know.

Q What part of the building did you first see him on that morning? A He come out the lobby; it is an elevator apartment; the elevator comes down to the lobby.

Q You saw him after he come out of the elevator? A No, I just saw him walking out of the lobby.

Q Out of the lobby, the lobby downstairs? A Yes.

Q The lobby which immediately admits to the street? A It is a long court, about fifty feet to walk in, but you could see.

Q Is it at the entrance? A Yes.

Q When you were in the apartment on the occasion you called Mr. Rich this name that you mentioned, what words did he use to you just before you called him that name and made some reference to what he had told you in the lobby? What words did he use? A He said, "It is none of your damn business," and all that stuff.

Q What was the stuff; what words did he use? A He told me, "It is none of your damn business what I am doing." I said, "It is not my business what you are doing, but I know what you told me in the lobby, and the record what you make here, I wouldn't keep you in the apartment if you paid me two hundred dollars."

Q When Mr. Rich spoke to you before you called him this name, did he use the words "man and wife" in what he said?

Mr. Ruback: I object. It is very leading. Witness testified to the complete conversation.

The Court: I will admit it.

A He said that; he mentioned that.

Q What did he say? A He said, "It is not your damn business about anything between man and wife."

Q And was it after that, that you called him the name? A It was before, too.

Q Was there a unit price per room that you were getting for the rooms in that apartment? A Yes, four rooms was one hundred dollars.

Q Were they generally twenty-five dollars per room? A Twenty-five dollars per room.

Q That was the type of apartment house? A Yes.

Q How many tenants? A Forty-eight.

Q And elevator service? A Yes.

Re-cross examination by Mr. Ruback.

Q That is a rather fashionable apartment house that you have, a high-class apartment house? A Yes; at that time it was high-class.

Q This elevator service that you furnished, is with an attendant? A No.

Q Self-serving elevator? A Yes, elevator boy runs it.

Q And steam heated? A Yes, sure.

TILLIE RICH, complainant, sworn.

Direct examination by Mr. Bilder.

Q Mrs. Rich, you are the complainant in this case? A Yes.

Q Where do you live? A 738 High street.

Q How long have you lived there? A It is going on six years.

Q You were born in Newark? A Yes.

Q And have lived here all your life? A Yes.

Q You were married on August 17, 1924? A Yes.

Q To the defendant in this case? A Yes.

Q Where did you take up your residence after your marriage? A 738 High street.

Q In what sort of an apartment? A A four-room apartment.

Q What rent did you pay? A One hundred dollars per month.

Q What business was Mr. Rich in at the time you married him? A Clothing.

Q Where was his place of business? A 128 Mulberry street.

Q Do you know how many people were working for him at that time? A At that time, two.

Q Did he attend business every day at that time? A Yes, and I was down myself, too, sometimes.

Q You used to attend there with him? A I used to go down in the afternoons and take his supper down to him.

Q Did you ever assist in the store after you married Mr. Rich? A Once in a while, yes.

Q What did you do? A Once in a while I took in the money and put it in the cash register.

Q You took cash at times? A Yes.

Q How long did you and your husband live together at this address at 738 High street? A About a year and two weeks, somewhere around that, a year and two weeks, I think it was.

Q How did you happen to take up your residence with your husband at 738 High street, how did that happen to be selected? A He said he wanted to live on High street because he wanted to come home for his lunch, and he could walk to business, because he likes to walk a whole lot, and he said he could walk home and go down to his business, and then, why, after we got married, he never came home for lunch, and I wanted him to come home, but he wouldn't.

Q Near what street is 738 High street? A Near Spruce street.

Q And did your husband, to your knowledge. walk to business frequently after you had your

residence in 738 High street? A Every morning, except sometimes. I didn't watch him every morning whether he walked down or not, but he told me so.

Q He told you he walked down frequently? A Yes.

Q How was it he selected High street as his place of residence? A I was living at the Riviera and Mr. Rich said he would like to live around there.

Q Where? A At the Riviera Hotel before I got married.

Q That is the hotel corner of High street and Clinton avenue? A Yes, and he said he would like to live around there, because it is handy for him to come down to business, he can walk down, and he said he would like to have a dining room and all, and I went and looked around.

Q How many rooms did he say he wanted? A Four rooms he said he wanted. He said he could pay about eighty-five or ninety dollars or five dollars more, it wouldn't make no difference. Then I went to work and I looked at this flat—

Q This apartment? A Yes, and I told him about it, and he said, "All right, then"; so he signed the lease and I took it.

Q For one year? A Yes.

Q You continued to live there with your husband, you say, for a year and several weeks? A Yes, about two or three weeks.

Q What happened at or about the end of that period, which led to a discontinuance of your living together? A Well, he found fault.

Q I mean at the end of that period what occurance, if any, took place, at the end of that year's period, which broke the relations? A In the morning—

Q When was this? A Right before we separated, the same morning.

Q About September, 1925? A Yes—in the morning, he said, "Till, come down and look at an apartment corner of Mulberry and Market street; there are four rooms there for thirty-five dollars."

Q How often? A A month. I said, "I cannot live in a place and put my furniture in a place like that. I don't think they even have steam up there or anything. I suppose they got coal fires?" He said, "Yes." I said, "Who is going to carry up coal?" He said, "You are. What are you going to do; play lady?"

Q How many flights up was that? A I don't know.

Q Did he say—what floor did he say the flat was on? A He didn't say. He told me to come down and look at the apartment.

Q Did you happen to know that neighborhood of Market and Mulberry street? A It was right across the street from the store.

Q What kind of a house is it? A A store downstairs, brick building; there is a lot of noise there—trolley cars on Mulberry and Market street are right at the corner.

Q Did any of your friends live in that house? A No.

Q Did any of his friends or relatives live there? A I don't know none of his relatives, only his children.

Q Did any of his family that you knew of live in that house? A No.

Q Or in that neighborhood? A No.

Q Did any of your family or relatives or friends live in that house or in that neighborhood? A No.

Q Do you know whether that neighborhood or that house was in a nice residential neighborhood? A At that time it was not.

Q What kind of a neighborhood was it? A It was a very noisy neighborhood, and it hasn't been nice for years around Market and Mulberry streets; and another thing, he told me in the morning, he said to me, "Tillie, come down and look at the apartment." He didn't let me know a word about it. "When you are down, look at that apartment." I said, "No, I won't move down there." And he said to me he cannot pay over thirty-five dollars, so I said I wouldn't look at them at all; so the next thing I knew—

Q You are talking about this same day? A Yes, all the same day. So I wanted to telephone, and I went to work and went to the telephone; the telephone was stopped—disconncted.

Q Which telephone? A My telephone.

Q In your apartment? A Yes.

Q How long had you had that telephone there? A A year and a month.

Q Since the time you began to occupy the apartment? A Yes, since the time until this occurred; then I went upstairs and I said to one of the tenants—in fact, I went upstairs and I—

Mr. Bilder: Don't tell what you said to anybody upstairs.

A (Continuing.) I went up and asked to use their telephone and I told them—

Mr. Bilder: Don't tell what you told upstairs.

Q You went up to use the telephone? A Yes, and I called up Central—I called up the

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telephone company and told them that my phone was out of order; they told me it was disconnected. I said, "Disconnected? I used it this morning; I had calls this morning." They said, "It is disconnected now. Wait a minute," they said. I said, "Never mind," and I stayed up there a little while and looked out the window and I saw a moving van.

Q Where? A Right in front of the building. So I went downstairs and I looked and I saw the door open.

Q What door? A My door in my apartment, so I went in.

Q When you left your apartment, had you left the door open? A No, I locked it; and I went in the apartment and I saw Mr. Rich there and one of his clerks down there, and the moving men, I don't know how many there were, two or three. I was so excited, I said, "What are you doing?" "I am moving." I said, "Who are you moving?" I said, "You took all your things out two weeks or three weeks ago. Every day you took something else out." Every morning he took something else out, and that day he had packed all his things and taken them out except a few clothes that he had in the chifforobe.

Q Did he tell you why he was taking his things out when he kept taking them for a few days before? A Yes, he told me he was going to take me down to Chinatown, to cover the law, and he would come once a month. He told me that along about maybe two months before that. Then when I saw the moving men, I said, "What are you doing?" He said, "Moving." I said, "This stuff belongs to me. You took your belongings, wedding presents and all that were given to me"; even the electric iron his clerk

gave me for a present, he took. Every morning he took something else out. I said, "You took your belongings, and what is here belongs to me. My brother gave me those for a wedding present." He said, "Don't mind her," to the moving men, "she is crazy; just go ahead." I said, "You won't do nothing of the kind; you moving men get on out." I said, "What am I going to do?" Then Mrs. Gerber heard this noise and she came in.

Q The lady who was on the stand today? A Yes. Then I said, "Mrs. Gerber, would you please go and call my brother?" Then Mr. Rich had told his clerk to go and call Mannie Scheck. Mannie Scheck came up and said, "What is the trouble here?" So then my brother came and I didn't bother no more. So then he went to work—

Q What did Mr. Rich say to you during that time these moving men were trying to move the stuff out, besides what you have told us? Did you hear him say anything to Mrs. Gerber? A He told her to get out, and then Mr. Gerber came along, and he told Mr. Gerber to get out.

Q Did you hear Mr. Gerber say anything to him? A No, I didn't, because I didn't pay any attention; I was so nervous and excited I didn't pay attention to what they said or did, because I was excited; I didn't expect him to come up to move me.

Q Had your husband told you in the morning that he would have a moving van there in the afternoon? A No; he told me to come down and look at the rooms; I said I wouldn't look at them.

Q Was this the last day of the month—your lease ran up to the end of the month? A Yes, to October 1st.

Q Had he told you in the morning or before definitely that he was going to have a moving man come up? A No, he told me nothing of the kind. He told me to come down and look at the apartment. The moving men came about two o'clock, and that was the time I was generally out. I went down for my lunch every day, and then I went to the store, but of late I didn't go down, and I went downtown and I had my lunch, but I kind of suspected something, and when I saw the telephone disconnected, I suspected something was wrong, and I stuck around.

Q Had Mr. Rich been talking about the subject of moving prior to this date? A I knew he wanted to move, because he always threw the checks; he always was nasty about paying the rent. I knew he didn't want to pay one hundred dollars, so I asked him, "Do you want to go in a cheaper apartment?"

Q When was this you asked him that, with reference to this moving day; with reference to September 24th? A The day that he went to work and wanted to move me, that very same day I said, "Louis, will you go in a fifty dollar apartment? Will you pay fifty dollars, and then I will look around and get four rooms," and he said, "No, I cannot afford fifty dollars, but I can afford thirty-five dollars." I said, "I cannot get no four rooms for thirty-five dollars," and I said, "There are two rooms right on this floor, and live decent. I am not used to living that way." I said, "I would rather live in two rooms and live decent and store the rest of the furniture, than to live down there." So I showed him these two rooms.

Q Did you go in the two rooms with him? A Yes, sir; I did.

Q In the same apartment house? A Yes. He said to me, "Why, a couple couldn't live here." I said, "A couple could live here; there are lots of couples that I know upstairs living in them." I live in the same two rooms, too.

Q You are now occupying a two-room apartment? A Yes.

Q Has he visited you in those two rooms? A Yes, and he was up and stayed over night.

Q When? A About a year and a half after he separated; he stayed there on Monday night.

Q With you in those two rooms? A Yes. That was in September.

Q How long have you occupied this two-room apartment that you showed him? A It will be five years in October.

Q You moved in there at the end of that month, September, 1925, or beginning of the next? A Yes.

Q After you showed him these two rooms, as you say, and he said "a couple cannot live in here," what else was said? A I thought everything was straightened out and that he was going to live there; he told me to take the telephone out and put it in there, and the next thing I knew the moving men came.

Q Had Mr. Rich said anything to you prior to September 24th, when he first tried to move you, about his attitude toward living with you? A No, he didn't that I can recollect. That I don't remember.

Q Did he make any statement about continuing to live with you prior to that? A Not that I can remember; I don't remember whether he did or not. The only thing that I remember is, that he told me—he says, "I am going to put

you down to Chinatown to cover the law and come once a month."

Q When was that? A Sometime, I think, around—

Q How long before September 24th moving experience? A About six months before that.

Q With reference to the payment of the rent, you said he had some attitude toward that; what did he say when he gave you a check for paying the rent? A He just threw it over.

Q What did he do and say when he would give you the check? A He said something—I don't know now—he just said—he just threw it over and didn't talk, and then every time the rent come due he wouldn't talk to me.

Q For how long? A For a few days or so. I didn't just keep track of it.

Q And that would occur each time the rent had to be paid? A That happened in January, sometime in January—it happened the 1st of January.

Q Did Mr. Rich ever visit you at the Riviera before you were married? A Yes.

Q He knew you were living there? A Yes.

Q Did he know your family? A Yes.

Q He knew your brothers, did he? A Not before I got in the family.

Q Before you actually married him, he knew them? A Yes. I took him down and had him come down to where I was working; I was down in my brothers' all my life.

Q You worked for your brothers all your life? A Yes, and my income was pretty good and I could afford to live where I was.

Q Did he know what salary you were earning at the time you married him? A Yes, he did.

Q What salary did he know that you were earning? A I told him my income was around forty to fifty dollars a week.

Q From your work? A Yes.

Q And did he tell you anything about his income prior to the time you married him or at the time you married him? A Yes, he did; he told me his income from the store was around sixty-five dollars a week, and from the property that he has—

Q What property? A On Market street, 216 Market street, him and his son has that, him and Mr. Moe Rich, and he told me it was around seventy-five dollars a week.

Q Is that net income? A Yes, after everything was paid.

Q And was the sixty-five dollars a week from his business, or did he say that was net income? A Yes, he said sometimes he makes sixty-five dollars, sometimes less and sometimes more.

Q At the time this quarrel occurred and he attempted to move you out, September 24, 1925, what finally happened there? Did you tell me everything else that happened on that day, when he attempted to move you, and your brothers came and those various people were in the room? A The moving men were there packing up stuff and his clerk was taking the dishes out of the closet and putting them in barrels—

Q Did anybody else talk to you besides Mr. Rich? A Yes, Mr. Scheck.

Q What was said by him? A Mr. Scheck said, "Till, I would like to talk to you." I said, "About money?" He said, "Never mind. If you want to talk, all right; if not, all right, too." I said, "All right; I will talk to you." So we went in the living-room and we sat down and he

said to me, "Till, Dad has got five thousand dollars of yours, and if you want it back, if you will release him"—he had a paper in his hand; he said, "If you release him of the property, sign it off, then he will give you five thousand dollars." I said, "I will do nothing of the kind until I talk to my attorney; I will only do what my attorney tells me to do."

Q Had there been any money transactions between you and your husband prior to the time of your marriage? A Yes.

Q What was it? A After I got my marriage license, I gave him five thousand dollars, with the understanding that he was to pay my Building and Loan. I had twenty-five building and loan shares besides my salary. I didn't take my meals in the Riviera and I was walking down and he happened to follow me in the restaurant, and he said to me, about a building across the street, what he would give for it, and told me about a building that he owned there, and all, and he said, "If he had money he would do this and do that," so I said, "Well"— I got to talking, as any wife would, if you expect to be a wife to a husband, you can confide in him, you are not afraid to tell him what you got and ain't got; I figured what was his was mine; I didn't think of this kind of business.

Q What did you say to him and what did he say to you? A I told him I had five thousand dollars, and I had twenty-five Building and Loan shares, but the interest of five thousand dollars is keeping up my Building and Loan shares, because I was getting six per cent. on the Building and Loan. I had paid-up stock.

Q He said, "If I had that in my business I could discount my bills and I could make twenty-

five to thirty-five per cent." I said, "I may as well give it to you, loan it to you, then, if you will keep my Building and Loans up." He said he would keep my Building and Loans up—because that would pay my Building and Loans from the five thousand dollars, that would bring in three hundred dollars. He said, "All right." So after I got my marriage license, I went to work and let them know in the Building and Loan, and they gave me the check, and I gave it to him.

Q What did Mr. Rich say to you when you parted on that particular day when the moving men were there? What was the last thing he said to you, if anything? A He didn't say anything; walked right out, and Mannie Scheck said like that (indicating), "Come on," he said to Mr. Rich, and he went in the bedroom, and then he took his own clothes and wrapped them in a sheet and took them.

Q When is the next time that you saw your husband after that occasion? A That was October, 1926.

Q You mean about a year later? A Yes, a year after.

Q Did he come to see you during that time? A Yes, he did.

(Last two questions and answers read to the witness.)

A (Continuing.) No, in October I saw him, 1926.

Q Where did you see him in October, 1926? A He wrote me a letter to meet him downtown that he would like to have a heart to heart talk with me; so I met him down in front of the

Cadillac, and we were to have dinner together and we did, and then after that—

Q What did he say to you? A He said about coming back; he always said that.

Q What did he say to you there in front of the Cadillac or at the dinner table? A Well, he always mentioned about coming back and I should rent rooms. He didn't say that then. He always said about coming back.

The Court: You were only asked about that particular time; what did he say then?

Q The first time you saw him after this September, 1925, which you say was a year later, you met him in front of the Cadillac; what was said on the subject of your marriage relations? A I really don't remember what was said on that day.

Q Did he then propose that you live together again? A Yes, he did.

Q What particular suggestion did he make or request did he make? A I cannot remember.

Q Did he speak of any plan for living together? A Yes, he did.

Q What was it? A He said about renting rooms.

Q And did he know where you were then living? A Sure he did.

Q 738 High street? A Yes.

Q Was there anything said about your taking up your living together at that place, when you saw him at the Cadillac? A He told me that—I cannot just remember that.

Q What suggestion did he make at the Cadillac about your living together again? A He told me to rent rooms—he told me to rent rooms; I cannot just recall.

Examination by the Court.

Q You had already rented rooms; you had two rooms? A Yes; I offered him to come up there to live, if he wanted to.

Q What did he say to that? A He didn't say anything about that.

Q Did he come? A He didn't come just that day, but he come later on.

Q Did he come up there to live? A He said he wanted to live there. He come in September. He come up the following year, he come up.

Q That is in 1927, you mean, a year afterwards, he came up? A Yes.

Q Just stop a moment and collect yourself. You say that you didn't see him at all from September, 1925, until October, 1926? A Yes.

Q That was about eleven months? A Yes, then I saw him.

Q Then he arranged with you to meet him downtown, and you met him in front of the Cadillac place? A Yes; we had lunch together.

Q And then you discussed living together again? A Yes.

Q Did you discuss then living in the apartment which you then had? A No, sir. He told me that I should rent three rooms, and he didn't care whether it was seventy-five dollars, I could rent three rooms for seventy-five dollars, if I wanted to; so I told him, I said, "All right, if you want to, I will rent them, but you have got to sign the lease."

Q Did you rent them? A No, I didn't even go to look at them, because he wouldn't go with me.

Q Did he tell you to rent them? A No; I didn't tell him to look at them.

Q You said he told you to rent them; didn't he? A He told me to go and look at them—look at an apartment, try to get an apartment.

Q And you said he would have to sign the lease; what did he say? A I am ahead of my story anyway. He sent me a letter. He went to Paris; he went to Europe.

Further direct examination by Mr. Bilder.

Q What year was that? A 1926.

Q Between the time of this trying to move you out and the time you met him in front of the Cadillac, you say he went to Europe? A Yes.

Q Did he tell you that? A Yes.

Q And told you how long he was away? A He didn't tell me he was going; I didn't know he was gone.

Q After he came back he told you he had been to Europe? A Yes; he sent me a letter from Europe.

Q Did he tell you how long he had been in Europe? A No.

Q Do you know when he went to Europe? A Yes, I know when he went; he went in April and he come back in October.

Q It was in that October that you saw him in front of the Cadillac? A Yes.

Examination by the Court.

Q You told us that he suggested there that you live together again and that you go and look at some new apartment and that you could rent a three-room apartment at a cost of around

seventy-five dollars? A Seventy-five or eighty-five dollars, he said.

Q And you said you told him that he would have to sign the lease; what did he say to that? A Well, then, I didn't see him after that.

Q Didn't he say anything then about signing a lease? A No, he didn't say anything.

Q Did he say he would or wouldn't? A He didn't say anything.

Q You told him that he would have to sign a lease? A Yes. And then he didn't say anything.

Q Then did you hunt for an apartment? A No, I didn't.

Q Why not? A Because I thought this way, I thought because—I thought I wouldn't hunt for an apartment, because he—I didn't know what to do.

Q He had told you to, didn't he? A He told me to, but—

Q You said he had to sign a lease, and he didn't say he wouldn't? A The way he left me, why should I go and rent an apartment without his being with me? He said even in the rooms before we separated, he said he thought he married an economical wife. I said, "You don't call me extravagant, do you?" He said why, I showed it by picking out the rooms. I said to him, "Well, you signed the lease," and I said, "You signed the lease."

Q Let us go back where we started from, in October, 1926; you met him and discussed going back to live together again? A Yes.

Q You told him that he would have to sign a lease for a new apartment? A Yes.

Q He said nothing? A He didn't say anything.

Q You didn't get the apartment and didn't look for any? A No, because—

Q When did you see him next after that conversation? A After that I didn't see him until January.

Q From October to January you didn't see him, and didn't have any communication with him? A No.

Q In January where did you see him? A In January I saw him downtown and went to New York and had dinner in New York.

Q Did he say anything then about living with you again? A Yes. He said he brought some presents along with him from Europe for me, but I never saw them, though.

Mr. Bilder: Did he ever offer them to you?

The Witness: No; he said he had them.

Q Did he say anything about where you would live together again? A Yes, he said he doesn't have to go near the store any more; that I could rent a place anywhere I wanted to.

Q Did you? A No, I didn't.

Q Why not? A I don't know why I didn't —because I didn't hear of him, only that, until January.

Q We are talking about the January occasion now. You met him in January and went to New York? A After that I didn't meet him until January.

Q I want to find out what happened in January, before we get to February. A January, I went to New York with him and had lunch with him, and then we went to the Paramount, and then came home, and after I didn't hear or see anything of him.

Q Did he say anything to you on that day in January about living together again? A Not that day—no, he didn't.

Q Then when is the next time you saw him? A I saw him, then, in February.

Q What happened then? A 22nd of February, I think it was—sometime in February, and it was a snowy day, and he called me up and he said, "Till, what are you doing today?" So I said to him, "I don't know." He said, "What are you going to do today?" I said, "I am going to stay home." Then I said, "Why; do you want to come up?" So he said, "Yes, I will run in on you." So he came up and had dinner with me and I was to go out in the evening; he come and stayed for dinner and for supper. He stayed for dinner and supper and then he went home, and then I didn't hear from him—

Q Wait a minute. All the time when he was there that day, you were not just sitting there eating and not talking, were you? A No; he was talking that day about coming back.

Q What did he say? A He told me to rent rooms and to sublet my apartment. I had my apartment subletted, and then he called me up and he told me to never mind.

Q Don't let us get that far yet. He told you to rent rooms; did he tell you where to rent them? A No.

Q Place any restrictions on you? A No. He said only in a quiet, nice place.

Q How soon after that was it that he called you up and told you to never mind? A That was in April.

Q You mean from February until April? A Yes. He come up all the time; after February

he came up to the house, and I met him downtown three or four times a week and we went to the movies and had lunch together, and then I didn't see him until April, and then he went to work and said to rent rooms. That was the time I had my place sublet.

Mr. Bilder: What month did he say to rent rooms, when you sublet your place?

The Witness: That was a year ago in February.

Q Did you go out and rent rooms, as he suggested? A No.

Q Why didn't you? You had from February until April or May when you were seeing him every day or so; why didn't you rent rooms then? A I didn't rent rooms then, because I thought this way—I thought—he got sore because I told him—he didn't want—he wouldn't do it, because I had no business to tell him that he should sign the lease, that I insulted him. That is what he said to me.

Q When did he tell you that? A He told me that very often.

Q When? A In February, and after that I saw him in April, and then I saw him from February and March and April; and April, he calls me up and tells me to never mind about the rooms, and don't bother about anything; because I had to wait to sublet my place. When I had it sublet, that was around in May—

Further direct examination by Mr. Bilder.

Q Did you tell him that you had sublet? A Yes—then he called me up and told me never mind subletting it; that he wouldn't be up for

dinner that day, because he is going to his son Moe's, because they have a party, a birthday party, and he was going up to his son's at the party. Then he said he would see me Easter Sunday, and he never saw me, and I never heard anything from him from that day until the following September.

Q That was 1927? A Yes.

Q During this time did you ever tell him that you would not permit him to live with you at this place at 738 High street? A No; he came there and stayed over one night; in September, 1927, he came and he stayed over night and then he promised me that he would call me up Tuesday to go to the movies with his daughter-in-law, and he said he would come for our holiday.

Q A Jewish holiday? A Yes.

Q The Day of Atonement? A Yes, and he said he would come; I said, "Do you want to come up and have dinner with me?" He said, "Yes," and when he stayed over night, he said, "Till, I will bring my things up and stay; we can live here until October, because your lease will run out in October anyhow."

Q You had a lease on that apartment, then? A Yes.

Q And he knew it? A Yes.

Q What else did he say that night that he stayed there, when he said, "Till, I think I will bring my clothes up and stay"? A Then he said he would come for dinner that night, and I prepared a big dinner and all, and I had the table set, and at quarter to five he calls up and said he wouldn't come up because he has got someone in the store. I said to him, "Well, I

will wait for you; I don't care what." He said he would not break his fast for anybody.

Q Was that on the eve of the Day of Atonement? A Yes. Then my neighbor came in and she saw the table all set—

Q Never mind. What happened after that eve of the Atonement, when you prepared dinner and he didn't come? A He called me up and said he couldn't come.

Q What happened after that? A I didn't see him until a long while after that.

Q You are talking about October, the Day of Atonement, October, 1927; when after that did you see him? A I cannot recall when I did see him; I don't remember that.

Q Did you see him again in 1927, after the eve of the Day of Atonement? A He came up all the time. I saw him every once in a while —every three or four months; he came up and called me up, or I would meet him downtown.

Q At whose request did you meet him down town? A Oh, I don't know.

Q Did you ever forbid him to come and see you? A No; he came up lots of times.

Q Did you ever forbid him to stay all night? A No, I said his home is here, if he wants it.

Q When did you first tell him that? A Every time he come up.

Mr. Bilder: The pleadings show there were further meetings, and the answer admits the dates shown in the pleadings after that.

Q Do you recall there was a time in 1928, when your lease was about to expire— A Yes.

Q Do you recall that occasion? A Yes.

Q Do you recall any communication with your husband? A Yes. He called me up and asked me whether I could see him that Sunday afternoon; I couldn't see him, and couldn't see him Monday afternoon, because I had an appointment; so I met him that Sunday night in the Central Railroad.

Q At whose request? A At his request. Then we had a talk there about renting rooms again, and then we went over to the Mosque and he said, "Till, I think I will come up—I think I will go up with you and go up with you and stay with you all night." I said, "All right; come ahead."

Q When was this? A That week of Atonement.

Q You have told us about that; I am talking about the subsequent occasion, when your lease was about to expire. Do you remember communicating with him, in 1928? A In 1928 he called me up.

Q I refer you now to sometime in 1928, when your lease was about to expire, and ask you whether you ever communicated with him at that time?

The Court: When was the lease about to expire?

The Witness: October my lease expired.

Mr. Bilder: My pleadings say July.

The Witness: About July he come up, yes.

Q I asked you about a time when your lease —when you first went into the two-room apartment, after your husband sought to move you out, that was in October, 1926? A Yes.

Q What kind of a lease, if any, did you obtain on that new two-room apartment? A I signed it for a year.

Q At that time? A After we separated, because I moved right in the two-room apartment.

Q When you moved in, you signed the lease? A Yes.

The Court: The year's lease was up in the following October, wasn't it?

The Witness: No, it was the year we separated; we separated in September, and October was my lease.

Q The lease would end October? A Yes.

Q From October 1st the lease period would be up? A Yes.

Q Do you remember a time when your lease period was about to expire in 1928? A Yes, the following October it was to expire.

Q Do you remember whether or not just prior to the time of the expiration of that lease, you communicated with your husband? A Yes.

Q You called him? A Oh, yes, I called him up, because he wanted me to rent rooms again. I called him up and I said "Louis, what shall I do; shall I sign the lease, or do you want to move?" So he said, "What have I got to do with your lease?" That was the answer I got.

Q What else was said? A That was up in Mrs.—

Q What else did he say? Did he just say those words and then hang up the receiver? A Yes, that is all that I can remember; that is all I can remember.

Q Did your husband ever offer to go out to find rooms with you? A No, he did not; he

always told me to go myself, and told me to rent them myself. One day he told me to go and look at rooms, and he told me to go by myself. He told me to rent them, to look at them, and then go by myself.

Q What do you mean he told you "to go by myself"? A He always wanted me to move out of that place, but he wanted me to live in the rooms by myself.

Q When did he first tell you he wanted you "to live by myself"? A He told me that in 1927.

Q Did he ever after that tell you he wanted you to live by yourself? A 1926 he told me that, I think; I am not sure.

Q Did he ever after that tell you he wanted you to live by yourself? A Yes. He come to the house one Sunday morning and rang the bell; I said, "Who is there?" He said, "The president is there." So he said to me, "Tillie, I have made up my mind that I want to come back and live with you." I said, "All right; that is fine." So then he said he wants his daughter-in-law to go with us to look for rooms. He is invited there. So I said, "If you want to, you can stay here for dinner, and then go out." He wanted the daughter-in-law to go. So he took me up to his daughter-in-law's, and the three of us went out, and wanted to look for rooms in Goldsmith avenue. Mannie Scheck was the receiver there. I went there.

Q Who all went? A Moe Rich and Martha Rich and Mr. Rich and myself. Then we went to the movies, but they wouldn't go to it. Mr. Rich wanted to go and Mrs. Rich wanted to go, but Mr. Moe Rich didn't want to go. He said, "Never mind; I will go to the movies and meet you

there." Then Mr. Rich said, "Wait until we come back and then I will go and look at them."

Q Which Mr. Rich? A Mr. Louis Rich, my husband.

Q What did he say? A He said, "Wait until we come back, we will look," and when we come back, he didn't look at them.

Q Did he do anything further with you to get any place, or to get that place? A No.

Q Did you look for a place? A No.

Q When was that he came up on Sunday morning, which led, at his suggestion, to your going to his daughter-in-law's for the purpose of all three or four of you going to look for a place? A That was either the end of July or 1st of August, 1927.

Q Did he thereafter make any suggestion for you to look somewhere else? A He did it so often that I couldn't keep track of it. He did it every once in a while; he did it all the time. He did nothing but make a big fool out of me. I took his word for it, and believed him. He always did that. He called me up; tried to see me downtown or something.

Q Did he ever tell you why he didn't want to go and live in this two-room apartment with you? A He wanted to go and then he changed his mind.

Q Did he ever say that he didn't like these two rooms and wouldn't live there, because he didn't like the looks of them; did he give any reason for not wanting to go? A No.

Q Did you ever refuse to go with him to look for rooms? A I did not. Just the contrary. I was always willing to go with him.

Q Is there any conversation that you had with your husband on the subject of your married

relations or your going to live together that you haven't told us yet, or that we haven't asked you about, which you recall? A About living together? No.

Q When was the last time you saw your husband? A I don't know whether it is four to six weeks ago—met him downtown.

Q Did you have a talk with him? A Yes.

Q What did you say to him and what did he say to you? A I just saw him for a little while.

Q What did he say to you? A We went in and had some cream and walked to—

Q Had some cream where? A In Huyler's.

Q At whose invitation? A At his invitation.

Q What did you say to him? A We talked and he said to me I blamed him for it; I said, "Yes, I do; I told you not to do what you were doing that morning that you left me. I told you you would be sorry for it." "Well," he said, "something has got to be done one way or the other by the first of the year. If nothing is done, I will see that it is done."

Q Did he ask you to—

The Court: Why waste time on this? That was long after the suit was begun, which was sometime in 1928.

Cross examination by Mr. Ruback.

Q This was the first marriage that you ever contracted? A Yes.

Q How old were you when you married Mr. Rich? A Forty-nine.

Q And at that time you were living alone at a hotel? A At the Hotel Riviera.

Q How long had you lived at that hotel? A I lived there about four months.

Q Before you went to the hotel where did you live? A Lenox Hotel.

Q How long had you lived there? A Fourteen years.

Q Had you ever lived in any boarding house? A Yes, I lived with Mrs. Winantz, in East Park street—that is a good many years ago, and I lived with my sister before I went to the Lenox.

Q When you lived at the Riviera, did you take your meals at the Riviera? A Once in a while, but very seldom.

Q You ate out? A Yes.

Q And at the hotel, I suppose, you had one room? A Yes, one room and bath.

Q And you were working? A Yes.

Q In the place of business of your brother? A Yes.

Q Which brother? A Both brothers. I was there since they were in business, I think, with them. That was the only place I ever worked.

Q You had worked for a great many years? A Yes.

Q Some clerical position? A No, I was all around the whole place.

Q Factory work? A Downstairs and upstairs; I went around; I was sort of a forelady like.

Q They were in the business of manufacturing candy? A Yes.

Q Most of your labors were in the factory itself? A Yes.

Q Very little in the office? A I wasn't in the office at all.

Q Did you not request Mr. Rich to take this apartment on High street with an understanding that you were to live there for the one year only? A Not for just one year; there was no specified time.

Q Is it not a fact that before you selected that apartment, Mr. Rich expressed a desire that he live nearer his place of business? A No, not near his business. He just said he wanted to live in High street, so he could have a walk every day.

Q Do you say that at no time prior to your marriage Mr. Rich told you he would like to live near his store? A No, he never said that.

Q Did you not express to him a wish to live on High street? A No, that was his own idea.

Q Did you at any time before you were married to Mr. Rich, say to him that you wanted to live in an apartment, because you wanted to make a good impression on your friends? A No, sir; I did not.

Q Who actually selected the apartment on High street? A Well, who selected it? I looked around. I was engaged to be married, and then we went to his daughter-in-law's for dinner, and he told me that his daughter and him made this up, and said when they get me there, they will bring this up, and he went to work—I had dinner there, and then—well, when I was in the Riviera he wanted to go to Atlantic City for his wedding trip, and I went to work and I said, "Well, I cannot get"—we made up to get married in November or December; that was the idea—so then he said to me he wants to have a vacation—

Q I don't want to interrupt you, but I asked you who selected the apartment on High street. That can be answered by naming the person; was it you or Mr. Rich? A I selected the apartment, but I told him about it.

Q That is the only place where you and Mr. Rich lived during the time that you lived together? A Yes.

Q And except for the single change that you made of moving from a four-room apartment to a two-room apartment in the same house, you have lived in the same place right along? A Yes.

Q And the first time that Mr. Rich—the first and only time that he separated himself from you was on the 24th day of September, 1925? A One case he went down to the shore to his daughter's and left me home.

Q This was the first time that he ever separated himself from you in anger? A Yes.

Q He hadn't left you before because of any quarrel? A No.

Q Your first year of married life was fairly peaceful, wasn't it? A Well, the first three months it was, but after that it wasn't, it was just the contrary.

Q Did you learn during the first year of your married life that Mr. Rich was having business troubles? A No, he never had no business troubles that I know of.

Q Didn't he inform you that his business had suffered a very severe slump? A No, sir.

Q Didn't he very early in the course of that year tell you that after the lease was up you would have to find a cheaper flat to live in? A No, he didn't tell me anything, just contrary. The way he went to work and gave me checks, I knew he didn't want to pay the rent. I suggested that myself. He said, "I will see." That is all the answer I ever got.

Q You say that at no time during that first year did he tell you he wanted a cheaper apartment? A No, sir; he did not.

Q He approved of your selection of the High street apartment for two reasons, which you say

he gave; one, that he could come home for lunch? A Yes.

Q And the second, he could walk to his business? A He never came home for lunch.

Q He never came home for lunch from the very time you were married? A No, only on Sundays and holidays he came home. I coaxed him to come home every day, because all I was getting married for was a home, and a companion; that was all I was getting married for, and I wanted a home, because I was boarding all my life.

Q Suppose we confine ourselves just to the very things you are asked. You did occasionally bring the meals to the place of business? A Yes, supper.

Q How often? A Every night.

Q Why? A Because I went down there every day; I went down, he wanted me to come down, because he went to the movies every afternoon and he wanted me to come down.

Q Why didn't you insist on your husband coming home for his dinner? A I did, but he wouldn't come.

Q Why didn't you insist on your husband coming home for his dinner, if you lived conveniently near to the store?

Mr. Bilder: She answered she did insist.

Q Did you know during the course of that first year in your married life, that your husband was taking both his lunch and his evening meal in restaurants on Market street? A That was only maybe a week or two weeks before we separated, because he told me not to come down to the store and bring it down.

Q Did you know where, for the first twelve months of your married life, he had his lunches? A Yes; he took them at Strum's, some of them; and some of them I don't know where he took them.

Q You knew he took them in a restaurant downtown? A He always does; he does it now, too.

Q Did you also know that your husband was suffering from stomach trouble? A No; he never told me.

Q Never complained to you? A No.

Q You never observed any symptoms of indigestion? A No, sir.

Q You knew, Mrs. Rich, that his business habits required his attendance at the store ordinarily until about 9 o'clock at night? A Yes, I was down; we used to walk home together every night.

Q You knew that on Saturday nights he was accustomed to staying a little later? A Yes.

Q How late? A Until 11 o'clock.

Q You knew that his failure to come home for his lunches and his evening meals was due to the inconvenience? A No, sir.

Q You did not? A No, sir.

Q Did you understand that your husband didn't come home for his lunches and his evening meals because he preferred to eat in restaurants? A No, I did not.

Q Why do you think he didn't come home for the two meals? A He didn't tell me; I asked him to come home, but he didn't come home.

Q Did you ask him why he preferred to take his meals in restaurants rather than come home? A I didn't ask him, because he wouldn't come home.

Q Didn't he ever explain to you that his business kept him in his store? A No. He told me only about two months ago, or three months ago, that I met him, he goes up to Katz for his dinner there; he rides up and walks down; he told me that about three months ago.

Q Did you, during the first year of your married life, attempt to prevail on your husband not to come home and eat his meals? A No, just the contrary; I wanted him to come home, because I preferred having my meals there.

Q When, during the first year, did Mr. Rich first talk to you about making a change in the place of residence? A He never told it, only that morning he said to me—not that morning, but once before he got sore about something and he said, "I will take you down to Chinatown and make your life miserable, and just come once a month, to cover the law." That is what he told me.

Q That was the first time that he spoke of changing your place of residence? A Yes, that is the only time I knew that he had, until that morning he moved me.

Q And his statement to you, then, was that he was going to move you down to Chinatown? A Yes.

Q Didn't he tell you he was going to move you nearer his place of business? A No, he did not.

Q Never told you that until the trucks arrived? A No, sir; he told me in the morning to come down and look at the rooms.

Q That was in the morning before he left for business? A Yes. He told me to come down and look at the rooms. He said, "There are four rooms down there for thirty-five dollars a

month." I said to him, "Louis, will you pay fifty dollars? I would rather live in two rooms, and live decent, than to live in four, and live in a dump."

Q Mrs. Rich, you didn't go down that morning to look at the rooms? A I didn't go out at all that day.

Q Yes or no? A No.

Q Did your husband tell you where the rooms were located? A Yes.

Q Have you ever been to the flat that your husband selected? A I never looked at them; no, sir.

Q Did you understand that the flat was located at the corner of Market and Mulberry streets in the City of Newark? A Yes, because he told me so.

Q Did you understand that the flat consisted of four rooms? A He told me that.

Q Did he also tell you that the rooms fronted on the street and were large and airy? A No, he didn't tell me anything.

Q Did you ask him? A No, I didn't ask him anything.

Q Did you know that morning that your husband had been negotiating for an apartment in the Larkey Building, at the corner of Market and Mulberry? A No, I did not. For rooms, do you mean?

Q For your apartment? A Yes, he told me that morning, but I didn't know whether it was the Larkey Building.

Q Did you know for a week or two before that he was trying to get that flat? A No, I didn't. I didn't know it until he come up that afternoon and wanted to move me.

Q In the affidavit you filed in this case, you said, when the moving truck arrived that morn-

ing, you asked your husband where he was going to take your furniture to, and he told you down to a flat at Mulberry and Market streets, and you said in that affidavit, "I learned that the said neighborhood was undesirable for residential purposes." When did you learn that? A I knew where it was; it was right opposite the office; I was down in the office every day, and I wouldn't live in a place like that.

Q Then your objection to the neighborhood was because of your general acquaintance with it? A Yes, his business was right across the street; I couldn't live in a place like that. It was too noisy; it would set me crazy to live in a place like that.

Q Your objection was not due to anything other than the general neighborhood? A That is it.

Q You didn't know what persons lived in that building? A No, I didn't know anything about it.

Q The moving truck arrived in the early afternoon? A Somewhere around 2 o'clock.

Q You physically prevented the removal of any of the furniture? A Yes, because he took all his things out.

Q I didn't ask you why. Did you physically prevent the moving men from taking them? A Yes.

Q You took the things away from them? A I pushed them aside and told them to get out; they have no right here, and he told the moving men to go right ahead and never mind what I said, that I am crazy.

Q Did you, on that occasion, say to Mr. Rich that you wouldn't go with him to any place, that you will not live with him any place, except in

an apartment house? A No, I did not. But he always said that to me, but I never said it.

Q Did you, on that occasion tell Mr. Rich, or any other person, that you were accustomed to better surroundings than to live down on Mulberry street? A I told him I couldn't live there; I told him I wanted to live in decent quarters. I didn't tell Mr. Rich that until that day, that morning, when he wanted to move me down in Mulberry and Market streets.

Q Did you, that afternoon, in the course of the trouble, say that you will not move downtown, that you are accustomed to better things? A No, sir; I never said any such a thing; I was too excited.

Q Did you say to your husband that afternoon that you had been accustomed to live at the Riviera Hotel, and that you will not live at any cheaper place? A No, sir.

Q Did you say anything like it? A No, sir.

Q Did not Mr. Rich say to you, "Please go down and look at this apartment. If you don't like it, we won't take it"? A No, sir.

Q You say he did not? A No, sir.

Q Did Mr. Scheck that afternoon call you aside? A Yes.

Q And ask you, in very kindly language— A Yes.

Q —to look at the apartment, and if you didn't like it, you need not take it? A No, sir.

Q Did Mr. Scheck on that occasion say to you that you might try it, and if you didn't like it after a short period, you could select your own place? A No, sir.

Q Say anything like it? A No, sir; never spoke about it to Scheck, never; never said a word about it.

Q You never spoke to Mr. Scheck— A Not about rooms at all. I didn't even see Mr. Scheck, only when he came up at the time the excitement was on. Mr. Rich sent for him, and he come up and showed a card, and the policeman was there; he said, "Why, the Judge sent me up here to move," and after that I didn't say nothing to Mr. Scheck.

Q You didn't say anything that afternoon to him? A Nothing at all, only about money—the time he asked me to come in to talk about the money; that is the only time that I spoke to him.

Q The only subject taken up by Mr. Scheck when talking that afternoon was the matter of your releasing your interest in Mr. Rich's property and your getting back five thousand dollars? A Yes.

Q Nothing else he said? A No, sir.

Q Nothing else said between you and Mr. Scheck that day, or at any other occasion? A Not that I can remember.

Q About a place of residence? A Not that I can remember.

Q You sent for your brother, Mr. Gus Lewis? A Yes, I did. I told my landlady to call my brother.

Q Did Mr. Rich say that afternoon that he wouldn't be responsible for the rent after the first of October? A I don't remember that, either.

Q Did Mr. Scheck say that? A That I don't remember.

Q Did Mr. Gus Lewis, your brother, say that he would assume that liability? A I don't remember, because I was too excited to know.

Q Who paid the rent on October 1, 1925? A I went in a two-room apartment and I paid it.

Q Where did you get the money? A My brother gave it to me.

Q Mr. Gus Lewis? A Yes.

Q And he furnished you with the money every month to pay the rent? A No, I paid it myself for a whole year, until Mr. Rich gave me less money; I was getting thirty dollars a week, and then he lowered me to twenty dollars a week, and then he lowered me to ten dollars a week, and that is when I sued him for support.

Q And then he refused to pay you anything? A No, then Mr. Bilder made him give me—the Court made him give me twenty dollars a week.

Q After this departure of your husband on the afternoon of September 24th, you continued to live in the apartment, only in a two-room apartment? A Yes.

Q And did Mr. Rich telephone to you shortly after that day? A I didn't see Mr. Rich until the following October; he went to Europe and stayed there six months.

Q I didn't ask you whether you saw your husband; I asked you whether he telephoned to you. A No, I didn't hear anything until the following October.

Q He did not telephone you in January and ask you to come back? A No, sir.

Mr. Ruback: I served notice on the other side to produce some letters.

Will you produce them, Mr. Bilder?

(Mr. Bilder produces letters.)

Q I show you a letter, Mrs. Rich, sent to you from Paris. I ask you to please look and see whether you received that from your husband? A Yes, sir.

Mr. Ruback: I offer that in evidence for identification.

(Marked D. 1 for identification.)

Q I show you another letter, one from Paris, dated August 16, 1926, did you receive that from your husband? A Yes.

Mr. Ruback: I offer that in evidence for identification.

(Marked Exhibit D. 2 for identification.)

I offer them only for what they may be legitimately used for, in case they will be admitted.

Q I show you a third letter, dated October 27, 1926; you received that from your husband? A Yes.

(Marked Exhibit D. 3 for identification.)

Mr. Bilder: We admit these letters were all written by a third party and signed by the defendant. I would like testimony offered to the effect—if it can be put into the record—that the contents of the letters were fully known and dictated by the defendant, before they should be admitted in evidence.

Mr. Ruback: It is conceded that they are not entirely the defendant's language.

The Court: You may show that. If you don't want them in evidence, you may have the benefit of your objection. I will admit them. You can cross examine the writer of the letters, whoever signed them.

(Letters heretofore marked Exhibits D. 1, D. 2 and D. 3 for identification, are marked Exhibits D. 1, D. 2 and D. 3.)

Mr. Ruback: I offer in evidence letter of November 30, 1927.

(Marked Exhibit D. 4.)

Also, letter of September 4, 1928.

(Marked Exhibit D. 5.)

Also, letter of September 30, 1925.

(Marked Exhibit D. 6.)

Q You read these letters when you received them?

The Court: Are they in your husband's handwriting?

The Witness: No, sir; they are in his daughter-in-law's, I guess; I don't know; they came from Paris.

The Court: None of them are in your husband's handwriting?

The Witness: No, sir.

Q Did you observe in this letter, Mrs. Rich, a statement by your husband to the effect that he was booked to leave on the George Washington boat on October 14, 1926; that he would be due on Friday morning, October 22, and he said, "If it is agreeable for you to meet me at the boat, United States Lines"—did you notice that? A Yes, I did.

Q Did you meet him at the boat? A I did not.

Q Did you make any reply to this letter? A No, sir.

Q Did you notice at the end of the letter, this postscript, "If you wish, answer Mr. L. Rich, Hotel DuPark, Paris, France"? A I knew about it, but I didn't answer it.

Q Why not? A Because the way he left me here—the day he left me, I haven't heard anything until I got the letters.

Q You testified that you didn't see or talk to your husband from the time he left you in September, 1925, until he returned from Europe? A No, sir; I did not.

Q This was the first communication you had from him? A Yes.

Q You were, during that period of the separation, from 1925 to 1926, anxious to resume living with your husband, were you not? A He wasn't; why should I live with him when I didn't hear nothing of him until I got a letter, and he was in Paris.

Q In September of 1925, when your husband left the home on High street, it was quite against your wishes, was it not? A No, it wasn't against my wishes. I would have moved in a fifty-dollar apartment.

The Court: You misunderstand. Did you want your husband to go, or didn't you?

The Witness: No, I didn't want him to go; I was willing to go with him anywhere.

The Court: After he had gone, were you anxious to resume living with him again?

The Witness: I didn't know nothing of him.

The Court: But irrespective of whether you knew or not, were you willing to go back and live with him—did you want to live with him?

The Witness: Yes, I did.

Q So you didn't accept the invitation to meet him at the pier upon his return from Europe?

A Why should I, when he leaves me the way he did that day, and I haven't heard anything from him until he came from Paris, until I get this letter?

Q Didn't you regard this letter as an opportunity for you to resume your proper relations with your husband? A Why should I go to work and meet him, when he goes to work and don't see me the whole time, and he goes away and goes to Europe for six months and don't let me know nothing about it?

Q Is that why you didn't even answer this letter or meet your husband at the pier? A Yes. I had Bill Harris at the time and I didn't bother with it; I gave it to Bill Harris.

Q Was it because you were in that state of bitterness or resentment against your husband, that you neither answered this letter nor met him at the pier? A No, sir; I was perfectly willing to go back with him any time he offered it to me.

Q Then why, when the opportunity came and the invitation arrived from your husband, didn't you accept it? A Because, why should I, when he goes to work and takes all his personal belongings out of the place and wants to move me down to Mulberry street, to cover the law; why should I go back to him?

Q Mrs. Rich, you still remembered when you got this letter, your grievance of the preceding year, and you were still sore, were you not? A I was willing to go back, if he come back and wanted to be sincere. If he is sincere in coming back, I was willing to move with him and go anywhere in a respectable place, always.

Q You were not willing to tell him that at the pier, were you? A I didn't go to the pier.

Q You had counsel or engaged counsel at that time, had you not? A Why wouldn't we have it there at the separation; when he said he would put me in Mulberry street to cover the law, I went to Mr. Harris. I thought it was best for me to have an attorney.

Q When you received this letter from Paris, the one dated August 11th, you had counsel with whom you were consulting about your matrimonial affairs? A Yes.

Q That attorney was Mr. William Harris? A Yes.

The Court: When did you first consult him?

The Witness: I really don't know.

The Court: Was it before your husband left you?

The Witness: A little while before; I cannot recollect.

The Court: Before your husband left, you consulted a lawyer to find out whether you had to go down to Mulberry street or not?

The Witness: Yes.

The Court: That was the reason you refused to go, because your lawyer told you you didn't have to go there?

The Witness: Well, no—

The Court: Was that one of the reasons?

The Witness: No, the reason is because I wasn't—

Adjourned to Monday, January 20, 1930, at 10 A. M.

Mrs. Tillie Rich, for complainant, by the Court.

Transcript of testimony taken in the above-entitled cause before Hon. Maja Leon Berry, Vice-Chancellor, at the Chancery Chambers, Newark, N. J., on Monday, January 20, 1930, at 10 A. M.

Appearances:

Counsel as before stated.

MRS. TILLIE RICH, complainant, recalled, testified further as follows:

Examination by the Court.

Q At the last hearing, and at the conclusion of the hearing, you were asked these questions and gave these answers: (Last page of testimony read to the witness.) What was your reason for not going down to Mulberry street to look at the room? A Because Mr. Rich didn't tell me he was going to move down there at all. He asked me in the morning to go down to look at the room.

Q Yes, I understand that; but you had already consulted Mr. Harris before he said anything about going down there, hadn't you, or did he tell you that morning? A Because Mr. Rich had said he was going to take me down to Chinatown just to cover the law. That was one thing I went to Mr. Harris about.

Q Did you ask Mr. Harris whether you had to go or not? A This was long ago. I forget. It is five years ago.

Q You have a fair recollection of what occurred at that time? A I don't remember. That was before we really separated; that was quite a while ago; quite a while before.

Q I understand that; but you had already consulted Mr. Harris about whether you had to go to Mulberry street or not, didn't you? A I did; but I don't remember what he said. It is so long ago that I really don't remember. Mr. Harris is in the family and I went to him any time I had anything. I didn't go with any intention of any trouble at all. I went to him, and if I had anything I went to Mr. Harris for advice, and he didn't charge me, and don't send me a bill or anything like that.

Q Having consulted Mr. Harris, then, when your husband told you that he was going to move down to Mulberry street, you refused to go? A I didn't refuse to go, because I didn't know he was going to move me down there.

Q You didn't go down? A Because he didn't tell me he was going. He told me in the morning to go down and look at the place and in the afternoon he came with the moving wagon and stopped the telephone and everything else.

Further direct examination by Mr. Bilder.

Q How long before the 24th of September of 1925 had you consulted Mr. Harris regarding your husband's plan or purpose to move down to Mulberry street? A I just cannot recall that.

Q Was it a matter of weeks or months? A I really don't know.

Q How many times had you consulted with Mr. Harris before this separation on the 24th of September? A I cannot tell you that, either; I don't know.

Q Was it a number of times? A I cannot tell you. It is so long ago that I have forgotten. It is five years ago, and I cannot recall all these things, just every date and all.

Mrs. Tillie Rich, for complainant, further direct.

Q You were asked by the Court, Mrs. Rich, whether one of the reasons you refused to go to Mulberry street was because your attorney had told you that you were not obliged to go there. Is it a fact that you had been advised by counsel that you were under no obligation or duty to go with your husband to Mulberry street? A I don't remember.

Q Wasn't that the sole object of your consultation with Mr. Harris? A No; it was because Mr. Rich had said to me one night in bed, or one morning, I don't just recall, that he is going to put me down to Mulberry street, just to cover the law, and as soon as I heard that I went down to consult Mr. Harris to see whether I would have to go there. That is about all I can remember. I don't know whether it was for that purpose, though. I know I went down to Mr. Harris; but outside of that I don't know how many times I went, because it is too long ago to remember everything.

Q You have testified to a single occasion when Mr. Rich said to you that he was going to put you down in Mulberry street, or Chinatown, to cover the law. Was it immediately following that remark by Mr. Rich that you consulted counsel? A I don't remember that. I cannot remember that.

Q On the morning of the 24th, when Mr. Rich told you to go down to Mulberry street, you were free for that morning? A I was free? What do you mean?

Q Did you have any appointment? A The only thing, I told Mr. Rich—

Q Did you have any appointment for that morning? A No, I didn't.

Q You stayed home all day? A Yes; stayed home all day.

Mrs. Tillie Rich, for complainant, further direct.

Q You were not preparing any lunch for Mr. Rich that day? A He never came home for lunch. I wanted him to come home; when we first got married, he promised me, but he never came home.

Q And were not busy that day with any household duties? A No.

Q What time in the morning did Mr. Rich tell you to go and look at the apartment? Before he went down to business? A I cannot tell you the time; about half-past seven or eight o'clock.

Q There was no reason why you didn't go down to look at the apartment except the reason that you have already stated, you didn't like the general neighborhood? A Yes, that is it.

Q Had you ever told Mr. Rich before the day of separation that you had consulted counsel about your duty to go to Mulberry street? A No, I cannot recollect that.

Q Did you attend any conference at Mr. Harris' office before the 24th of September, 1925? A I don't recall that either, because all those things are so long ago that I have forgot. I know that I was at Mr. Harris' office; but on account of what, I told you about taking me in Chinatown.

Q Were you over at Mr. Harris' office before the day of separation at a conference attended by your brother and by Mr. Scheck? A I think that that was after we separated. I am not positive, but I think it was.

Q At the time you received a letter from your husband dated August 16, 1926, referring to Exhibit D. 2, you were paying how much rent for your apartment? A For the two rooms?

Q Yes. A $60.

Q And you observe that your husband in this letter authorized you to look for an apartment and to pay five or ten dollars more than the rent that you were then paying? A Yes.

Q Did you go out to look for any apartments for seventy or seventy-five dollars? A I did not.

Q How long before Mr. Rich returned to this country had you received this letter of August 10th? A I cannot recall that.

Q Some weeks? A I cannot say positively, but I think it was sometime in August; I ain't sure.

Q And in any event, you made no effort to comply with this request? A No effort at all.

Q Did you go to see your lawyer when you got this letter? A Yes.

Q You observe, Mrs. Rich, in this letter of August 16th, that your husband suggested to you that you might rent an apartment in any part of the city? A I don't understand you. It is so long ago that I don't remember.

Q Is it that you don't understand the question, or you don't remember the occurrence? A I don't understand the whole thing, because I haven't seen these letters for four years.

Q Let me read you from this letter, and see whether you recall reading it at the time you received it: "I think the best thing for you not to sign any lease where you are, and for five or ten dollars more you can get three nice rooms, as I don't have to live near the store any more, so it does not make any difference what part of the city as long as it is a nice place to live in." You remember that? A Yes.

Q You knew when you read that, that it was no longer required for you to live down on Mul-

berry street? A No, I didn't know nothing of the kind.

Q Didn't you understand this letter to be— A At that time I knew it, but I didn't answer that letter. I didn't answer no letters. I paid no attention to the letters. I wanted it settled before I would rent any rooms, because he left me in such a condition that I wouldn't go back unless the thing was straightened out.

Q What was it you wanted settled between the attorneys? A Because I didn't want to go over that same thing again.

Q What was it that you hoped to have settled by the attorneys? A It was this way; if I didn't want to go through the same question as I went through before; he would take me probably and do the same thing over again, and I wanted it understood before I moved with him.

Q What was it you wanted your husband to furnish you by way of a settlement? A I didn't want no settlement. I was just willing to go with him, and when I met him in New York or Newark or where, I don't recall, I was always willing to go with him, and every time he would tell me to go and look for rooms, and when I would say "Louis, you go with me and look for rooms," he said, "Why don't you go by yourself; get three rooms; and for the same price you are paying you can get three rooms and go by yourself, and I will come up and see you." "Why should I go do it," I said, "if we cannot go together I will stay where I am."

Q What was it you wanted your husband to furnish you as part of a settlement between the attorneys? A I didn't want him to make any settement.

Q Did you ever ask for a surety company bond? A I don't remember.

Q Did you ever ask for any kind of a bond? A I don't recall.

Q Did you ever ask your husband to furnish you security that you were to live in a high class apartment house? A No, sir, not that I can recall.

Q Were you ever present at any discussion or conference at which Mr. Rich was asked to furnish a bond? A Not that I can recall.

Q I read from the same letter, Mrs. Rich, of August 16th, "If you can avoid to sign a lease, I think it would be better, as we may leave Newark for a while. The reason I write all this now is because your lease is about to expire. Now, if you are satisfied with these conditions, give this your immediate attention and be ready when I come home. If you are willing, meet me at the boat and we'll go home together." When you read that, didn't you understand that your husband was seeking to resume living with you? A I did; but I had my lease signed already when I got these letters. You know, you have got to give your landlord three months' notice.

Q I don't want to interrupt you, and I don't want to be discourteous; but I must insist that you answer only what I ask you. Didn't you understand when you got this letter that your husband was seeking to resume living with you? A Yes; and I was willing to live together with him, and I asked him myself. I called up one time, I called him up and asked him if I should sign a lease, and he said, "What have I got to do with your lease?" That was the answer I got.

Q Did you follow any of the other suggestions contained in this letter of August 16th? A No,

sir, I didn't. I didn't pay any attention to those letters.

Q All you did was to go to your lawyer with the letter? A Yes.

Q When your husband returned to this country he wrote you again, did he not? A Yes. You have got the letters there I guess.

Q You received this letter, Exhibit D. 3, dated October 27, 1926. Did you make any reply to it? A What letter is that? I don't know. I haven't got my glasses. Is that from Europe, too?

Q No; that is a letter written from Newark. Let me read you parts of it, and perhaps you will recall the letter. "Dear Tillie: Enclosed find check. I was very much disappointed at your failure to meet me at Hoboken when the boat came in. I don't hold this against you, but I sure would have been glad to see you. I brought some nice things from Europe, and will give them to you when I see you." Do you remember this letter? A I do recall that letter.

Q (Continuing.) "Now, Tillie, you can see I mean well. If you will only see me I think we can arrange things much better than by writing. Please let me know by phone or letter where you will see me, and I will be there. What I want is to have a heart to heart talk with you. If you will listen to me and not to your friends and brothers, we will both be better off. I am living with Mannie Scheck. His telephone is Waverly 7889, and you can call me up there any evening or you can write to me there. Don't let anyone put foolish ideas in your head. Both of us would be better off in a home of our own. I cannot afford a palace, but we could live decently without a lot of money. So think it over and let me know. Tell me when I can see you and I will be

up to the house. Sincerely, Louis." Then there is a postscript: "P. S. If you would rather see me downtown I will be in front of the Cadillac Restaurant on Broad street near Clinton street where we can have lunch together and talk it over. Will wait there from 12 to 12:30 P. M. Thursday and Friday." You remember this letter? A Yes.

Q What did you do when you received this letter? A I went down and met Mr. Rich.

Q Where did you go? A In front of the Cadillac.

Q Was it Thursday or Friday? A That I don't remember. It is too long ago.

Q Is it not a fact that you telephoned your husband that you didn't want to meet him? A No.

Q Isn't it a fact that the first time you met your husband after his return from Europe, was not at the place requested, but at the Tube Station, at Park Place? A I don't recall that, but I know I did meet him at the depot and went to New York. I don't recall the date. The other day I was so excited, I might have made a mistake there; but I think I met him in front of the Tube. I know I did one time, and I know I met him at the Tube and went to New York.

Q You are not excited now, Mrs. Rich? A No; but I am telling it the way I think. I cannot recall everything for five years. You cannot think of everything.

Q Isn't it a fact that the first time you saw your husband after his return from Europe, was at the Tube station on Park Place? A I don't remember whether it was the first time or not; I cannot remember that, but I know I did meet him there, and I know we went to New York and

talked, and told me about the presents, and told me he had a shawl and pocketbook, and when we were in the hotel he told me the kind of a pocketbook it was, but I never saw any of the presents myself.

Q You never saw any of them? A No; he never gave it to me.

Q He never gave you a lorgnette? A Yes.

Q That he brought from Europe? A Yes.

Q You say he didn't give you any presents? A No, he didn't give me the shawl and pocketbook; he said he would.

Q He didn't give you some of the presents? A No; this is what he gave me (indicating).

Q You never called at Mannie Scheck's home when you got this letter? A I think I called Mr. Rich; I am not positive about that, either; but I think I called Mr. Rich up down to the store, and made arrangements to go to New York.

Q You mean you answered this letter by a telephone call? A I think I did; I wouldn't say positive, but I know I met him.

Q It may be that your husband called you to find out why you hadn't answered this letter? A No; I called him, I'm pretty sure of it. It is so long ago that I really cannot recall.

Q Can you fix the month in which you met your husband for the first time after his return from Paris? A I cannot say that positively, either, but I think it was October.

Q October of 1926? A Yes.

Q On the occasion that you did meet him, after the receipt of this letter, did you talk about taking rooms and living again together? A Yes, we did talk about it.

Q What did he say to you about living together again? A He told me to try and sublet

my place and to have it sublet, and Mr. Gerber had it sublet, and then he calls me back and tells me to never mind subletting it—as much as to say he had changed his mind.

Q Had you ever sublet the apartment? A Yes, it was.

Q To whom? A I don't know. I didn't sublet it; my janitor and landlord did that, and the superintendent.

Q Did you vacate the apartment after subletting it? A No; how could I after he called me up; then I don't know what they did, but I told them, and Mr. Berger phoned me shortly after that and he said, "What kind of a way is that to do?"

Q Did you ever sub-lease to anybody? A No, I didn't.

Q After receiving the second letter that your husband sent you from France, the letter of August 16th in which he suggested that you after the lease expired—that you get an apartment in which he could live with you, you went ahead and renewed the lease? A No; I had my lease renewed before I got the letter.

Q When had you renewed the lease, for the year commencing October 1, 1926? A I think it was June—either May or June.

Q Did you sign the renewal lease? A Yes. My lease of my two rooms I always signed myself.

Q When you went to New York with your husband, he told you to sublet the apartment and you went ahead and did sublet it? A I did.

Q How soon after he told you to do so? A As soon as I came home; the next day I called up and told my landlord I'm going to try to get other rooms, I am going back with my husband,

and I told him, the superintendent, because Mr. Rich, I think, told me to tell the superintendent, we would give him $10 if he would sublet.

Q All I asked you, how soon after you returned did you sublet? A I cannot recall.

Q How soon after you sublet did your husband tell you not to mind, or to undo what you had done? Within a month, or year, or week? A I don't recall that, I cannot recall it, it is too long ago.

Q You sublet your apartment before you had gone out to get a new apartment? A Sure I did. I couldn't go to work and get another apartment when I got this one on my hands, could I, and I would have two apartments. I did not want to do that. In the first place, the reason I really didn't go to look at an apartment, he put in the paper that he wouldn't be responsible for any debts concerning me, and going to take it on my own responsiblity, and rent it, and be responsible for it.

Q When you sublet the apartment, you had every intention of going out and finding a new apartment? A I surely did.

Q Did you? A Yes, I did. I had all intentions of going back and going out and looking for rooms.

Q And did you go out and look for an apartment? A No, I didn't.

Q Why not? A Because Mr. Rich had that in the paper, and what was the use of my looking without him? If he wanted to go with me, I would have rented them and told him that.

Q What Mr. Rich had in the newspaper, had appeared in the year 1925, and you knew it when you sublet your apartment, did you not? A I did; but I didn't go no other place because I

wanted him to go with me and wanted him to be with me and sign the lease. What was the use of getting another apartment and me be responsible for it.

Q You were determined not to go, and not to make the change until Mr. Rich had signed personally another lease? A No; I wanted him to go 'long with me to look.

Q Which he had refused to do? A Every time I asked him he refused to do it, yes, because when I got these four rooms, he threw all those kind of things up to me. I said this time if I get rooms he must come with me.

Q You had no confidence in his signing a lease for the apartment you would ultimately select? A What do you mean?

Q You didn't feel that he would sign for a flat that you would take? A I wouldn't take it because he fooled me.

Q But you did take his word for the subletting of the apartment you were occupying? A Yes.

Q You took the chance of being without a home if Mr. Rich refused to sign a lease? A No; I could get an apartment; Newark is big enough that you can always find an apartment. If it is not one place it is another.

Q You don't recall the name of the person to whom you sublet your apartment? A I don't know who it was, no more than I made it, because I didn't see them. I gave Mr. Gerber my key. I said to Mr. Gerber, "Please sublet my apartment."

Q Do you remember the letter of November 30th in which your husband sent you $20 instead of $30, that being the first time he reduced your weekly allowance? A Yes, and I went to Mr. Harris.

Mrs. Tillie Rich, for complainant, further direct.

Q You remember that letter? A Yes.

Q You didn't answer that letter? A I went to Mr. Harris and he answered it.

Q You personally didn't answer this letter? A No, I didn't answer no letters.

Q That goes for all letters? A That goes for all letters. I didn't answer no letters at all, only through the attorney.

Q I want to read you a portion of this letter: "Dear Tillie: I am sending you $20 this week. Things are terrible and I cannot pay you $30. If you would only be reasonable and move with me in a different apartment and stop listening to your friends, we would both make out better. Now we must both struggle. If you want to see me, let me know." Signed, "Louis." Why didn't you call up your husband and tell him that you do want to see him? A I guess I did call him up and I think I met him downtown.

Q You called him up in reference to this letter? A I think I did; I won't swear to it.

Q Was that the first thing you did when you got this letter? A I really don't know.

Q Or was the first thing you did, to go to the office of Mr. Harris, and complain of the reduction? A I went to Mr. Harris, I think, and complained about the reduction.

Q That was the first thing you did, before you ever called up your husband, or made any other response to this letter? A I think so; I cannot recall everything, it is too long ago.

Q How soon after November 30th did you see your husband? A I cannot recall that either.

Q Was this letter at all discussed between you? A I really don't know. I cannot remember all those things; it is too long ago.

Q Mr. Harris was handling your matrimonial problem? A Yes.

Q From sometime before the day you and your husband separated? A Yes.

Q Until when? A I cannot recall that. It is too long ago to remember those things.

Q Were you willing in December of 1927 to accompany your husband to any decent place of residence that he selected in the City of Newark? A I was always willing.

Q Were you willing during the month of November, 1927, so to do? A All I can say is, I always was willing to go back, and always asked him to come back and move, but he said he would and then when the time comes he refused.

The Court: Won't you just answer the question, please?

Q (Last question repeated.) "Were you willing during the month of December, 1927, so to do?" A I really cannot— I know I was always willing to go back; that I know; to move with him in a respectable place.

Q Isn't it a fact, Mrs. Rich, that whenever you have expressed your willingness to live with your husband, it was upon certain conditions that you stated? A No, sir.

Q Isn't it a fact that you always stated that the terms must be satisfactory to you? A I don't remember saying anything like that; I don't know.

Q Did you ever see the letter that Mr. Harris wrote to Mr. Scheck in response to the letter that you received from your husband under date of November 30, 1927? A I don't remember.

Q Will you kindly look at this letter, written by Billie; that is Mr. Harris, isn't it? A Yes.

Mrs. Tillie Rich, for complainant, further direct.

Q And tell us whether the contents of that letter met with your approval. A I haven't my glasses with me.

Q I'll read the letter to you: "Emanuel Scheck: Dear Mannie: I am enclosing a copy of a letter written to Tillie Rich, self explanatory, together with the $20 check that was enclosed. Mrs. Rich will not accept the check.

I have been thinking the matter over and by reason of the letter written by Louis Rich, have tried to persuade Tillie Rich to go back with Mr. Rich, and she states that she is perfectly willing to try and start all over again, providing he agrees to the following:

First, if he is willing if she subleases her present apartment, to take an apartment that is satisfactory to her and for which he will sign the lease. Second, some provision will have to be made whereby she will receive $30 a week definitely out of which she is willing to clothe herself and supply the table. All extra expenses, like light and telephone will have to be paid for by Mr. Rich. She will only do this on one further consideration, and that is that he is sincere in his desire to do the above and thinks that they can be happy in so doing. Please let me hear from you as soon as possible."

I now ask you, Mrs. Rich, whether these conditions outlined in the letter of your attorney, thoroughly expresses your wishes.

Mr. Bilder: If I may interrupt: I take it that the letter has been read, not for the purpose of the record, but merely for the purpose of apprising the witness of its contents, she saying she was unable to read it without glasses. I therefore ask that the

letter be not spread upon the record unless it is desired by your Honor, unless it is properly put in evidence, and I object, it is a letter of a third person without his agency being established, and I feel it is not evidential.

Examination by the Court.

Q I understood you to say that Mr. Harris represented you at this time? A Well, I asked him to do these favors for me.

Q You took this leter down to Mr. Harris, didn't you, the letter of November 30th? A That I got from Mr. Rich?

Q Yes; the one that contained the $20 check. A Yes; I took it down to him.

Q And didn't Mr. Harris write to Mr. Rich right then and there and tell him— A Not when I was there.

Q Did you leave the check with him? A Yes.

Q And did you tell him to send it back to Mr. Rich? A I don't remember whether I did or not.

Q Did you know what he was going to write to Mr. Rich? A I don't recall.

Q Didn't he ever tell you what he was going to write to Mr. Rich? A I cannot recall that.

Q Did he have authority to write for you and in your behalf? A I went to him with the understanding that he was working for my interests, because when I had got that I needed an attorney, and I went to him and he didn't charge me for it.

Q Did he have authority to negotiate with Mr. Rich in your behalf? A I don't know. How did I know?—yes.

Mrs. Tillie Rich, for complainant, further cross.

Q He was representing you in this transaction? A Yes.

Q And he was trying to get the best terms for you that he could? A I suppose he was.

Q And that was with your approval? A Yes.

The Court: I think it is admissible.

Mr. Bilder: It wasn't offered in evidence.

The Court: No; it hasn't been offered in evidence. Your objection was to its being left in the record. I shall leave it there.

Mr. Bilder: May I ask through your Honor whether Mr. Ruback has Mr. Harris here? I understood he was to be here, and I think it is only fair to the witness that he should be here.

Mr. Ruback: I will have him here this afternoon at 2 o'clock.

Further cross examination by Mr. Ruback.

Q I ask you now, Mrs. Rich, whether this letter does not thoroughly represent the conditions that you told your attorney should be imposed upon your husband before you and he resumed living together? A I don't understand you.

Q These conditions that Mr. Harris wrote, set forth in the letter that I read you, were conditions that you wanted to carry out? A Well, I don't remember whether I did tell him or not. I don't want to tell a story, because I don't remember.

Q Let us take it item by item. You didn't want the $20 check, did you? A No; I couldn't get along with $20.

Q And you left it with Mr. Harris to return it? A Yes. You see, I had my rent to pay—

Q Did you tell Mr. Harris that you would go back to live with your husband if the apartment was one that was satisfactory to yourself? A I don't remember saying that.

Q Wasn't it a fact that that was your state of mind? A I don't know.

Mr. Bilder: I object to what her state of mind was. She is being interrogated with reference to the contents of a letter purported to be written in her behalf by an attorney, and what her state of mind was, except insofar as it was disclosed to her attorney, is not pertinent.

The Court: That may be, but she has said that she doesn't remember whether she specically authorized Mr. Harris to impose those conditions or not. She has also said that Mr. Harris was her attorney at the time and was representing her, and doing what she wanted him to do in order to get the best terms possible. This is cross examination, and it is perfectly proper to ask this question under the circumstances. The objection is overruled.

(Last question and answer read.)

The Court: In other words, wasn't that what you wanted?

The Witness: I cannot remember, because it is so long ago. My gracious!—that is four or five years, I don't remember.

Q Would you in December, 1927, have gone with your husband to a flat on Mulberry street?

A If it was respectable, yes; if it was a decent flat I would have went.

Q Even on Mulberry street? A If it was in a decent place, yes.

Q Even on Market street? A Yes, if it was decent.

Q What do you mean by "decent"? A Not live among Chinamen and like that, the way he was going to put me.

Q You say that the apartment that your husband selected in 1925 at the corner of Market and Mulberry streets, is a Chinese neighborhood? A I don't say that apartment is; but he had told me before he ever told me about that apartment, he told me, I don't know how long before, we were in bed; he got angry about something, and he said, "I'll take you down in Chinatown just to cover the law."

Q On September 24th, when he told you where the apartment was located, you knew it was not in Chinatown? A Yes, I did know it.

Q The only thing you feared was that he might carry out his threat and take you to Chinatown? A I didn't fear anything. I didn't know that he was going to move myself. He told me in the morning to look at the apartment corner of Mulberry and Market, and I said, "Louis, will you pay $50, and I will look for another apartment." He said, "I cannot pay no more than $35," and I showed him my two rooms, and he said, "Two people cannot live here." And then he told me to take what bulbs I needed in the two rooms, and the next thing I wanted to telephone and my 'phone was disconnected.

Q You say that in December, 1927, you were willing to accompany your husband to any decent apartment, even on Mulberry street? A I was.

Q That was your attitude right along during your entire married life? A Yes; I was all ready to go back.

Q Anywhere, if it was decent? A Yes, in a respectable neighborhood.

Q Not Chinatown, of course? A No.

Q Then, why didn't you accompany your husband on the morning of September 24th, when you then knew that he was not then taking you to Chinatown? A He didn't tell me he wanted to move. I asked him several times whether he wants to move, and he said he will see, he will see. I said I was looking at a cheaper apartment, and he said he will see. When I asked him if he wants to move in a cheaper place, he always said he will see.

Q About 7:30 in the morning of the day of separation, you definitely knew that your husband had selected an apartment at Market and Mulberry streets? A I did not. I knew nothing about it.

Q You knew he wanted you to look at that apartment? A I didn't know he wanted me to look until he mentioned it to me that morning, and he said, "Go down and look at the corner of Market and Mulberry street and look at an apartment there."

Q Why didn't you go? A Because I wouldn't live in a $35 apartment; I couldn't live in that, take me from a $100 apartment to a $35 apartment.

Q Was that the trouble, the rub, the reduction from this high class apartment on High street to a moderate flat on Mulberry and Market street? A No; the only thing is, I showed him my two rooms. The way he spoke to me, I thought he wanted me to take them, because he

said, "Why, two people cannot live here." I said, "Why, sure, in all the two-room apartments there are couples."

Q When he told you that morning that he wanted you to look at this apartment, you told him you wouldn't do so, you didn't like the neighborhood, you were accustomed to better things? A I didn't say nothing of the kind.

Q And you were concerned about who would bring the coal up? A Yes.

Q That is right? A That is right.

Q Didn't Mr. Rich tell you that he would install gas radiators the same as he has in the store? A No. I said, "Who will carry the coal up?" He said, "You are; do you think you're going to play lady?" That is what he said to me; and I told him I wasn't used to doing that, I wasn't accustomed to living like that.

Q Would you have been willing to accompany your husband in 1925 to any flat that was not steam heated? A Yes, if it was respectable.

Q By "respectable," I take it you mean where there are no disorderly persons living? A Yes, in a decent neighborhood.

Q You mean a neighborhood just as good as the one you were living in? A That didn't make any difference as long as it was a nice neighborhood.

Q You know that there are very many families that live at Mulberry street in the vicinity of Market street? A He didn't want to put me in the center of Mulberry street. He wanted to put me corner of Mulberry and Market streets. When he come that afternoon to move, he had his hat on and said he had rented an apartment. I knew nothing about it. I heard him say that.

Q You know that there are quite a few families that live in that very house in which your husband had selected an apartment? A I don't know anything about it.

Q It is a very large building? A I don't know anything about it; I never was in it. It is right across from his store.

Q You saw it from the outside? A Yes.

Q It is a four or five-story building? A I cannot say that, either. It is so long ago that I have been down there I don't know.

Q You do know that all the upper floors are occupied by families? A I don't know that, either. I haven't been down that way in a long while.

Q You know Mrs. Martha Rich? A Yes.

Q Did you ever talk to her about your married life after you left your husband? A I told her some things, yes.

Q You met her several times? A Yes.

Q Did she attempt to patch up the trouble between you and Mr. Rich? A Not that I know of.

Q Did she ask you to join her husband and look for an apartment? A Just a moment, please; I will take that back; I made a mistake there. That is what I had in mind the other day, that I had put in there, that I was going to bring out, that he was to the house, he rang the bell, and I asked, "Who is there," and he said, "The President"—

Q Pardon me; I asked you whether Mrs. Martha Rich ever tried to patch up the troubles between you and your husband. You can answer that yes or no. A She didn't, only over the 'phone, the time he was up there, that he called her up from my house that Sunday.

Q Did she ever meet you at Bamberger's and talk to you about coming back and living with the old gentleman? A No, not that I can recall. Not that I can recall.

Q Did she ever meet you on Market street and you told her you wouldn't go back unless you had a bond? A No, I never said no such thing. In fact, never spoke like that to anybody.

Q You know Mr. Schlesinger? He is a friend of your family? A Yes; I know him quite a number of years.

Q You have been rather friendly with him? A I don't know that.

Q Your brother is quite friendly with him? A That I don't know, either.

Q Did you meet Mr. Schlesinger while your husband was in Europe? A Yes.

Q Talked to him about your troubles? A I don't know whether I talked to him about my troubles; I don't know what I said. I met him downtown one time; I don't know what I said to him any more.

Q You don't remember any part of the conversation? A No, I don't remember anything about what I said; I know I was very sorry that he treated me the way he did, and I was apt to say anything, when you have been treated like that—

Q Perhaps this will refresh your memory. Did you tell Mr. Schlesinger that you would never again live with Mr. Rich unless everything was put in black and white? A Not that I remember, no; I don't think I said that.

Q Was that your attitude at that time while your husband was in Europe? A What is that?

Q Was it your attitude at that time, that you would never live again with your husband unless whatever conditions you wanted to impose would be put in black and white? A No, I don't recall that; I don't recall saying that.

Q Did you think that way, or did you feel that way? A I cannot say what I thought. I cannot think what I recall years ago.

Mr. Bilder: If the Court please, I submit it does not seem to me pretinent that whatever this woman may have had in mind, this and that and the other, as to what she should desire as a condition for her coming back to her husband. She might desire any number of things, but the only thing it seems to me to be pertinent is whether she expressed that and made that a condition.

The Court: Yes; but she says she doesn't remember whether she did or not. She might have said, most anything under the circumstances, the way she felt towards her husband, she said. Now, if she says she doesn't remember whether she made the statement, I think it is admissible.

A I don't think I did.

Q You were asked the other day whether you didn't know that your husband was obliged to take his meals in restaurants on Market street. You said he took his meals at Strum's? A He did.

Q You remember saying that? A Yes.

Q Wasn't Strum's located on Market street for a number of years? A Yes.

Q Now, you knew when you married Mr. Rich, that he was considerably older than you? A I

knew he was a little older. He told me he was 58 or so.

Q You knew that he had grown-up children, and grandchildren? A I knew he was older than me; I knew he had grown-up children.

Q You knew he had quite a large family? A Yes.

Q You also knew that the entire family had been brought up in the downtown section of Newark? A No, I didn't know that.

Q You didn't know the first Mrs. Rich? A I met her a few times, but not to know her well.

Q You didn't know that the whole family lived on Columbia street for a good many years? A No.

Q You yourself spent the major part of your life in the downtown section below the railroad, did you not? A No, I did not.

Q You never lived below the railroad? A Yes, I did.

Q You spent your girlhood there? A I spent some there, but I lived most of the time uptown. I lived with my sister for 20 years.

Q That was the last 20 years of your life? A No; it was the first 20 years, because I had no mother since I was about ten years old.

Q And it is a fact that for a great many years you lived below the railroad, in the downtown or down-neck section of Newark? A I don't know how long we lived there; but I lived with my sister then, and she moved uptown and I lived with her.

Q Was your residence in that section a good many years? A That is about 30 or 35 years ago, 40 years ago.

Q You don't remember that? A No; it is about 40 years ago.

Q You had an idea that Mr. Rich was quite a wealthy man when you married him? A No, I had no idea of anything like that at all.

Q Didn't you inquire about it? A Not that I know of. No; I took his word for everything he said, I believe. I knew he was an old man and I took it for granted that everything he said was true; I had confidence in him.

Q You did meet with some disappointment after you married him when you found out his true financial condition? A I never found out, only what he told me, what I explained the other day. I didn't marry him for money. I never had no idea of that. I married him for a home and companion, that is all I ever got married for, because I was boarding with my sister, and boarding in hotels. For one place I boarded down in Winans' in Park street, and I met Mr. Rich when his first wife and him and her came there.

Q Did you go through a drawer down in the store and find a batch of accumulated bills in Mr. Rich's business, that hadn't been paid? A No; I never went through any of his drawers.

Q Did you ever express surprise that your husband didn't have the ability to discount his bills? A The only thing—

Q Answer the question. Did you ever express surprise that your husband didn't have the ability to discount his bills, and saying to him you thought he was a rich man? A No, never.

Q You never told any of your friends or acquaintances that you made bad match in that you thought you married a rich man and you married a poor man? A Never.

Q Ever tell any of your friends that you regretted taking on the responsibility of a home, that you were better off as a maiden lady? A

No, I never did, only since we separated, then I felt discouraged, to think that I waited all these years, and then go to work and have such a deal as that. I made that remark after that; never before.

Q Never after discovering that your husband was not a wealthy man did you express regret at having married him?

Mr. Bilder: Counsel has incorporated in that question an assumed fact, as if the witness had acknowledged it to be a fact, which is contrary to her testimony.

Mr. Ruback: I think that is perhaps a valid objection; I will re-frame it. After you married your husband and after the separation, did you ever express to any person, regret at having married a poor man?

A I never thought I married a poor man and didn't think I married a rich man. I didn't know. I never expressed such a word. I never passed such a word.

Q I think you told us that for some weeks before the day of separation, your husband was gradually removing his personal effects? A He took all his personal things, and besides that, he sent one of his clerks up with a card to take a chair and blankets and two pillows and a smoking stand that I got from a salesman he had taken, and his other things he carried out every morning, all the presents that I got on his side, he carried them out every morning, every morning he took something else out. One time he came there in the afternoon when I wasn't there, that was the first thing he took out, the silver pitcher that Mr. Scheck gave me for a wedding present.

Q So he removed all his personal effects before the day of separation? A Yes, he surely did, except his good clothes, as I said the other day.

Q Was that against your wishes, his removing his personal effects? A What could I do, if he kept taking them out? Lots of times I didn't know he was taking them. He went out in the morning, and he told me not to get up and make his breakfast, and he took them without my knowing it.

Q Did you ever say to your husband that was against your wishes, his moving his clothing? A I didn't say nothing; I left him alone.

Q Did you ever assist him in removing any of the personal effects he was taking away? A No, not that I know of.

Q Did you ever deliver to anyone for purposes of removal, any of his clothing? A I didn't deliver nothing; he took his clothing down himself.

Q Do you remember before the day of separation, Mr. Rich sent a cleaner to get a suit of clothes? A He never sent a cleaner to my house, never. He took them down in the store.

Q Do you remember handing a certain man a few things to take out of your home? A Yes; that is the clerk that he sent up for the chair.

Q Not a man who was in the cleaning business? A No, he was working for him at the time.

Q Before the day of separation didn't you expect to move and ask that there be removed from the apartment, a certain Morris chair, or armchair, that had been used by the first Mrs. Rich? A No, I don't know anything about it, only the boy came up and said Mr. Rich sent me

up for a chair and a blanket, and he took two pillows. I had them downstairs in the locker, because they were so soiled I wouldn't keep them upstairs and I got them upstairs and give him them, too, because if he wanted his chair and his blanket, and took everything else, he may as well take his pillows; I didn't want them either.

Q Things were being removed from the house; you didn't ask your husband where they were being taken to? A No, I didn't ask him nothing. He sent for them and he took them out.

Q You didn't regard that as a bit curious conduct on the part of your husband? A No, I didn't ask nothing, because he was taking them out; what could I do.

Q Wasn't it because you knew that some articles were being gradually removed, but you didn't object to it? A I don't understand that.

Mr. Ruback: Never mind.

Further direct examination by Mr. Bilder.

Q Mrs. Rich, will you please tell us what your husband told you about this apartment corner of Mulberry and Market street, when he first mentioned it to you on September 24, 1925? A He told me to go down and look at the apartment corner of Mulberry and Market streets, so I asked him if there was any steam heat or anything in it; he said "No." He said "It is coal fires." I said, "Who will carry up the coal?" He said, "You will; do you think you're going to play lady?"

Q Did he tell you what the rent was? A $35 per month.

Q Did he tell you how many rooms there were? A No, he didn't tell me that there are

four rooms. I think he said, four rooms for $35.

Q Did you know what particular building he meant or had reference to? A Yes; he told me corner of Market and Mulberry.

Q Do you know which corner he meant? A Yes; that was the only corner that had any rooms in it, the one right across the street from him.

Q Do you know what the first floor there looked like, what was in the ground floor? A A store, some kind of a store. I forget.

Q Do you know what the character of the building was, was it frame or brick? A Brick.

Q Do you know what its outside appearance was? A I cannot recall that.

Q Did it look like the outside of a dwelling place? Did it look like the outside of an apartment house? A It looked like a dwelling place.

Q Did it present a nice appearance, or what? A I cannot say that, either. I haven't been there for over four or five years, down that way.

Q What was the character of the neighborhood there? Was it residential or business? A All business, and lots of noise.

The Court: Hasn't this all been gone into?

The Witness: It has been.

The Court: She is making the same statements now she made last week.

Q Mrs. Rich, on these occasions when your husband—you said it was on more than one occasion, that your husband told you to go out and look for rooms? A Yes.

Q What if anything did you say to him in that connection, when he said, "Go out and look for rooms"? A I asked him to go out and look for rooms with me.

The Court: Hasn't that been gone over before?

Mr. Bilder: Your Honor asked her specifically about these things, and she paused and hemmed and hawed.

Q (Last question repeated.) "What if anything did you say to him in that connection, when he said, 'Go out and look for rooms' "? A I asked him to go with me and he said—and then he changed it.

Q Did he say he would, on any of these occasions? A He said he would, and then he refused, and he called up and said "Never mind."

Q Did he ever make an appointment to go out with you looking for rooms, and didn't keep it? A No, never kept it.

Q Why didn't you go out without him and look for rooms? A Because we were separated; he put in the "News" that he would not be responsible for any debts concerning me, because I wouldn't move in his home, and I think, Mr. Bilder, you have that.

Q Were you giving any additional reasons why you didn't look for rooms, when I interrupted you? A Yes; because if I would go and rent rooms and go around looking for rooms myself, I would be liable for the rent. They would hold me responsible for the rent.

Q On any of these occasions when you would meet your husband after the separation, and he would tell you to go down looking for rooms, did he before leaving home, on such an occasion, made a definite appointment with you to see you again on a subsequent date? A No, he did not. He come around and after that probably I wouldn't see him for three or four months. I

could never depend on him. He would come once and then I wouldn't see him for three or four months after that.

Q Did he ever on any occasion when he told you to look for rooms, say, "I will be around to see you, or let me know when you have got them; give me a ring and I will come up and look at them"? A No, nothing.

Mr. Bilder: It is stipulated on September 25, 1925, there appeared in the Newark Evening News an advertisement in the personal ads, or personal column, as follows:

"TO WHOM IT MAY CONCERN: My wife, Tillie Rich, having refused to live at my home, I hereby give notice that I will not be responsible for her debts. Louis Rich, 128 Mulberry Street,"

and it is stipulated that that was inserted by the defendant.

Q Referring, Mrs. Rich, to the letter which was read to you by Mr. Ruback, a letter of December 3, 1927, addressed to Mr. Emanuel Scheck by Mr. William Harris, in which a statement is made that Mr. Harris would try to persuade you to come back with Mr. Rich, did you know that such a statement was being made in the letter then written or to be written by Mr. Harris to Mr. Emanuel Scheck, that he was going to persuade you to come back to Mr. Rich? A Persuade me?

Q Did you know that such a statement was going to be made in the letter to be written by Mr. Harris to Mr. Scheck? —yes or no. A I don't know.

Q Did you understand my question?

Mrs. Tillie Rich, for complainant, further direct.

The Court: That is the same question that has been put to her a thousand times and she has said on every occasion that she don't know, or words to that effect.

Q Did you ever tell Mr. Harris that you left your husband? A That I left him? —no, sir, I never left him; he left me.

Q Did you tell Mr. Harris that you left your husband? A No, sir.

Q Did you ever tell Mr. Harris that you would not go back to live with Mr. Rich except on certain conditions? —yes or no. A I don't remember whether I did or not.

Q Did you ever tell Mr. Harris to tell Mr. Scheck that you would not go back to live with Mr. Rich except on certain conditions? A I don't recall; I don't know, it is so long ago that I cannot recall those things at all. It is about four years ago.

Mr. Bilder: We know how long it is, Mrs. Rich.

Q Did you ever tell Mr. Harris to tell Mr. Scheck that you would not go back to live with your husband unless he got an apartment which was satisfactory to you? A I might have said that.

Q And what did you mean by an apartment satisfactory to you? A I didn't want to go down in Chinatown; that is what I didn't want to do. I wanted to take an apartment and wanted to get something in a decent neighborhood, somewhere where it was a respectable neighborhood.

Q What would you consider a satisfactory apartment at that time, in December, 1927? A In price, you mean?

Q I am asking you what you mean. A I wanted to go in a respectable neighborhood; that is all I mean.

Q By that you mean a residential neighborhood? A As long as it was a nice place to live.

Q Had you ever stated to your husband how many rooms you would insist upon having? A Not that I know of, I know he always told me to get three rooms, and then when I was ready to go, he refused.

Q Did Mr. Rich call you up after he came back from Europe in October, 1926, and before you saw him for the first time, did he ever call you up? A I don't remember that, but I think he wrote me a letter, and I called him up; I ain't sure.

Q Had you ever forbidden Mr. Rich to come to that apartment at 738 High street? A No; he was there lots of times, lots and lots of times, and had meals there and all.

Q Did he come to see you at that apartment after he came—did he before the first time you saw him downtown, come to that apartment on High street after his return from Europe? A Not the first time, no.

Q When you said to Mr. Ruback on cross examination, something about wanting the attorneys to settle it, what did you mean? A I wanted an understanding. I didn't want to go back and have the same thing. He had his attorney, and I wanted the attorneys to fix up that we agreed to go back, and get livable quarters, because he only gives me $15 to live on, when I was living with him, and I couldn't get along and buy clothes and set a table on $15 a week. These days they cost more than that, and I wanted an understanding before I went to go

through that same thing again. When I go back I wanted to live in peace and live like a person can live. You cannot get along these days with $15 and buy clothes. I had no other income.

Q Why did you think it was necessary for the attorneys to fix things up between you and your husband? A Because I couldn't depend upon him, because he promised a whole lot of things and didn't keep them. Before we were married he promised to take me to Europe and to Florida. Did he keep it? He didn't take me anywhere.

Q And that is why you were angry at him? A No, that isn't why I was angry.

Q I asked you what it was you wanted the attorneys to settle. A To straighten things out, that we go together.

Q Did you want to go back? A Sure I wanted to go back.

Q Did you want your attorney to arrange that you should go back? A Yes, that is what I wanted.

Q Why did you think that it was necessary for you to have attorneys to fix things up? A Because it was in the attorney's hands. I thought it was a proper thing to do, for the attorneys to fix it up.

Q What was your understanding as to Mr. Scheck's position in the matter? I don't mean as to his views, but just what he had to do towards fixing things up? A It was Mr. Harris and Mr. Scheck—

Q Listen to my question. What was your understanding as to what Mr. Scheck's position was, as between you and your husband? What his position was, not what his views were, but what his position was. You knew what Mr.

Harris' position was; what did you understand to be Mr. Scheck's position in that situation? A I don't understand you.

Q Did you know Mr. Scheck previous to the time you separated from your husband? A He was a son-in-law of Mr. Rich.

Q Were you friendly with Mr. Scheck? A I was friendly with the whole family.

Q Had you visited with Mr. Scheck, that is to say, been present upon family occasions in the home of one or other of the relatives? A Surely; and the children were all very nice to me.

Q Had you known Mr. William Harris before you got married? A Yes, long before, because he is in the family.

Q In what way is Mr. Harris related to you? A He is a brother-in-law to my niece.

Q And had you seen and met Mr. Harris in connection with the family relationship, prior to the time of your marriage? A Yes; I always met him around the family.

Q Did you know him well enough to call him by his first name? A Sure.

Q For how many years? A About 16 years.

Q When you went to consult him for the first time during your married life, and before the separation between you and your husband, did you tell him about your married life and about the situation that had come to pass at that time? A What do you mean?

Q Did you talk to him freely? A When was this?

Q Did you ever suggest to Mr. William Harris that he communicate with Mr. Scheck with reference to the state of affairs between you and your husband? A I certainly did.

Mrs. Tillie Rich, for complainant, further direct.

Q And did you tell Mr. William Harris in what way Mr. Scheck was related to you and to your husband? A Yes.

Q Do you know whether Mr. Scheck knew of the way in which Mr. Harris was related by marriage to you? A I don't know that, no.

Q Do you know whether your husband knew that? A That Bill Harris was related—I really don't know that either.

Q You have spoken about an occasion when your husband came to your apartment after the separation and asked you to call up Martha, I think you said? A Yes.

Q And then you testified that pursuant to that, you called this lady and you and your husband went up to this lady's house? A Yes.

Q That is, I believe, your husband's daughter? A Daughter-in-law.

Q And you testified as to some suggestion there about going to look for rooms on Goldsmith avenue. Now, do you recall whether or not you came back to that house on a later occasion on the same day, after you and your husband and I think the other Mr. and Mrs. Rich had gone out with you to the movies? A Mr. Rich had called up from the house to Martha.

Q Don't go over it all. Just answer the question. A Yes, we went back.

Q Were you in the house of Martha, if I may designate the lady by that name—were you in the house twice on that day with your husband? A Yes.

Q Will you tell us about the second occasion, and what took place? A Instead of looking for rooms, that is what I went up there for, to look for rooms with Mr. Rich, and instead of looking for rooms, they wouldn't look for rooms with

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me. They got me up there and made a fool out of me.

Q Please—you went to the movies? A Yes; we came back and had supper, and after supper we went home about half-past nine, and when we were walking down, Mr. Rich said to me, "we may as well have an understanding." I said, "Go ahead."

Q Where was this? A After we left Martha's house at night, about half-past nine.

Q Did you go back to Martha's house after you went to the movies? A Yes.

Q What took place there, if anything? A I sat in the living room, and Mr. Louis Rich and Martha were fixing supper, they were outside. The three of them were talking outside, and left me in the living room. I don't know what it was about. Then afterwards we had supper and when we went home Mr. Rich said to me, "Tillie, we may as well have an understanding." I said, "All right, go ahead." He said, "Well, Tillie, why don't you go and take three rooms and go by yourself, and I will come up three or four times a week to see you." I said, "You got some nerve, to get me up here to look for rooms and then talk like that."

Q Was that the occasion when it was suggested that you go to look for rooms on Goldsmith avenue? A No.

The Court: What was the date of that?

The Witness: I don't know.

The Court: Was it after Mr. Rich returned from Europe?

The Witness: Yes it was in 1928, I think. The time was either the end of July or beginning of August. It was sometime

around that time. It was on a Sunday; but just the date I don't know.

Q Had Mr. Rich ever previously made any such suggestion as you just now told us he made, about your living by yourself and he would come and visit you? A He come up lots of times. He has done it lots of times. He wanted to try to get me out of the house all the time. I told him I wouldn't go until this thing was settled—by myself.

Q When was this last occasion you have spoken of, when he suggested that you go and live by yourself and he would come and visit you? A He suggested that last July again.

Q Had he ever made such a suggestion prior to the time when you went up to Martha's with him, and you all went to the movies and were supposed to go to Goldsmith avenue; had he ever said it before then? A Yes, lots of times. He has done it so much that I didn't pay any attention to him any more, because I couldn't depend on him.

Q When was it that you first became aware that your husband was moving some of his personal belongings from the apartment on High street?

Mr. Ruback: I object; I think we have gone into this on the lady's main case.

The Court: We are wasting time.

Mr. Bilder: I don't recall that I made any reference to the personal belongings being removed.

The Court: Yes, that was all gone over on direct and on cross examination, and now

you are attempting to go over it on re-direct again.

Mr. Bilder: I want to direct her mind to that and ask her about it.

Q Do you recall that your husband was removing some of his personal belongings, prior to the time that you actually separated? A Yes.

Q Did you talk to him about that, or say anything to him about that, when you first became aware of it? A I missed the silver pitcher. I asked him did he take it out, and he said "Yes." I thought probably someone stole it; and he said yes, he took it, and that was on one of our holidays. I wasn't home; I was up at my sister's over night, and he was down to the shore over night, from Saturday to Monday.

The Court: What did he say when you asked him?

The Witness: He said yes, he took them.

The Court: What did you say?

The Witness: I didn't say anything.

Q Did you ask him why he took it? A Yes; he said he wanted to take it out.

Q Did you ask him why he wanted it? A No.

Q When did he take the next item out? A He kept taking them all the time.

Q What did you say to him about it? Did you ask him what he was up to? A Yes; and he said he was going to leave me.

Q And what did you say? A I said, "What for?" I don't remember what I did say.

Q Did you say, "Go ahead, that is fine"? A No, I did not. I should say not.

The Court: What did you say?

The Witness: I didn't say anything. Why should I tell him—

Mr. Bilder: Not why.

Q You testified on cross examination that you used to walk to your husband's business with his meals when you lived on High street? A From the beginning, for supper.

Q How long did you keep it up? A I cannot just recall whether it was three weeks before we separated, or two weeks before we separated.

Q You testified on cross examination that your husband had told you he was walking to Katz's for his meals. A That was only lately, about, maybe, four or five weeks, maybe two months ago, this year, and he said he rides up and walks down.

The Court: Please don't be so voluble. Every time a question is asked, you insist on going over the whole thing again. Just answer the question directly, and stop.

The Witness: I thought that is what he wanted to know.

Q Where is Katz? A On Belmont avenue near Springfield avenue.

Q In Newark? A Yes.

Q Is that further from your husband's place of business than High street, where you were living? A I should say it is.

Recess.

After Recess.

Mr. Bilder: I would like to apply for leave to plead condonation by the defendant on his cross petition for divorce on the ground of desertion. I learned on Saturday morning from my client that the parties had sexual relations in July of this year, and I would like to amend the pleadings to that effect.

Mr. Ruback: Very early in this case one of the witnesses was asked a question concerning an alleged visit by Mr. Rich to the apartment of the complainant. I could conceive of no materiality unless it was to lay the basis for the defense of condonation, and I objected and asked your Honor that the answer should not be permitted for the reason that in this case condonation had not been pleaded, the cases holding that unless it is affirmatively pleaded, being an affirmative defense, the excuse of the matrimonial ~~continuance~~ offence that results from condonation is not applicable, and in answer to that point your Honor said, "I don't know what the purpose is, what is it?" Mr. Bilder said that the purpose is not condonation, the purpose is to show that the alleged continuous separation was broken. It goes to the element of obstinacy. We denied the allegation absolutely.

This application to amend is, of course, addressed to your Honor's discretionary power. It seems to me that after we have spent this time in presenting testimony, in the light of this early denial of the plea of condonation and counsel's disclaimer that

they do not set up condonation, that they ought not to be permitted now to interpose that defense, upon testimony which counsel says has just come to him. Of course, it is possible in the trial of a case to multiply the issues *ad infinitum,* but I fancy that this point having been discussed at the outset of the case, it is now too late for them to urge it.

The Court: What is the page of that?

Mr. Ruback: Page 7.

Mr. Bilder: I suppose I need not urge upon this Court nor my adversary that I was sincere and honest in my representation that I made to the Court at the opening of the case. I do not want to protest that I was, because I take it for granted that that would be assumed, but it not amiss to call the Court's attention to this fact, that at that very point the act that the condonation was based on occurred during the running of the period of two years, not at its termination, and when I was asked the question as to what the purpose was, I had not condonation in mind at all, it is simply a question of continuity.

The Court: If it occurred within the two years it is not condonation.

Mr. Bilder: I take it it is condonation of—

The Court: It is an interruption of the running of the time.

Mr. Bilder: Yes, of the time, that is my point.

The Court: If it happened after the two year period had elapsed, that would be condonation.

Mr. Bilder: The cause of action was complete. What I was addressing my remarks to at that particular point was interruption of the period, which had not matured at the time of the cause of action.

The Court: So I understood. Now you wish to amend upon condonation.

Mr. Bilder: Affirmative facts which came to my knowledge only now, and which occurred in July of 1929. I had not that knowledge when I was in court the other day, and of course, my remark was not addressed to that state of facts at all. This was something I did not know about, namely that there was that act as she testified to about a year and a half—

The Court: The evidence you want to put in now is in. This evidence is already in?

Mr. Bilder: Oh, no.

The Court: You may have an amendment.

MRS. TILLIE RICH, recalled for further

Direct examination by Mr. Bilder.

Q Mrs. Rich, where were you living in July of 1929? A 738 High street.

Q In a two room apartment? A Two rooms, yes, sir.

Q Did you see your husband in July of 1929? A Yes.

Q Where? A Corner of Clinton avenue and High street.

Q Where else did you see him in July, 1929? A 1929, I saw him in my house.

Q When was that? A I met him on the 18th, and on the 19th he was in my house for breakfast and then I saw him after that. He went down to Bradley and called me up from Bradley—

Q No, no, you saw him in your house on July 19? A On the 18th I met him on the corner of Clinton avenue and he gave me a card to go up and look at some rooms. The next morning he said he would see me because I was going down there, and he asked me what time I would be home. I said I could not say. He said he would come up for breakfast. Saturday morning he was up for breakfast. After he had breakfast I told him, I says, if you want to go with me I will go get rooms, and he gave me a card to go look at the rooms, corner of Chancellor avenue and Wainwright street. (Handing Mr. Bilder a card.)

Q Who wrote this on this card (indicating some handwriting on the card), do you know? A I don't know whose writing it is. Mr. Rich gave it to me just as it is.

Q What occurred while Mr. Rich was in your apartment on July 19th, as you say? A We had intercourse.

Q When did you next see him after that? A The next, he said he was going down to Bradley Sunday, in fact, I told him—

Q The question is, when did you next see him after that, that would call for the time and the date? A That would be Sunday, I don't know. I have marked it down on the calendar here (producing sheet of calendar) just when it was.

Mr. Bilder: I offer the card handed to me by the witness in evidence.

(Marked Exhibit C. 1 of January 20, 1930.)

The Witness: Will you allow me to take the calendar out and look at it?

Mr. Bilder: If it will refresh your recollection and you cannot say without it.

The Witness: July 28th.

Q Where did you see him? A In my house.

Q What occurred on that occasion? A The same thing, intercourse. Then we took a ride to Morristown and sat on the bench and he wanted to meet his daughter-in-law, the one who is here now—

Mr. Bilder: I don't know if your Honor wants to—

The Court: Please do not, when you have answered the question stop talking.

The Witness: Yes, sir.

Cross examination by Mr. Ruback.

Q What was the date of the first occasion when you had sexual relations with Mr. Rich during 1929? A I met him on the corner of Clinton avenue—

The Court: What is the date?

The Witness: What, that I met him?

The Court: The date you had intercourse?

The Witness: The 19th.

Q 19th of July? A Yes.

Q Do you remember the day of the week that was? A Yes, Friday.

Q And the second occasion was when? A July 28th, Sunday.

Q When did you first tell Mr. Bilder about these two occurances? A Saturday.

Q Saturday, when? A Saturday morning.

Q This last Saturday? A Yes, sir.

Q Have you had any conference with Mr. Bilder concerning your case since July 28th of last year? A Did I have any what?

Q Did you have any conferences with Mr. Bilder concerning this suit between July 28th of last year and Saturday of last week? A I don't understand that.

The Court: Did you talk to your counsel at any time between last July and last week when we had the last hearing?

The Witness: No, only last Saturday was the only time.

The Court: That was after the last hearing. Between last July and last Tuesday when you were here, did you talk to your counsel at all?

The Witness: I don't remember whether I did or not.

Q Did you see Mr. Bilder before this case was started last week? A I don't know whether —I cannot recall whether I did or not. I think I did.

Q Haven't you been to Mr. Bilder's office during the summer, fall and winter? A I have been up two weeks ago before the case started.

Q Talk about this case? A Yes.

Q Didn't you think it was important to tell your counsel of these two occurrences? A I did, but I didn't really think of it, that is why. I didn't really think of it until I had got home, it came to my memory.

Q You say you did think it was important for you to tell your counsel about it? A I did but I didn't think of it when I was in his office.

Q You thought of it when you returned to your home? A Yes, then I happened to talk to him when I was down there Saturday, I went back and told him about it, that is, I told him about it the next day.

Q If you thought it was important enough to tell him about it, why didn't you tell it to him before this case was started a week ago? A Well, because I did not think of it.

The Court: When was the bill filed in this cause?

Mr. Ruback: Over a year ago, 1928.

Q Now you remember when your counsel instituted this suit for maintenance? A Well, this occurred after that.

Q No, I did not ask you when, Mrs. Rich, do you remember when it was Mr. Bilder started suit for you? A It is here on the card. That is when I got twenty dollars from Mr. Rich, then he lowered me to ten dollars, that is how I came to start the suit, because I could not get along on ten dollars.

Q That was over a year ago? A Yes, when I got the ten dollars, I don't think it was over a year ago.

Q It was over a year ago that you started this suit? A Yes, sir.

Q And before this suit was started in your behalf you had a number of conferences with your counsel? A With Mr. Harris about it.

Q Did you have any conference with your attorney in this suit, Mr. Bilder? A I don't know whether I did or not—sure I did.

Q Well, now, after suit was started between the fall of 1928 and last Saturday, you had a great many conferences with Mr. Nathan Bilder, did you not? A I did not have only one with Mr. Nathan Bilder.

Q You had a number with Mr. Walter Bilder? A I told you I had two with him.

Q Did you ever tell Mr. Nathan Bilder about these two occurrences in your apartment? A No, I did not, and I didn't tell Mr. Walter Bilder until Saturday.

Q Why didn't you tell either of these two gentlemen who were taking care of your case? A Because I didn't think it was going as far as it did, that is why. I didn't think it was necessary. Te tell you the truth, I was ashamed to talk about it.

Q Do you know the purpose of this testimony offered now, which is that counsel is seeking to prove sexual relations between you and Mr. Rich since the suit was started? A Yes.

Q Do you know the purpose of this testimony? A No, I don't remember.

The Court: Do you know why Mr. Bilder should now ask you these questions about intercourse with your husband; do you know why he wants to prove that?

The Witness: No, I don't.

The Court: What?

The Witness: No, I don't.

Q Mrs. Rich, both in the bill of complaint that was filed in this cause in your behalf and in your affidavit, and in, I believe, an application for alimony, you mentioned the fact that in October of 1926 Mr. Rich spent a night in your apartment. You furnished that information to your attorney, did you not? A Yes, sir.

Q Did you know the purpose of it? A Yes, sir.

Q What was the purpose, as you understood it? A What was the purpose? So I could get a divorce. I didn't really know. That is the only purpose I knew.

Q Did you know when you informed Mr. Bilder before the suit was started that Mr. Rich had spent a night in your apartment that the purpose of it was to defeat Mr. Rich's right to a divorce if that fact were believed by the Court? A I didn't understand.

Q Did you understand when you told Mr. Bilder about your husband being with you over night in 1926 that if that fact were believed your husband might not be able to secure his divorce from you? A I thought my husband was coming to stay with me altogether. That was my view of it. I didn't think about the divorce at all. I thought he was going to live, to stay with me, that is what I thought of it.

Q Mrs. Rich, when you consulted counsel and instituted this suit you were concerned only with the matter of getting support, weren't you? A Yes, that is all.

Q Why did you inform Mr. Bilder that Mr. Rich had spent a night with you in 1926, what was your purpose in doing it? A I told him everything that happened. Why shouldn't I tell him everything that happened? It is up to

me to tell him. What for I got an attorney if I don't tell him what occurred and things?

Q Did you then understand that if that were believed, Mr. Rich's, your husband's, divorce suit might be defeated? A I didn't think—I thought nothing of that kind, no, I thought Mr. Rich was going back to stay with me. It was my intention right along, because he always came around and told me to get rooms.

The Court: You have answered the question.

Q Have you ever been informed or advised by anyone that Mr. Rich spending a night with you and having sex contact with you, might defeat his divorce suit? A Well, I knew that.

Q You knew that? A That I knew myself.

Q You knew that back in 1926? A I knew that all my life, from the time I am grown up, if a person separated and they came back, that they cannot get a divorce, if they came back and stayed over night, in the two years.

Q Why didn't you, after this first meeting with Mr. Rich on July 19th, when you say he had sex relations with you, why didn't you immediately inform your counsel, if you knew the effect it would have on Mr. Rich's divorce? A Well, because I forgot all about it. I didn't think of it at the time.

Q It was somewhat unusual, wasn't it, this occurrence in your apartment house? A No, whenever he came he did the same thing.

Q And did you on that occasion tell your counsel what was going on at your home? A No, not things like that, no because I was ashamed to tell counsel.

Q It happened again on July 28th, Sunday morning? A No, Sunday afternoon.

Q Sunday afternoon, why didn't you tell Mr. Bilder the next day or next week what had happened? A Well, I don't know why I didn't tell him, because as I said, I was ashamed to go down and tell him anything like that, that is why.

Q You knew, did you not, that your husband had filed a law suit against you for divorce? A I knew—I didn't know he wanted a divorce—

Q Against you? A I know it now, yes.

Q When did you first learn that? A When did I first learn that, I don't know just when I first knew it.

Q Well, didn't Mr. Bilder tell you when the petition for divorce was filed in this cause that your husband was seeking a divorce? A Well, he might have told me, but I forgot about it. I don't know whether he told me or not, I don't remember, because I was not down to Bilder's so often, I did not run down there with every little thing.

Q Mrs. Rich, you appeared quite indignant when your husband suggested to you that you take a room on Chancellor avenue and that he would visit you two or three times a week, you thought that quite indecent, did you not? A No, I thought he was coming to live with me, to rent rooms, that was the intention what he came for. Then when I told him to go with me, then everything was changed again. He said he was going down to Bradley for the day, then he calls me up Thursday night at half-past eight or nine and told me that he is in Bradley, and asked me if I had made up my mind. Of course, if you want me to relate the whole story—

Mrs. Tillie Rich, for complainant, cross.

Q No, Mrs. Rich, when you finally realized what your husband meant by renting an apartment, were you pleased? A He told me to go look myself—

The Court: Won't you please answer the question and stop. I have told you as many as a dozen times not to make a speech every time you reply to a question.

The Witness: Yes, sir.

Q Mrs. Rich, when you finally did realize that your husband meant that you should take an apartment and live there alone and that he would visit you there several times a week, you were quite indignant, were you not? A He did not ask at that time, that was not the time he asked.

Q But whatever time it did dawn upon you that that was his purpose, you were quite aroused, were you not? A No, I was not aroused.

Q You never resented the idea? A No, I always wanted to go with him, and wanted him to go with me to rent rooms, always.

Q Well, there did come a time when you realized what your husband intended to have you do was to get you a place to live in and he would visit you only occasionally, and you felt quite indignant about that, did you not? A Only as he said to me I should rent some rooms and he will come two or three days a week, he told me that he wants me—

The Court: When he said that did you approve or disapprove of it?

The Witness: I disapproved of it.

Q Were you indignant at him at all? A I was, I said to him what difference does it make to you if I live where I am living, whether I move or stay here, as long as you don't go with me?

Q You thought it was quite improper, quite indecent, for a husband to keep his wife in that fashion, to pay for an apartment and to visit her occasionally? A He didn't want to pay for it. He wanted me to pay for it.

Q What was it that aroused your resentment, that he would visit you occasionally, or that he wanted you to pay for it? A No, he wanted me to pay for it. If he wanted me to move, then he should move with me.

Q If he had been willing to pay for that apartment and to visit you only three or four times a week and have sex relations with you, would that have been satisfactory to you; would that have been all right? A If he had paid for the apartment?

Q Yes. A Well, I don't know. I don't know whether I would or not.

Q You would not have regarded that as a decent arrangement between husband and wife? A I don't know—I don't know what I thought at the time. I don't know what—

Q You thought it was quite a proper thing to do, while living separate and apart from your husband and a divorce suit pending in the courts of this State, did you, to permit sex relations on the part of your husband? A No, I thought he was going to make up, because he always promised me he was going to make up, always promised me, even when I met him a few weeks ago, he got me by the arm and he said, "Tillie, don't worry, things will turn out all right." He

fooled me. That is what I told you the other day, made a regular fool out of me.

Q How long had that been going on, these visits, these sex relations? A Ever since we parted. He would come around, then he would not show up for four or five months.

Q Then he would come around again and you would again permit his embraces and again be fooled? A Yes, with the understanding he was coming back. After he had what he wanted then he didn't show up.

Q How many times were you thusly fooled since 1925? A I could not tell you how many times.

Q A great many times? A Yes.

Q When did it first dawn on you that you were being fooled? A Only lately.

Q Last Saturday A No, before last Saturday.

Q When? A Last week, when I got the notice to come to court.

Q Up until that time you had an idea— A That he was coming back.

Q That notwithstanding the fact that every time your husband had made a promise to you and had sex relations with you, he didn't keep his promise, you thought the next time he would be sincere? A I always thought he would be sincere. I figured that he meant it, but I found out he didn't mean a word he said. I could not depend upon his word.

Examination by the Court.

Q Was July 28th, 1929, the last time he had intercourse with you? A Yes, sir.

Q I think you have a calendar there in your pocketbook on which you made a notation? A Yes, I marked it down on my calendar when he

was there so I would remember, because my memory is very poor.

Q Did you mark the 19th down also? A No.

Q Why did you mark the 28th and not the 19th? A I marked the 19th, I marked the three of them.

Q Then you marked each time he was there? A Yes, that is, that month.

Q Did you mark the calendar other months when he was there also? A I did, yes, but I didn't keep track of them all because I tore them up. This one here I happened to have the calendar because my memory is poor. I am not a good speller.

Q You made note of it at the time? A Yes, I did.

Q You have had that portion of the calendar ever since? A I had that calendar, yes.

Q Why didn't you show that calendar to your counsel immediately after these occurences? A I told you I don't know why I didn't, your Honor. I say I just didn't think—I don't know why.

Further cross examination by Mr. Ruback.

Q Between the time that your husband returned from Europe in October of 1926— A Yes.

Q And October of 1928, a period of two years, how many times did Mr. Rich come to your apartment and have intercourse? A I cannot tell you how many times, but he has been there quite a few times.

Q Quite a few times that he came and had intercourse with you? A Yes, sir.

Q Did you keep a record of each occasion? A No, I didn't keep a record of it.

Q Why is it, Mrs. Rich, when you made your affidavit in this case on October 11th, 1928, speaking of your husband visiting you and having sex relations, you say: "In October 1927 my husband visited me and remained in my apartment over night and on that occasion my husband expressed a desire to take up his residence again with me in said apartment." Why did you mention that one instance only when a great many like instances had occurred? A Well, because I didn't think of it just at the time it was made up, as my memory is poor anyway.

Q Well, Mrs. Rich, when you informed your counsel of the one episode in October, 1926, weren't you aware there were many like episodes? A I don't understand what you—

Q When you told Mr. Bilder of this single instance that you speak of, your husband staying over night with you in October of 1927, why didn't you tell him of the many other occasions when he stayed with you and had sex intercourse with you? A Well, he had been there over night. That was the time he came there. Two or three times a week he used to come back. That was the time he told me to sublet my apartment and I had it sublet and then he told me, he called me up to never mind. He said he had to speak to his sons.

Q Why did you inform your attorney only of this one instance when there were several that you might have mentioned to him? A I didn't think it was necessary because I didn't think it would come thus far.

Q But you did think it was necessary to mention this one occasion, why didn't you mention all the occasions? A Because when I saw it

come to court last week, then I knew it was necessary to mention it.

Q Is that the best explanation you can give of your failure to inform your counsel in 1928 of these many acts of intercourse which you speak of; is that your best explanation? A It is the best I can explain just now—I cannot—

Q Mrs. Rich, you heard both Mr. and Mrs. Gerber testify? A Yes, sir.

Q You heard Mrs. Gerber testify that she saw your husband in your apartment on a certain night? A Yes, sir.

Q You heard Mr. Gerber testify that he saw your husband walk out of the downstairs lobby one morning? A Yes, sir.

Q You saw your counsel try to connect these two events to cover the same night, you knew that, didn't you notice that? A I don't remember whether I did or not, I don't remember that.

Q Did you conclude in your own mind, after Mr. and Mrs. Gerber had testified, that they had not connected up with respect to the same night, did you realize that? A I don't think they did make that up; no I don't think they did, they didn't make that up.

Q No, after both Mr. and Mrs. Gerber had testified here last week, did you realize that they had both failed to testify to the same occasion? A I didn't know what they meant. I didn't know anything about it. I did not see them except only that I paid my rent and like that, I had no dealings with them.

Q Did you conclude in your own mind last Saturday before you spoke to Mr. Bilder that up to that time you had failed to prove any sexual act on the part of your husband in rela-

tion with you during the period of your separation? A I don't get that.

Q Before you informed Mr. Bilder of these several acts that you now speak of— A Well, I only informed him—

Q Did you realize that you had up to that time failed to prove any sexual relations between you and your husband since the time of the separation? A I realized that I never told him, yes.

Q Did you also realize that before you told Mr. Bilder that you had not proved the fact of sexual relations between you and your husband? A That I what?

Q That you had not up until that moment proved by Mr. and Mrs. Gerber any sexual relations between you and your husband since your separation? A Proved by Mrs. Gerber— I didn't know nothing about what they saw or what they didn't see, I—

Q That little calendar that you have, may I look at it? A Yes, you may look at it. (Handing sheet of calendar for month of July, 1929, to Mr. Ruback). I have something else on there, that is what made me keep it, because I had it for something else.

Q I just wanted to know whether I might look at it? A Sure, you may look at it.

Q And when did you make the notations on this slip? A I made them the same week he was there.

Q Each time he came and had sex relations with you, you noted that on the calendar? A Just that month I did, yes.

Q Just that one month? A Yes.

Q But I notice there has been a circle around No. 10? A That had nothing to do with it:

That is what I kept the slip for. That had nothing to do with it.

Q That circle around 10 did not relate to it? A No, not to this case at all.

Q You have some pencil marks around No. 18? A The 18th, that is the Thursday morning I met Mr. Rich on the corner of Clinton avenue and High street, the time he gave me that card.

Q On the morning of the 18th you had sexual relations with him? A No, not on the 18th, the 19th.

Q Why did you mark off the 18th? A Because I met him at the corner on the 18th, when he wanted me to look at the rooms.

Q And on the 19th he came to your apartment? A Yes, for breakfast.

Q And again on the 28th? A Yes.

Q Did you preserve the calendar from which this was taken have you got the calendar off which this was taken? A Yes.

Q Where is it? A I haven't got it with me.

Q Where is it? A Home. I think I have. Anyway I know I got that out—that tenth is what made me.

Q Mrs. Rich, why did you make a record— A Because—

Q Why did you make a record every time your husband came to you during July, 1929, and you had sex contact? A Well, why did I make it?

Q Yes. A I done it because I had that in the court on account of the ten dollars, and I don't think he has been there before or since without offering to give me the ten dollars. That calendar I kept on account of that ten dollars. That is what it was, and then he has

not been there since that time. He has not been to my house.

Q Now, let's try it again. Why did you make any record of these acts of sexual intercourse between you and your husband during the month of July? What was the purpose of your making this record? A There was no purpose to it at all. It was just that I wanted to keep track of it. That was all.

Q Why? A I had no reasons why. I just happened to do it. That is all.

Q Had you kept any record of any earlier or other acts of intercourse with your husband? A Did I? I don't think so.

Q Is it likely every time your husband had intercourse with you you entered it in some book or record? A No, I don't think I did.

Q You have not kept any record of any intercourse since July of 1929? There has been some, hasn't there, since July of 1929? Your husband has had intercourse with you as recently as— A No.

Q So July was the last time? A Yes, July was the last time. He has not been to the house since the Tuesday I met him downtown.

Q Maybe you can answer it now. You kept no record of any earlier acts. Why did you keep a record of his sexual relations during the month of July, 1929? A Because I sued him for support. I knew this was coming on. That is why. Then he promised it was going to be straightened out, but it was not straightened out.

Q Mrs. Rich, you sued your husband back in 1928? A Yes.

Q Between 1928 and July of 1929 your husband was at your apartment and had several

times intercourse with you, is that right? A Yes.

Q You knew your case was pending? A I knew it was pending, yes.

Q You knew your husband was seeking a divorce against you? A I don't know whether I knew that or not. I cannot just recall everything. I got the calendar marked, maybe I did check it off, I don't know whether I did or not. I will look around and bring it down.

Q When did you take this off the calendar body? A I had not looked over the calendar at the time.

Q When did you take it off the calendar? A Saturday morning.

Q You did that Saturday morning? A Yes.

Q I supposed you looked through the whole calendar to see what other months you made entries? A No, I just happened to have that ten there. I wanted to find out something for that ten there, I had an appointment with a friend. I mean I looked, and that is what made me go to work and look that up, because I did not keep a record or any books. I am not a good speller, that is why.

Q Of course, you never told anybody about these secret visits to you which your husband was making to your home and bed? A No, not to any one, I would not tell those things.

Q Didn't tell that to anybody? A No.

Q That is too private and intimate to tell any person except in open court? A I didn't like to do it here. That is why I didn't tell Mr. Bilder about it.

Q Up until Saturday of last week you did not tell any person about these visits and these acts of intercourse? A Not that I know of.

Re-direct examination by Mr. Bilder.

Q Mrs. Rich, did you fully believe in July of 1929 that this case would come to court and there would be a trial? A No, I did not.

Q What were your hopes? A I was in hopes of going housekeeping again with Mr. Rich.

Q Was there anything which Mr. Rich told you during the pendency of this suit which gave you any belief or expectation as to whether or not this case would come to trial? A Yes, he always told me don't worry, I should rent rooms and he would come back, but he always changed it. I could not depend upon his word. His word was no good, he didn't mean what he said, and he changed it all the time.

Q Did you ever have any talk with your husband during the pendency of this case with respect to resuming marital relations and settling up this case? A Yes, I did that Saturday morning.

Q Any other occasions? A Other occasions, every time he came he said something about renting rooms, but when it came to the time, then he told me to go by myself. I told him what difference does it make to you where I live, as long as you do not want to go with me.

Q Was there any other item with relation to this case that you first called to my attention on Saturday morning? Listen to my question. Was there any other event which has been brought out on the trial today which you did not tell me of until Saturday morning? A Yes—another—I cannot think.

Q Did you make known to me something else on Saturday morning for the first time that you had not told me? A Yes.

Q What was it?

Mr. Ruback: I object because that may be a very effective way of getting in testimony otherwise inadmissible, what this lady told counsel if sought for by a proper question might appear objectionable on its face.

Mr. Bilder: The answer to that question is yes or no.

The Court: She has already answered yes. I am not going to permit you to go any further.

Mr. Bilder: I didn't know she had answered yes. It is in order, I suppose, for counsel to object—

The Court: She has already answered it yes. I say I am not going to permit you to go any further unless it is evidential to the issue here.

Mr. Bilder: If the Court please, it is manifest that Mr. Ruback very properly seeks to have it appear that this is fabricated testimony prepared at the eleventh hour, and great improbability is sought to be thrown upon the fact that this witness disclosed, and what counsel considers to be a very important item, should be communicated to her counsel at the eleventh hour. Now if another important item which has appeared in evidence today can be shown to have been disclosed to counsel likewise, it seems to me it goes to the credibility of the witness.

The Court: Something already in evidence, put in evidence this morning?

Mr. Bilder: Yes.

The Court: All right.

Q What was it you told counsel? A Well, we took a ride to Morristown and we sat on the bench there, and Mr. Rich says—

The Court: No, you just related that a few minutes ago.

The Witness: Not this, your Honor. It about five thousand I am talking about, something about five thousand. I did not relate that.

The Court: There is nothing in evidence about any five thousand.

Mr. Bilder: That is not what I am inquiring about.

Q Wasn't there something which you showed me which I had not seen before? A Yes.

Q What was it? A Do you want me to show it?

The Court: Is it in evidence?

Mr. Bilder: Yes.

The Witness: Is this what you mean, Mr. Bilder? (Handing Mr. Bilder paper.)

Q Yes, that is one of the things I mean, but that is not what I am asking about.

Mr. Bilder: Witness produces newspaper clipping which she showed me for the first time on Saturday.

Q Did you show me any other clipping? A Yes.

Q What was it? A A newspaper ad that he would not be responsible for my debts.

Q Is this it (handing witness paper)? A Yes, sir.

Mr. Bilder: That is covered by a stipulation. A piece has been chewed out of the end of it.

BERNARD LEWIS, a witness called in behalf of the complainant, being first duly sworn according to law, on his oath says:

Direct examination by Mr. Bilder.

Q You are the brother of Mrs. Rich, the complainant in this cause? A Yes, sir.

Mr. Ruback: I have had Mr. William Harris under subpoena here. He is here. His examination should not take more than a few minutes. Just has reference to one letter. If counsel consents that I call him out of order, will your Honor permit it?

The Court: Yes.

Mr. Bilder: I offer in evidence the notice referred to by Mrs. Rich.

(Marked Exhibit C. 2 of January 20, 1930.)

WILLIAM HARRIS, a witness called in behalf of the defendant, being first duly sworn according to law, on his oath says:

Direct examination by Mr. Ruback.

Q You are a practicing lawyer here in Newark? A I am.

Q You represented Mrs. Louis Rich with respect to some matrimonial trouble between her and her husband? A I did.

Q I show you a letter dated December 3, 1927, signed "Billy." Is that letter written by you? A Yes, it was.

Q Had you had any conference with Mrs. Rich concerning the subject of that letter before you wrote it? A May I read the letter (after doing so) I did.

Q Does that letter fairly represent your client's wishes? A At that time, yes.

Q Mr. Scheck replied to that letter? A I had several—I wrote several letters to Mr. Scheck and had several replies from him.

Q Do you, perhaps, recall this letter (handing witness another letter) as a reply to that one? A I don't recall.

Q In your letter you speak of Mrs. Rich having received a letter from her husband and you enclose a copy of it to Mr. Scheck, is this (handing witness carbon of letter) the copy you enclosed? A I could not say, I don't recall.

Mr. Ruback: I offer in evidence only the letter identified by the witness.

Mr. Bilder: May I cross examine him?

Mr. Ruback: On the offer?

Mr. Bilder: On the offer.

Cross examination by Mr. Bilder.

Q Mr. Harris, having regard to the contents of this letter, did you know whether Mrs. Rich was familiar with the contents of the letter word for word at the time you sent it? A I don't recall.

Q Before you wrote this letter had Mrs. Rich expressed to you an unwillingness to live with her husband? A She expressed an unwillingness to live with her husband in the manner that he wanted her to live.

Q Did she tell you what that manner was? A She told me that he wanted her to take an apartment somewhere down on Mulberry street and she did not think that was a proper neighborhood for her to live in, and he wanted her to live on a much smaller amount of money than he had formerly been giving her and she was not satisfied to live the way he wanted at that time. She thought he could afford to spend more money that he offered to give her.

Q Did she before you wrote this letter disclose to you or make any statement to you about a suggestion from him that she live alone and that he visit her on occasions instead of them living together continuously? A I recall something. Mrs. Rich came to see me for several months. I recall at some time during the time she came to me such a suggestion was made. She informed me that such a suggestion was made.

Q Did she before you wrote this letter inform you that she had left her husband? A No.

(Letter marked Exhibit D. 1 of January 20, 1930.)

Further direct examination by Mr. Ruback.

Q Did you ever have a conference at which Mr. Rich was present in connection with this situation? A I don't believe I ever met Mr. Rich. Even up to this time I would not know him if I saw him. My entire conversations and communications were with Mr. Scheck, who represented him.

Q Did you understand that Mr. Scheck was a son-in-law of the defendant, Mr. Rich? A Yes, I knew that.

Q You knew that at the time you represented Mrs. Rich? A So he informed me, and so Mrs. Rich informed me.

Q Was your interest in this matter something other than or in addition to professional representation of Mrs. Rich? A I took the matter entirely because Mrs. Rich is related in some way to a brother-in-law of mine. I did not take it as a professional case, although I so handled it.

BERNARD LEWIS, recalled for further

Direct examination by Mr. Bilder.

Q Did you have any conversation with Mr. Rich, the defendant in this cause, after your sister married him and before the separation occurred in September of 1925? A Yes, sir.

Q What—did that conversation relate to the marital relations between your sister and Mr.

Rich? A I can explain it to you if you want me to.

Q Did that relate to the marital relations? A Yes.

Q What was said in your conversation by you and by him? A My sister informed me that he was dissatisfied and—

Mr. Bilder: Mr. Lewis, you are not permitted to say what your sister told you if it was not in the presence of Mr. Rich.

A (Continuing.) Then I went down and saw Mr. Rich.

Q As the result of something your sister told you, you saw Mr. Rich? A Yes.

Q What did you say to him and what did he say to you? A I went there one day—

Q Where? A At the store down on Mulberry street near Market. He was not there that day. I went back the next day and met him and I said, "What's the matter, Louis, what is the matter with you and Tillie, she seems to be crying and worrying her head off about your not loving her." And I says, "What did she do, what is the cause of it?" He says, "I don't want to tell you, I don't want to live with her." And that is all the satisfaction I got out of him at that time.

Q What did you say to him? A I says, "Hasn't she been taking care of the house?" but he would not give me any answer. He said, "What's the use of my telling you, it isn't going to do any good. I made a mistake and I am willing to pay for it." That is the remark he used.

Mr. Ruback: I did not hear that.

The Witness: I said he said I made a mistake and I am willing to pay for it.

Q What conversation, if any, did you have with Mr. Rich subsequently on that subject? A Before that?

Q No, after that. Did you have any conversation before that? A No.

Q When next did you have a conversation? A When he came back from Europe. I got, I think it was a telephone call, or I called him up to find out what he was going to do.

Q Do you recall whether that was in 1926, say in October? A When he came back from France.

Q Would that be in October or November, 1926?

Mr. Ruback: I think the witness ought to be asked when, not counsel suggest the time.

The Witness: It was when he came back from there, I cannot just recall the month.

Q How long ago from today? A Well, that is quite a while ago, I guess it is two years ago, whatever time he came back, I cannot recall the exact date.

Q Well, tell us what conversation took place then? A I wanted him to come down to the office, but he says, no, I don't want to go down there, so I says I will come up. Well, he thought that over and he said, "No, I will meet you at the Central Railroad," so I went up there and met him, and he started to tell me then that he was up to some friends of his on Munn avenue.

Q What city? A In East Orange, and he saw some rooms there that they wanted eighty or eighty-five dollars for. I do not just recall how many rooms, whether he said there was three or four, I think it was three. I said to him then, I said, "Well, you were complaining about the rent being too high on High street, why can you afford to pay eighty-five dollars?" He said, "Well, that would not make any difference, five dollars more or less." Then he said, "Well, I am going to leave it to Mannie"—that means Mannie Scheck, "and whatever he does, why, it will be satisfactory." So I didn't hear no more then for some time and then I met Mannie over at the Progress Club, and I says—

Mr. Bilder: No, no, you cannot tell about that conversation.

Mr. Ruback: I do not object.

Mr. Bilder: I asked the witness about a conversation that he had with Mr. Rich, now if he proceeds to tell me—I don't want to shut off the truth—if he proceeds to tell me what he said to Mr. Scheck, it is competent for Mr. Scheck to come back and say what he said to him, which does not bind this complainant at all.

The Court: If you want the testimony, you may have it. If you don't, tell him so.

Q Was that all the conversation between you and Mr. Rich? Have you finished it, or is there more to it? A That is all that was said then.

Q Did he say what he was going to do before you left; was there something he said he was going to do, or was there something he

wanted you to do? A Oh, just that he was not going to live together, and he said he was going to—I told him I would speak to Tillie about it and see if we could not get together and I did and met—

Mr. Bilder: No, you cannot tell what you did.

The Court: Did you see Mr. Rich after that?

The Witness: No, never saw him after that. I may have seen him by sight, but I never spoke to him after that.

GUSTAVE LEWIS, called as a witness in behalf of the complainant, being first duly sworn according to law, on his oath says:

Direct examination by Mr. Bilder.

Q Mr. Lewis, you are a brother of Mrs. Rich, the complainant in this action? A Yes, sir.

Q Did you have a conversation with Mr. Rich prior to your sister's marriage to him, which related to his then prospective marriage to your sister? A I did.

Q Will you state that, as nearly as you can recollect? A Well, he was down to our place one day, he went into my office, and at that time he was engaged or was about to be engaged, I forget which, and told me about his financial condition and told me he had a store in Mulberry street near Market and he said he carried a stock of about fifty or seventy-five thousand dollars and he had an equity in a property on

Market street—I don't remember the number, this his part, half interest, that netted sixty-five hundred dollars a year, and I said that is very nice, and I said you will find my sister an economical woman, that won't be any less with her, and he said, I don't think so, and then he said to me, come up there, so I said all right, and in a day or two I went up there and saw him, and it was a nice big store, large stock and looked very prosperous. Of course, I have no knowledge whether it was worth that or it was not.

Q Was there anything said by him on that occasion on the subject of his prospective place of residence after he was married? A Why, I don't think so, not at that time.

Q Was there a subsequent occasion when he said something about where he wanted to live? A Oh, he said he wanted to live within walking distance on High street, and I think he had a lease drawn up, and after they were engaged he had a lease drawn up, but we never saw the lease, it was sent to him to be signed, and they anticipated going to Atlantic City, I believe on their wedding tour, and my sister didn't know how she was going to furnish the house on such short notice, and I said to her she did not need to worry about that, I would buy the furniture, and my brother and I would take care of that and she would be furnished by the time she got back, and she was.

Q By whom was High street mentioned as the place of residence in this conversation between you and Mr. Rich? A Mr. Lewis Rich.

Q Was anything mentioned by him at that time about the amount of rent or anything he expected to pay? A I think he said between

seventy-five and a hundred dollars. I don't recall, but I think that was it.

Q How long before the marriage was that, as you recall it? A Not very long, maybe two weeks, not longer than that.

Q And did he say anything about who was the owner of that business that he mentioned to you? A He said he owned the business.

Mr. Ruback: No cross examination.

Mr. Bilder: We rest.

EMANUEL P. SCHECK, called as a witness in behalf of the defendant, being first duly sworn according to law, on his oath testified as follows:

Direct examination by Mr. Ruback.

Q Mr. Scheck, you are the son-in-law of Mr. Lewis Rich, the defendant in this case? A Yes, sir.

Q You are a practicing lawyer? A I am.

Q Practicing at our Bar how long? A Since 1914.

Q And are a member of the firm of Osborne, Cornish & Scheck? A Yes, sir.

Q When did you marry Mr. Rich's daughter? A In 1919.

Q And you and your family reside where at this time? A 72 Girard Place, Newark.

Q You have been living there how long? A About four and one-half years.

Q Who besides your wife, child and help live with you? A Mr. Rich.

Q How long has he lived with you? A He lived with us after his first wife died for a short period—I don't remember just how long, and until he remarried, and then he left, of course, and then he came back to live with us after his separation from his second wife in 1925 and has lived with us ever since except for the time he was in Europe.

Q Excepting for the several months of his trip to Europe has he lived continuously at your address? A He has.

Q That is in the City of Newark? A Yes.

Q And did you know the present Mrs. Rich prior to the date of separation, which we will assume was September 24, 1925? A Yes, I had met her after her marriage to Mr. Rich.

Q Did you see her on the 24th of September? A 1925?

Q 1925? A Yes, I did.

Q Where? A At their apartment on High street, Newark.

Q Will you relate the circumstances under which you called at their apartment, fixing the time, if you can? A Yes, it was shortly after lunch. I had just got back to my office from lunch when I received a telephone call from Frank, Frank Loroco, who is a man who has been working for Mr. Rich for many years, and of course, while I cannot tell what that was, it impelled me to immediately get in an automobile and go up to the apartment house. When I got there I found a moving van in front of the house. I went up to the second floor where the apartment was, and there was Mrs. Rich and Mr. Rich, Mrs. Rich's brother, Gus Lewis, and his nephew, Jack Lewis, whom I met then for the first time, and a policeman, Mr. Knef,

who is sitting here in the court room, and the expressman. I think that was all.

Q Now please relate what occurred during your entire stay in the apartment, relating also any conversation you had with Mrs. Rich? A When I came in there seemed to be a feeling of tenseness; no one was talking, all were standing except Mrs. Rich who was seated on the left in a rocker. When I saw the policeman; saw them all standing there, some furniture being packed up as if it was ready to move, I said what is the trouble here, why is a policeman here. Mr. Rich said, "Well, I have taken an apartment downtown, I am moving, and these men, pointing to Gus Lewis and Jack Lewis, won't let us move. Mrs. Rich does not want to move. I remember that I gave my card to the policeman and introduced myself and asked him what occasion there was for his presence and he said there had been some disturbance and he was simply there to see that peace was preserved. I turned to Gus Lewis and I said, "Gus, I don't think you ought to interfere; I don't think anybody ought to interfere. Mr. Rich is the head of the household and he has a right to move." He said, "Not a stick of furniture is going to be taken out of this apartment." I said, "I don't think that is a proper attitude." I turned to Mrs. Rich and I said—but she said "I am not going to move, I am not going down. He wants to put me in Chinatown." I said, "No, that is not right." I said, "That is not Chinatown." They said he had taken an apartment corner of Market and Mulberry street. That is not Chinatown. If you don't like the apartment, why don't you go down and take a look at it, I said. She said, "I don't want to go." I said, "That is not a reasonable

attitude." I said, "Go down and look at it, if you don't like it maybe you can find something else." She said, "No, I am not going." She said, "He fooled me, he wants to put me down here. I don't want to go, I am going to live right here." And Gus Lewis repeated what he said before, that his sister was not going to be moved. I said, "Gus, you should realize that you are doing rather a serious thing. These people are not children; they are man and wife, and they are old enough to know what they ought to do." I said, "We ought not to interfere." Furthermore, the lease expires in a week or so and if the furniture remains here somebody is going to be liable for the rent. Mr. Rich is not going to be liable because he wants to move. He said, "I will take care of that. I will get them a new lease, or I will get my sister a new lease," something like that. I said, "You better call the landlord," so I sent for the landlord, I don't know who went for him, but in a few minutes the landlord came up. I told him I was representing Mr. Rich, that he was leaving the apartment and that he would not be liable for the rent after October 1st. I said, "Here is Mr. Gus Lewis, Mrs. Rich's brother," and he, I said, "will be liable for the rent. I just want you to understand that." He said "I know Mr. Gus Lewis and I would a hundred times rather have him than Mr. Rich." I said, "All right, I just wanted to fix the liability."

Then I turned again to Mrs. Rich, toward whom I had always had the kindliest feeling, although I had not seen very much of her. I said to her, "You oughtn't to do this, you ought to think this over, you oughtn't to have a disturbance like this, with a policeman in your apart-

ment. That is not nice." I said, "Go down and look at that apartment" and I repeated that if she did not like that she might find something else, but that Mr. Rich was not going to continue to live there, and then I asked her to go into another room, a little room with me, immediately adjoining, and I asked her again—spoke to her again along the same lines, doing my best to get her to go down there and at least to look at it. She said, "No," she would not go, she was going to stay right there where she was, and she did not go. I then said to Mr. Rich, "Apparently there is nothing further for me to do here, Mrs. Rich does not want to move with you. You can go alone. It is her duty to go where you want to go."

Now I don't remember who went out first, whether I did or somebody else did, but I do know in a few minutes we went and I took Mr. Rich down, I think in my car, down to his store and I left him there.

That is about as much of the occurrence as I can remember.

Q Did you bring a brief case with you on that occasion? A I did not.

Q Have any papers for Mrs. Rich to sign? A I had no papers with me.

Q Asking her to release some property rights that she had? A I did not.

Q Was the subject in any wise discussed or even broached? A Not to my present recollection. In fact, I am almost sure that it was not.

Q Was there anything said by anybody regarding money on that occasion? A I don't remember a thing about money.

Q You did not, between the time that you got the telephone call from Frank to come up there and the time you arrived, prepare any release of dower or other instrument of extinguishment? A I did not, and if I could tell you what the telephone conversation was—

Mr. Bilder: I object, he is telling it by inference. I object.

The Witness: I did not have a chance to prepare; did not intend to prepare and did not prepare any papers or take any with me.

Q Following this party up at the apartment house did you have any occasion to represent Mr. Rich professionally at any conference concerning his troubles with his wife? A I represented him—I don't know whether I was representing him professionally, sort of cabinet member without portfolio, but I looked after his interest. I don't know whether it was before or after that occurrence, but I have a recollection of a conference at Mr. Harris' office in which Mrs. Rich was present, and either Gus or Barney Lewis, I don't remember which—Barney shakes his head at me—it was one of those two.

Q Will you relate what happened at Mr. Harris' office? A That is very vague in my memory, but Mr. Harris called me down—we were in the same building, the Kinney Building, and said that Mr. and Mrs. Rich had separated, and he said that he wanted her to move into an objectional neighborhood, and he had advised her that she did not have to move into that neighborhood, and I said, "Well, Billy,"—this was in the presence of Mrs. Rich, who was there.

Mr. Bilder: I object to conversations between the witness and Mr. Harris at a time as to which it might or might not have been the fact that there was a relationship of attorney and client between complainant and Mr. Harris, and when he might or might not have been authorized to say the things that he stated to Mr. Scheck.

The Court: It was in her presence, according to what he said.

The Witness: Mrs. Rich was there.

Mr. Bilder: I withdraw the objection, I did not so understand it.

A (Continuing) Yes, what I am about to relate was in the presence of Mrs. Rich and her brother, one of the brothers, and I think it was Barney. He said he told her she did not have to go down to that neighborhood. I said to him, "Billy, you know Mr. Rich has lived in that neighborhood for the last forty years; his family was all born and brought up there, in fact, I courted my wife there." I told him that. "In fact, we were married right on Columbia street, which is only four or five blocks from there, from the store." As a matter of fact, my wife was born on Mulberry street. I told him all this. "So far as the neighborhood is concerned" I said, "I don't think there ought to be such great objection, but anyway, what is it she wants"? "Well," he said, "She wants to live right there in the apartment house, they have taken another place without any contacts with Mr. Rich if he will continue to pay her thirty dollars a week." I said, "I don't know why he should pay her any thirty dollars a week, if they are going to live apart." He said, "I will tell you why he should. When

they were married she gave him $5,000 and it was a loan and he ought to repay it." I said, "I have heard some talk about that $5,000. My impression is that it was her contribution to the common marriage fund, it was not a loan, it was her dowry" and, I said, "if she wants that back she ought to be willing to give back what she got out of it. She got some jewelry worth some $1,500, or more, money—

Mr. Bilder: I object to testimony as to money—

The Witness: I am telling you my conversation. That is what I told Harris in her presence.

Mr. Bilder: I withdraw the objection.

A (Continuing) I said if she wants back the $5,000 she ought to give back this jewelry, and also she acquired an inchoate dower right in some property in Market street, she ought to give that back." Harris said, "No, she won't give that up, she ought to keep that as security for getting the thirty dollars a week." I said, "That is rather an unreasonable attitude, if she wants to get things back she ought to give things up." I said, "Anyhow, I will go back and report to my father-in-law. He does not know about this." I said, "I cannot make any bargain for him, I will go back and tell him what I have learned." I remember Harris also said that we ought to bring them together. I thought he was quite sincere about that. I said, "I will do what I can." I went back and told that to my father-in-law, and he said I am not interested—

Mr. Bilder: I object to what his father-in-law told him.

The Court: Yes, don't relate any conversation with your father-in-law unless it was communicated to Mrs. Rich.

The Witness: I may have communicated it subsequently to Mr. Harris. At any rate, all I told them was I was not authorized to make any such bargain for him, and I did not make any bargain for him.

Q Mr. Scheck, did you ever in the presence of Mrs. Rich hear the subject of a bond, surety bond, discussed or mentioned? A Yes.

Q Where? A I think it was right there in Harris' office, although I am not sure about that, I think it was, but it was suggested by Harris or Barney Lewis, I don't know which, that if—she ought to have either the security of the house on Market street or a bond of some kind from him that he would continue to pay thirty dollars a week. I remember that because I said I never heard of such a bond except a *ne exeat* bond and he is not running away. I said if you are going to make an effort to bring them together certainly we ought not to have to put up a bond.

Cross examination by Mr. Bilder.

Q Mr. Scheck, you started out in your narration of this conversation by saying that your recollection was very vague, and you end up by—A As to whether or not—

Q (Continuing) giving it most explicitly. Now I ask you in all frankness, have you a positive recollection as you relate it, have you a memory of all the occurrences, statements and words that you have been narrating, or are you in all sincerity simply putting your own construction

on what you understand to have been the general tenor of what then and there occurred? A I am giving my best recollection of the salient features of what happened in Mr. Harris' office. As to the occurrences up at the apartment house, my recollection is much brighter. I think I started to say why the other is not as vague as the first.

Q Now, when did this conference take place in Mr. Harris' office that you have just now spoken of? A Either shortly before or shortly after September 24, 1295.

Q It was either before the day of separation, as we might call it, or shortly thereafter? A Yes, around that period.

Q Yes, and do you know personally the neighborhood of Market and Mulberry street as it was in September of 1925, a little over four years ago? A I have a general idea of it.

Q You have lived in Newark how long? A All my life.

Q Your office has been located in the Kinney Building for a number of years? A Well, it is not now. It was there for seven or eight years.

Q You had a number of occasions which required you to go down Market street and cross Mulberry, perhaps to the Pennsylvania Railroad or elsewhere? A Many times.

Q I suppose as a boy you knew Market and Mulberry streets very well, and continuously right on to today? A No, as a boy I did not go there very often as a boy. I always lived up on the hill.

Q And would you say that the corner of Market and Mulberry streets as you knew it to be in September of 1925 was a residential neighborhood? A No, it was not.

Q You would classify it as strictly business, wouldn't you? A Business and residential, but mostly business.

Q Now with respect to its residential aspect, would you be able to use words to characterize it as being high class, middle class or what you might call a third class residential neighborhood? A It certainly was not high class. I cannot draw much distinction between middle or high. It was not a residential section, certainly not.

Q As I understand middle class, we speak of middle class speaking of income? A A people like—

Q In regard to the higher middle class, I think probably highly improperly, I mean the artisan class, generally spoken of, if I may for illustrative purposes, say the artisan class, the higher salaried wage earner, would you say it was that type of residence in which they live? A No.

Q Inferior to that? A Inferior to a man whose income is substantial.

Q Inferior to the skilled workman, the skilled wage earner? A Yes, I should say it was inferior to that.

Q When you spoke of the place of residence of your wife's family you mentioned Columbia street. I think you said that was four or five blocks away, is that correct, from the corner of Market and Mulberry? A It is about four blocks, not more than that.

Q You are now speaking of the place of residence where Mr. Rich resided when you knew your wife prior to your marriage? A And where we were married.

Q Yes, now is that character of Columbia—will you fix the date, that was in 1919, is that correct? A Yes.

Q When you referred to it you mentioned 1919, when you referred to the neighborhood in which Mr. Rich resided, you referred to 1919, is that correct? A When I was dealing with the time of my marriage, yes. They continued to live there for a couple of years after my marriage.

Q A couple of years after 1919? A Yes.

Q And as of 1925, September, 1925, do you know the neighborhood in which Mr. Rich resided at the time you married his daughter? A I have a general idea of Columbia street, sure.

Q Were you familiar with it in 1925? A Generally, yes.

Q Did you know it as well as you knew Market and Mulberry? A Better, having spent many years there.

Q I mean in September, 1925, not after you were married? A I was familiar with both neighborhoods.

Q Now, when you got to the apartment on High street on the day of the separation of the parties, did you know that Mr. Rich was intending to move from that apartment on that day before you got there, aside from the telephone conversation? A I don't think I did, I don't remember.

Q Had you had any talk with Mr. Rich on the subject of an intended removal by him from that apartment prior to that date? A I think I did, but I am not sure about it.

Q Had you advised him on that subject? A No.

Q Quite sure of that? A Quite sure of that. I refrained consistently from giving him advise as to his marital relationship. Of that I am sure.

Q So that you did not know of any intention on his part to move of that day, or specifically that he intended to move down to Market and Mulberry streets? A It depends on whether that conference in Harris' office was before or after that date, because in Harris' office we discussed his moving.

Q If that occurred before, you knew about it? A That is why I cannot fix it definitely.

Q Now then, up to the time you came up to the apartment, the situation that confronted you there, was it utterly amazing to you, or did you have some information about an intended removal? A That is the thing I don't remember.

Q You say you made an announcement there later on, when you were at the apartment on High street, when this trouble occurred, you made an announcement on Mr. Rich's behalf that he was not going to be liable for the rent. Was that after a conference with Mr. Rich? A No, it was right there when he told me he was moving. He was the first one to speak, I think. When I got there he told me he had taken a place on Market and Mulberry streets and wanted to move. I knew, or must have known from somewhere, that the lease expired in another week—it may have come out in the conversation, because I sent for the landlord after I was there some minutes.

Q But when you made the announcement that Mr. Rich was not going to be liable for the rent, you did so after a conference with him there, or just how did you come to say that? A I had no private conference with him. Whatever he said to me or I to him was in the presence of everybody there.

Q How did you come to say that Mr. Rich would not be liable for the rent? A Well, my sense of business told me that if the lease was about to expire and his furniture was still in there when it did expire, the landlord might still look to him for the rent, and I wanted a distinct understanding as to that.

Q Did your business sense dictate what you did and said on that occasion? A My business sense, my sense of decency toward both people and whatever little legal knowledge I had.

Q You said to Mrs. Rich, as you say, in trying to get her to go down to look at Mulberry street, if she did not like that, you used some language which I do not quite recall? A I said, "Go down and look at it and if you don't like that place, maybe you can find some other one."

Q Did you mean by that she might find it alone or she might with Mr. Rich find some place? A I am sure I did not have that in mind, whether she should go alone or he go with her.

Q You knew, did you not, Mr. Rich was already tied up with the rental of the Mulberry and Market street place? A No, except what I heard right there.

Q He told you already? A I don't know whether he had taken the lease or a month to month tenancy. I had no knowledge of that.

Q Now when you were asked as to whether or not anything was said by you to Mrs. Rich about her releasing her property or releasing the property, you said you had no present recollection on that score, is that correct? A Of having said anything at that particular time?

Q Yes. A My recollection is rather—well, I won't say, clear, but it is more than doubtful that I did not mention that at that occasion.

Q Now when you went to Mr. Harris's office and had this conference, had you already had any talk with Mr. Rich on the subject of the then marital situation between him and Mrs. Rich? A I don't know if that conference was after September 24th. Then, of course, I knew a great deal about it.

Q But independently of the time element, Mr. Scheck, and having in mind what you said at that conference at Mr. Harris's office, can you not say whether or not you had already had a conference with Mr. Rich on the subject? A On what subject?

Q On the subject of the then marital situation between him and Mrs. Rich? A I may have, I don't remember.

Q Among the things that you say you discussed at that conference—well, the subject of the resumption of the marital relations you say was one of the things mentioned, and getting them together, was that one of the things that was discussed at that conference? A Yes.

Q Well, they must have been apart? A No, it may have been when he told her he wanted her to move and Harris had advised her she did not have to move down to that neighborhood and she had said she was not going to move into that neighborhood.

Q When you were in Harris's office did you already know that Mr. Rich had told her he wanted her to move? A I learned that in there.

Q Had you learned that before? A I don't remember.

Q You told Mr. Harris you were not authorized to make a bargain for Mr. Rich. What did you mean by that? A When I was discussing, or she was discussing the return of the five

thousand dollars, and I suggested, simply because if any bargain was to be made I wanted to get the best bargain for Mr. Rich that I could get for him, although I had not been authorized to speak for him, but we had been discussing the subject, and I said, "Well, if she wants her five thousand dollars back, she certainly ought to give up what she got out of this marriage."

Q Mr. Scheck, if you came to this conference without any knowledge of the situation which gave rise to the conference or of the matters discussed at that conference, it is possible that you would have even entered upon a discussion of the terms? A Sure, I testified that I had heard about the five thousand dollars. I said that very clearly, I had heard that there had been some talk about it.

Q I mean, is it possible, without any previous conversation with Mr. Rich or knowledge of the subject matter which was then and there discussed in Mr. Harris's office, you would have participated as freely in that conversation as you say you did? A No question about it in my mind. Mr. Rich was my father-in-law. I was not there as a lawyer only—

Q Would you not have said this: Maybe you better let me talk to Mr. Rich and find out what he thinks, what it is all about, and then I will arrange for a conference? A No, on the contrary, it might have been wise to find out what they wanted and then say I will go and talk to Mr. Rich.

Q When did you first hear about that five thousand dollars? A I don't know. I know I had heard some talk about it before I got to Harris's office.

Q Well, you made some statement in reference to the five thousand dollars at Harris's office? A No, they made the statement.

Q Didn't you say something about it? A No, they said it first. They said she wants to get her five thousand dollars back.

Q Now, Mr. Scheck, please pardon me? A Oh, yes, I said I heard that it was her contribution to the marriage pot, it may not be a nice way of saying it, but that was my idea of the subject.

Q Did you say then and there it had been told you that it was, or did you make it as a declaration that it was? A I don't know just exactly the language that I used.

Q As I understood your testimony, you asserted that it was her contribution. I am wondering whether you did that directly as you now suggested or whether you stated it as some understanding you had? A It was my idea, my understanding, of what I had heard before.

Re-direct examination by Mr. Ruback.

A Mr. Scheck, I had quite forgotten to ask you what you did when you received from William Harris the letter that is marked in evidence, the letter outlining the conditions upon which Mrs. Rich would resume co-habitation with her husband?

Mr. Bilder: I object to testimony as to what he did unless the answer is a communication.

Q Did you reply to that letter? A Yes, I replied to that letter.

Q Have you a copy of it here? A Have you demanded the original? I think that is the original. It is not signed. It looks as if it was an original because it is not a carbon.

Mr. Ruback: Mr. Bilder, have you got the original of that?

Mr. Bilder: I gave you all the letters we have.

The Witness: Letter dated December 5, 1927.

Mr. Ruback: Is there any objection to the use of a copy?

Mr. Bilder: If the witness swears that he knows the original was sent out, there is no objection.

Mr. Ruback: I will offer in evidence a copy of that letter.

The Court: Is this a copy of that letter?

The Witness: This is a copy of the letter I gave to Mr. Harris on December 5, 1927.

(Letter marked Exhibit D. 2 of January 20, 1930.)

Q The Harris letter speaks of enclosing a copy of a letter written to Tillie Rich, is this the letter that came with the Harris letter (handing witness letter)? A Yes, my best recollection is that it is.

Mr. Ruback: I offer that letter in evidence.

(Letter marked Exhibit D. 3 of January 20, 1930.)

ISAAC SCHLESSINGER, a witness called in behalf of the defendant, being first duly sworn according to law on his oath says:

Direct examination by Mr. Ruback.

Q Mr. Schlessinger, you are a resident of this city? A I am of East Orange.

Q East Orange. You know both Mr. and Mrs. Louis Rich? A I do.

Q You have been a friend of Louis and Mrs. Rich for many years? A I have.

Q When did you first learn that these two parties were living apart? A It was the fall of 1925. I was coming across Broad street going south. I met Mrs. Rich. I stopped and said, "How do you do" to her. I said how are you getting on, and she said alright. She said, "You know, I am not living with Louis." I was surprised to hear that and I said to her, "Why so foolish?" so she says—No, I says to her. "You want to forget about these arguments, why don't you go back to your husband and everything will turn out alright?" She said, "I will not go back to him until I have everything in black and white." That is all that was said, and she went away.

Cross examination by Mr. Bilder.

Q When did that conversation take place? A In the fall of 1925.

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ANDREW KNEF, called as a witness in behalf of the defendant, being first duly sworn according to law in his oath testified as follows:

Direct examination by Mr. Ruback.

Q You are a police officer attached to the first precinct of this city? A Yes, sir.

Q Were you in this Court room while Mrs. Tillie Rich was on the stand? A I was here all during the proceedings.

Q Did you recognize her? A Yes.

Q When had you seen her previous to this time? A September 24, 1925.

Q Where? A 738 High street.

Q You went there in response to some call to the police department? A Yes.

Q Relate what you observed in the apartment? A When I got to the apartment I found a lot of confusion there, a lot of excitement and Mrs. Rich crying. She said they want me to move my furniture out and she said I don't want them to. I told her I was sorry I could not help her in the matter, I was there to preserve peace, and finally Mr. Rich says to me, "I am ready to move." There was a colored man there, and a van at the door, at the curb line, and he said "I am ready to move to another cheaper apartment" and she refused to go with him. She said "I shan't go, I am not used to living in a place of that kind" that he had rented for her. So Mr. Lewis was there, one of the brothers, and he said that he would take care of her, that the furniture really belonged to her, that it was given to her as a wedding present, and they shan't move any of it, and that he would provide for her and take

care of her. She refused to go to the apartment that Mr. Rich had hired. After a little while Mr. Rich left and the moving men left and I told them there was nothing for me to do, no action to take, and I left.

Q Now, before Mr. Rich left and before you left, did you see Mr. Scheck arrive? A Yes.

Q Did you hear Mr. Scheck talk to Mrs. Rich? A Yes, he spoke to her.

Q What did he say to her? A Well, I could not relate the whole conversation that he had with her, but nevertheless, he was advising her—

Q How much do you remember? A I heard him speak about the new apartment and he advised her to go there and take a look at it. She said she would not go to that neighborhood; she was not brought up in a place of that kind and she would not go there now.

Q Anything said about her continuing to live with Mr. Rich? A Nothing more than—

Q Did she say anything about that? A No more than what I said; she would not go to that particular apartment with him; she refused to go with him; she had rooms there and Mr. Lewis would lease an apartment there or some other one for her and she would prefer to remain there in that house.

Q Was Mr. Rich abusive in any way on that occasion? A There was nobody during my time there abusive to anybody.

Q Did you hear Mr. Rich or anybody else call her, Mrs. Rich, crazy? A I don't recollect that. I did not hear that conversation.

Q I don't suppose while you were there there were any attempts made to hit anybody? A

No, they were quite orderly outside of Mrs. Rich being excited and crying over what had occurred previous to my being there.

Q Tell me, when Mr. Scheck arrived, did he bring with him a brief case? A If he did, I didn't see it.

Q When he was talking to Mrs. Rich did he have any papers that he was presenting to her?

Mr. Bilder: I object to the question, being put that way. Did he have anything in his hands, it seems to me, would be proper.

The Court: Objection overruled.

A If he had I didn't take notice of it. He came to me and handed me a business card and introduced himself to me.

Mr. Bilder: No cross examination.

Further hearings in this matter adjourned until Tuesday, January 21st, 1930, at 11 A. M.

Transcript of testimony taken in the above entitled cause before Hon. Maja Leon Berry, Vice-Chancellor, at the Chancery Chambers, Newark, N. J., on Tuesday, January 21, 1930, at 10 A. M.

Appearances.

Counsel as before stated.

ROBERT D. GROSMAN, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination by Mr. Ruback.

Q You are a member of the Essex County Bar? A I am.

Q And live in Newark? A I do.

Q You are also a son-in-law of Mr. Louis Rich, the defendant in this action? A Yes.

Q When did you marry his daughter? A In June, 1922.

Q Where were you and your family living during the summer of 1929? A Bradley Beach, Ocean avenue.

Q Hotel or private cottage? A I had a cottage down there.

Q One rented by you? A Yes.

Q And did you have any guests at your home at Bradley Beach during the month of July? A We did.

Q Who? A We had three guests at our home during that period. The early part of July we had a friend of the family named Klein, who lived with us for a time. Then from the 16th of July until the 26th of July, a period of ten days, Mr. Louis Rich, the person concerned in this case, lived with us continuously, and

then the daughter of my brother-in-law, Dr. Weinstock, was with us for a week.

Q During that period of ten days from the 16th to the 26th, did you attend to your business? A I did; I would come up in the morning and would go down at night.

Q During that period of ten days, did you see Mr. Rich each morning? A Each morning and each night.

Q How do you fix, Mr. Grosman, the date of his departure from your Bradley Beach home? A Why, in this way—

Q I have reference to your father-in-law, Mr. Rich. A In this way, a rather unpleasant incident happened right after he left. My niece, Dr. Weinstock's daughter, a child 3 years of age, about, was brought down there by her father, Dr. Weinstock, on the day Mr. Rich left, as I remember it, and Dr. Weinstock took Mr. Rich to the train with his baggage. The child was with us a week in the care of a nurse, who proved to be very, very neglectful towards the child, so much so that we were very much upset over it, and when the doctor came down at the end of the week to take the child home, we called the conduct of this nurse to the attention of the doctor, and he discharged that maid the day after he went home. In order to refresh my mind as when that happened—I know that it happened the last of July—I asked the doctor to look up his checks, particularly the check which he gave this maid when he discharged her. I have the check; that is how I know it.

Mr. Ruback: I will prove that by competent testimony.

Cross examination by Mr. Bilder.

Q How do you fix the date when Mr. Rich came to your cottage in July? A In this way: I had arranged with him to spend week ends down at the cottage. He only stayed ten days, because he developed a very heavy cold, and he decided to come back to Newark. I know that the day he left my niece, Dr. Weinstock's daughter, came down to our cottage. I know she stayed a week and I know that the maid was discharged—Dr. Weinstock's maid was discharged the day after he took the child home. That was August 3rd, so figure back.

Q Wait. You are referring to the 3rd of August? A As the day on which the maid was discharged.

Q Have you a present independent recollection of that date? A I know there was a lot of commotion about the maid, and I know she was discharged. I refreshed my memory by reference to a check.

Q Not your own recollection? A No.

Q And by that you work it out from that date in reverse order? A Yes.

Mr. Bilder: I interrupted you.

The Witness (continuing): As I say, the maid was discharged the day after Dr. Weinstock took his child home. The child had been with us a week, and on the day the child came down Mr. Rich went home; and I know that he developed a very bad cold down there, and instead of staying two weeks, he only stayed ten days, because on my trip up to Newark on the day Mr. Rich decided to go home, I called Dr. Weinstock and told

him that instead of sending his child down on Sunday or Monday following, he might bring the child down that day, because I had made arrangements with Mr. Weinstock to have his child come down for a week. I anticipated that Mr. Rich was going to stay two weeks, and when he decided to go home earlier, I told Dr. Weinstock he might bring his child down earlier.

Q Is your recollection as to his having stayed ten days, distinct and clear in your mind, or approximate? A No, that is absolute. I know he stayed ten days. He was supposed to stay two weeks.

Q What train did you take up in the morning during the period you mention in July? A I think it was the eight something train, which got me here a little after nine in the morning.

Q When did you return? A I would take the four something train, which got me there around 6 o'clock.

Q You have a distinct recollection that Mr. Rich was at the house every day when you departed during that period? A Yes.

Q And was also there each and every day upon your return? A Yes, because we used to go on the boardwalk at night, and I know in the morning before I left the house he would take my two children down on the boardwalk.

The Court: You don't know, of course, whether Mr. Rich left Bradley Beach during the interval, the days when you were there?

The Witness: If he were to leave Bradley Beach after I left the house for Newark, I of course wouldn't know where he went during the day, because I wasn't home.

MRS. ROSE GROSMAN, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination by Mr. Ruback.

Q You are the wife of Robert Grosman? A Yes.

Q And a daughter of Mr. Louis Rich? A Yes.

Q Where did you live during the month of July, 1929? A Ocean avenue, Bradley Beach.

Q With your family? A Yes.

Q And was your father a guest at your home during any part of that month? A Yes, he was.

Q During what part? A He came down the middle of July, I fix the date about the 16th.

Q How long did he stay? A He stayed ten days.

Q Did he stay continuously? A Yes.

Q Are you generally home during the day? A Yes.

Q Have you any household duties in connection with your home and family? A Yes; I take care of the children.

Q Notwithstanding the fact that you have help? A Yes.

Q Did your father at any time during that period absent himself during the day for more than an hour or two? A The only time he left the house, he took the children with him and took them to the beach.

Q Was it possible for your father to have gone to Newark and returned within any day without your knowing it? A No; he didn't miss any meal.

Mr. Bilder: I object as calling for a conclusion.

The Court: She certainly ought to be able to tell whether it was possible to have left town and come to Newark without her knowing it.

Mr. Bilder: It is a conclusion. She could state the facts, and your Honor will draw the inference.

The Court: That is her judgment, based on the time that Mr. Rich was in her home, and I don't know that I could come to any other conclusion.

Q Mrs. Grosman, do you know whether your father at any time during that period of ten days, stayed away over night? A He did not.

Q How do you fix the time of his return to Newark, that is, his departure from your home? A By Dr. Weinstock's bringing the child down, and he came on a Friday and took my father to the station, and I know the date that he came.

Q You say the day your father left, is the day— A The day Dr. Weinstock brought the child down.

Q I suppose that you had limited accommodations in your cottage? A Yes; we only had one spare room.

Cross examination by Mr. Bilder:

Q Mrs. Grosman, during the period which you have just testified to in July, during which you say your father was at your cottage in Bradley Beach, do you recall whether or not on any day you went out for any period of time, outside of Bradley Beach? A I didn't, no.

Q Did you have an automobile at your disposal there? A Yes.

Q Did you during July drive out of Bradley Beach during the day at any time? A Never further than Allenhurst or Asbury Park.

Q Did you visit any people who were staying at the shore in that vicinity during the month of July? A Yes.

Q Was it quite usual for you to pay visits to your friends who had cottages, or were staying at the shore at that time, during the course of the day? A Yes.

Q And you would be likely to take your children with you in the machine? A I took my father too. It was my sister I went to see.

Q Was there any occasion when you went out in the machine when you didn't take your father? A No, there wasn't.

Q You would always take him when you went out in the machine? A Yes.

Q You distinctly recollect now that you never went out without taking him in the machine? A The only time I went to Allenhurst was to visit my sister, and then my father went with me.

Q Is that the only place you went to visit? A Yes.

Q In Allenhurst? A Yes.

Q You visited only one person? A Yes.

Q And when you were not at home, where else were you during that period in July? A Down at the beach with the children, and my father.

Q You say now that you know positively your father was not absent from Bradley Beach during the period from July 16th to July 26th

at all? A I am positive, because he was at every meal.

Q Now, you mean you saw him three times a day at meal times during each and every day of the period you testified to? A Yes.

Q You don't infer that, but you now have a positive recollection that that is so? A Yes.

Q And that is not a surmise or an inference from anything else? A No; I am quite sure.

Q As to the dates, do you distinctly and positively recollect the dates independently of any reference? A The way I recall it to mind is because Dr. Weinstock come down that day and taking my father home, taking him to the station, to the train, and I know that was on Friday that he brought the child down. My father had come the middle of July and he came down the 26th—Dr. Weinstock did.

Q How do you know that Dr. Weinstock came down on the 26th? A Because we called him up and asked him about the maid that came with the child, the maid that came with the child, wasn't competent, we told him when he came down. The child was there a week, and they went home on a Friday a week after they came down, and the next day he discharged the girl, and I called him up—

Q How do you know what date that was? A Because they stayed one week.

Q How do you know what date he discharged the girl? A Because I talked to my sister-in-law on the telephone and told her what she did, and she said she was going to discharge her the following morning, so she discharged her on Saturday morning. That was the day after they returned from Bradley Beach.

Q How do you know what date that was? A I looked it up in the calendar.

Q On a marked calendar? A No; I called Dr. Weinstock last night and asked him the date he paid the girl, and if he had his check. He said he did, and I referred back.

Q And that check date was the reference that you made? A Yes, because he discharged her the day after he came home.

Q It was because of that date on his check that you by figuring out the dates in reverse order, you come to the dates which you testified to? A Yes.

DR. MICHAEL WEINSTOCK, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination by Mr. Ruback.

Q You are a practicing physician in this city? A Yes.

Q And you are a brother-in-law of Robert Grosman? A Yes.

Q Having married his sister? A Yes.

Q Have you any children? A Yes.

Q Who are they? A A girl and a boy.

Q What is the name of your daughter? A Joe and Barbara.

Q Was she at Bradley Beach during the month of July, 1929? A Yes.

Q Who took her there? A I did.

Q When? A I took her on July 26th, the morning of Friday, July 26th.

Q And left her there? A Yes.

Q With whom? A With Mrs. Grosman, and a maid. We had our maid go with her.

Q Did you stay there, or return to Newark? A I returned to Newark in the evening.

Q Do you know Mr. Louis Rich? A Yes.

Q Did you see him that day? A Yes.

Q Where? A At Mrs. Grosman's cottage.

Q Do you know whether Mr. Louis Rich remained at that cottage beyond that day? A He did not.

Q Do you know where he went? A I took him in the afternoon to the station and waited until he got on the train and went to Newark, and that is all I know about it.

Q When you took him to the train, did you take any property with you? A Some of his baggage; he took some baggage.

Q How do you fix that as July 26th? A A We got rid of the girl—the maid down there wasn't taking proper care of the youngster, and I said to my wife, Mrs. Weinstock, "I want to take her home." I went down Friday afternoon and brought the youngster home in the evening. That was Friday, August 2nd or August 3rd; the maid was acting indecent and I gave her a check and told her to go.

Q Do you know the name of that maid? A Annie Zeigler.

Q Have you that check? A Yes.

Q Is that the last check you ever gave her? A That is the last check I ever gave her. I have the stub.

Q And the date of that check is what? A August 3.

Q That is how you fix the week and time of the week that your little girl spent at the shore? A Yes.

Q And the day you took her, and the day you brought Mr. Rich back? A Yes.

(No cross examination.)

LOUIS RICH, the defendant, being duly sworn, according to law, on his oath says:

Direct examination by Mr. Ruback.

Q Mr. Rich, you are the husband of the complainant, Tillie Rich? A I am.

Q You were married to her when? A August, 1924.

Q Had you ever been married before? A Yes.

Q What happened to your first wife? A She died.

Q When? A July 23rd, 1923, I believe. I don't remember just exactly.

Q How long were you a widower before you married the present Mrs. Rich? A Over a year.

Q How long had you lived with your first wife? A 37 years.

Q How many children had she borne you? A Six.

Q All alive? A Yes.

Q All married and have families of their own? A Yes.

Q And during that period of 37 years that you lived with the first Mrs. Rich, how long did you live in Newark? A About 41 years.

Q I don't think you quite understood me. Of the 37 years that you and the first Mrs.

Rich lived together, how long did you live in Newark? A About 40 years.

Q When you married the first Mrs. Rich, did you take up your home in Newark? A Yes.

Q And continued to live there until the time of her death? A Yes.

Q Before you married her, you lived for a few years in Newark? A A couple of years.

Q How old are you now? A 62.

Q Before you married the present Mrs. Rich, was there any plan or discussion between you as to where you would make your home, your joint home? A Yes.

Q State what conversation occurred between you on that point. A When we come about to arrange our marriage, I told Mrs. Rich that my business is not a very prosperous business, I am in a poor neighborhood, and I cannot afford extravagance. She told me she is very economical, she lived nearly all her life down Neck, and she kept house for her brother, she knew my wife, and she would live with me the same as my wife. I said then—she asked me how much I can afford to pay rent. I said, "Well, about fifty or sixty dollars. I would like to have it somewhere in the neighborhood of the store." Well, she agreed to all that.

Q If she did agree to all that, including a home near the store, how is it that your first residence was on High street a considerable distance from your place? A Mrs. Rich started out to look for rooms, after we got engaged, and she come to me and told me she seen four wonderful rooms, and would make her very happy if I would take them for the first year, as she wants to show her friends. Well, I couldn't hardly object to it; I said, "Well, if it is only for a year, go ahead."

She said, "Well, I will make you a handsome present, you will not be sorry."

Q That is how you selected the High street property? A She selected it and I signed the lease.

Q Your business on Mulberry street is that of a retail clothier? A Yes.

Q And was your personal presence at the store at all necessary? A All day.

Q Did you have any assistants? A I had a man and a boy.

Q And what were the usual hours that you attended your business? A Generally we got down about 8 o'clock in the morning, until 9 in the evening; Saturday until 11 o'clock.

Q How far away from your place of business is the High street address at which you lived for the first year of your present married life? A About a mile, I guess.

Q Did you go home for your lunches? A No, I didn't, except Sunday and holidays, then I closed the store.

Q Did you go home for your evening meal? A No; Mrs. Rich brought sandwiches to the store.

Q Where would you take your lunches, or your meal during the day? A Right near the store. There is a restaurant there.

Q I would like to know the name of the restaurant. A Strum was the name.

Q Where was that located? A About three houses from my store, on Market street.

Q Did Mrs. Rich know that you were taking your meals there? A Yes; sometimes she took meals with me.

Q Did that have any effect on you, taking meals outside in a restaurant? A My stomach was out of order.

Mr. Bilder: I object; the witness is drawing a conclusion.

The Court: He may state the fact that his stomach was out of order.

Q After you had been taking your meals in restaurants on Market street, was there any change in your state of health that you noticed? A Yes.

Q What? A A little dyspepsia; sometimes indigestion. My son gave me pills to doctor with.

Q You have a son who is a practicing physician in this city? A Yes, Dr. Rich.

Q Had you suffered from dyspepsia or indigestion before you were taking your meals in Market street? A Not much.

Q Did you ever speak to Mrs. Rich about that condition? A Well, no, we didn't say much until later.

Q Did you ever tell Mrs. Rich about your state of health being affected by meals? A No.

Q As the first year of your tenancy up at the High street apartment was drawing to a close, what happened with relation to having rooms elsewhere after that first year? A Mrs. Rich once went over my bills in my desk, and she found they were not paid; that is, they were overdue. I was out at the time, and I come back, and she said, "How is it your bills are overdue?" I said, "In our line of business you cannot be prompt." She said "My brothers pay ten days, and two off of the bill." I said, "They are rich." And she said, "I was told you were rich," and from that time Mrs. Rich changed.

Q That isn't quite what I asked you, Mr. Rich. I wanted to know what passed between

you and your wife with respect to either continuing at the High street address or changing your place of residence as the first year was drawing to a close? A About two weeks after that she asked me what I intended to do with the rooms; and I said, "I cannot stay here, that is sure," and "you promised me you will only stay a year." Well, she didn't like that, and she didn't say no more about it for about two or three weeks; then she said—we are talking about it again, "If I want to sign a lease there," and I said, "I cannot." Then she said, "I will sign it and I will have to pay the rent," and she will not move. I tried to reason with her for about a month or so, I said, "You know for your family's sake and my family's sake, let us do the best we can. I cannot stay here. You know that; why be stubborn?" Finally she admitted she seen somebody and she advised her that she has a right to stay there if she wants to, that she can go out and buy goods in the stores and I will have to pay for it.

Q How long before the date of the separation did this occur? A That was about two months.

Q Up to this time had you selected another flat or apartment? A No; I begged her to go over on Orchard street, there is a place on Walnut street around that neighborhood, where I can walk to dinner.

Q Where had you and the first Mrs. Rich spent most of the years of your life? A Most of them on Mulberry street.

Q And what were the reasons that impelled you to want to change your residence from High street to any other place?

Mr. Bilder: I object, unless they were communicated to the complainant.

The Court: Objection is overruled.

A I couldn't afford it, in the first place, and then I wanted my meals home. Noontime was my big meal, and I couldn't walk up and take so long, and get back in time to send my man home.

Q Why couldn't you ride up to High street from the car? A It would take just as long, I guess. You can never leave one man in the store.

Q This location on High street, was that anywhere near to the trolley line? A About a block or two.

Q Spruce street is a block or two? A Yes.

Q Did you ever rent any apartment other than the High street one? A Down on Mulberry street.

Q Where did you rent that? A I told her to go and look at it, a few times. I said, "If you don't want to go there"—she said the reason she wouldn't go there, she would have to pass everyone down to Walnut street. I said, "It is not necessary you can walk to Broad street." She said, "Look at these apartments right across"—she was speaking about steam heat. I said, "I got gas radiators in the store, I got a couple of them, we can put them up there and we can use gas." She wouldn't go. Finally she said, "If you want to, go ahead," so I went down to an expressman and I asked him when he could move me. He said, "If I don't move you"—

Mr. Bilder: I object to what he said to the expressman.

Mr. Ruback: Never mind.

Q You say Mrs. Rich did finally say "Go ahead"? A Yes, "If you like them, go ahead."

Q Did you go ahead and rent an apartment? A Yes; I went in and rented an apartment.

Q In what building? A In the Larky Building, corner of Market and Mulberry streets.

Q How many rooms, Mr. Rich? A Four rooms.

Q Did they face on any street? A The windows faced on Market street.

Q Did you look at the rooms before you rented them? A Yes.

Q Can you in a general way describe that flat that you selected? A They were just as nice as the place we had up there, as far as rooms are concerned; but weren't so quite up to date.

Q They were not steam heated? A No; they had everything else, electric and gas.

Q And did you rent the place under a lease? A No; I told Mrs. Rich, "I am not taking a lease, we will go up there and if you don't like it we will move out."

Q You leased it by the month? A Yes.

Q Did you pay any rent? A I paid a month's rent.

Q Did you ever tell Mrs. Rich that she would have to bring coal up to the flat? A No; there was no question about that.

Q Was it ever discussed? A No.

Q Before you rented the apartment, had you informed her that you intended to install a gas heater? A She asked me whether it was steam heat, and I told her we can have gas heat there, the same as I have got in the store now.

Q Had you found from experience that the gas radiators in your store heated the place

comfortably? A We have two of them there and they are very comfortable.

Q What need was there for you to move out of the High street apartment on the 24th of September, when you had another week that you might have lived there? A The expressman couldn't move us any other time. He had dates ahead, and at that time he said, "I can move you then, otherwise you will have to wait until after the 1st."

Q And you didn't want to remain until after the 1st? A No; he would have held me responsible for another year.

Q Did you ever tell that to Mrs. Rich? A Yes.

Q What conversation passed between you and Mrs. Rich on the morning of September 24th before you left for business?

After Recess.

Q (Repeated) "What conversation passed between you and Mrs. Rich on the morning of September 24th before you left for business? A I told her "We got to move, we cannot wait any longer." I asked her again, I said, "Go down with me and see the rooms." She said, "It is all right if you like them, I am satisfied."

The Court: This is the morning of the 24th of September, as I understand it?

The Witness: Yes.

Q Did you tell her where the rooms were located? A Oh, yes, she knew right along.

Q When did you hire the expressman? A The same morning.

Q And did you accompany the express wagon? A Yes, I went with him.

Q What happened up at the apartment? Tell us briefly. A When I got there I told one of the clerks who worked for my son, to pack the dishes. I told the colored people to start to move.

Q Then Mrs. Rich came in? A She came in and said nobody is going to touch her things, "It is all mine."

Q What did you do? A I told them to move, and the landlord come up—

Q When Mrs. Rich said that no part of the furniture was to be taken, it was hers, what did you say to her?—anything? A I said, "You promised to live with me; why don't you leave and be nice about it"; but she wouldn't listen to anything. She just grabbed the furniture out of the moving man's hands.

Q Who sent for the landlord? A I don't know.

Q What happened after he came in? A He came in with a gang and he said, "You ain't going to move out of here." I said, "I am moving, and what are you going to say about it?" He said, "You son of a bitch, if you talk to me I will smash you," and he held up his hand.

Q Was the officer there? A Yes; he held him back.

The Court: Who said he was going to smash you?

The Witness: The landlord.

Q Mrs. Rich was there? A Yes; and the officer was in there; he got between us.

Q Was it then that you sent for your son-in-law, Scheck? A Not yet. The officer came up then, and I told the officer, I said, "We have got to move out of here, I have got a lease which is up October, if I don't move out they will hold me for another year. Can I move?" He said, "That is not for me to decide; I am here to see that there is peace," with that Mr. Lewis and his son came up and he said, "No one will touch a piece out of here, that all belongs to me."

Q When you say Mr. Lewis— A Mr. Gus Lewis.

Q Your wife's brother? A Yes; I told him he had no right to be in there.

Q During the time that this took place, what was Mrs. Rich doing? A She sat down somewhere. The brothers were there, and policemen was there.

Q What happened after Mr. Scheck left? A I told the officer he had better call Mr. Scheck and advise me what to do. Mr. Scheck came up, and he handed a card to the officer, representing himself. He said, "What is the trouble here?" The officer said, "They don't want to let him move." He referred to Mr. Gus Lewis and the son.

Q Go ahead. A Then Mr. Scheck said, he called Mrs. Rich aside, and started to talk to her. He said, "You go down with him and if you don't like it, it is only a monthly affair, you can move out." She wouldn't listen to him.

Q What did she say? A She said no, she wouldn't move, she wouldn't live there.

Q Did Mannie Scheck bring a brief case or papers with him? A No; just a card.

Q Did he present to your wife any papers? A Nothing at all.

Q Did he talk to your wife about signing off any paper, deeds or anything? A No, nothing.

Q Mr. Rich, had you told your landlord some weeks before this time, that you didn't intend to live with your wife, and that you intended to take her down to Chinatown? A No, sir.

Q So as to cover the law? A No, sir.

Q Was anything said that resembled that? A No, sir.

Q Did Mannie Scheck talk to Mr. Lewis while Mrs. Rich was there? A I don't recall; they had some words.

Q Was there anything said about the payment of rent for the apartment after the 1st of— A He told Mr. Lewis, "He has got to get out of here. Will you be responsible for the apartment?" Mr. Gus Lewis said, "Yes, I will be responsible," so Mr. Mannie Scheck or the officer called up the landlord, the landlord came up, and he said, "Will you accept Mr. Lewis's responsibility?" He said, "Yes, he is good enough for me. I wouldn't have that man for $200 a month," and that was the end of it.

Q After that you removed your clothes? A I removed my clothes.

Mr. Bilder: I object.

Q And when did you remove your clothes? A Mr. Mannie Scheck said, "We are through, you'd better take your things," and Mr. Levock and Mr. Scheck packed up in a sheet, all my belongings.

Q And took your clothes away? A Yes.

Q Have you lived with your wife since September 24, 1925? A I have not.

Q Have you ever stayed at her apartment over night? A Never.

Q Have you at any time since September, 1925, had sexual intercourse with your wife? A No, sir.

Q Were you to her apartment on High street in the City of Newark on the 18th, 19th or 25th of July of this year? A No.

Q Where were you between the 16th and the 26th of July, 1929? A My daughter invited me to come there.

Q Where? A Bradley Beach.

Q At whose home? A Mr. Grosman's.

Q And during that period of ten days, were you in Newark at all? A No, sir.

Q Who took you to the station at Bradley Beach the afternoon that you left? A Dr. Weinstock.

Q After this occurrence on the afternoon of September 24, the day of separation, when did you next talk to Mrs. Rich? A I called her up a couple of times around December. They didn't answer. Once she answered. I said, "Hello, Tillie," and she hung up the receiver on me, so I didn't say any more to her.

Q While you were in Europe, did you write your wife? A I wrote her a couple of postals.

Q Any letters? A Letters.

Q Who wrote the letters from Paris that are in evidence here? A My daughter, Martha Rich.

Q Who gave her the material for the letters? A I dictated it.

Q You write English, Mr. Rich? A I write, but I don't spell well.

Q How long were you in Europe? A Seven months.

Q You went to Europe with whom? A With my son and daughter-in-law.

Q And your son Moe Rich? A Yes.

Q Did your wife meet you at the pier? A No.

Q When after you returned to this country did you first talk to Mrs. Rich? A I think it was about a week after, I sent her a letter, that I would like to meet her, and if she would meet me, she should let me know, and I would come up to her house, or, I said, "I will wait for her for luncheon. Sometimes I went with my son to the Cadillac—in front of the Cadillac, if she wants to meet me there.

Q Did she appear? A No; I waited there for about an hour.

Q When did you meet her? A Then she called me up a couple of days after. That was about Friday; I think she told me she wouldn't meet me in Newark, but if I will go to New York she will talk to me; so I told her about half past twelve would be all right with me, I would meet her at the station, and we met.

Q Did she meet you in front of the Cadillac? A No.

Q On either of the two dates mentioned in the letter? A No, sir, she wasn't there.

Q The first time you met her after your return from Europe, was on Sunday? A On a Sunday.

Q Where did you go? A I went to New York, had dinner, and from there we went to the McAlpin Hotel and sat down in the lobby, and I talked to her.

Q What about? A I asked her why she didn't answer my letter, that living by herself, it is an awful thing, wouldn't she reconsider it? She said "No, I am not comfortable with you living"—

Q How many times have you met Mrs. Rich since that occasion that you have last spoken about? A About five or six times.

Q What did you generally talk about when you met? A To try to convince her that we are both better off to move.

Q Did you after you returned from Europe, place any restrictions on her as to where your home was to be? A No, sir.

Q What was her objection to living with you again?—what did she say? A She wouldn't move out of there, except I give her a bonded guarantee.

Q A bond for what? A I asked her, "What do you mean, what do you expect?" Well, she wants to be secure for all her life that I give her $30 a week and no less, that I will give her a first class apartment which she likes, some times she wants a maid, and so forth.

Q I'm not permitted to lead you, but I must suggest to you, was there any talk about an automobile? A Once she said—

Mr. Bilder: I object to that. The witness is not shown to have been exhausted by the inquiry.

The Court: Objection overruled. We will get along faster and may finish this afternoon if we don't take up too much time with objections.

Q What was that conversation? A She asked me if I would buy her an automobile. I said, "Will you drive it?" She said, "You can hire a chauffeur."

Q You have been paying your wife money ever since December, 1924? A Yes.

Q You first paid her how much? A $30 a week.

Q You then paid her how much? A $20.

Q Then under the order of this Court you have been paying her $20 a week? A Yes.

Q Why have you been paying your wife support money in view of the fact that she declined to live with you? A Well, I thought I'd keep it out of court and try to win her back again.

Q Have you ever talked to Mrs. Rich about court proceedings? A Yes.

Q What was it? A That I wouldn't like to expose the thing, and tried to patch it up for the family's sake, but she didn't care, she has rich brothers, if I don't support her, they will support her.

Q This Mulberry street neighborhood is how far from the Chinatown district that has been spoken of? A It is about two and a half blocks.

Q Do you know of any Chinamen that live in the immediate vicinity of Market and Mulberry streets? A No; there are no Chinamen there.

Q Any other families living in that apartment house? A I think eight, if I ain't mistaken, or more.

Q Did you ever direct your wife to look for rooms and then call her on the telephone and countermand that order? A Several times I asked her to look for rooms.

Q Did you ask her to look for rooms, and then call her up and tell her not to look for rooms? A Never.

Q On these several occasions when you did tell her to look for rooms, what did she say? A She wouldn't move out of there, out of that building. I can come in there and live.

Q During the 37 years that you were married to the first Mrs. Rich, were you ever in any litigation with her?

Mr. Bilder: I object.

The Court: I assume that there was none.

Mr. Ruback: I withdraw the question.

The Court: Let me ask a question before you cross examine. I think you did answer questions along this line, but I don't know that they were as specific as I shall make my questions, or not.

Examination by the Court.

Q Mrs. Rich has testified as a fact that on almost every occasion after your separation when you saw her in her apartment, you had sexual intercourse with her. Is that true? A No, sir.

Q She testified specifically to two dates on which you came to the apartment, and had sexual intercourse; one was July 19, 1929, and the other was July 28, 1929. Did you have sexual intercourse with her on either of those dates? A No, sir; I was in Bradley.

Q You were in Bradley on the 28th? A Every Sunday after that I went to Bradley.

Q You testified that you came back to Newark on the 26th. A I came back; I promised my daughter; she wanted me to come back, that I will come back Sunday. I went back on excursions, and met Mrs. Rich on the same excursion on a Sunday.

Q Have you at any time since your separation, had sexual intercourse with your wife? A No, sir.

Mr. Ruback: I am refraining from going into the subject of his capacity to pay. It will take perhaps some hours to go into that question. I take it that with the understanding that if your Honor should determine that this lady is entitled to a decree for maintenance, that then your Honor would make a reference to inquire as to his capacity.

The Court: There has been no proof offered up to this time on either side as to the man's capacity to respond in alimony. I think you may as well reserve that, because if I do give a decree for complainant, I shall certainly want some information as to his business and what he is able to pay.

Mr. Bilder: There is some testimony as to declarations made by him as to his then income, at the time of his marriage, and his property.

The Court: I would suggest that you leave that until you find out whether the complainant is entitled to a decree; if she is I will give you an opportunity to put in whatever testimony you want on either side, to show the man's ability to pay.

Mr. Bilder: Your Honor will not foreclose me from going into the matter of his financial means at the time of the separation, where his desire to move was put by him upon the ground—alleged to have been put by him upon the ground of his inability to maintain an apartment at that cost?

The Court: If you want to go into it, you may; I don't know how much bearing that has on it.

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Mr. Bilder: Credibility.

Cross examination by Mr. Bilder.

Q You said that your business at the time you married the present Mrs. Rich, was not prosperous? A Yes.

Q You told that to Mrs. Rich? A Yes.

Q You told her why, didn't you? A I told her.

Q And what was that reason? A Well, we make small profits there.

Q What reason did you give her? A I wouldn't undertake to marry an extravagant woman; I couldn't.

Q You stated a reason why your business wasn't prosperous, didn't you? A Yes.

Q On direct examination? A Yes.

Q What reason was it that you gave? A Because I couldn't afford an extravagant woman.

Q You said your place was in a poor neighborhood? A Yes.

Q You told her at that time, you were able to pay about fifty to sixty dollars a month rent? A Yes.

Q You say that your High street address where you lived with your wife during the year 1924 to 1925, was about a mile from the store? A That is the way I judge it.

Q You eat at Katz's restaurant now, do you not? A Yes.

Q Do you ever walk there? A I ride up and walk back.

Q And is Katz's restaurant, further from your store than High street? A It is much further, yes, sir.

Q At least twice as far? A Yes.

Q Probably more than that? A Probably more than that.

Q Are you in better physical condition today than you were in 1925? A Yes.

Q You condition has improved? A Yes.

Q You feel strong? A Yes.

Q You say you didn't go home for meals except on Saturday and holidays? A On Sunday and holidays.

Q And when you went home for meals on Sunday and holidays, you would walk? A Oh, yes.

Q Both ways? A Sometimes I stayed home after that.

Q The High street, I mean. A Yes.

Q You would walk both ways? A I walk and stay home for a while.

Q And then you would walk back? A The store is closed now.

Q You say there was an occasion when Mrs. Rich was found by you looking over some of your bills. Where was that? A That was about in June some time.

Q What year? A The same year.

Q The first year of your marriage? A Yes.

Q Where? A In the store. She said she didn't think that I was as rich as she thought. She expressed herself that way.

Q Why do you mention that? A She began to get cold and she said she made a mistake. She told me "I should have married a kike."

Q Did she have an argument with you then and there? A Not much; but in the evening she asked me, "How much are you really worth?" I said, "Why not let me sleep; why do you want to know? It is all right; you are protected." Then she slept off.

Q You told her she was protected? A Yes.

Q What did you mean by that? A I made a will to protect her at that time, the same as I did with the first wife.

Q Did you tell her that? A Yes.

Q Wasn't she satisfied? A Well, at times she was and at times she wasn't.

Q I mean about the overdue bills. Wasn't she satisfied? A She said to me that her brothers do business different. I said, "Your brothers are rich."

Q What difference did it make in her attitude towards you? A She got a little bit disappointed; she acted disappointed.

Q There was nothing else besides that? A No, not at that time.

Q When did you first talk to your wife about wanting to move? A She asked me about it.

Q She did? A Yes.

Q When was this? A One Sunday she asked me, "What do you intend to do about the rooms?"

Q When was this? A Somewhere in July, the beginning of July. I said, "I cannot stay here." "Well, if you want to, we will look around near the store somewhere; Walnut street, my son lives there, and Orchard street, there are rooms there.

Q Walnut street and Orchard street apartments? A She said, "I would have to pass Chinese." I said, "You could walk to Broad street."

Q Do you know what rent they were asking for apartments on Walnut or Orchard street? A I don't know for sure, but I think about $60.

Q Do you know? A No.

Q Had you inquired at that time? A I hadn't.

Q Had you then made inquiry when you told her to look around Orchard and Walnut streets? A No.

Q That is a residential neighborhood? A Yes.

Q And was at that time? A Yes.

Q What did she say? A Well, she didn't say much; she didn't answer much; but a few weeks after that she said she will not move out of there, she has a right to sign up the lease and I will pay the rent. She said, "If you want to move, you can move yourself."

Q That was a few weeks after? A Yes, about the beginning of August.

Q What else did she say showing her attitude about staying there and not being willing to move? A She said she married to better her condition, she will not be no cook for me, or something like that.

Q What else did she say on this subject of having to move or her refusal to move? A That is what she said, she wouldn't move.

Q Did she tell you why she decided not to move? A No, she found out she don't have to move, she said.

Q Did she tell you what she meant by that? A No, she didn't tell me; I tried to reason with her.

Q When she said she found out she doesn't have to move, what else did you ask her? Did you ask her what she meant? A I talked to her about it. I told her not to be stubborn.

Q When she used the words she found out she didn't have to move, did you ask her what

she meant about finding out? A No, I didn't ask her. She said she knows.

Q Did you ask whether she went some place to find out? A She said a friend of hers advised her.

Q Did you ask who the friend was? A I asked who told her, some of the Richs? She said, "What do you care; I won't tell you."

Q Didn't she mention anybody? A No.

Q She didn't mention a lawyer? A No, not at that time.

Q Why did you want to move? A I wanted to be near the store so I could get my meals, and I couldn't afford to pay a hundred dollars. I told her I couldn't afford that and she knew that.

Q How much less did you want to pay? A I wasn't particular whether I paid $50, if I got the rooms.

Q Would you have paid $60? A But it wasn't available except those rooms.

Q Would you have paid $60? A I might.

Q Orchard street would have been all right? A Yes.

Q Did you try on Orchard street? A I didn't; I asked her to go with me, and she wouldn't.

Q Before you got the Mulberry street place, did you try Orchard street? A I didn't try.

Q Did you try Walnut street? A No.

Q That was a pretty nice residential section at that time? A Yes.

Q When did you rent the Mulberry street place? A The day we were going to move.

Q The day you were going to move you rented it? A Yes, but the place was there for

a few weeks. I told her I want to rent them, but she wouldn't stand for it.

Q In what way did you secure them?—by signing a paper? A I just paid the rent and they gave me a receipt.

Q Have you got that receipt? A No, I haven't.

Q But it was the same day that you had the moving van there at High street? A The same day, yes.

Q Did you look inside before you paid the rent? A I did.

Q Did you look at the apartment? A I looked at it a couple of days before that.

Q Will you describe it? A There were four nice large rooms, with windows facing on Market street, some on Mulberry street.

Q What about the walls? A They were all right.

Q Were they painted or papered? A They were painted.

Q Clean inside? A Pretty clean.

Q You wouldn't say the walls were dirty? A I didn't see any dirt on them.

Q How about the floors? A They were clean.

Q What kind of lighting facilities? A Gas and electric.

Q You are sure they had electric light? A I am sure.

Q I want you to make sure about that. A I am sure.

Q Electric lights in the chandeliers? A Some chandeliers.

Q Brackets of some sort? A Yes.

Q In all of the bedrooms? A I am not sure of that.

Q Where do you remember that there were electric lights? A The front I am sure had electric. I didn't pay attention to that much. I didn't look around. They all had brackets. I assumed they had.

Q They had gas, you remember that distinctly? A Yes.

Q Was it a combination gas and electric? A I cannot tell you. I didn't take notice of that.

Q Did the gas and electric light both go into the one chandelier? A I didn't take notice of that.

Q What facilities for heating? A There was gas.

Q You mean there was a gas heater before? A Yes; you could attach the gas heater.

Q You could attach a rubber hose? A No; we had regular gas heaters in the store; that is the kind I meant to put in.

Q There weren't any of those in the apartment? A No; I had them in the store.

Q What about bathrooms? A There is a bathroom there.

Q Where was that? A In the bathroom.

Q Was it right in the apartment itself? A In the apartment.

Q Did you look at it? A Yes.

Q Up-to-date bathroom, was it? A Yes, sure, it was up-to-date.

Q Clean? A There was no shower bath, but it was clean.

Q They were not tiled walls? A No.

Q The only actual heating device there was, was the kitchen stove, I presume, coal stove? A There was gas too, I am quite sure.

Q What flight was it on? A Third floor.

Q How many flights to walk up? A Three.

Q Where was the entrance? A On Mulberry street.

Q How were the hallways, carpeted or bare? A I don't remember; I think they were carpeted.

Q Was the hall lighted in any way? A Lights.

Q What kind of lights? A I don't remember whether it was gas or electric.

Q Do you know whether the rest of the house was tenanted at the time? A All of them.

Q How do you know that? A I could see from my store, the tenants looking out through the windows. The curtains were there. This is the only one that was available.

Q How much rent were you to pay? A $35.

Q Per month? A Per month.

Q In your direct examination you said that was just as nice a place as the High street apartment? A As far as the rooms were concerned.

Q What was the difference? A The elevator and lobby, and all that stuff, they didn't have that.

Q The difference was the lobby and elevator? A Yes, the rooms were high, comfortable and airy.

Q When you say the rooms were comfortable, what do you mean? A They were just as good to live in as on High street; just as healthy to live in.

Q Where did you live before you were married to Mrs. Rich? A With Mr. Scheck.

Q Where? A On Lehigh avenue, in Newark.

Q What kind of a house?—one family? A One-family house.

Q Modern up-to-date house? A Yes.

Q Quite recently built? A Yes.

Q Very good neighborhood? A Nice neighborhood.

Q Did you go to business every day up to the time you were married in 1924? A Yes.

Q Going to and fro between Mr. Scheck's home and Lehigh avenue and your place of business? A Yes.

Q How did you get down to business and back? A Sometimes I walked, or I took a car.

Well, Lehigh avenue is near Weequahic Park? A Yes.

Q How long did it take you to walk from Lehigh avenue? A About three-quarters of an hour.

Q You did that in the morning? A Yes.

Q Did you walk back at night? A No, I took the car home.

Q Where would you take your meals? A In a restaurant.

Q You took your lunch daily at the restaurant? A Breakfast I took with Mr. Scheck.

Q Your lunch you would have at the restaurant? A Yes.

Q And that went on for quite a number of years prior to your marriage? A No; about a year.

Q That was the same restaurant at which you ate after you got married? A Yes.

Q And kept taking your lunches there? A Yes.

Q You used to get to business on time when you left Mr. Scheck's home in the morning from Lehigh avenue? A Yes.

Q About the same time every morning you would get down there? A Yes.

Q Did you know just how you were going to get your coal into the apartment on Mulberry and Market street for the stove there? A We didn't need no coal.

Q Wasn't there a coal range there? A There was a coal range, but we were going to use gas.

Q You are sure there was a gas stove there? A If it wasn't, I would put one in; I told Mrs. Rich so.

Q You say Mrs. Rich told you that it was all right to move. When did she tell you it was all right to move? A A couple of days before I moved.

Q Wasn't it longer than that? A No; about two days before that she consented to—in the morning I said, "Go down and look at them."

Q When did you first ask her consent to move to Mulberry and Market street? A I imagine for a couple of months.

Q And finally, two days before, she consented? A I said, "I am going to move." She said, "If you like them, all right."

Q It was two days before you decided to move? A No; I decided long ago, but she decided two days before, to take them.

Q Did she say she would go with you? A So she said. She said, "If you like them, all right.

Q You understood that a couple of days before? A Yes.

Q You said that the expressman made known to you the fact that there was a difficulty in his schedule in accommodating you because of the renting season at that time? A Yes, we were all packed up.

Q When did he tell you that? A About two days before I moved.

Q And when did you hire him? A I hired him the same day. He told me that is the only day he has.

Q You hired him the same day? A Yes.

Q When you got to the apartment on High street on this day when you intended to move, did you find the door open or locked? A It was locked.

Q How did you gain admission? A I had a key.

Q Did you try to find your wife? A I opened the door; she wasn't there.

Q Was there any sign inside which would tell you that she was in the building? A No; she came right in.

Q Before she came in what did you do? A I told the man to start and move and then she came right in.

Q You told your employe, Mr. Levock, to start to pack the dishes? A Yes.

Q Had he started to pack before Mrs. Rich came in? A He started to pack and she came right in.

Q Did you start to look for your wife before you ordered him to start packing the dishes? A No, I thought she would be around sometime.

Q Did you have any idea where she was? A No.

Q Did you know what her habits were with reference to being home during the day, or being out? A She was always out, but that morning she said she will stay in.

Q When did you have the telephone disconnected and discontinued? A The day before I moved.

Q Did you tell your wife about that? A I told her I will transfer it to the store.

Q You didn't make any arrangements to have the 'phone installed at Mulberry street? A We were right across the street; it wouldn't be necessary.

Q That 'phone was to be used by your wife to telephone other places than your store, was it not, at High street? A But she used it in the store too, often.

Q You know your wife made social use of it, to 'phone to friends and relatives and others? A I don't know who she called up. I suppose she called whenever she wants.

Q You knew the store wasn't the only place she was telephoning from and to? A No.

Q When your wife came in on this day, when you said to move, what did she say to you? A She didn't say anything to me. She start to hollering "Nobody will touch anything here," and she stopped the expressman, she took the furniture out of his hands.

Q She didn't say a word to you? A No.

Q Did she see you there? A Yes.

Q What was the first thing she said to you? A She didn't say anything. She just rushed at the moving man and grabbed the furniture.

Q What is the first thing she said to you? A I am telling you she didn't say anything.

Q Not during that whole period when you were there? A No, she didn't say anything to me during that period.

Q Right up to the time you went out? A After that she said she wouldn't live with me.

Q When? A She hollered out there, among the excitement she hollered she wouldn't live with me.

Q Who did she holler that to? A To the crowd.

Q Did you say anything? A No, I didn't say anything.

Q Didn't you say anything to her at all? A I just asked her to be nice and quiet and come and move, that she is my wife. She wouldn't listen to me at all, she hollered.

Q Did you tell her that you were absolutely amazed or astonished with her on the morning you left, and you thought that it was perfectly proper for her to go down there? A You couldn't talk to her.

Q Were you surprised at the way she was acting? A I was certainly surprised.

Q Did you tell her so? A No; I couldn't talk to her.

Q When you came home and found the door locked and let yourself in with your key, were you surprised that the stuff wasn't all packed up and ready to go out? A No.

Q You had some words with the landlord; how did that come about? A Mrs. Rich I suppose had made him come in there to help her.

Q How did the quarrel between you and the landlord come about? A I don't know, he came in there and told me I am not to move.

Q He told you you were not to move? A Yes. I said, "What have you got to do here?" He said, " You son of a bitch, if you talk that way to me I will smash you."

Q When you said to him, "What have you got to do here?" and he said, "You son of a bitch, I will smash you," did he seem angry? A He seemed angry, yes, because I wouldn't stay.

Q He was angry because you were leaving the apartment? A Yes.

Q He was going to lose a tenant? A Yes.

Q And that is why he called you a son of a bitch? A That is right.

Q Do you remember the first letter that was written to your wife? A Yes.

Mr. Bilder: I have these original letters in my possession, and I note a second separate page here. I take it it is part of the letter from Paris of August 11. May I ask Mr. Ruback whether that is so?

Mr. Ruback: I think so. You produce the letter. It must be a part of one or the other, and we can ascertain which it is and I will abide by your client's statement. It is part of the letter marked Exhibit D. 1.

Q Mr. Rich, is this letter—do you find any of your writing on page 4 of Exhibit D. 1? A I never write.

Q On page 4 of Exhibit D. 1 do you find any word written by you? A Not at all. I looked. I didn't write! I never write.

Q Did you sign your name? A I signed my name. (On Exhibit D. 1)? (After examining letter): No, that isn't my writing.

Q That isn't your name? A Yes, but it is not my writing.

Q You didn't write the word which looks like "Louis?" A Oh, yes, that is my writing; but there is another—

Q I mean the word "Louis." A That is my writing.

Q That is all that is yours? A Yes.

Q That is all that is yours? A Yes.

Q This is a letter purporting to be written from Paris, August 11, 1926. Do you remember what you said in that letter? A If you read it I can.

Q I would like you to tell me what is in the letter? A I wrote it; I cannot remember exactly everything.

Q Anything? A I wrote to her that if she wouldn't consider, since I don't have to be in business any more, she can move anywhere, any part of the city, and that if she pays five or ten dollars more we could get a nice apartment, and if she wouldn't listen to anybody else, or something like that, she should meet me at the depot where the ship comes in and I will go home with her. That is all I can remember.

Q You meant you would go home to High street? A No, I instructed her to take rooms, since I am not in business any more, I don't have to live near the store. I said that in the letter.

Q You wanted her to rent rooms? A Yes. And if she is satisfied she should come and meet me and I will go home with her.

Q Were you willing to pay five or ten dollars more? A Yes, than she is paying,

Q She was paying then what? A $60.

Q That would make it as much as $70? A Yes.

Q Had your financial condition improved during your trip to Europe? A Not so much.

Q Your financial condition hadn't changed while you were in Europe? A No.

Q About the same as when you went away? A Yes.

Q You went to Europe when? A Tenth of April.

Q And had your financial condition changed since the previous September? A No.

Q From September to April, when you went to Europe in April, 1920, had your financial con-

dition improved since April? A It didn't improve.

Q It remained about the same? A Yes.

Q Where did you live when you went to Europe? A You mean in Paris?

Q Yes. A I have the address here.

Q What sort of a place is it? A A private hotel on the outskirts of the city.

Q You lived there about six months? A Here are the bills, if you want to see them.

Q Is this a bill rendered to you? A Yes.

Q This says Monsieur Reich. A Yes, it is Reich there.

Q What is the first figure? A We paid about 15 francs a week. That was two and a half cents at the time we were there.

Q A rather inexpensive board? A We were advised from here to go out to the outskirts, you can rent cheaper, if you want to stay longer they make it so much cheaper.

Q Did you rent your apartment there for a long period of time, six months rental? A About three months we were there.

Q Did you know that this post-script was added to the letter? I will read it to you: "I am writing this letter, and I have been working in your favor, Martha." Did you know that that post-script was on there? A I didn't know that. I didn't dictate that.

Q Martha is your daughter-in-law? Yes.

Q And she was manifestly expressing friendship for Mrs. Rich while she was with you abroad? A Yes.

Q Do you know whose writing this is on the card which I show you marked Exhibit C. 1? A That is my son's writing.

Q Which son? A Aaron W. Rich.

Q Do you know when that was written on the card?—do you know when? A In July.

Q In July, 1929? A Yes.

Q Do you remember when in July? A I don't remember the date.

Q Was it before you went to Europe, or after? A I cannot remember very well.

Q You remember giving this to Mrs. Rich? A Yes.

Q Where did you give it to her?—where were you? A I met her on the train going to Bradley Beach one Sunday.

Q Was she on the train? A She went in the same car.

Q Did you sit together? A Yes; we sat down together, and I talked about Mr. Scheck; he is receiver of some rooms, I said, and he will rent them for $20 a room, as my son gave me that to give to a friend. She said, "My sister is looking for rooms." I said, "All right, here is the address." That is all that was said.

Q You gave this to Mrs. Rich for her sister? A She told me her sister is interested in rooms. I said, "She can get them for $20 a room, as I understand that is what they are renting for."

Q This wasn't for Mrs. Rich's use? A No, it was not for her use. She wouldn't consider renting.

Q When was this written down?—before you got on that train? A Yes.

Q You had this card in your pocket when you got on the train? A Yes.

Q Why did you have your son write this down before you got on the train? A He was looking for tenants, and collecting rents, and he said, "If you know anybody that wants rooms,

I would like to get them." He was to get tenants for the apartments.

Q And he wanted you to get some tenants for him? A If I knew anybody, he told me at the time that would rent rooms, they would rent for $20 a room, and it was a new apartment, hardly finished.

Q He wrote this for you so you would remember it? A So I would give it to someone, if anybody wants rooms, to come and see him.

Q How many apartments did he have for rent? A It was a new apartment with a lot of apartments.

Q Do you remember where it was, after you gave this card to Mrs. Rich, so as to speak to others about it? A No, I didn't take notice of it.

Q You are quite sure that you didn't tell Mrs. Rich to go up there and look? A She said she will go up with her sister to look at them.

Q Didn't you give it to Mrs. Rich so she might look for an apartment? A She told me once she wouldn't consider anything, and we didn't talk any more about it.

Q Didn't you give this to her and say, "Go and look for a place" for you and her to live in? A No, I did not.

Q Did you ever go to Bradley Beach in the summer of 1929 on an excursion ticket? A I went on lots of excursion tickets.

Q When you went down to Bradley Beach, didn't you make use of or purchase a ticket sold in connection with some excursion run by an association at reduced rates? A I went every Sunday on an excursion.

Q Reduced rates? A Yes.

Q You would find out what association was running a train? A The Odd Fellows mostly.

Q They would run the train every week? A Every Sunday.

Q Did you ever go down on a Prudential excursion? A I don't remember whether I went down. I went down on an excursion, every Sunday.

Q Did you ever go down on any excursion, Y. M. H. A., of Newark, that they gave? A I didn't pay particular attention. I bought a ticket from fellows on the outside, and took a train.

Q Men on the outside were selling excursion tickets? A Reduced rates at times.

Q Did you go only when you went to Bradley Beach to stay at Mr. Grosman's home? A Not by excursion. I didn't go on an excursion then, I went on the regular train.

Q It wasn't a Sunday? A No.

Q Do you remember the date? A Yes.

Q What date was it? A On a Tuesday.

Q On Tuesday of what? A Tuesday, July 16th.

Q Did you say to the landlord, "Don't interfere between man and wife," on that day when you sought to move out? A Yes; I said, "You have no right to interfere with man and wife."

Q Didn't he say to you— A He said, "You son of a bitch, if you talk to me I will smash you."

Q Give me a chance. Didn't he say to you, "Don't you remember what you told me down in the hallway the other day?" A He didn't say anything about that.

Q Do you remember telling him anything in the hallway? A He met me in the hallway on

a Saturday before that. He said, "Mr. Rich, Mrs. Rich wants to sign up a lease." I said, "I will not be responsible." "She told me you wanted a $35 rental, it is kind of queer." I said, "Well, there is no law that will compel me to live beyond my means," and with that I went upstairs.

Q Did that get him angry? A No.

Q How many times do you think in all you saw Mrs. Rich after the separation in September, 1925, generally? A I cannot count the number of times.

Q Did you see her as often as once a month, aside from your trip to Europe? A I wouldn't say exactly, once a month. I called her up.

Q The number of times, I am talking about. A I cannot tell exactly the number of times.

Q But it wouldn't average once a month in 1925? A It might; but I didn't call her every month.

Q To see her personally? A No.

Q Did you see her personally at least once a month? A No, not every month.

Q About how often would you say? A At the end of the expiration of the lease I called her up pretty near at the end, to see if I couldn't coax her not to sign no lease.

Q What year was that? A In every year.

Q At the end of every year, just before every October, let us say of each year, you would call her up? A Yes, to see if she didn't change her mind and move with me.

Q Did you have any objection to living in a two-room apartment, which she was renting for $60? A I wouldn't live there.

Q Why? A Because the man insulted me. I told her that I didn't even want to come in,

when she invited me in the house. I said, "That man insulted me. He said he wouldn't rent me an apartment for $200."

Q Otherwise you didn't have any objection to the rooms up there? A I wouldn't live in two rooms; it wasn't enough.

Q Even if the man hadn't insulted you, you wouldn't live in those two rooms? A No.

Q Did you ever go near that apartment house, 738 High street, from the day September 24, 1925, up to now? A I might have passed there several times.

Q Did you ever go in it? A Yes.

Q When was the last time you went in it? A It was in October before the holidays.

Q October, 1929? A Yes.

Q Did you visit someone there? A Yes.

Q Who? A Mrs. Rich.

Q When was the time before that? A Several times before that, about three or four times.

Q You visited Mrs. Rich? A Yes.

Q In the two-room apartment? A Yes.

Q Did you visit her in September, 1929? A No, I wasn't there in September.

Q How long before the October visit did you pay a visit?—about a week or two weeks before? A About four months before.

Q And for that whole four months you hadn't been there? A Yes.

Q Sure about that? A I am sure.

Q Four months before would be about what month?—don't you now recollect it? A It would be about May or June.

Q And you were in the apartment? A When?

Q In May or June? A Yes; I think I went up there.

Q And when before that? A I cannot remember; I never put down dates.

Q You didn't write down the dates? A No.

Q But there were quite a few? A About three or four times I was up there.

Q You didn't have any fight with her while you were in there? A No.

Q You got along pleasantly? A We were not there very long.

Q (Repeated): You got along pleasantly or unpleasantly? A We talked there, because I told her to come to the show.

Q Did you get along pleasantly? A We didn't fight.

Q Do you remember being in the apartment in the year 1927, late at night, with your collar off, sitting in your shirt-sleeves in that apartment? A When was that?

Q In 1927? A What date.

Q I don't know the date. A I don't know the date. I never carried the dates. What day was it?

Mr. Bilder: I don't know.

The Court: There doesn't anybody seem to know, Mr. Rich, just exactly what date that was; but Mrs. Gerber testified that in September or October or December, she said it warm weather, and she was sure it was summer or September or October or December, she saw you sitting in the front room of the apartment one night by the window and that you were in your shirt-sleeves with your shirt-sleeves rolled up, and your coat off and no collar on. That is the occasion, I presume, to which Mr. Bilder refers, and the question is, were

you there at that time and in that condition?

The Witness: I was not in that condition, but I was there in October the day before Atonement, I called there.

The Court: What we are particularly interested in is whether or not you were there in that apartment at night, with your coat off, your collar off, your sleeves rolled up.

The Witness: I didn't have my collar off; I never roll my sleeves up in my life, never.

Q Did you ever take your coat off? A I might have taken the coat off if it was a hot night.

Q Mrs. Rich told you to come and live with her at the apartment house on High street? A No; she said she wouldn't move out of there, and if I wanted to live, I can live there.

Q She invited you to come and live with her there? A Yes.

Q Did she ever refuse to have you come to the High street apartment and live with her? A She knew I wouldn't move in there. It was an excuse. I told her in the letter, too.

Q My question was: Did she ever refuse to have you come and live with her at the apartment? A I didn't ask her. She knows I wouldn't live there.

Q When did you start taking your belongings, your personal belongings, out of the High street apartment? A I didn't take any.

Q Did you ever move within the few weeks or perhaps few months prior to September, 1925, when you sought to move out the furniture,

had you taken any of your personal belongings out? A Not myself.

Q Did you ever have anybody else take them? A I sent the cleaner up one time to get a suit cleaned, and Mrs. Rich sent down a few things with him.

Q You are now talking about a conversation with Mrs. Rich? A No; you asked me who took them.

Q A cleaner took them? A Yes.

Q What did the cleaner hand you? A He brought down a chair, a piece of iron, and some other things; an iron stand.

Q What else? A I don't remember; I think it was a pillow, or something like that.

Q Where did he bring the chair to? A In the store.

Q This was a cleaner? A Yes.

Q A man engaged in the business of cleaning wearing apparel? A I sent for my suit and she gave it to him.

Q Did he have a wagon outside? A Yes; he brought it with the truck.

Q An ordinary sitting chair or large chair? A It was a low chair that my wife used to sit in there, and I had it in the house.

Q A large chair? A About the size of this (indicating).

Q Did you ever take anything out of the apartment yourself prior to the time you sought to move out? A No, never.

Q Did Rabbi Foster come to see you with reference to your marital relations with Mrs. Rich? A He was in the store; I wasn't in. He left word I should call him up. I called the rabbi up. He said "Will you see me after services in the Temple?" I went to see him.

Q Did he tell you on whose behalf he wanted to speak to you? A Not then.

Q When you saw him? A When I saw him.

Q On whose behalf did he say he wanted to speak to you? A My wife's.

Q Did he tell you Mrs. Rich had asked him to speak to you? A That is what he said.

Q About resuming marital relations? A He didn't, no. He said that Mrs. Rich talked to him about calling me up.

Q And getting together again? A He didn't say that exactly.

Q Did he say anything like that? A He said, "I would be glad if I could do anything between you, I will be very happy;" but he said, "Don't tell me your troubles," but I told him.

Q As a result of the rabbi's conversation with you, did you communicate with Mrs. Rich? A Yes.

Q When was that? A I met her in front of the Temple on a Friday night.

Q What year? A A week or two after.

The Court: You mean 1925?

The Witness: Yes, that is when the rabbi—

Q What year did the rabbi see you? A You know when the rabbi saw me; two weeks after that.

Q Was it this past year, 1929? A No; about two years ago.

Q Was it before this suit was started, or after? A It was after you had written letters.

Q Was it before the suit was started? A Yes.

Q Before you were served with papers? A After I got your letter.

Q Before papers were served on you in this suit? A Yes.

Q Did you ask your wife at that time to resume marital relations with you? A I asked my wife, "Why go to the rabbi? You can talk to me. If you want to talk, you know I was ready to talk to you." She said, "I know we cannot live—if you give me $25 a week I will be satisfied."

Q Was that what she wanted the rabbi to get for her? A The rabbi didn't tell me that, but she told me that.

The Court: We will suspend now. I would like to know how much longer your case will take. How many more witnesses have you?

Mr. Bilder: In rebuttal I will call Mr. Gus Lewis very briefly; I don't think his testimony will take 15 minutes; and possibly another witness who will take much less than 5 minutes. The cross examination of Mr. Rich I think I can finish in 15 minutes.

Mr. Ruback: I am prepared to rest the case now if we can finish it today; otherwise I would like 15 minutes to close the case.

The Court: Come in next Tuesday, at 2 o'clock.

Transcript of testimony taken in the above entitled cause before Hon. Maja Leon Berry, Vice-Chancellor, at the Chancery Chambers, Newark, N. J., on Tuesday, January 28, 1930, 2 P. M.

Appearances:

Counsel as before stated.

LOUIS RICH recalled for further

Cross examination by Mr. Bilder.

Q Mr. Rich, in the month of July, 1929, you lived with Mr. Mannie Scheck? A Yes.

Q In the Weequahic section? A Yes.

Q And frequently walked down mornings? A Yes.

Q Ever take any flowers down to business with you? A In June.

Q You probably took some down in July? A No; he had none in July; we had June flowers.

Q Very likely took some flowers downtown with you in that month of July? A No, sir.

Q Do you recall whether or not you met Mrs. Rich on Clinton avenue near High street one day in July and walked downtown with her? A I don't think it was in July. I met her once, but I think it was in June.

Q Do you remember meeting her and walking downtown? A Not downtown, but to the corner of Broad and Clinton streets.

Q The junction? A Yes. I turned into Broad street and Mrs. Rich went some other way.

Q That was at the junction there about about opposite the Elks Club? A Yes.

Q You think that was in June? A I think so.

Q Is it possible that it may have been July? A I remember distinctly I had June flowers at

the time I met her. She asked me about the flowers. We had none in July.

Q You had some flowers in your hand? A Yes.

Q Was that the day you gave her this card (witness shown card Exhibit C. 1, January 2nd, 1930)? A Yes, I think so. I think I gave her that when I met her going to Bradley.

Q You think you gave that card with the writing on the back of it, which was marked in evidence, an another occasion, is that right? A On another occasion.

Q That other occasion was when she was going to Bradley? A Yes; I was with her on the same train.

Q Are you sure of that? A I am sure.

Q Who else was with her? A Nobody else. I met her just coming up.

Q Did she tell you where she was going? A Yes; she said she was visiting her brother, and I went to my daughter.

Q Do you remember an occasion in March of 1927 when you were in the apartment of Mrs. Rich on High street, when Mrs. Simon, Mrs. Rich's sister, came in? A I don't remember exactly the date; I went there around supper-time and wanted her to go to some show, and she said she was going out, and just then Mrs. Simon came in, I remember, and they went away together.

Q That may have been in March, 1927? A I cannot remember dates.

Q Do you remember their mentioning they were going to a birthday party of a nephew? A Yes.

Q Do you remember that? A Yes.

Louis Rich, for defendant, further direct.

Q Do you remember in the spring of 1928 whether or not you saw Mrs. Simon in the apartment of Mrs. Rich again, in the spring of 1928? A I don't remember.

Q Do you remember whether or not you were in bed in Mrs. Rich's bed on a day in the spring of 1928 during the afternoon, with Mrs. Rich? A I wasn't there in bed.

Q You are sure you were not? A Sure, positive.

Q In the spring of 1928? A Not after I left her, I was never in bed with her.

Q You were never in bed with her after 1925? A No.

Q Do you remember any time when you met Mrs. Rich when she mentioned to you she was going on the Prudential Insurance Company excursion? A The only time I met her, once she walked down, she said she has got to meet a lady friend, and it was around the end of June sometime. I had flowers in my hand.

Q Do you remember her mentioning that to you? A No; she never mentioned an excursion.

Further direct examination by Mr. Ruback.

Q You told Mr. Bilder on cross examination that the apartment house at Mulberry street had electric lights; are you sure about that? A I wasn't very sure, but I had seen the first floor always lit up, and I assumed there was electric light.

Q Have you been to that apartment since 1925? A No.

Q You also responded to a question put to you by Mr. Bilder, that you visited Mrs. Rich at her apartment in October of 1929, this last

October. Did you mean that? A I meant the day before Atonement Day. In 1929 Atonement Day was in September. In 1928 it was in October.

Q Have you visited Mrs. Rich's apartment since you vacated it in 1928? A No.

MARTHA RICH, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination by Mr. Ruback.

Q You are the wife of Moe Rich? A Yes.

Q And a daughter-in-law of the defendant in this case? A Yes.

Q You know, of course, Mrs. Tillie Rich, the complainant? A Yes.

Q Did you and she have any conversation before September of 1925 regarding a home that Mr. and Mrs. Rich would occupy when the lease to the High street apartment expired? A Yes.

Q When was that conversation? A At our Market street store.

Q Where were you living at that time? A In Orchard street.

Q Did you occupy an apartment there? A Yes.

Q Was that a large apartment house? A Yes; about 36 tenants.

Q Was Mrs. Rich visiting you at that apartment? A Yes.

Q What was the conversation? A Mrs. Rich came in, walked in our store on Market street, and she was telling Mr. Rich, or dad, she used to call him, dad, that dad wanted to move, so I said, "Tillie, why don't you move where I live;

it is a nice apartment." So she said to me, "Martha, I wouldn't move downtown."

Q The apartment house where you occupy an apartment, was a modern house? A Yes.

Q Steam heated? A Yes.

Q Electric lights? A Yes.

Q Did you see Mrs. Rich after the separation which occurred in September of 1925? A Yes.

Q Where did you see her first after the separation? A On Broad street.

Q Talk to her? A Yes.

Q Talk to her about her affairs with Mr. Rich? A Yes.

Q Tell us so much of the conversation as pertains to that. A I met Mrs. Rich on a Saturday; it was between the hour of 12 and 1; I was going downtown, and she asked me how dad was. I said dad wasn't feeling so well, so she said, "Yes?—what is the trouble?" I said he had a little stomach trouble. So she said to me, "Is that so?" I said, "Yes." I said, "Tillie, why don't you make it convenient for dad? Why don't you live downtown so dad could go home for his meals?" She said, "I wouldn't live downtown; I want to live on High street." Naturally, I couldn't make any headway, and I went away.

Q Did you ever again meet her? A Yes; outside of Bamberger's.

Q Talk to her? A Yes.

Q What was the conversation? A She started to say that she was a little disappointed in him. I said, "Why?" She said, she ought not to have married him, that dad was too old for her, and that he was a much older man than she was.

(No cross examination.)

Mr. Ruback: Complainant in her bill charges that the act of abandonment consisted of a certain letter written by counsel for Mr. Rich in which he indicated that he would not thereafter support her. I have called for that letter. I want to offer that in evidence and close my case. Will you keep the record open until that is produced?

The Court: Yes.

FLORENCE SIMON, called as a witness on behalf of the complainant in rebuttal, being first duly sworn, testified as follows:

Direct examination by Mr. Bilder.

Q Where do you live? A 856 South 16th street, Newark.

Q You are employed downtown, are you? A Yes.

Q Where? A Kresge's department store.

Q For how long have you been so employed? A Three years.

Q What time do you usually get to business mornings? A Around half past eight.

Q Do you know Mr. Rich? A Yes, I do.

Q How long have you known him by sight? A Just since my aunt really married him.

Q Since 1924? A Yes.

Q Have you seen him often since then? A Yes; saw him walking down mornings.

Q Know him well by sight? A Yes.

Q Do you remember seeing Mr. Rich on Clinton avenue one morning during this past summer of 1929? A I do.

Q Will you tell us about where you saw him, and with whom? A It was on Lincoln Park, right at the Warren apartment there, as you turn from Broad street; and he was with Mrs. Rich.

Q The complainant in this case? A Yes.

Q And about what time in the morning was that, about? A About twenty minutes to eight.

Q Where were you? A I was on the Board car.

Q Coming downtown? A Coming down to business.

Q Anything about Mr. Rich that you particularly observed? A Yes; he had a bouquet of flowers.

Q Do you know whether or not you saw Mrs. Rich, whether you had seen Mrs. Rich shortly before that day? A I saw her a few days before.

Q Where? A At my home.

Q How soon after that day did you see Mrs. Rich, do you remember? A A few days later than that.

Q Where? A At my home.

Q Did you at that time make any reference to having seen her? A Yes, I did.

Q What did you say?

Mr. Ruback: I object.

The Court: Objection sustained.

Mr. Bilder: The purpose is not to prove the truth of anything that this witness told her, but to simply show what she told her, the fact of the communication, for the purpose of fixing a date. The truth of the assertion is to be in issue, and it is the fact of the communication that I desire to prove, so as to fix the date.

The Court: You may put it on the record, if it has any bearing, otherwise it will be stricken.

Q Do you remember the month in which you saw Mr. Rich on this occasion? A I remember that it was the Prudential excursion.

Q Do you remember the month? A No; I cannot say the month.

Q Did you make any mention to Mrs. Rich of having seen her, as you say you saw her, a few days later? A Yes.

Q Where did you say you saw her? A In my home.

Q What did you say to her? A I was kidding her about the flowers that Mr. Rich had.

Q Had you seen Mrs. Rich shortly before then? A Yes.

Q Did she upon that occasion—this conversation also has as its purpose, not to prove the truth of the assertion, but the fact—

Mr. Ruback: Same objection.

The Court: Same ruling.

Q When you saw Mrs. Rich a few days after this occasion of seeing Mr. Rich with her, did she make any statement to you about her intending to go out of town?

Mr. Ruback: I object, as being leading. The question involves the very conversation.

The Court: Yes, entirely too leading.

Q Do you remember anything she said to you at that time? A Yes, she said—

Mr. Ruback: I object.

The Court: It is entirely too indefinite. Objection sustained.

(No cross examination).

MRS. CARRIE SIMON, called as a witness in behalf of the complainant, in rebuttal, being first duly sworn, testified as follows:

Direct examination by Mr. Bilder.

Q Mrs. Simon, you live in Newark? A Yes.

Q You are a sister of Mrs. Rich, the complainant in this case? A Yes.

Q Do you remember being in Mrs. Rich's apartment on High street any time in the summer of 1927? A Yes.

Q Will you state an occasion when you remember being there? A I was there on a Sunday night.

Q In what month? A It was in March, the latter part of March.

Q Did you see anybody in the apartment on that occasion besides Mrs. Rich? A Mr. Rich was there.

Q The defendant in this case? A Yes.

Q Where was he?

Mr. Ruback: I object, for the reason that apparently that this is a new and a different attempt to prove condonation. We have had two. We have had an attempt to prove condonation, by sex contact in October, 1926. That failed, in that the testimony of Mr. and Mrs. Gerber did not somehow coincide. Then we had, in the

middle of the case, by your Honor's permission to meet, two dates furnished, July 18, July 26. We met those. We had the opportunity—because the case was prolonged —to meet that testimony. Now comes another event. The Court has held that it has to be specially pleaded.

The Court: You don't need to argue that. If this is an attempt to prove some other incident showing condonation, I will not hear it.

Mr. Bilder: I asked the defendant on cross examination, about these occasions, and he denied them. This is a contradiction of the defendant.

The Court: I will hear it only for the purpose of contradicting the defendant, but not for the purpose of showing condonation. It is only an attack on his credibility, and it is received for that purpose only. The defendant should not now at this late hour be put to his defense on some other charges of conduct which might spell a condonation.

Q Where was Mr. Rich in the room when you saw him? A Sitting on the couch.

Q What fixes that particular day in your mind? A That was my nephew's birthday. We went there that evening, my sister and I.

Q That was in March? A Yes; and Mr. Rich was there.

Q Did you leave the apartment with Mrs. Rich? A Yes.

Q Where did Mr. Rich go? A He went downstairs and said "Good-bye," and I don't know where he went.

Mrs. Carrie Simon, in rebuttal, cross.

Q Were you in the apartment on an occasion in the spring of 1928? A Yes.

Q Mrs. Rich's apartment on High street? A Yes.

Q Do you remember seeing anyone there besides Mrs. Rich? A I rang the bell and I walked in. The door wasn't locked, and I walked in, and as I got to the bedroom door I saw Mr. Rich lying in bed, and my sister was coming out in her nightgown.

Cross examination by Mr. Ruback.

Q Were you expected by your sister that morning? A No, I wasn't expected.

Q Were you in the habit of visiting her frequently? A Yes.

Q Where did you live at the time? A I lived at 856 South Sixteenth street.

Q You conduct your own home? A Yes.

Q What time was it you arrived at the Rich apartment on High street? A It was around 2 o'clock; but how much after I don't know, because I left my house at 2 o'clock in the afternoon.

Q You did knock on the door? A I rang the bell to the Rich apartment.

Q Any response? A I got no response, so I tried the door and I got in, so I went in as far as the bedroom door.

Q You rang the bell downstairs? A No; I rang the bell upstairs.

Q And you didn't knock, did you, before you entered? A No; I just rang the bell and opened the door and went in.

Q And you found Mr. Rich in bed? A Yes.

Q The bedroom door was open? A Yes. There is no door on the bedroom. Mrs. Rich was just coming out.

Q Out of where? A Out of the bedroom, as I got to the door.

Q That happened in the spring of 1928? A Yes.

Q What month? A That I don't know, just what month it was.

Q Didn't you say it was March, 1928? A Oh, yes, that was March when I saw him there.

Q Why didn't you a second ago say it was March, when I asked you what month it was? A The day I saw him in there—no, I don't know what day that was.

Q Was it March? A No, that wasn't March. That was June or July.

Q Of what year? A 1928.

Q You knew at the time that your sister was living separate and apart from her husband? A Yes.

Q You had known of the separation that had taken place some years before? A Yes.

Q Have you and your sister discussed this matter since that occurrence in June or July of 1928? A No.

Q She never had occasion to refer to it? A Yes; she said different things, that she wished it was settled, and one thing and another. That is all.

Q When did you first learn that a suit for divorce resulted between these two parties? A I don't know.

Q When did you first learn of it? A Since this thing started.

Q How long ago? A Last week.

Q You didn't know until last week there was a suit pending? A No, I didn't know anything about it.

Q You had been visiting your sister frequently during the last year and a half? A Yes.

Q She never informed you that her suit was in court? A No.

Q Did you ever inquire? A No.

Q Did you know who her attorney was? A No, I didn't know.

Q When did you learn that for the first time? A I only found that out the other day, who her attorney was.

Q It struck you as rather strange, did it not, to find Mr. Rich in bed when he and his wife were living separately? A Yes.

Q Talk to your sister about it? A No; I walked right out.

Q Didn't stay? A I didn't stay at all.

Q And you have never referred to the episode since? A I never said anything about it since.

Q Didn't talk to your sister or anyone else? A I only told my daughters about it the other day.

Q How did you come to mention it a week ago? A Because I was supposed to go on the stand here, that I saw Mr. Rich.

Q When? A A week ago.

Q Who did you first disclose that discovery of yours to—who did you first tell about this thing that you observed in the spring or summer of 1928? A I didn't tell anybody.

Q Until a week ago? A Until a week ago.

Q Then who did you tell it to? A I told my sister about it. After her affair, she remembered that, and said this.

Q Why did you remind your sister about it? A Because I thought it would do her some good.

Q In her suit? A In her suit.

Q How did you learn that the case was being brought; who told you? A She told me herself.

Q She came to you? A No; I talked to her over the phone. She told me her case is going to be tried.

Q And did she tell you that she had tried in this suit to prove that she had been having sexual relations with her husband? A Yes.

Q While the suit was pending did she tell you that? A No.

Q She didn't tell you the fact that the subject was being talked about in the trial of this case? A Yes, she told me that.

Q Did she ask you whether you recalled this event? A Yes.

Q Or did you remind her? A No, I told her.

Q And did she suggest the time and year and month to you? Did she tell you when it happened? A It was in 1929.

Q But did she tell you that it was in 1928? A I told her it was in 1928.

Q Have you any means of fixing the year? A I know it was in the spring of the year, it was in July or August—I mean June or July, it was.

Q How did you fix the year as being 1928? A Because that is the year it was in.

Q Is there any fact or occurrence by which you fix the year? A No, only I knew it was 1928.

Q Why aren't you equally certain it might have been 1927? A Because I know it wasn't 1927. I know it was 1928.

Mr. Bilder: It is agreed that on July 18, 1929, the Prudential Insurance Athletic Association had an excursion to Asbury Park and Ocean Grove. It occurred actually on July 18, 1929.

Mr. Ruback: I agree with that if your Honor thinks the evidence is material, and I will waive formal proof of it. I don't see the materiality of it.

MISS ANNA ALTMAN, called as a witness on behalf of the complainant, in rebuttal, being first duly sworn, testified as follows:

Direct examination by Mr. Bilder.

Q Where do you live? A 15 Leo Place, Newark.

Q Are you related to Mrs. Rich? A No.

Q How do you happen to know her? A Just a friend of my mother.

Q Intimate friend? A Quite so.

Q Where are you employed? A In the Prudential Insurance Company.

Q How long have you been employed there? A It will be two years in March; almost two years.

Q Do you remember the excursion of the Prudential Insurance Athletic Association which took place in the past summer of 1929? A Yes.

Q It occurring July 18, 1929? A Yes.

Q Did you go to that excursion? A Yes.

Q Where? A To Asbury Park.

Q How did you go down? A By automobile.

Q Who went with you? A Mrs. Rich and my mother and I.

Mrs. Tillie Rich, in rebuttal, direct.

Q Do you remember Mrs. Rich handing any object to your mother on that date? A She showed her a card in the morning.

Q That had an address on it? A Yes.

Q Would you recognize the card if you saw it? A Yes.

Q Do you remember anything about it? A It was a small square card.

Q Do you remember any writing on it? A I don't know where the address was. I just know she had an address on it.

Q At what time was it on that day that you first saw Mrs. Rich? A I think around 9 o'clock in the morning.

Q Where did you see her? A In my house on Leo Place.

Q How far from Clinton avenue is Leo Place? A One block.

The Court: What do you want to prove by this witness?

Mr. Bilder: That is all.

MRS. TILLIE RICH, the complainant, recalled in rebuttal.

Direct examination by Mr. Bilder.

Q Mrs. Rich, you testified to having met Mr. Rich one day on Clinton avenue near High street? A Yes.

Q And on that day you said he handed you this card which was marked in evidence? A Yes, Mr. Rich's card with some writing on the back of it.

Mrs. Tillie Rich, in rebuttal, direct.

Q Do you remember where you went after you saw Mr. Rich? A Yes; we both walked down to Clinton avenue where the church is, opposite the Mosque Theatre, I took a car and Mr. Rich I don't know where he went; he went the other way.

The Court: This has all been gone over.

Q Then where did you go? A Then myself and Mrs. Simon, we went down to Asbury Park, down to the shore?

Q Do you remember what occasion that was? A It was July, 1928.

Q What occasion? A The Prudential excursion.

Q Do you remember having a talk with Mrs. Moe Rich in which she suggested to you that you should live on Orchard street, and you said then that you wouldn't move downtown? A No.

Q Did you ever talk with Mrs. Moe Rich before you and your husband were separated, in which she told you that Mr. Rich had been having some stomach trouble? A No.

Q Is it true that you, upon hearing from her, as she says, that Mr. Rich had stomach trouble, said that you wouldn't move downtown? A No, sir.

The Court: I shall not dispose of this case until I have an opportunity to read the testimony which has been given. It has been given in so many different sections that I don't want to trust my memory to decide the case now. It is purely a fact case. There is no need of filing a memorandum.

Mrs. Tillie Rich, in rebuttal, direct.

Mr. Ruback: I offer in evidence my office copy of letter of September 19, 1928, written by me to Nathan Bilder, the solicitor for the complainant, he being unable at this time to produce the original.

Mr. Bilder: I object to the copy of the letter, produced by Mr. Ruback.

The Court: I think it is admissible. It is a letter of refusal to make further payments. That is all the materiality it has. The facts upon which it is based are not evidential.

(Marked Exhibit A for defendant.)

Defendant's Exhibits.

Exhibit D. 1.

(Envelope)

Mrs Tillie Rich
738 High St
Newark N J.
U-S-A.

Paris Aug 11/26

Dear Tillie
This will know doubt supprise you to hear from me, after which you said you will not live with me again, After thinking the matter over a lot of times you could not have meant it for you know that I never insulted you or said anything about your family, Your trouble began that Easter Sunday we went to N. Y. with Carolyn You meet some old friend's and you said you would be happier to be with them than with me, After that you worked in that direction to be with them again, anything you could say to hurt my feeling you did it.
All you wanted Thirty Dollars a week and be by yourself You told me that would make you happy,
Though you know well that I could not give it to you unless I deprived myself, Still I did not want to be mean with you, on the contrary wanted to be the best of friends with you.
I have no doubt that if your family knew the truth you would ~~wor~~ not have gotten my sympathy, In order to get that sympathy you painted me black, told them that I wanted to take you to Chinatown and starve you, All you know that I wanted to be near the store and come home for meals However it is different

now and I dont have to live near the business could live anywhere you like, except in that house. Dont run around and show this letter to everybody, So called friends will have different opponions,
However you can consult your family,
I am booked to leave on the George Washington boat on Oct 14/26 and will be due Friday morning Oct 22/26.
If it is agreeable for you meet me at the boat United States Liners
I close my letter with love and kisses Louis
If you wish to answer

Address Mr L. Rich
c/o Hotel Du Parc
1 Place Armand Carrel
Paris E 19 France

S P. I am writting this letter and I have been working in your favor.

Best regards to you

from
Martha

Exhibit D. 2.

(Envelope)

Mrs Tillie Rich
738 High St
Newark N J.
U-S-A.

Paris Aug 16/26

Dear Tillie
I have sent you a regeristed letter and have made a mistake where the boat lands, instead of N. Y

it lands at Hoboken Pier 4 If you really are not so happy ~~bing~~ living by yourself and want to live ~~th~~ with me, then I think the best thing for you not to sign any lease where you are, And for five or ten dollars more you can get three nice rooms, as I dont have to live near the store anymore, so it does not make any difference what part of the city as long it is a nice place to live in. If you can advoid to sign a lease I think it would be better as we may leave Newark for a while, The reason I write all this now is because your leave is about to expire, Now if you are satisfied with these conditions

Give this your imediate attention and be ready when I come home,

If you are willing meet me at the boat and will go home together,

Best regards to you and sister Carrie

Louie

Best regards from Moe and myself.

Martha

The steamship George Washington United States Lines.

Leave Europe Oct 14/26

and is due Friday morning at Hoboken Pier 4 Oct 2/2/26.

Addres

Mr L. Rich
c/o Madame H Bouchard
1 Rue Auber
United States Lines Paris

Defendant's Exhibits.

Exhibit D. 3.

LOUIS RICH
CLOTHIER
128 Mulberry Street

Newark, N. J. Oct 27 1926

Dear Tillie:—

Enclosed find check. I was very much disappointed at your failure to meet me at Hoboken when the boat came in. I don't hold this against you, but I sure would have been glad to see you. I brought some nice things from Europe and will give them to you when I see you. Now Tillie you can see I mean well. If you will only see me I think we can arrange things much better than by writing. Please let me know by phone or letter where you will see me and I will be there. What I want is to have a heart to heart talk with you. If you will listen to me and not to your friends and brothers we will both be better off. I am living with Mannie Scheck. His telephone is waverly 7889 and you can call me up there any evening or you can write to me there. Dont let anyone put foolish ideas in your head. Both of us would be better off in a home of our own. I can't afford a palace, but we could live decently without a lot of money. So think it over and let me know. Tell me when I can see you and I will be up to the house.

Sincerely
Louis

P. S.If you' would rather see me downtown I will be in front of the Cadillac Restaurant on Broad St near Clinton St where we can have lunch together and talk it over. Will wait there from 12 to 12:30 P. M. Thursday and Friday.

Defendant's Exhibits.

Exhibit D. 4.

Nov 30, 1927

Dear Tillie:—

I am sending you $20.00 this week. Things are terrible and I cannot pay you $30.00. If you would only be reasonable and move with me in a different apartment, and stop listening to your friends, we could both make out better. Now we must both struggle. If you want to see me, let me know.

Louis

Exhibit D. 5.

Sept, 1, 1928

Dear Tillie;

Conditions are so bad that I have to reduce the amount I am sending you. It is absolutely impossible for me to do better.

Yours Louis

Exhibit D. 6.

Newark, N. J.,
September 30th, 1925.

Mrs. Tillie Rich,
744 High Street,
Newark, N. J.

Dear Tillie:—

I am enclosing herewith a check for $30. for your support, which I am sending you even though you would not come to live with me.

Yours, Louis

Encl.

Complainant's Exhibits.

Exhibit C. 1.

1/20/30

Established 1885

RICH'S
High Art Sample Clothing
At Half Price

128 MULBERRY ST.
(W. C. T. U. BLDG.) NEWARK, N. J.

(Reverse side of C. 1.)

Chancellor Ave
Wainwright St.

Exhibit C. 2.

1/20/30

"TO WHOM IT MAY CONCERN: My wife, Tillie Rich, having refused to live at my home, I hereby give notice that I will not be responsible for her debts. Louis Rich, 128 Mulberry Street,"

Defendant's Exhibits.

Exhibit D. 1.

1/20/30

Law Offices
of
WILLIAM HARRIS

Newark, N. J.
December 3, 1927.

Emanuel Scheck, Esq.,
Newark,
New Jersey.

Dear Mannie:—

I am enclosing a copy of a letter written to Tillie Rich, self explanatory together with the $20.00 check that was enclosed. Mrs. Rich will not accept the check.

I have been thinking the matter over and by reason of the letter written by Louis Rich, have tried to persuade Tillie Rich to go back with Mr. Rich and she states she is perfectly willing to try and start all over, providing he agrees to the following.

First, if he is willing, if she sub-leases her present apartment, to take an apartment that is satisfactory to her and for which he will sign a lease. Second, some provision will have to be made whereby she will receive $30.00 a week definitely, out of which she is willing to clothe herself and supply the table. All extra expenses like light and telephone will have to be paid by Mr. Rich.

She will only do this on one further consideration, and that is that he is sincere in his desire to do the above and thinks that they can be happy in so doing.

Defendant's Exhibits.

Please let me hear from you as soon as possible.

Very truly yours,

-4 Billy

Encs.

Exhibit D. 2.

1/20/30

December 5th, 1927.

William Harris, Esq.,
Kinney Building,
Newark, N. J.

Dear Bill:—

This is to acknowledge receipt of your letter of December 3rd, 1927, with which you sent me a copy of a letter written by Mr. Louis Rich to Tillie Rich and check of $20.00 sent by Mr. Rich to Mrs. Rich.

I have not discussed the situation with Mr. Rich for a long time and would prefer that he handle this matter himself. I am therefore passing your letter with the enclosure on to him.

Very truly yours,

E. P. SCHECK.

EPS: AG

Defendant's Exhibits.

Exhibit D. 3.

1/20/30

Nov. 30, 1927

Dear Tillie:—

I am sending you $20.00 this week. Things are terrible and I cannot pay you $30.00. If you would only be reasonable and move with me in a different apartment, and stop listening to your friends, we could both make out better. Now we must both struggle. If you want to see me, let me know.

Louis

Exhibit A. for Defendant.

September 19, 1928.

Nathan Bilder, Esq.,
60 Park Place,
Newark, N. J.

My dear Mr. Bilder:

I hand you herewith my firm's check for $30.00 representing the aggregate amount by which Mr. Louis Rich reduced his wife's allowance for the past three weeks. This payment is being made by me as a matter of professional fairness to you, as will appear from the facts below stated. In fairness to my client's position, it is necessary that I accompany the payment with a statement of facts which have impelled us to make this payment at this time.

You have stated to me that it was your understanding at the time you left for Europe that during your absence there would be no change in

the situation between the parties and that Mr. Rich would continue his weekly payments. I agreed to this, it being, of course, understood that the arrangement was without prejudice to the legal rights of either party. Recently Mr. Rich, without previous notice to you, reduced the weekly payments from $20.00 to $10.00. You feel that the acceptance by your client of these checks may unfairly prejudice your position. This we have no desire to do. I want to restore you to the position you occupied before the reduction and then give your client, through you, the notice hereinbelow in this letter expressed. It is for the foregoing reason and for no other that I make the $30. payment by the enclosed check.

Mr. Rich desires me to say that from this day on he will make no further payments to Mrs. Rich. The payments of $20. a week were made without legal right on the part of Mrs. Rich to insist on the same and were made mainly because Mr. Rich desired to avoid the embarrassment to his family which would follow from the publicity of a suit for maintenance brought by his wife. The reduction

from $20.00 to $10.00 a week was necessitated by Mr. Rich's reduced means. Mr. Rich would have been willing to continue the $10.00 payments for the same reason that he had continued the larger payments, but evidently your client is unwilling to submit to this reduction and I judge from what you have said to me that a suit for maintenance will be instituted by her. In view of that attitude and because the embarrassment heretofore sought to be avoided is about to be incurred, Mr. Rich elects to stand on his legal rights and de-

clines to maintain Mrs. Rich except in the home heretofore offered by Mr. Rich and to which she has declined to go.

Yours very truly,

MER:MM

31 MAY.T 1931

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

Between

TILLIE RICH,
Complainant-Appellant,

and

LOUIS RICH,
Defendant-Respondent.

On Appeal from Chancery.

BRIEF IN BEHALF OF COMPLAINANT-APPELLANT.

The bill of Tillie Rich (p. 1), was filed on October 9, 1928, against her husband Louis Rich, charging abandonment as of October, 1925, and from and after September 19, 1928, a failure to maintain and provide for her. An answer and counter-claim (p. 6) was filed on December 13, 1928, admitting that the defendant left the wife, but claiming that he did so because of his desire to remove to an apartment in a different and cheaper neighborhood to which his wife refused to accompany him; and further counter-claiming for a divorce against the wife for the cause of desertion.

The case was heard upon the bill for maintenance of the wife, answer thereto, and the petition of the husband for divorce on the ground of desertion, and answer thereto.

The Vice-Chancellor filed his conclusions (p. 21) dismissing the wife's bill and granting the husband's petition for divorce, and thereupon, on the 14th day of October, 1930, a decree dismissing the wife's bill for separate maintenance and granting the husband's petition for divorce

New Jersey State Library

was filed (p. 23). From this decree, this appeal was taken (Notice of Appeal, p. 27; Petition of Appeal, p. 29).

The facts involved in this case, although running into innumerable pages of repititious testimony, are extremely simple. A misguided and well-intentioned wife was held to have been guilty of desertion in the face of the husband's arbitrary demand that she move to a neighborhood which the law does not compel her to move to, and his insincere, albeit repeated efforts, for her to resume cohabitation with him followed by his withdrawals upon her acquiescence; a finding which in equity is difficult of comprehension.

The parties were married on August 17th, 1924, the wife at the time of the marriage living at the Hotel Riviera (p. 76, l. 27), Clinton avenue and High street, Newark, New Jersey, and the husband residing with his daughter and son-in-law at Lehigh avenue, Newark, New Jersey (p. 185 bottom) both fine residential neighborhoods.

The husband signed a lease (p. 69, l. 29) for a four-room apartment (p. 67 bottom) at $100. a month, but about six months thereafter commenced to pay the rent unwillingly (p. 76, ll. 15 to 20) and on one occasion said to his wife, "I am going to put you down to Chinatown to cover the law and come once a month" (p. 75 bottom, 76 top), having probably been groomed that the law required him to offer the wife a home. On September 24th, 1925 (p. 70, l. 4), the husband abruptly demanded that the wife move to an unimproved apartment he had rented for $35. a month, in premises at the corner of Mulberry and Market streets. That this is one of the most inferior neighborhoods in the city there is not

the slightest doubt of as evidenced by the unequivocal admission of the defendant's own witness, Mr. Mannie Scheck (p. 195, l. 25) who characterized it as undesirable for even "skilled laborers." This neighborhood, near the Chinese quarters, is quite unhabitable, and it is to be borne in mind that at no time did this husband, either prior to his marriage or subsequent to his desertion, reside in or near that immediate vicinity for even a day.

The husband, without further consulting his wife, arranged for the moving that same afternoon, and upon the wife's objecting, sent for his son-in-law, Mr. Mannie Scheck, who, on his arrival, had some conversation with the complainant as to her releasing her property interests upon the repayment to her of a $5,000 loan she had made to her husband (p. 78, top). She refused to sign any instrument and the husband left with Mr. Scheck, taking his clothing with him (p. 79, l. 20).

This attempt to move the wife into this particular neighborhood was neither more nor less than a plan for this husband to desert his wife.

It is of importance to be mindful that at no point in the defendant's case is there an attempt made to show that it was financially necessary for him to remove to less expensive quarters, his income, as he had informed his wife, being around $65. a week (p. 77, l. 12) from his store, and around $75. a week from his various properties (p. 77, l. 15). The fact that the apartment occupied by these parties was in a neighborhood not one whit superior to that in which the husband was living at the time of his marriage, nor to that in which he was living at the time of the trial, and furthermore, consider-

ably nearer to his place of business, gives the lie to the bona fides of his attempted moving and labels it exactly what it was—a means of escape from his wife.

When we examine the testimony concerning the husband's actions after his departure, we are faced by endless pages in which the wife is, if too verbose, open and truthful concerning her husband's oft-repeated requests that she return to live with him—requests which, however, immediately acceded to by her, were hastily dropped and abandoned by him. That he had to make the gesture he knew; but that he did not desire her return he was sure of, and so instead of making one real bona fide offer, he indulged in play-acting, not to be interpreted as the one act the law required of him.

He in no way communicated with the wife after his leaving until she received a letter sent from Europe where he was holidaying (p. 82 l. 25), and then on his return a year after his inexcusable desertion he met her by appointment. From then on the picture becomes amusing. He met her many times; called on her many times; and frequently discussed their living together, but it can avail nothing to go through the lengthy pages of testimony resulting in only one point: Immediately the wife signified her wish to return (p. 81, bottom), he evaded response, ignoring all her suggestions. It was the same each time—in October of 1926 (p. 83 l. 7); in January of 1927 (p. 84, top) and in February of 1927 (p. 85, top). They discussed taking up their residence together, but she would have but to ask him to look for rooms with her, or to request him to sign the lease, and he would retract all his suggestions. *What he was looking for*

—a refusal—he could not get because he was faced by a wife who wished to live with him.

We now come to an incident which indelibly stamps this husband's requests as worthless and disentitled to value. In the late winter of 1927, he suggested that his wife sublet the two-room apartment she was occupying and obtain an apartment for them both. This trusting wife, despite her having been misled by his former actions, when she should have been on guard, relied on him and ordered her apartment to be subleased, only to be told (p. 86, l. 33), after her so doing, that she should "never mind about the rooms and don't bother about anything," and she neither saw nor heard anything of him until the following September (p. 87, l. 10). In view of this last evidence of the husband's real wish and intentions, how can his meaningless gestures be given serious weight? We are not faced by a wife denying her husband's requests for her to return; but we are overwhelmingly shown that his requests could not hold water. He made obeisance, in phrasing and posturing to what the law demanded of him, but immediately given the opportunity to act as the law dictated, he about-faced, and quickly.

In September of 1927, he called at her apartment (p. 87, l. 14) stayed over night and again went through another performance, this time varying it by saying he would come up to live with her in her apartment (p. 87, l. 28), although of course he did, as theretofore, nothing of the kind, and from then on the story was the same. He would see her, discuss living with her again, and as soon as she showed eagerness, become alarmed and withdraw. When in October of 1928, prior to her lease expiring (p. 90, l. 29) she 'phoned him and said "Louis, what shall I do;

shall I sign the lease, or do you want to move," his graphic reply was "What have I got to do with your lease?" (p. 90, l. 31). As she says at p. 92, l. 20, "He did it so often, that I couldn't keep track of it. He did it every once in a while; he did it all the time. He did nothing but make a big fool out of me. I took his word for it, and believed him." "Did he ever tell you why he didn't want to go and live in this two-room apartment with you?" A "He wanted to go and then he changed his mind" (p. 92, l. 29). "Did you ever refuse to go with him to look for rooms?" A "I did not. Just the contrary. I was always willing to go with him" (p. 92, l. 37).

To review the cross examination at any length would serve no useful purpose. The wife's testimony, admittedly, both on direct and cross examination, is too wordy and often confusing as to dates, but it does not fail to show truth, nor does it fail to show us the clearest kind of a picture of this pussyfooting husband. She only repeats his many performances of requesting her to return, and his equally many refusals to follow it by the slightest act.

From the first, she tried in all respects to make him happy and comfortable, bringing his suppers down to him (p. 97, l. 19) and seeking to be a good wife and companion to him (p. 97, l. 14). She admitted her refusal to move down to Mulberry and Market streets; her husband's leaving her; his failure to communicate with her until nearly a year later; his many requests that she live with him, matched only by his equally many refusals upon her assent; his failure to provide a place for her to go to, and finally his indication—and this is indeed clarifying—of his willingness for her to move into a place herself (p. 91, l. 11)

where he might as he said (p. 115, l. 33) *"Come up and see you"*—not, it is to be observed, to live with her.

An effort was made to distort her failure to meet his boat from Europe into a refusal to live with him. Just how any self respecting woman, whose husband had deserted her and gone off on a pleasure trip abroad, could on being advised of the boat on which he was returning, be expected to meet that boat, is not made quite clear. Nor is it made clear as to how this could indicate any refusal to return on her part. Our law has for too long been unequivocal on the point that the actual move for a return is placed upon the husband, to need comment here. As the wife said (p. 108, l. 35)"I was willing to go back, if he came back and wanted to be sincere. If he is sincere in coming, I was willing to move with him and go anywhere in a respectable place, always."

It is further not understandable why this wife should be penalized, as counsel for the husband seeks to do (p. 122, l. 21) for subletting her apartment without having taken another before so doing. Or does counsel intend that because she so foolishly relied on her husband that she should pay for that foolishness?

An attempt was also made to show that a letter, Exhibit D. 1, written by Mr. Harris, a friend of the wife's, to Mr. Scheck, concerning the support of the wife, indicated the wife's unwillingness to return. Nothing in that letter could be so possibly construed, whether or not the letter was written at the wife's direction, which clearly it was not. Because a wife, who had been thoroughly fooled, consulted a lawyer, who was her friend, as to her right of support

from a deserting husband, does not and cannot impugn her good faith.

The cross examination goes on and on and this woman only reiterates again and again her husband's requests and withdrawals, one after another, and finally, his statement that she get rooms, go by "herself" (p. 148, l. 25) and he would call on her. We have there his whole desire and intention. He was willing to see her, spend some time with her, but not to live with her.

Nor is there need to take this Honorable Court's time in going into any length concerning the absurd effort of the defendant to show that his attempted move down to Mulberry street, near his business, was impelled by his wish to take his meals at home. We find that as late as two months prior to the trial, on meeting the wife (p. 151, l. 17) he informed her that he was taking his meals at Katz's, a restaurant on Belmont avenue near Springfield avenue, a very considerable distance from his residence. Apparently, having once disposed of his wife, he was unconcerned about distances in getting his meals, and generously waived aside whatever stomach disorders he imagined himself to be suffering from while living with his wife on High street. Getting rid of her ushered in a new era of well being—trips to Europe, long walks theretofore too strenuous for him, meals in out-of-the-way restaurants, etc.

An application was made (p. 152 top) by counsel for complainant for leave to amend to plead condonation, by virtue of facts just having come into possession of said counsel that the parties had had sexual relations subsequent to the institution of the suit. It is of course con-

ceded that the complainant should have conveyed this important information to her counsel prior to her actually so doing, but as she says (p. 159, l. 23) "I didn't think it was necessary. To tell you the truth, I was ashamed to talk about it," and there should be no penalty imposed on her because of her understandable reticence. The Court allowed the amendment (p. 154, l. 25) and it is definitely established that on the 19th and 28th of July, 1929, the parties had sexual relations (p. 155, l. 28; p. 156, l. 38; p. 157, l. 5) and we find corroboration of the July incidents in the testimony of Mrs. Simon (p. 271, l. 20).

The wife's actually having sexual congress with her husband while he was living separate and apart from her cannot be interpreted as any Machiavellian design on her part, as counsel for the husband would have us believe. It is but a further instance of foolish, misplaced trust in the belief and hope that he would actually return (p. 164, ll. 3, etc.). And the entire story of this wife, admittedly often confused and in some respects not altogether in sequence, while it may lead to impatience, is, stripped of unnecessary verbiage, clear, accurate and unshaken.

The desertion of the husband; its wilfullness; the husband's visits to the wife and his presence there partly unclothed, is fully corroborated by both the landlord and landlady, whose information, obtained through personal observation, remains undisputed by the testimony of any witness.

The testimony of SADIE GERBER (p. 40) clarifies much of the picture. Mrs. Rich had approached her early in the day of the 24th of September, 1925, for a smaller and cheaper

apartment for the parties to move to (p. 42, l. 10), but the husband failed at any time to look at it, and in fact, during the attempted moving later in that day, in the presence of this witness, said to the wife (p. 44, l. 8), "I don't want to live with you; I don't want cheaper rooms." This must obliterate any trumped-up explanation of the husband that he had to move to Mulberry street because he wanted cheaper quarters. This witness was present while Mr. Scheck was in the apartment and overheard him say to the wife (p. 43, l. 10), "If you get your five thousand dollars back will you sign the property?" Cross examination of this witness only served to engrave her story more clearly. She was present during the attempted, and to Mrs. Rich unexpected moving. Mr. Rich left with Mr. Scheck after the wife's refusal to be moved (p. 47, l. 37); she overheard Mr. Scheck ask the wife to sign some papers concerning the release of the wife's property rights; and Mr. Rich called his wife "crazy" (p. 42, l. 36).

The Court allowed this witness to testify in rebuttal, anticipating testimony on the complainant's defense on the cross petition, and she established beyond question or dispute that Mr. Rich, in the late summer of 1926 (p. 52, l. 18), was present at his wife's apartment, which was a downstairs front apartment, the windows of which were observable from the street (p. 52, l. 27), this witness having seen him sitting at the window, his shirt sleeves rolled up and without a collar (p. 46, l. 10). Although this was the only time she saw him actually in the wife's apartment, she frequently thereafter saw him go into the apartment building. The importance of this testimony, uncontradicted and uncontradictable, cannot be too strongly stressed, as must be apparent.

CHARLES GERBER, the landlord (p. 55), testified to a conversation he had had with the husband in the lobby of the apartment shortly prior to the attempted moving (p. 57, l. 25) when Mr. Rich told him he contemplated moving because he could not live with his wife (p. 57, l. 39) and that he was "going to take her down to Mulberry street, according to law, make her life miserable, so that she will go and leave herself." How illuminating is this uncontradicted testimony, which it should not fail to be noted is not attempted to be disturbed by counsel for the husband. This witness was also present on the 24th of September, 1925, when the defendant left with Mr. Scheck who informed the witness on that occasion that Mr. Rich would not be liable for the rent (p. 64, l. 13). The next time this witness saw Mr. Rich was about a year after that (p. 65, l. 25) in the lobby of the apartment, thus further corroborating the visits to the wife.

WILLIAM HARRIS (p. 177) called in behalf of the defendant, testified that he was a practicing lawyer in the City of Newark; that he had had some correspondence with Mr. Scheck concerning this case (p. 177, l. 25 *et seq.*) and that Mrs. Rich had expressed to him an unwillingness to live on Mulberry street. This witness, called as it must be remembered by the defendant, corroborated the wife's story that the husband had suggested that she live alone and accept the occasional visits of her husband (p. 178, l. 5). Mr. Harris further stated that the complainant at no time informed him, prior to his writing the letter (Exhibit D. 1) that she had left her husband.

BERNARD LEWIS (pp. 176, 179), a brother of the complainant, testified to a conversation he had with the defendant as a result of some-

thing his sister had told him prior to September 25, 1925, when he inquired of the defendant as to the cause of the trouble between him and his sister, and the defendant said (p. 180, l. 28), "I don't want to tell you. I don't want to live with her." "What's the use of my telling you, it isn't going to do any good. I made a mistake and I am willing to pay for it" (p. 180, l. 32). Nor would he say anything further, even when this witness met the defendant on his return from abroad by appointment (p. 181, l. 35) and discussed the matter. The husband evaded all discussion and said he was going to leave it to "Mannie" (p. 182, l. 13) his son-in-law, and this witness heard nothing from the defendant again.

GUSTAVE LEWIS, another brother of the wife (p. 183, l. 20), testified to a conversation he had with the husband prior to the marriage when the defendant informed him he was financially secure, and that he wished to live on High street and pay between $75 and $100 a month rent (p. 185 top).

Except for some brief testimony as to the condonation, this concluded the wife's case, and we respectfully insist that her case is indisputably established and overcomes the defendant's equivocations, evasions and elaborations.

EMANUEL P. SCHECK (p. 185), a son-in-law of the defendant, testified that the defendant resided with him and his family at 72 Girard Place, Newark, N. J., having also resided with them prior to his marriage. He was present at the moving of Mr. Rich (p. 186, l. 24); advised Mrs. Rich that his father-in-law was not going to live at the apartment (p. 189, l. 4) and that Mr. Rich could leave alone; and he told the landlord that Mr. Rich would not be liable for any rent

after October 1st (p. 188, l. 28). Mr. Scheck, while denying any conversation with Mrs. Rich on that occasion as to her signing off as to anything, admits having a conversation with Mr. Harris (p. 191, l. 25) in which he sought to excuse Mr. Rich's attempt to move his wife down to Mulberry street. He further stated to Mr. Harris "If she wants back the $5,000 she ought to give back this jewelry, and also she acquired an inchoate dower right in some property, in Market street, she ought to give that back" (p. 192, l. 10).

It is also particularly interesting to observe that Mr. Scheck unhesitatingly labelled this Market and Mulberry street neighborhood for what it was—(p. 195, l. 13). "It was not a residential section, certainly not" (p. 195, l. 25). "I should say it was inferior to that"—referring to it being a place for a skilled wage earner to live in. And it is also illuminating to note that Mr. Scheck testified (p. 200 top) that he was trying to get for his father-in-law the best bargain he could get in his dealings with Mr. Harris. How Mr. Scheck could have tried to get the "best bargain" with Mr. Harris as to the $5,000 and still insist that he did not take that up with the wife on the day of the moving is not satisfactorily explained. He must and probably did have some discussion with his father-in-law about the matter prior to the moving, otherwise he could not have been intent on getting for him the "best bargain."

ISAAC SCHLESINGER (p. 203) testified to meeting Mrs. Rich in the fall of 1925 when she advised him that she and her husband were living apart, and that she would not return until everything was in black and white. Except to

indicate how this woman had been fooled, this testimony is pointless.

The testimony of ANDREW KNEF, called by the defendant, the police officer present during the moving (p. 204), while it merely covered the husband's leaving with Mr. Scheck and Mrs. Rich being in tears (p. 204, l. 24) is important in that it gives the lie to Mr. Rich's testimony of the incident when Mr. Rich insisted that the landlord attacked him and that the officer "got in between" (p. 225, l. 32). No one of the many present testified to anything of the kind, and this officer definitely stated (p. 205, l. 34), "There was nobody during my time there abusive to anybody."

It was sought to be shown by the testimony of ROBERT D. GROSMAN (p. 207), a son-in-law of the defendant, that the defendant was at Bradley Beach from the 16th until the 26th of July, 1929, and therefore unable to have been with Mrs. Rich in Newark on the 19th, but his testimony cannot conceivably lead to any such conclusion, inasmuch as this witness left Bradley at eight each morning (p. 210, l. 20) and returned at six in the evenings and could not have known if Mr. Rich left during any day for Newark after he was gone, and returned before his return. And it must not be forgotten that this witness was not questioned as to the 28th of July at all on which date, the wife testified she had intercourse with her husband.

MRS. ROSE GROSMAN (p. 211) the defendant's daughter, also testified to Mr. Rich's visit at Bradley from the 16th of July (p. 221, l. 20) for ten days, and would have us conclude that he did not stir from there because he was present for all his meals. Bradley, as is well

known (p. 210, l. 21), is but an hour's run from Newark, and had this defendant come to the city on any morning or afternoon, he could still have been at Bradley for all his meals without arousing suspicion. But it must here too be observed that there is no question asked of this witness as to the 28th.

DR. WEINSTOCK (p. 215) testified that in calling for his daughter at the home of Mrs. Grosman, on July 26, 1928, he took Mr. Rich back to his train going to Newark, and so the husband surely was back in Newark for the 28th.

The defendant, LOUIS RICH, then testified (p. 217), and throughout, granting him the grace of being briefer than was his wife, we find innumerable contradictions, embellishments, attempts to embroider the truth, and outright false statements—not to speak of silly reasons for his unwarranted actions—which, in view of the mass of testimony of disinterested, unbiased witnesses must be recognized as a boldfaced effort on the part of this man to get rid of his wife.

This was his second marriage. He signed the lease (p. 219, l. 5) for the apartment on High street for $100 a month, his wife having selected it. Prior to the expiration of the lease he discussed with his wife their moving down to the neighborhood of the store (p. 221, l. 29), and despite her remonstrances, he rented an unimproved apartment in the Larkey Building, which in his own words is "about two and a half blocks" from the Chinatown district, making no lease (p. 223, l. 24) relying on her not accompanying him, but fully prepared to throw away one month's rent of $35 on the good cause whereon he was bent. He arranged for the moving that very morning of the 24th (p. 225 top), although

he could have given his wife a week to prepare and pack, but then we must remember that his planned coup d'etat called for speed.

He departs from truth in his recital as to the moving when he says the landlord "came in with a gang" (p. 225, l. 27) when not even his own witnesses—Mr. Scheck and the officer hint at such a thing, and further when he says the landlord threatened him and the officer "got in between" them (p. 225 bottom). He simply is calling on his imagination to bolster up his story, as he does in many other places.

He went on to tell of his trip abroad after his desertion, and his remaining abroad some seven months (p. 228), and of his meeting his wife on his return (p. 229, l. 35), but he says nothing whatever—significant we insist—about offering to provide a home for her.

When we come to the denials of the husband that he at any time had sexual relations with his wife (p. 228, l. 4), we respectfully insist that, confronted by his own story of his calling on her several times at her apartment (p. 254, l. 16) and by the fully corroborated testimony of the wife, these denials must be discounted. While it is true that the husband insisted that he was not in Newark between the 16th and 26th of July, 1929, his story of returning to Newark on the 26th and then going back for the day of the 28th is unbelievable. Were it true, the defense had ample opportunity for corroboration, by asking that question of Mr. and Mrs. Grosman, who mention the 28th not at all.

The cross examination shows this witness' story about desiring to move near his store to take his meals home, because of stomach disorders, to be false and ridiculous, for the apart-

ment he occupied with his wife was but a mile from the store (p. 234, l. 31) and the place he was taking his meals—Katz's restaurant, at the time of the trial, was twice as far, if not more (p. 234, l. 38), but apparently his physical condition at the time of the trial despite all his dining at Katz's, was good. And so this concocted reason for the moving must be abandoned.

We would inquire of this husband, why, if as he outrightly states in his direct examination (p. 221, l. 29; p. 222, l. 33) Orchard and Walnut streets (admitted to be near the store), are nice residential sections, he made no effort (p. 237, l. 7) to rent an apartment there, but instead chose unimproved rooms in the most undesirable district of Newark? The answer of course is simple—his wife would have accompanied him to a decent place, and he would have defeated his purpose.

The letter, Exhibit D. 1, sent by his daughter to Mrs. Rich, while he was abroad, suggested that she get an apartment for about $10 a month more than she was paying, making it $70 a month, and it is again to be noted that he in no way followed up this suggestion. He admits that he called her up a number of times (p. 253, l. 12); saw her often; 'phoned her each year shortly prior to the expiration of her lease (p. 253, l. 28), and gives as an excuse for not living with her that the landlord had insulted him and he didn't wish to live in that house (p. 254 top). It is true, that in a conversation with the landlord, prior to his moving, he told the landlord he was not going to continue living there (p. 253 top), but how this flimsy excuse can explain his refusal to live with his wife is not clear.

At various points in this husband's testimony, he denied ever spending any time with her in the apartment after his return from abroad, but was lead into saying "I might have passed there several times" (p. 254, l. 14) and finally was forced to admit that he had visited her in her apartment and that the last time was in October of 1929 (p. 254, l. 17), thus firmly corroborating the testimony of the wife (p. 157, l. 15), the landlord (p. 65, l. 25), landlady (p. 53, l. 11) and of Mrs. Simon (p. 270, l. 10), later referred to. He even stated that at such times as he visited her they got along and didn't fight (p. 255, l. 10), and complete corroboration is supplied as to the incident testified to by the landlady, when she saw him in shirt sleeves, for he admits that he "might have taken the coat off if it was a hot night" (p. 256, l. 19). Surely it is proved beyond doubt that the husband had been up to see his wife and spent considerable time with her. He admitted (p. 256, l. 25) that she invited him to live with her at her apartment, but he never asked her to live there with him (p. 256, l. 33). And he further admitted that in March of 1927 he was in his wife's apartment when her sister, Mrs. Simon called (p. 261, l. 27) and these hard-wrung admissions obtained from this defendant as to his visits must be conclusive of his visits to and his sexual relations with his wife.

This condensed resume of the husband's testimony fully shows the many inconsistencies in his actions. His own words brand him a deserter, and his weak excuses can avail him nothing.

MARTHA RICH, the defendant's daughter, testified (p. 263) to a conversation with the complainant about the latter's not wishing to move near the store, and that after the separation, the

only discussion she had with the complainant was as to the husband's health (p. 263 bottom).

Particularly important is the testimony of FLORENCE SIMON (p. 265), the wife's niece, who testified that at about twenty minutes to eight on the morning of July 19, 1929, when we are asked by the husband to believe that he was not in Newark but at Bradley, this witness saw him and Mrs. Rich on Lincoln Park (p. 266 top) near Broad street. Her testimony was as clear and simple as possible, and the incident was fixed in her mind because it was the day of the Prudential excursion (p. 267, l. 9) to the seashore. Nor was the testimony of this witness impeached or in any way attacked or overcome.

The testimony of MRS. CARRIE SIMON, a sister of the wife (p. 268), is of even greater importance, as she was present in March of 1927 when Mr. Rich (as he admitted, p. 261, l. 33) was with his wife in the latter's apartment (p. 268, l. 23). This witness also in July or June of 1928 (p. 271, l. 20), called at her sister's apartment, rang the bell (p. 270, l. 9), and receiving no response tried the door, found it open and entered to see Mr. Rich "lying in bed and my sister was coming out in her nightgown." This is completely dispositive of the fact that the complainant and defendant had sexual relations. The cross examination of this witness only etches the incidents more clearly, and it is of course natural, under the circumstances of her so finding the parties intimately together that she did not mention this incident to her sister (p. 272, l. 21) until a week before testifying.

MISS ANNA ALTMAN (p. 274) testified that she went to the Asbury Park excursion of the Prudential Company on July 19, 1929 with her mother and Mrs. Rich.

The conscience of this Court cannot fail to be shocked by this husband's conduct. It would seem that the Vice-Chancellor erroneously concluded that if this husband made a dozen efforts to get his wife to return to him, the first eleven of which were proved wholly insincere, that the wife should have believed and relied on the twelfth. There is really a point beyond which the most willing wife should be required to go, and in this case that point was reached when the wife actually sublet her apartment, only to be told, upon her so doing, that her husband would not go through with it.

We repeat, at the risk of becoming monotonous, that fifty insincere efforts should not be confused with one such real bona fide effort.

The principles of law applicable to the facts herein are simple and clearly dispositive of the issues raised in favor of the complainant.

It is not disputed that the husband has the right to determine the matrimonial residence, but it is respectfully insisted that our long line of decisions enforces the rule that the husband, in selecting a suitable home, act in good faith, and unless he does so act the wife is relieved of the duty to accompany her husband. If, as is clearly proved in the present case, the husband's intention in taking up or changing his residence is not bona fide, but is a deliberate choice of an abode where he intends the wife shall not accompany him, we have an actual abandonment upon the husband's part. *Boyce* v. *Boyce*, 23 N. J. Eq. 337; *Van Arsdalen* v. *Van Arsdalen*, 30 N. J. Eq. 359; *Symon* v. *Symon*, 94 N. J. Eq. 353.

The Boyce case, *supra*, which has been frequently cited and followed with approval down to the present time, is practically on all fours with the case at bar, in that there the husband tried to rid himself of his wife by removing her from a very comfortable home to one exactly opposite, without proving any need therefor. The Court in that case held the wife's refusal to continue to live in the new place entirely justified. It is of interest to note too that in that case the husband's declared intention of refusing to pay the wife's debts was held to have been an indication of his determination to be free of her. It must here be remembered that Mr. Rich had caused to be published a repudiation of responsibility for the wife's debts p. 176, Exhibit C. 2, p. 283.

And even though it were held in this case that the complainant improperly refused to accompany her husband, a finding which is not justified by the evidence, there is abundant proof that the defendant-respondent by his conduct toward his wife contributed to the separation, and failed to carry out the duty which the law thrusts upon him—"a preeminent duty to make the advances of a just man" and restore the broken home.

Our Court of Errors and Appeals has time and again engraved the rule as stated in *Hall* v. *Hall*, 60 N. J. Eq. 469, that "When the husband has, by his conduct toward his wife, contributed in any degree to her original desertion, the law requires that he should evidence that willingness by making such advances or concessions to his wife as might be reasonably expected to induce her to return to him." This same principle was adopted and followed in *Danielly* v. *Danielly*, 93 N. J. Eq., 556; *Davenport* v. *Davenport*, 97 N. J. Eq., p. 14, and in the important case of *Baxter* v. *Baxter*, 101 N. J. Eq. 236 decided by the Court of Errors

and Appeals. Justice Parker in the Baxter case stated that the husband's general conduct, coupled with his advertisement repudiating responsibility for her debts, was such a course of conduct as to definitely preclude the wife's returning.

In *Sellick* v. *Sellick*, 98 N. J. Eq. 729, Court of Errors and Appeals, the husband's efforts for the return of his wife were found to have been without good faith. The wife had in that case separated herself from the husband following a series of quarrels, and thereafter he wrote her innumerable letters suggesting her return upon certain conditions. Upon her final assent to the conditions, she was greeted with silence, and the Vice-Chancellor in his opinion in the court below discounted the efforts of the husband as lacking sincerity.

It is further argued that even where the wife's desertion has been wilful, without his fault and consent, if she sincerely repents, his silence to her requests changes the positions of the parties, and makes him the deserter. *Newing* v. *Newing*, 45 N. J. Eq. 498 states that "A husband has not the right to require his wife, even when she is in the wrong, to crawl back to him. It is his duty to take her back upon such terms as will permit her to preserve her self-respect."

The case of *Holst* v. *Holst*, 101 N. J. Eq. 682, presents facts greatly similar to those with which we are dealing in the Rich case. In that case, Vice-Chancellor Fallon considered the husband's many efforts to obtain the return of his wife weak and lacking real intent, and those efforts resemble the efforts of Mr. Rich exactly. In the Holst case it was found by the Court that the husband was trying to make a case for himself

and that his efforts were bent on that one end. The defendant-respondent in the case at bar has patently acted with the view only to found a cause for a suit for divorce on the ground of the wife's alleged desertion of him, and he should fail therein as did the husband in the Holst case and for the same reason: The advances made were not in truth designed to accomplish the return of the wife.

It must remain undisputed that our established long line of decisions places on the husband the burden of proving that he has exercised all possible effort to induce the wife's return.

In *Gordon* v. *Gordon*, 29 N. J. Eq. 535, the Court of Errors and Appeals held that "the burden was upon the petitioner to prove his case and all uncertainties of fact should be resolved against him." In *Goldberg* v. *Goldberg*, 101 N. J. Eq. 284, the Court of Errors and Appeals repeats this rule, stating that the husband "must show by a preponderance of the evidence that the defendant is guilty of obstinate desertion," and "that the burden of proving such effort is upon the petitioner and doubt as to his efforts is resolved against him"; and this of course remains the rule even though the original leaving by the wife may have been unjustified.

The defendant-respondent has utterly failed to show by a "preponderance of the evidence" that his efforts were bona fide and sincere, and he has completely failed to sustain the burden of proof placed upon him.

There is ample evidence in this case to show that during the period of the wife's alleged desertion, as set forth in defendant's cross-petition, there had been what would amount to a condonation by the husband of the desertion with-

in the period of two years from the filing of the petition. Such condonation would break the continuity of the alleged desertion. The resumption of sexual intercourse constitutes such condonation, and should prevent the husband from obtaining his divorce.

Upon the principles above stated it is contended that the decree dismissing petitioner's bill of complaint for separate maintenance and support and granting defendant's divorce is not justified and should be set aside.

Respectfully submitted,

LUM, TAMBLYN & COLYER,
Solicitors of Complainant-Appellant.

RALPH E. LUM,
Of Counsel.

New Jersey Court of Errors and Appeals

Between TILLIE RICH, *Complainant-Appellant,* *and* LOUIS RICH, *Defendant-Respondent.*	*On Appeal from Chancery.*

BRIEF IN BEHALF OF DEFENDANT-RESPONDENT.

This is a matrimonial suit arising from the wife's bill for maintenance in which she charged abandonment, the husband's answer denying the charge and his counter-claim charging the wife with desertion. The husband's counter-claim was filed on December 13, 1928 (State of Case, p. 6.) Her answer to the counter-claim, filed on July 16, 1929 (p. 17A), was a denial of the desertion charged against her and contained no matter specially pleaded in bar to the husband's cause of action. The cause was referred to Vice-Chancellor Berry and the first hearing was held on January 14, 1930, when the testimony of three witnesses was taken (pp. 40-109). The hearing was continued on January 20, 1930, and the complainant-wife was examined both in direct and on cross (pp. 110-152). After the noonday recess counsel for the wife informed the Court that he had on the previous Saturday morning learned from his client that the parties to the suit had had sexual relations in July of that year and that he asked leave to amend the pleadings to that effect (p. 152). The Court permitted an amendment, and accordingly com-

plainant filed on January 30, 1930 her amended answer to the counter-claim (p. 18). The amended answer differs from the original answer only in the respect that complainant has added a paragraph (par. 4, p. 20) alleging that on July 19, 1929, the parties had sexual relations at complainant's apartment in the City of Newark and that nine days later they again had like relations at the same place. At the conclusion of many hearings and the taking of much testimony the Court found that there had been no abandonment by the husband but that, on the contrary, the wife had deserted the husband, that the husband had made sincere and bona fide advances for the resumption of cohabitation and that her refusal to submit to those advances made her the matrimonial offender. The Court also found with regard to the wife's defense of condonation that "*it was not originally pleaded, was plainly an afterthought, and is not supported by satisfactory or convincing evidence. It is an affirmative defense and the burden of proving it is on the one who asserts it. This burden has not been sustained by the complainant* (see conclusions, pp. 21-22). Upon the advice of Vice-Chancellor Berry, the Chancellor dismissed complainant's bill and awarded a *decree nisi* to the defendant on his counter-claim for the cause of desertion. It is from that *decree nisi* that this appeal was taken by the wife.

All italics in this brief are our own unless otherwise stated.

Facts.

The parties married on August 17, 1924. She was then forty-nine years of age and it was her first marriage (p. 93). She was then living alone at the Riviera Hotel in the City of Newark and before going to that hotel had for fourteen years lived alone at the Lenox Hotel and prior to that time had been a boarder elsewhere. For a great many years she had worked as a factory hand in her brothers' business of manufacturing candy (pp. 93-94). It was the defendant's second marriage. He was then fifty-six years of age and a widower, the first Mrs. Rich having died in July of 1923. The defendant had lived with his first wife thirty-seven years and had six living children, all of whom are married and have families of their own (pp. 217-218). Before the parties married there was discussed between them the plan for their future home. The defendant told the complainant that his business was not a prosperous one, that he was located in a poor neighborhood and that he could not afford any extravagances. She replied that she was economical, had lived nearly all her life in the Down Neck section of Newark, that she had kept house for her brother, that she had known the first Mrs. Rich and that she would live with the defendant the same as did the defendant's first wife. She inquired from the defendant as to how much rent he could afford to pay and was told about fifty or sixty dollars a month and that the defendant would like to have the home somewhere in the neighborhood of his store. She agreed to the location of the home in such neighborhood (p. 218). The defendant's retail clothing store was located at the corner of Market and Mulberry streets, in the City of Newark, and his personal attendance at

that store was necessary all day, he working there from 8 in the morning until 9 at night and until 11 o'clock at night on Saturdays (p. 219).

Immediately after the parties agreed to marry complainant informed the defendant that she had seen "four wonderful rooms" and it would make her very happy if he would take them for the first year, so that she could make an appearance before her friends. He felt he could not object to this and said, "Well, if it is only for a year, go ahead" (p. 218). She thereupon selected a four-room apartment in a steam-heated, elevator-serviced apartment house on High street and the defendant signed the lease for one year from October 1, 1924. This apartment was located about a mile from the husband's store on Mulberry street, and because of his business he was unable to travel that distance either for his lunches or his evening meals, except on Sundays and holidays. His lunches he ate in a restaurant near his store and for his evening meal he ate sandwiches brought to his store by his wife (p. 219). This eating in restaurants and having only cold sandwich suppers disordered the defendant's stomach and gave him dyspepsia and indigestion, to treat which he required medical attention (pp. 219-220). Not long before the lease for the High street apartment was due to expire, Mrs. Rich went over her husband's bills on his desk and observed that they were overdue and unpaid. She made inquiry about this condition and remarked that her brothers discounted their bills, and when the defendant answered "they are rich," she replied "I was told you were rich" (p. 220). About two weeks later she asked her husband what he intended to do about the High street

apartment and was told by him that they could not stay there and was reminded by him of her promise that they would live in that apartment only a year (p. 221). Two or three weeks later she asked him if he wanted to sign a lease for the same apartment and he told her that he could not do so. She replied that he will sign it and will have to pay the rent and that she would not move. For a month the subject was discussed between them, the husband attempting to reason with her, saying to her "you know for your family's sake and my family's sake, let us do the best we can. I cannot stay here. You know that; why be stubborn?" *She then admitted to her husband that she had seen somebody and been advised that she had a right to stay in the High street apartment if she wanted to, that she could go out and buy goods in the stores and that her husband would have to pay for such purchases* (p. 221). The foregoing happened about two months before the parties separated on September 24, 1925. Up to this time the husband had not selected any other flat or apartment. He asked her to look at a place on Orchard street or at a place on Walnut street, to which he would be able to walk for his dinners. Orchard and Walnut streets are in the neighborhood of Mulberry street, where the defendant and his first wife had spent most of the thirty-seven years of their married life (p. 221). The defendant wanted to live near his store for several reasons, viz.: he could not afford the rent for the High street apartment, and he wanted to eat his meals at home. His main meal was his noon-hour lunch and he could not take the time to go home if home were a mile away (p. 222).

BEFORE September 24, 1925, the husband located but did not rent a four-room apartment in a brick apartment house at the corner of Market and Mulberry streets, directly opposite his place of business. He told complainant several times to look at the apartment. She said she wouldn't go there because she would have to pass everyone down to Walnut street. She then spoke about steam heat and was informed by the defendant that he would install gas radiators in the apartment. She refused to go and view the apartment but finally consented to the moving proposed by the husband, saying to the defendant *"If you want to, go ahead"* (p. 222). Thereupon the defendant rented the said apartment, it being located in the Larkey Building at the corner of Market and Mulberry streets, consisting of four rooms, the windows of which faced Market street. He looked at these rooms before he rented them; they were quite as nice as the place on High street but "weren't so quite up to date." They were not steam-heated but possessed all the other common improvements such as electricity and gas. The defendant rented the premises by the month, telling his wife that he would take no lease, that they would try the apartment and if they did not like it would move out. The defendant paid one month's rent. When the complainant inquired as to whether the apartment was steam-heated, the defendant promised to install gas radiators which, from his experience in the store he knew could heat the premises comfortably (p. 223).

It was necessary for the defendant to move the household effects on September 24th, although the lease on the High street apartment would not expire for another week. The expressman who was to move the effects could

move them at no other time because of "dates ahead." The defendant was unwilling to remain until after the 1st of October because he feared liability as a hold-over tenant. These conditions were discussed between husband and wife on the morning of September 24th before he left for his business (p. 224). That morning the defendant told his wife "We got to move, we cannot wait any longer." He again asked her to go down with him and look at the rooms and she replied, *"It is all right if you like them, I am satisfied"* (p. 224). He thereupon hired an expressman and accompanied him to the apartment on High street. His wife was out at the moment and the defendant directed the moving men to pack the dishes and start moving. At this point the complainant came in and announced that nobody would touch her things and that it was all hers. The husband pleaded with her and reminded her of her promise. She grabbed the furniture out of the hands of the moving men and forcibly prevented the removal of any of the articles (p. 225). Someone telephoned for a police officer to preserve the peace. Upon his arrival the defendant explained that he had to move out of the flat because his lease was about to expire. Complainant telephoned for her brother, a Mr. Gus Lewis, who came up with his son. Upon his arrival the brother announced, "No one will touch a piece out of here, that all belongs to me." The defendant telephoned for his son-in-law, Mr. Emanuel Scheck who, upon his arrival, was informed by the police officer that Mr. Gus Lewis and his son would not let complainant move. Mr. Scheck called the complainant aside and he asked her to go with her husband and stated that if she did not like the flat she could move out because

it was being taken only on a monthly rental. She said she would not move and would not live in the Mulberry street flat (p. 226). Mr. Scheck thereupon spoke to complainant's brother, Gus Lewis, informing him that the defendant had to vacate the High street apartment and wanted to know whether Mr. Lewis would be responsible for the rent for the apartment. Mr. Lewis said that he would be responsible for the rent. Mr. Scheck then inquired of the landlord whether he would accept Mr. Lewis' responsibility and was told by the landlord that he would. Thereupon the defendant moved only his clothes and personal belongings. The parties never thereafter lived together (p. 227). Mrs. Rich selected a smaller apartment for herself in the *same* apartment house on High street and continued to live there alone for four or five years, and was living there when this suit was heard in the court below.

In December of 1925, about three months after the separation, the defendant attempted several times to communicate with his wife over the telephone. When he succeeded in getting her on the phone and said to her, "Hello, Tillie," she hung up the receiver without any further conversation (p. 228). Not long thereafter the defendant was taken to Europe by his son and daughter-in-law and wrote from there to his wife several postals and letters. On August 11, 1926, the defendant sent his wife Exhibit D. 1 (p. 278), informing her that he did not have to live near the business and *could live anywhere she liked except in that particular house on High street.* In that letter he informed her of the time and place of his expected arrival in the United States and furnished her with his European address. THIS LETTER SHE RE-

CEIVED BUT MADE NO REPLY THERETO. Five days later, the defendant wrote her Exhibit D. 2 (p. 279), advising her not to sign any lease for the apartment then occupied by her and *requesting that she rent three rooms in any part of the city and telling her to "be ready when I come home. If you are willing meet me at the boat and will go home together."* In this letter he informed her of a mistake made by him in Exhibit D. 1 as to the place of arrival. THIS LETTER WAS RECEIVED BY THE WIFE AND TO IT SHE MADE NO REPLY, NOR DID SHE YIELD TO THE DEFENDANT'S WISH THAT SHE MEET HIM AND THAT THEY GO HOME TOGETHER.

About a week after the defendant returned, he sent her a letter (Exhibit D. 3, p. 281) expressing his disappointment in her failure to meet him at Hoboken, informing her of some gifts that he had brought her from Europe, and begging her to see him personally. In that letter he entreated her to inform him by phone or letter where she would see him and telling her he would be there. He asked her for "a heart to heart talk." In that letter he furnished her with his address and his telephone number and asked her to call him up or write him. He offered to call upon her if she would tell him when he could see her. In that letter he assured her that both she and he would be better off in a home of their own. In a postscript to that letter he suggested that if she would rather see him downtown he would meet her in front of the Cadillac Restaurant on Broad street where they could lunch together and talk it over, and he advised her that he would wait there for her from 12 to 12:30 P. M. on the Thursday and Friday following the sending of the letter. SHE

MADE NO REPLY TO THIS LETTER. The defendant waited for her about an hour in front of the Cadillac on each of those two days but she failed to appear (p. 229). A few days later, over the telephone, she informed the defendant that she would not meet him in Newark but that if he would go with her to New York she would talk to him. They fixed an appointment for the following Sunday afternoon and met at the railroad station. They went together to New York, had dinner and talked over their affairs. He asked her why she hadn't answered his letters and asked her to reconsider living with him again, which she declined to do (p. 229). The defendant met her about five or six times after his return from Europe and on each occasion he tried to convince her that they would both be better off to move. He placed no restrictions on her as to where their home was to be except that he declined to live in that apartment house where he had had a fight with his landlord. She declined to leave that particular apartment house unless he gave her what has been referred to as a "bonded guarantee." She demanded that she be secured by a bond that for all her life he would give her thirty dollars a week and no less and that he would give her a first-class apartment which she would like. At times she wanted a maid and an automobile with a chauffeur (p. 230).

From the time of the separation down to November 30, 1927, the defendant voluntarily paid his wife thirty dollars a week. On November 30, 1927, he was compelled to reduce that payment to twenty dollars. With his first twenty-dollar check he wrote her the letter Exhibit D. 4 (p. 282), begging her to be reasonable and to move with him in a different apartment.

This letter she received but made no reply thereto except that she forthwith consulted her counsel, Mr. William Harris. She told Mr. Harris that she was unwilling to live with her husband on Mulberry street because she did not think that it was a proper neighborhood for her to live in and because he wanted her to live on less money than he had formerly been giving her (State of Case, p. 178). Mr. Harris thereupon wrote the letter dated December 3, 1927, Exhibit D. 1 (p. 284) in which he states that he tried to persuade Mrs. Rich to return to her husband and in which he enumerates the conditions upon which she was willing to do so. The defendant kept up the $20.00 a week payments until September 1, 1928, when, owing to his conditions, he was compelled to reduce the amount to $10.00 a week. He thereupon wrote her the letter of September 1, 1928, Exhibit D. 5 (p. 282). She declined to submit to the reduction and threatened legal proceedings. Thereupon counsel for the defendant wrote the letter, Exhibit A (p. 286). That is the letter which precipitated the filing by complainant of her maintenance bill, in which bill the said letter is referred to as further evidence of his abandonment (see paragraph 11 of Bill on p. 4 of State of Case).

Both the parties to this suit rely upon the occurrences of September 24, 1925 as marking the date of the matrimonial offenses complained of. That was the day upon which the wife by force prevented the husband from moving the household effects to the home selected by him, to which selection she had in the morning of that day given her assent. That was the day when the husband packed up his clothes and left what was then the common home, since which day

the parties have lived apart. Complete and intelligent corroboration of the outstanding events of that day appear in the testimony of the witness Scheck (pp. 185 to 202). Mr. Scheck, who is a son-in-law of the defendant, was summoned by telephone to the High street apartment. When he arrived he found the moving van in front of the house. In the apartment were husband and wife, the latter's brother and nephew, a policeman and the moving men. Mr. Scheck was informed by the defendant that he was moving the furniture to an apartment downtown and was being prevented by complainant's brother and nephew because complainant did not wish to move. Mr. Scheck informed Mr. Lewis (complainant's brother) that the latter had no right to interfere and that the defendant was head of his household and had a right to move, to which Mr. Lewis replied that not a stick of furniture would be taken out of the apartment (p. 187). The complainant herself was present and when spoken to by Mr. Scheck said that she wouldn't move, that she was not going downtown and that her husband wanted to put her in Chinatown. Mr. Scheck reminded her that Market street at the corner of Mulberry street is not Chinatown and suggested to her that she go down and look at the apartment. Mrs. Rich said that she didn't want to go. When Mr. Scheck again suggested that she look at the apartment and that if she didn't like it perhaps she could find something else, she replied that she wouldn't go and that she was going to live right there (in the High street apartment). Mr. Scheck then made the observation that the lease for the apartment would expire in a week and that if the furniture remained there someone would be liable for the

rent. Complainant's brother replied that he would take care of that matter. Mr. Scheck sent for the landlord and informed him that Mr. Rich was leaving the apartment and would not be liable for the rent after October 1st and that Mr. Gus Lewis, complainant's brother, would be liable for the rent. To this arrangement the landlord agreed (p. 188). Mr. Scheck again on that occasion attempted to persuade Mrs. Rich to go with her husband and begged her to go downtown and look at the apartment and advised her that if she did not like the apartment she might find something else. He called her into another room and again pleaded with her *at least to go downtown and look at the apartment.* She was obdurate and said that she would not go and look at the apartment, that she would stay where she was. Mr. Scheck, realizing that there was apparently nothing further to be done, advised the defendant to go alone.

Shortly after the occurrences of September 24th there was a meeting in the office of the wife's attorney, Mr. Harris. It was attended by Mrs. Rich, her brother, Barney Lewis, and by Mr. Scheck representing the defendant. In the presence of Mrs. Rich her attorney said that the parties had separated because Mr. Rich had wanted his wife to move into an objectionable neighborhood (p. 190). Mr. Scheck pointed out that that was the neighborhood in which Mr. Rich had lived for forty years and in which his family had been born and brought up. Mr. Scheck asked what it was that Mrs. Rich wanted and was told that she wanted to live right there in the apartment house (on High street); that they (Mrs. Rich and her brother) had taken another place without any contacts with Mr. Rich and that he should continue to pay her

$30.00 a week (p. 191). At that conference either Mr. Harris or complainant's brother, Barney Lewis, suggested that she ought to have either the security of a house on Market street or a bond of some kind from the defendant that he would continue to pay her $30.00 a week. Mr. Scheck suggested that if any effort was to be made to bring the parties together certainly the defendant ought not be required to post any bond.

Corroborative of the testimony of the husband and of the witness Scheck is the testimony of the police officer, Andrew Knef, as to what occurred in the apartment on September 24, 1925 (pp. 204-206). When he arrived at the apartment Mrs. Rich told him that they wanted to move her furniture out, that she didn't want them to do so; that finally Mr. Rich said that he was ready to move and that he was moving into a cheaper apartment; that Mrs. Rich refused to go with him and said, *"I shan't go. I am not used to living in a place of that kind"*; that Mr. Lewis, one of the complainant's brothers, was there and that he said that he would take care of complainant, that the furniture belonged to her, that it was given to her as a wedding present and that they "shan't move any of it" and that he would provide for the complainant and take care of her. The police officer testified that Mr. Rich refused to go to the apartment that Mr. Rich had hired and after a little while Mr. Rich and the moving men left. Knef testified that when Mr. Scheck arrived he heard him talk to Mrs. Rich about the new apartment and advise her to go and take a look at it but that *she said she would not go to that neighborhood and that she had not*

been brought up in a place of that kind and would not go there now. She said that she had rooms in the same apartment house and that her brother would lease an apartment there or some other one for her *and that she preferred to remain in that house* (p. 205).

In the fall of 1925 which was shortly after the parties separated complainant informed her friend, a Mr. Isaac Schlessinger, that she was not living with her husband and when told to forget arguments and go back to her husband and that everything will turn out all right, she replied, "I will not go back to him until I have everything in black and white" (p. 203). *This testimony was not denied.*

Before the events of September 24, 1925, Mrs. Rich had formed a determination not to move to the downtown section of Newark. In a conversation with her daughter-in-law it was suggested to her that she move to the apartment house where the daughter-in-law was living on Orchard street and that it was a nice apartment. To this the complainant replied, "Martha, I wouldn't move downtown" (p. 264). The apartment house thusly referred to was a modern one, serviced with steam heat and electric lights (p. 264). It will be noted that before making this announcement she had already consulted counsel to find out if she had to go down to Mulberry street or not (see Court's examination of complainant, p. 109).

After the parties separated Mrs. Rich met her daughter-in-law downtown and was told the defendant wasn't well and was suffering from stomach trouble. She was asked, "Tillie, why don't you make it convenient for Dad? Why don't you live downtown so that Dad could go

home for his meals." Her reply was, "I wouldn't live downtown; I want to live on High street" (p. 264). On a later occasion complainant revealed the true attitude towards her husband when she stated that she was disappointed in him, that she ought not to have married him because he was too old for her (p. 264).

Wife's Defense to the Desertion Charged.

The complainant admits that on the morning of September 24, 1925, the defendant said to her, "Till, come down and look at an apartment corner of Mulberry and Market street; there are four rooms there for thirty-five dollars." She admits that to this request she replied that she could not live in that place or put her furniture in a place like that and that she didn't think they even had steam heat. She says the house to which her husband wanted to move was a brick building with a store downstairs and that there was much noise in the neighborhood because of trolley cars passing the corner (p. 70). She complains (p. 71) "that the house was not in a nice residential neighborhood." When told to look at the apartment, she replied, "No, I won't move down there," and when told by her husband that he couldn't afford to pay more than thirty-five dollars a month, she said she wouldn't look at the apartment at all (p. 71). She admits that when the moving men attempted to move some of the furniture she said, "You won't do nothing of the kind; you moving men get on out" (p. 73).

Upon her direct examination she testified that her husband wrote her a letter in October of 1926 asking her to meet him downtown, that he would like to have a heart-to-heart talk with her

(p. 79), that she met him and that he then proposed to her that they live together again and that she should rent rooms (p. 80). The Court then examined her as to her reaction to that proposal from the husband (p. 81). She admitted that her husband had authorized her to rent three rooms and to pay as much as seventy-five dollars per month, that she had agreed to this and that thereupon she not only rented no rooms but didn't even look for any (p. 81). The Court asked her whether after her husband had told her to look for an apartment she had hunted for one. She said she hadn't, and when asked by the Court why not, she stammered and stuttered and finally said that it was because of the manner in which he had left her (p. 83). Upon the Court's further questioning she stated that she had met her husband the following January (1927), went to New York and had dinner with him there, that on that occasion the defendant spoke about living together again and told her that he did not have to go near the store any more and that she could rent a place anywhere she wanted to. The Court then asked her whether she did rent a place. She replied she didn't, and when asked why not, said, "I don't know why I didn't—because I didn't hear of him, only that, until January" (p. 84). Upon further questioning by the Court she stated that in the following February her husband visited her for dinner and that on that occasion told her to rent rooms without placing any restrictions on her as to where the rooms were to be located, that in April he telephoned her and told her "to never mind," but that between February (when he told her to rent rooms) and April (when he told her "to never mind") she looked for no rooms (p. 86).

We direct this Court's particular attention to the examination of the wife conducted by the Vice-Chancellor (pp. 81-86). That examination, conducted not by partisan counsel but by the Court itself, reveals in a clear light the husband's many earnest efforts to rebuild his home and the wife's obdurate resistance to every such advance.

Her direct examination is replete with numerous requests by the husband that they resume housekeeping in rooms to be selected by her *anywhere* except in that particular apartment house where he had been vilely insulted by the landlord, Gerber, on the occasion when the defendant attempted to move his furniture and the landlord had come to the wife's rescue.

It would unduly prolong this argument for us to analyze fully Mrs. Rich's story told on cross examination. Better, perhaps, than anything else in the case it demonstrates the wilfulness and stubbornness of her desertion. There are, however, a few high spots in that testimony that demand mention. She testified that the morning of September 24, 1925 marked the first quarrel that her husband had with her and the first time that he separated himself from her in anger (p. 96). She knew during the year that they lived together that her husband's business required his attendance at the store until 9 o'clock every night and until 11 o'clock on Saturdays (p. 98). She testified the first time her husband spoke to her about moving downtown was on the morning of September 24th, when he asked her to look at the four rooms on Mulberry street for which he would pay thirty-five dollars a month, and that she replied that she would rather live in two rooms for fifty dollars a

month than live in a "dump." She admitted that she did not go to look at the rooms, although her husband had told here where they were located, and that down to the time of the trial she hadn't ever been to the flat selected by him (p. 100). She then testified that her objection to the home of her husband's selection was not due to anything other than the general neighborhood (line 20, p. 101), and that she didn't know what persons lived in the Market street building and knew nothing about it. She admitted that she physically prevented the moving men from taking the furniture, that she pushed them aside and told them to get out and that they had no right in her apartment (p. 101, line 30). She admits that Mr. Scheck spoke to her gently but denies that he attempted to persuade her to look at the apartment or try it for a month and if she did not like it to move elsewhere (p. 102). At the same time she professes to have no recollection of conversations with Scheck other than those involving money and to have no recollection of the arrangements made in her presence between her brother and the landlord for the liability for rent for the High street apartment.

She produced the original letters written by her husband (Exhibits D. 1, D. 2, D. 3, D. 4, D. 5 and D. 6). She says she made no reply to the letters sent by her husband from Europe and did not meet him upon his arrival, all because of the manner in which he left her, although she says she wanted to live with him again (pp. 106-107). She reveals, however, that when she received these overtures from her husband she did not bother with them except to turn them over to her attorney, Mr. Harris (pp. 108-109).

Complainant's attention was directed to the husband's letter (Exhibit D. 2) in which he authorized her to rent three rooms and to pay for them five or ten dollars more than her rental at High street (p. 114). She was then paying $50.00 per month. She received this letter in August of 1926. Her husband arrived in this country on October 22nd. She admits that during this interim she made "no effort at all" to comply with the request expressed in the letter (lines 10-20, p. 114). She says she failed to answer this letter because she paid no attention to any of her husband's letters. She says she wanted something settled first (p. 115), and when asked whether she had ever demanded a surety company bond from her husband or any kind of a bond, she professes to have no recollection (p. 116). She admits that when she received her husband's letter she understood that he was seeking to resume living with her but that she failed to follow his suggestions because she paid no attention to them except to turn them over to her lawyer (pp. 116-117).

Although she had previously testified that her husband never gave her any presents brought from Europe, she admits (p. 119) that he did bring from Europe and deliver to her a lorgnette.

When she received her husband's letter (Exhibit D. 4) begging her to move with him in a different apartment she made no reply to it but took it to her attorney, who wrote for her the letter of December 3, 1927 (p. 284). She says she didn't answer that letter because she didn't answer any letters except through her attorney (p. 123).

Defense of Condonation.

To the defendant's counter-claim charging desertion the complainant has interposed the defense of condonation. The alleged condonation is said to consist of sexual intercourse between the parties on two dates, viz., July 19, 1929 and July 28, 1929. The first day of the hearing before Vice-Chancellor Berry was Tuesday, January 14, 1930 (p. 40), about six months after the alleged acts of condonation. At no time within said six months did complainant by her solicitor or otherwise disclose the alleged acts. A whole day was spent in taking proofs and the cause was adjourned until the following Monday morning (p. 109). The whole of that Monday morning was taken up in the cross examination of Mrs. Rich and the Court adjourned for the noon-hour recess (p. 151). In the afternoon counsel asked leave to plead condonation, saying that he had learned from his client the preceding Saturday morning that the parties had had sexual intercourse during the month of July (pp. 152-154). Counsel for complainant admitted that the acts of condonation that he intended to rely upon arose after the cause of action for desertion was complete (p. 154). The Court allowed the amendment and thereupon Mrs. Rich testified that her husband had had sexual intercourse with her on Friday, July 19, 1929, and on Sunday, July 28, 1929.

The Vice-Chancellor observing that Mrs. Rich while testifying was looking at a calendar sheet in her pocketbook inquired about it. Mrs. Rich informed the Court that she had marked off on the calendar each date when the defendant had been there and had had intercourse with her (pp. 165-166). She stated that she had marked off

other dates on other calendar sheets representing visits from her husband but had not kept them, having torn them up. She said "this one here (the sheet for July 1929) I happened to have the calendar because my memory is poor. I am not a good speller" (p. 166). The following questions and answers then passed between the Court and Mrs. Rich (p.):

> "Q (By the Court.) You made note of it at the time? A Yes, I did.
>
> Q You have had that portion of the calendar ever since? A I had that calendar, yes.
>
> Q Why didn't you show that calendar to your counsel immediately after these occurrences? A I told you I don't know why I didn't, your Honor. I say I just didn't think—I don't know why."

She then testified that Mr. Rich had been to her apartment quite a few times and that on each occasion he had intercourse with her but that she kept no record of it. On further cross examination she handed counsel a calendar sheet for the month of July, 1929 and testified that she made the notations thereon the same week that her husband had been there and that for the month of July, 1929 she noted on the calendar each time that he came and had sexual relations with her (p. 169). She said that was the only month during which she made such notations. When asked why she made a record of each alleged visit she at first said that it had something to do with the $10.00 per week that her husband wanted to pay her (p. 170). She then said that she had no purpose in keeping the record, that she just wanted to keep track of it (p. 171, line 10). She then said that she had no reasons at all for keeping the record, that she just happened to do it; that she kept

no record of earlier or other acts of intercourse. She finally said that she kept a record of intercourse during the month of July, 1929 "because I sued him for support. I knew this was coming on. That is why. Then he promised it was going to be straightened out, but it was not straightened out" (line 30, p. 171). She further testified that she took the July, 1929 sheet off the calendar the Saturday before the hearing but didn't look through the calendar for any other sheets bearing like notations. She also testified that she had never told anybody about the alleged secret visits that her husband was paying to her home and bed (lines 20-30, p. 172).

Counsel for Mrs. Rich throughout his brief refers to her testimony as "wordy" and "confusing" but nowhere do we find any attempted explanation of this amazing conduct on the part of his client who says that after she had been outrageously abandoned by her husband, after he had repeatedly broken his promises to her to resume cohabitation and while her suit for maintenance and his counter-claim for divorce were pending, submits to his caresses and every time she does so she marks off on a calendar the event. It will here be noted that stuck away in paragraph 8 of her bill of complaint (p. 3, line 20) appears the sentence, "In October 1927 defendant visited your oratrix and remained in her apartment over night." This statement she repeated in her affidavit on an application for alimony *pendente lite* (p. 167). When asked why she had informed her counsel about *that* occurrence she said: "I told him everything that happened. Why shouldn't I tell him everything that happened? It is up to me to tell him. What for I got an attorney if I don't tell him what occurred and things" (pp.

160-161)? Notwithstanding the foregoing she testified that she didn't inform her counsel, Mr. Bilder, of the alleged two acts of sexual intercourse in July of 1929 because she was ashamed to give him the information. She realized fully the legal effect of intercourse between the parties pending the suit, for she testified that she knew that sexual relations between herself and her husband would defeat his divorce suit (p. 161). She testified that all her life she knew that if husband and wife separated and "they came back that they cannot get a divorce, if they came back and stayed over night, in the two years" (p. 161). Upon her making this admission she was asked why then she didn't immediately inform her counsel of the event if she knew the effect that would have upon her husband's divorce suit. Her answer was that she forgot all about it and didn't think of it at the time (p. 161, line 30). A moment later she testified not that she forgot about it but that she was ashamed to tell counsel (line 40, p. 161). Later she testified that every time he had sexual relations with her it was under a promise that he was going to make up to her and that he made a regular fool out of her (pp. 164-165) and that these sexual relations and deceptions had been going on from the time they parted. When asked how many times she had been thusly fooled since 1925 she said she couldn't tell how many times but that it was a great many in number and that it first dawned on her the week before the hearing in Chancery that she was being fooled (p. 165). Yet, a moment later she testified that July 28, 1929 was the last time he had intercourse with her (p. 165).

We contended in the Court below and we contend here that the allegation in the mainte-

nance suit that the defendant had spent the night with the complainant at her apartment in October of 1927 was an ill-concealed attempt to reserve the plea of condonation against an anticipated suit for divorce by the husband. Very early in the case and before Mrs. Rich was even called as a witness an attempt was made by complainant's counsel to prove by the testimony of the two witnesses, Sadie Gerber and Charles Gerber, that Mr. Rich spent the night in his wife's apartment. That testimony went in support of the aforementioned allegation in her bill. It wasn't material to her maintenance suit and when objected to (p. 45) counsel promptly disclaimed any purpose to prove condonation but only to show an interruption in the continuity of the desertion. Thereafter Mrs. Gerber testified that she saw the defendant sitting one evening on a chair near the front window in Mrs. Rich's apartment and that she at first thought it was Mrs. Rich's brother (p. 46). Mr. Gerber later testified that he saw the defendant leaving the apartment house one morning (not complainant's apartment itself) at about half-past eight but that he didn't know whether it was a year or two after the parties had separated. He did say that that observation by him occurred a few months or six months after Mrs. Gerber had told him that she saw the defendant in Mrs. Rich's front window (p. 60). When asked whether he saw Mr. Rich coming out of the apartment or out of the building he said that he saw him walking out of the downstairs lobby (p. 65).

It is to us incredible, as it must have been to the Court below, that a woman who is meticulous enough to inform her counsel in the preparation of a simple maintenance suit of the fact that her

husband had been in her apartment over night should omit during the pendency of the suit to inform him of actual sexual relations between them while the suit is already pending and after the husband had counter-claimed for divorce on the ground of her desertion. Equally incredible is it to us that a person who, by her own admission, realized the importance of such conduct on the part of the husband and in such realization kept a calendar or bookkeeping system of her husband's caresses, should utterly fail to furnish that information to her own counsel. The Court below was judicially indulgent when it characterized this lady's plea as "an afterthought" (p. 22). Her own counsel learned of these alleged acts on Saturday morning, but didn't speak up until the following Monday afternoon, by which time she had already been cross examined (on Monday morning) without any advantage to herself. Is not this significant? The plea was born of the exigencies of the case and after the cause had sufficiently advanced to indicate to Mrs. Rich that by the results of her cross examination her husband's charge of desertion was being substantiated. Regrettable indeed is it that there has not yet been devised some method for perpetuating not only the spoken word of the witness on the stand but his shifty look and his halting manner and those myriad indicia which enable the Court of first instance to look at the witness in the living flesh and say, "This witness lies."

After Mrs. Rich had testified to the intercourse on July 19, 1929 and July 28, 1929, the defendant produced the testimony of Mr. Robert D. Grossman, Mrs. Rose Grossman, Dr. Michael Weinstock and his own testimony and established to a moral certainty that he was at Bradley Beach,

New Jersey, on the two dates mentioned. It is needless to analyze that testimony except to say that it rises to the high degree of demonstration. By that testimony there was completely annihilated Mrs. Rich's uncorroborated plea of condonation. Thereupon there was a sudden shifting of ground and an attempt to establish condonation by some other event not pleaded (p. 268). This was objected to and the Court ruled that he would not allow testimony to prove some other incident showing condonation but would allow such testimony for the purpose of contradicting the defendant (p. 269). Thereupon the witness Carrie Simon, complainant's sister, testified that she came to complainant's apartment in the *Spring of 1928,* that she rang the bell of her sister's apartment and walked in, that the door wasn't locked and as she got to the bedroom door she saw Mr. Rich lying in bed and complainant coming out in her nightgown (p. 270). On cross examination she testified at first that this occurred in March of 1928 and later said that it occurred in June or July of 1928. She testified that she entered the apartment without knocking. Although at the time of this occurrence she knew that the parties had for some years been living apart she never discussed that occurrence with complainant; that she learned for the first time of the pending divorce suit only the week before her testimony was taken (p. 271), although she visited the complainant frequently. She said that although it struck her as rather strange to find the defendant in bed under the testified-to circumstances, she never talked to her sister about it but did talk to her own daughters (p. 272). A moment later she testified that about a week before she was called as a witness she reminded

complainant about the occurrence, that she did this because she thought it would do her sister some good in her divorce suit (p. 273). The witness further testified that complainant had suggested to her that the occurrence was in the year 1929, that the witness told complainant that it had occurred in the year 1928. She was firm in her assertion that it was in 1928 (p. 273). None of the testimony of the witness Simon was therefore corroborative of the dates pleaded, viz. July 19, 1929, and July 28, 1929.

ARGUMENT.

Our reading of our adversary's brief indicates to us that he adroitly confines himself to the events of September 24, 1925, and pays little, much too little, attention to the conduct of his client both before and since the day of separation. Not that this is culpable. It is certainly not incumbent on Mrs. Rich's counsel to call the Court's attention to the fact that long before the blow-up on September 24th Mrs. Rich had consulted counsel as to whether or not she was obliged to accompany her husband in the change of residence proposed by him. Nor is it incumbent upon our adversary to extract from the record and thereby emphasize before the Court those proofs, emanating mainly from the mouth of his client, that every renewed and repeated effort on the part of the husband to repair and restore the breach was either ignored or repelled with a firmness that ill becomes a yearning heart. It is, however, incumbent upon counsel, seeking by force of logic to persuade a discerning judicial mind, to explain why the lady declined to follow Mr. Scheck's suggestion, gently and kindly made, that she look at the apartment selected by her husband or try it and that if she didn't

like it a change could be made. It must be borne in mind that Mr. Rich rented the downtown apartment as a monthly tenant, standing in no way committed to a long term. We also think it is incumbent upon our adversary to explain, not lamely but convincingly, why his client paid no attention to the many letters, telephone calls and personal entreaties coming from the husband that the wife select an apartment *anywhere* in the City of Newark, he no longer (after 1926) being in business on Mulberry street and the reasons for his desiring that particular locality having ceased to exist. It is incumbent upon our adversary satisfactorily to explain the eleventh-hour resort to the defense of condonation, always a defense by way of confession and avoidance and always the last refuge of a guilty spouse. Have these factual burdens been borne by complainant? We think not and we will proceed to indicate why not.

Marital eruptions are rarely spontaneous. Their origin is generally imbedded deeply in the experience and personalities of the parties directly involved, and the revelation and understanding of the cause of trouble must be sought in the lives of the persons affected. Those lives are the background which brings out in bas-relief the tone, color and proportion of the dispute and the disputants. In no other way can human behavior be intelligently understood.

Mr. Rich found himself in that unhappy condition when, in the late afternoon of life, he was left without his help-mate who, for thirty-seven years, hadn't balked at living in the "downtown" section of Newark, who had borne him six children and who had shared with him life's joys and pains. His stay, after the death of his wife,

at the home of his son-in-law, Mr. Scheck, must have, under the most favorable circumstances, constituted a handicapped existence. A younger generation, active, energetic, pleasure-bent, with its own circles and its own concerns, can only tolerate, never adequately absorb those of an older school. Then again, to have been master of one's own home for almost forty years and then to find oneself suddenly in the position of dependency in the home of another, even though that other be a devoted child, is a bitter experience to any man already on the downward slope of life. No wonder that men thusly circumstanced strive, to paraphrase the poet, to take the shattered things of life and rebuild them nearer the heart's desire. There is no other explanation for the defendant, cared for as he was by his children, to have attempted once again to set up his household Gods.

What background does Mrs. Rich furnish? A spinster lady, more than fifty years of age, all her matured life spent in the chilling influence of boarding houses and hotels; a forelady in her brothers' factory, accustomed in that position to dictate to and exercise dominion over those who labored under her; no home in its real sense, no household cares or duties, her meals taken in hotels and public restaurants, and complete freedom from responsibility to anyone. These were the conditions under which she had worked and lived for over twenty-five years.

In this relative posture of the parties, he, attuned to domestic life and its demands and compromises, and she, unaccustomed and untried in the principles of give and take, the parties married. Disappointment came to her rather quickly. The reasons for this can be best under-

stood in the uncontroverted testimony of the daughter-in-law (p. 264 of the record):

> "Q What was the conversation? A She started to say that she was a little disappointed in him. I said 'Why?'. She said, she ought not to have married him, that Dad was too old for her, and that he was a much older man than she was."

Little wonder then that with such disappointment her only concern was that of her creature comforts and her so-called "social position." In this attitude of mind her husband's wishes, interests and rights assumed a secondary importance to her, if not utterly ignored. Little wonder then that when her husband suggested moving from the neighborhood of her choice to the one of his convenience her immediate reaction was secretly to consult counsel to find out whether it was obligatory upon her to submit to her husband's choice. The letter written by Mr. Harris, acting as her counsel, is as cold-blooded a dictation of terms of peace as might be expected from one trader to another, proper in the realm of commerce but shocking in the higher and more intimate relation of husband and wife. It is only in the aspect of a cold and calulating trader that her conduct, as revealed by the record, must be studied. Nowhere in the proofs can there be found even slight traces of any affection, loyalty or good sportsmanship on the part of the woman who knew that she was marrying a man much older than herself, settled in the ways of life and seeking for himself a companion and a life-partner, not a parasite. Nowhere in the proofs can there be found on the part of Mrs. Rich an attitude other than that of a strict constructionist, informed as to the law (erroneously we will prove) and standing firmly on her legal grounds. If that position taken by Mrs.

Rich is insecure, it is her own responsibility. By that position she must either stand or fall.

The defendant had the right to select a down-town apartment for the common home.

If there is any principle that is well settled in the law of domestic relations it is that which recognizes the right of the husband to fix the place of domicile and the duty of the wife to accompany her husband to that place. If cases are needed to support this statement they will be found elsewhere below in this brief. Of course, we do not suggest that this right carries with it the power to take the wife from a home of decency and remove her to a place of shame or from a home of cleanliness to one of squalor or from a home of comfort to one of hardship. Yet when circumstances warrant it, the husband may move his wife from a palace to a hovel and it is her duty to submit to the change. As a general rule the law does not undertake to regulate the administration of a man's home, where he shall live, how much he shall spend and what comforts he shall furnish to the wife. In the very order of things these questions are, in the main, committed to the conscience of the husband. It is only in extreme circumstances that the Courts undertake to review the husband's discretion. The question is altogether one of relativity. For a Vanderbilt to move his wife from her mansion at Newport to a flat at Market and Mulberry streets would constitute not a mere violation of the wife's rights but an act of extreme cruelty. On the other hand for a husband to move his wife from the densely populated tenement section of Newark or from the meadow-lands or from the factory district below the railroad to the same locality at Market

and Mulberry streets would be an act of beneficence and a transition from little to much. Does the present situation fall within either of these supposed cases? We are dealing here with middle class people, whose reasonable requirements of life must be gauged by their needs and their means. What right had Mrs. Rich to say that she would not live "downtown" but only on High street? What right had she to insist that she be near her social acquaintances when her husband's financial status, and his comfort and physical needs required that she be near his place of business? Which should yield to the other, the social ambitions of this wife, amusing as they are, or the business and bodily needs of the husband? What right had she to insist that elevator service be supplied her and that her apartment be decorated in the most modern and approved fashion? The examination of her by her trial counsel in which he inquires minutely as to whether the walls are painted or papered, and as to what kind of brackets or chandeliers were contained in the apartment, is a fair indication of the spirit that animates his client (pp. 239-241). The question of steam heat in the downtown apartment is of no consequence in this case for the following reasons:

1. There is no rule of law that a husband must supply any particular form of heat.

2. Here the husband had planned and intended to install gas radiators, which he had efficiently and satisfactorily used in his store.

3. The wife had theretofore refused to move to the Orchard street neighborhood into an apartment house that had elevator service and steam heat.

I think it is very fair to say that the wife's objections were solely based on her false pride and her sense of aesthetics. Shall these prevail against the more substantial verities of life?

Complainant's excuses for refusing to accompany her husband.

Mrs. Rich attempts to explain her conduct by saying that prior to the day of the attempted moving to Market and Mulberry streets her husband had told her that he intended to put her in Chinatown "to cover the law." The evidence of all the witnesses is to the effect that the corner of Market and Mulberry streets is not in Chinatown and quite a few blocks away from where some Chinamen live. Mrs. Rich testified that she knew the corner of Market and Mulberry streets for a great many years, that it was opposite her husband's place of business and to reach it it was not necessary to go through Chinatown. We don't know how many blocks or miles a neighborhood must be removed from the Chinese to escape the odium which the complainant in this case feebly attempted to throw upon the location selected by her husband. Even she herself was compelled to admit that the flat selected by her husband at Market and Mulberry streets was not in Chinatown, witness the following testimony (pp. 128-129):

> "Q Would you in December, 1927, have gone with your husband to a flat on Mulberry street? A If it was respectable, yes; if it was a decent flat I would have went.
>
> Q Even on Mulberry street? A If it was in a decent place, yes.
>
> Q Even on Market street? A Yes, if it was decent.
>
> Q What do you mean by 'decent'? A Not live among Chinamen and like that, the way he was going to put me.

Q You say that the apartment that your husband selected in 1925 at the corner of Market and Mulberry streets, is a Chinese neighborhood? A *I don't say that apartment is;* but he had told me before he ever told me about that apartment, he told me, I don't know how long before, we were in bed; he got angry about something, and he said, 'I'll take you down in Chinatown just to cover the law.'

Q On September 24th, when he told you where the apartment was located, you knew it was not in Chinatown? A Yes, I did know it."

If it were the fact that the corner of Market and Mulberry streets is so near the Chinese neighborhood as to give substance to the wife's complaint, could there not have been offered by her some bit of evidence of the fact? The absence of such evidence, coupled with her admission that that apartment house is not in a Chinese neighborhood clearly shows the falsity of her position. Her excuse amounts substantially to this: She didn't accompany her husband to the corner of Market and Mulberry streets because (as she says) he had previously threatened to put her in a Chinese neighborhood, although the selected apartment was not in Chinatown and she knew that to be so. It was therefore the alleged threat and not anything in performance of it that is her excuse. If the threat were in itself a justification for her refusal any wife, whose husband threatened to put her in an objectionable neighborhood, could thereafter refuse to go with him to a proper neighborhood. This, of course, seems absurd and yet that is in essence Mrs. Rich's explanation. Is not the true reason for her refusal to be found in the bit of testimony, on page 130,

in which she unguardedly exposes her true attitude:

> "Q You knew he wanted you to look at that apartment? A I didn't know he wanted me to look until he mentioned it to me that morning, and he said, 'Go down and look at the corner of Market and Mulberry street and look at an apartment there.'
>
> Q Why didn't you go? A Because I wouldn't live in a $35 apartment; I couldn't live in that, take me from a $100 apartment to a $35 apartment."

Suffice it to say that the neighborhood that he selected was the place where *he, too,* intended to live; it was to be their *joint* home and it was in that very district where he and the first Mrs. Rich had lived and reared their children.

Husband's repeated attempts to restore his home and wife's refusal.

The blow-up between these parties happened on September 24, 1925. Around December, 1925, Mr. Rich tried several times to get her on the telephone and once succeeded. When he said to her "Hello Tillie," she hung up the receiver on him. He didn't again communicate with her until August of 1926, about eight months later, when he wrote her his first letter from Paris.

Our adversary makes capital of the fact that Mr. Rich went to Europe without his wife. We know of very happy family circles, free of any ruptures, in which either one spouse or the other has traveled alone to Europe or other distant resorts. It certainly was not incumbent on Mr. Rich to respect his wife as a fair weather sport. If she wasn't willing to accompany him to a decent place selected by him as their home (although that place was inferior to the elevator

apartment on High street), it wasn't obligatory upon him to invite her for a European trip. How cheap a trip his son treated him to may be judged from his weekly board bill (p. 249). Then again she had very definitely and violently indicated her refusal to be with or live with her husband and we know of no rule of law that requires the husband to prostrate himself and lick the boot of an unreasonably frenzied wife. The fact that he later did virtually prostrate himself before her and did, by his letters and personal entreaties, lick her boot, is no argument that such duty rested upon him.

How little the law requires of the offended husband by way of an advance to the wife may be best seen in the opinion of Vice-Chancellor Bentley in the case of *Symon* v. *Symon*, 94 N. J. Eq. 253, in which the husband wrote the wife that he had completed a home which was ready for occupancy and expressing the hope that her judgment would recommend that she come to live, without further persuasion or argument, in the home which he so furnished. Vice-Chancellor Bentley compared this invitation of the husband to that made in the case of *Purnell* v. *Purnell*, 70 Atl. Rep. 187 (not officially reported), in which the husband there said:

> "Maud Purnell—I am willing to support you only in the home I have provided.
>
> J. W. Purnell."

Referring to this short note from Purnell, Vice-Chancellor Bentley said: "If this cool invitation, if it may be so dignified, was sufficient to discharge the burden that the law cast upon the petitioner in that case, it seems to me that the letter written by Symon went way beyond what it was his duty to do."

We respectfully submit that the defendant's letter (Exhibit D. 1, p. 278) is as fine and sincere an effort on the part of Mr. Rich to conciliate his wife as could be required by the most exacting woman similarly situated. It is not only an appeal to her better nature but is essentially a surrender to the terms dictated by her. Having disposed of his business, he informs her that he does not have to live near that business, that they can live anywhere *she* likes, except in the particular house on High street. Fearing that she may follow the ill advice of friends, he begs her not to show the letter to everybody because her friends may have different opinions. He, however, leaves her free to consult her family.

His second letter (Exhibit D. 2, p. 279) is a prompt effort on his part to insure her meeting him at the pier, for in the first letter he had mistakenly stated that the boat would dock at the U. S. Lines, when in fact it was due to dock at the Hoboken pier. In that letter he advises her not to renew her lease because both he and she might "leave Newark for awhile." He tells her to be ready when he comes back and that if she is willing, to meet him at the boat and they "will go home together."

These are the letters which she promptly turned over to her counsel, Mr. William Harris.

Notwithstanding her failure to reply to these letters or to meet him at the pier, he wrote her Exhibit D. 3 (p. 281) pleading for the opportunity of a "heart to heart talk" with her and begging her to listen to him and not to her friends and brothers, and assuring her that both would be better off in a home of their own. In this letter he offers to call upon her whenever she would see him and suggested two successive days when she could meet him downtown.

Again in November of 1927 he wrote her Exhibit D. 4 (p. 282) asking her to be reasonable and to move with him in a different apartment and to stop listening to the advice of friends This letter was written after the two-year period of desertion had run and it can not be earnestly suggested that he had for its purpose a mere gesture.

Comment is made by our adversary about Mr. Rich's insertion in the press of Exhibit C. 2 to the effect that he will not be responsible for her debts. It will be borne in mind that she had theretofore informed him that she could make purchases in the stores and that he would have to pay for them (p. 221, line 21). Notwithstanding that insertion, we find that on September 30, 1925 (four or five days after the press insertion) Mr. Rich sent his wife thirty dollars for her support and with it the letter Exhibit D. 6 (p. 282), in which he says that he is sending her the money even though she wouldn't come to live with him.

It is not enough to say in this case that the husband made just and sincere advances. He did more than that. He didn't permit pride or stubbornness to stand in the way. Humbly he prostrated himself before his adamant wife, and this not once but many times, and not alone within the two-year period next following her desertion but down to the time that she saw fit to give publicity to their marital troubles by means of her suit for maintenance, a result that he sought to avoid for the sake of his children and sons-in-law, three of whom are professional men more or less in the public eye. To us it seems that every letter and every advance by the husband was not a gesture, as our adversary characterizes it, but the cry of an old lonely man.

It may here be noted that the only testimony which counsel for the appellant says shows a lack of sincerity on the part of the husband, is testimony coming from the wife alone, wholly uncorroborated by any other witness or circumstance.

THE LAW OF THE CASE.

POINT I.

The husband has the right to choose the place of residence. The wife's refusal to move with her husband at the place chosen by him constitutes such desertion as entitles him to divorce.

Chancellor Runyon had before him the case of *Hunt* v. *Hunt* (decided in 1878 and reported in 29 N. J. Eq., page 96). The husband filed a bill for divorce for the cause of desertion. The parties had married in the West. The husband came East and established himself as a practicing lawyer in New York. He requested his wife to join him and live with him in New York, but she made no response to such letters of request. Even after answer was filed, the husband sought her coming to New York. Her reply was "that she could not think of it; that she could not think of giving up her arrangements in Wisconsin; that she could not break up all her arrangements and plans in compliance with that letter (husband's letter of invitation), adding that she could not comprehend the meaning of the message." Chancellor Runyon, in awarding a decree of divorce against her for the cause of desertion, said:

> "Her whole conduct shows a determination to live separate from her husband. Her testimony on this point is evasive and entirely unsatisfactory. Her husband had a right to choose the place at which they were to reside. He selected the City of New York. She was unwilling to go there, and preferred to live in Wisconsin. It was her duty to live with her husband in the place which he so designated, and when she refused to do so, it was, in law, a desertion. For more than three years before the filing of the bill she was living apart from her hus-

> band, after refusing to return to him without any justifying cause. The complainant has been a resident of this state since the year 1870."

In the case of *Calichio* v. *Calachio* (decided in 1915 and reported in 96 Atl. p. 658), the Court of Errors and Appeals considered the propriety of a final decree of divorce in favor of the husband, advised by Advisory Master Roe. This Court affirmed for the reasons stated in the opinion of the Advisory Master. That opinion appears in full in the Atlantic Reporter but does not appear in the affirmance reported in 85 N. J. Eq., page 213. In that case one of the reasons advanced by the defendant wife for leaving her husband was that the husband was dismantling their home. The husband proved that "he had leased another apartment, *inferior in location to the one in which they were living,* but at less rent than he had been paying, and that his wife objected to moving to that place and left him." The Court said:

> "And the whole case distinctly shows that the reason of defendant's leaving was because, as she says, 'she ought to live in better rooms' than those provided by her husband. This refusal of the defendant to live with her husband at the home selected by him was without other excuse than that she did not think it good enough—constitutes the defendant the deserting party. Hunt *v.* Hunt, 29 N. J. Eq. 96."

The case of *Purnell* v. *Purnell* 70 Atl. p. 187, not reported in State Reports) was decided by the Court of Errors and Appeals in 1908. That was on an appeal from a final decree advised by Vice-Chancellor Stevenson granting a divorce to the petitioning husband. Affirmance was for the reasons given by the Vice-Chancellor, reported in full in the Atlantic Reporter. That case defi-

nitely establishes in this state the following rules of law:

1. The wife cannot dictate to her husband their mode of living. Nor can she determine where they shall live. Neither can she compel him to come to her, but it is her duty to go to him.

2. Where the wife refuses to live in the home and at the place designated by the husband, where the same is a proper one, she has the burden, when sued for divorce, to show that she changed her attitude and notified the husband of her willingness to return, and that it is her duty to make a bona fide effort to return to that home.

3. Where the husband has by his conduct contributed to the wife's original desertion, he is under the duty to make such advances as may be reasonable to induce her to return to him, but where it is manifest from the circumstances under which the desertion took place, or *from the wife's temper and disposition,* that an honest effort on the husband's part to terminate the separation will be unavailing, the duty of making advances or concessions does not exist.

The case of *Symon* v. *Symon,* decided in 1923 by Vice-Chancellor Bentley (94 N. J. Eq., p. 353) stands for the proposition that where the husband establishes a proper home for his wife and so notifies her and she refuses for more than two years, without just cause, to live with him *there,* she is guilty of desertion. The Vice-Chancellor held that the defendant wife is under a duty to permit her husband to take her to the home established by him and that when she, without just cause, refused to follow him "she, in truth, became the deserter." Cites *Hunt* v. *Hunt,* 29 N. J. Eq., 96; *Purnell* v. *Purnell,* 70 Atl. Rep. 187 (not in State Reports).

Vice-Chancellor Buchanan decided the case of *Lucca* v. *Lucca* in 1925 (128 Atl. Reporter, p. 236. 3 Misc. Rep., page 287, not reported in State Reports). In this case the wife admitted requests by the husband, in person and by mail, that she should come to live with him in a home of their own and "that she refused, unless he would provide a home in a big city and in a municipality other than that in which the husband's parents resided." The Court said:

> "There is of course no legal justification for her imposition of such a condition."

Appellant's Citations on This Point.

Our adversary has made reference to the cases of *Boyce* v. *Boyce,* 23 N. J. Eq. 337, *Van Arsdalen* v. *Van Arsdalen,* 30 N. J. Eq. 359, and *Symon* v. *Symon,* 94 N. J. Eq. 353.

The BOYCE case very clearly states the rule as to the wife's duty to accompany her husband to such place as he may, as head of the family, in good faith determine to remove to for habitation or business "provided he does not unreasonably banish her from all society and comforts of civilized life." The facts in that case show that the husband broke up housekeeping in Jersey City and went with his wife to board at a forlorn place on the shores of the Hudson River. He stayed with her here a short time and while she was absent from the house he took his trunk and moved away to Long Island, leaving her entirely alone. Previous to doing this he didn't tell his wife that he intended to leave her nor did he ask her to accompany him, nor did he let her know at any time where he had gone. *The Court held that he had no right to take her to such place where he did not intend to reside with her himself and had no right to compel*

her to stay there, at his pleasure, alone without him. A reading of that case indicates that the husband took his wife to a place of desolation because he wanted to punish her for her bad temper. The BOYCE case was unanimously affirmed by the Court of Errors and Appeals upon the opinion of the Chancellor (24 N. J. Eq. 588).

In the VAN ARSDALEN case the husband removed from one address in New Brunswick to another in the same city. Before this removal he had thrown the wife's clothes out of their common bedroom, locked the door and kept the key, thereby excluding her from the room. He accused her of attempting to poison him and he imputed to her a physical malformation and an incapacity for the marital relation. While in the act of moving from one house to another he told her that if she had a mind to come along she could move with him, to which she replied that she was willing to go with him. The next day he told her that she had better go and live with her father on his farm. She subsequently went to her husband and asked him to take her back into his house and to support her, which request he positively denied and refused to receive her, saying that because of her physical condition he didn't want her and would not have her. The Chancellor held that it was only upon the occurrence of this latter refusal that an act of abandonment on his part arose.

In the SYMON case the parties were living with the wife's parents. The husband rented an apartment and wrote the wife that it was ready for occupancy. She declined to join him at this new home. Vice-Chancellor Bentley held that the husband had "fulfilled his obligation and duty when he established a proper home and

notified her of his desire to have her with him." We regard the Symon case as a decided authority against the appellant herein.

Assuming that Mrs. Rich had the right to insist that her husband provide a home for her in a strictly residential neighborhood and that he shelter her from commercial environment, a proposition in itself quite unheard of, the fact remains that from October, 1926 down to December, 1928, when the husband counter-claimed for divorce, Mrs. Rich held her husband's oft-expressed authority to rent any nice three-room apartment in the City of Newark except in the very house in which the parties had separated in 1925 and in which he had quarreled with the landlord. Her failure even to look for rooms, her insistence upon surety bonds, and her repeated assertions to her husband and others that she would not live with him, all demonstrate that her state of mind of September 24, 1925 remained unchanged and that she wanted nothing more from her husband but his weekly allowance. If she wasn't the deserter on September 24, 1925 she became the deserter in August of 1926 when she received the letters, Exhibits D. 1 and D. 2, made no reply to them but gave them to her counsel and failed to join her husband and take up residence with him anywhere she liked, as requested by him. If she wasn't the deserter in August of 1926 she surely became such deserter in October of 1926 when she received the latter Exhibit D. 3 and made no response to that letter except to turn it over to her lawyer. The counter-claim for divorce was not filed until December 13, 1928, more than two years after she received the invitations evidenced by Exhibits D. 1, D. 2 and D. 3. *Orcutt* v. *Orcutt,* 94 N. J. Eq. 303.

POINT II.

HUSBAND'S ADVANCES.

The husband has made all just and reasonable advances to his wife for her return.

Little argument is needed on the facts supporting the foregoing assertion. For years he made overtures to her in writing, by telephone and in person. Fortunately, the letters which he wrote her and which *she* produced at the trial (p. 104) speak "trumpet-tongued" in his behalf. Every utterance breathes earnestness and sincerity, and a warmth altogether undeserved by her to whom the appeals were addressed. He wasn't even under a duty to make any advances to her in view of what this Court said in *Rogers* v. *Rogers* (81 N. J. Eq. p. 485), where the Court held that the husband was excused from making any advances because of her act of desertion, *the imposition of unlawful and unreasonable conditions before she would return,* and other acts indicating that any overtures or efforts made by the husband to induce her to return would have been entirely futile. Citing *Hall* v. *Hall,* 65 N. J. Eq. 709; *Sterling* v. *Sterling,* 71 N. J. Eq. 59; *Purnell* v. *Purnell,* 70 Atl. 187. See also *Fisler* v. *Fisler* (Court of Errors and Appeals), 85 N. J. Eq. at page 199.

In *Purnell* v. *Purnell* (Court of Errors and Appeals, 70 Atl. p. 187), the husband wrote a letter to the wife which, in its entirety, read as follows:

> "Maude Purnell—I am willing to support you only at the home I have provided.
>
> J. W. Purnell."

The Court said the foregoing note didn't indicate a very affectionate feeling by the husband for his wife but that the wife was to blame for

it. The Court considered the sending of the note as an adequate advance made by the husband. The Purnell case contains a very excellent analysis of the rule of the husband's advances. A study of it will show that Mr. Rich has gone far and beyond his line of duty.

In *Symon* v. *Symon* (94 N. J. Eq. p. 353), the husband wrote a cold and peremptory note to the wife. This Vice-Chancellor Bentley held sufficient.

In *Calichio* v. *Calichio, ubi supra,* the Court said:

> "The only question remaining is whether the petitioner made proper efforts to secure the return to him of his wife. After defendant left him, the petitioner visited her at her father's house, and in his presence invited his wife to return to him; she refused to go to his home. The father says petitioner promised to have things fixed up, as his daughter had said the rooms provided were not fit to live in. The husband saw his wife on several occasions during the period of two years, and on each occasion invited her to return to him, which she invariably refused. This refusal was reiterated to friends and intermediaries, and as late as 1913 she declared she would not live with him any more and did not care if he died, she would not go back. The only excuse offered by defendant for these repeated refusals of her husband's invitation to return to him was that he would not fix a house which she conceived to be 'proper for her to live in.' She says, however, she did not believe his advances sincere; but the case clearly shows the contrary. The petitioner's efforts to secure his wife's return were persistently made, and as persistently repulsed by the defendant. *The reason for the wife's refusal to return to him was because he would not live in the style she*

wished. This was not a justifiable cause for desertion. Rogers *v.* Rogers, 81 N. J. Eq. 479, 86 Atl. 935, 46 L. R. A. (N. S.) 711.

"I am therefore of the opinion that the defendant's desertion of petitioner was willful, continued, and obstinate for the period of two years prior to the filing of the petition, and will advise a decree accordingly."

There are many other cases in the state in which were present cold and uninviting invitations by the husband to the wife. They were held to be sufficient. Let them be compared with any of the entreaties sent by Mr. Rich to his wife and let the comparison determine this question.

POINT III.

Condonation by Mr. Rich has not been established in this case as required by law.

We have only two acts of sexual intercourse (on July 19, 1929 and July 28, 1929) relied upon as constituting condonation by the husband. Those are the acts set up in the amended answer to our cross petition. No other acts were permitted to be proved *as a defense.* There was no testimony in support of these acts except the uncorroborated testimony of Mrs. Rich. That testimony was fully met and, as we think, utterly destroyed by the testimony of Mr. and Mrs. Grossman, Dr. Weinstock, and the defendant's own denial.

In the case of *Delaney* v. *Delaney,* decided by Vice-Chancellor Emery in 1906 (69 N. J. Eq. p. 602), the defendant's wife asserted that her adultery had been condoned by the act of the husband. This condonation was insisted on at the argument but the Court held that "this de-

fense, in order to be available, must be pleaded," citing *Jones* v. *Jones,* 18 N. J. Eq. 33; *Warner* v. *Warner,* 31 N. J. Eq. 225. The Court continued to say that assuming an appropriate amendment, the defendant nevertheless failed to establish this defense on her proofs. She swore that her husband cohabited with her on Sunday, Monday and Tuesday. As to Tuesday, she was positive both on direct and cross examination. It was proved beyond question that the petitioner spent Tuesday night in New York at his sister's. The Court said, "the condonation depends on her evidence, which is denied by petitioner, and with her credibility thus impeached, it cannot be considered as made out." The Delaney case went up to the Court of Errors and Appeals and was there reversed, but only on the single ground that the act of adultery, which formed the basis of the decree below, was the result of the husband's connivance and consent. What was said by Vice-Chancellor Emery as to condonation was tacitly approved by the Court of Errors and Appeals since in the opinion of the Court of Errors and Appeals no criticism is made of what was said in the court below on the subject of condonation.

See the case of *Warner* v. *Warner* (31 N. J. Eq. p. 225) for a splendid discussion of the rule that condonation is not available as a defense unless specially pleaded. After a decree for complainant, the defendant made application to amend his answer and set up condonation. This was denied. See also the opinion of Vice-Chancellor Van Fleet in 31 N. J. Eq. 549.

Our Court of Errors and Appeals said in *Greims* v. *Greims* (80 N. J. Eq. 234), "it is well settled that condonation is a conclusion of fact

and not of law and must be proved by the defendant, and the burden of proof is upon the defendant." Citing *Graham* v. *Graham,* 50 N. J. E. 701; *Goeger* v. *Goeger,* 59 N. J. Eq. 15; *Hann* v. *Hann,* 58 N. J. Eq. 211; *Bornstein* v. *Bornstein,* L. R. Prob., Div. 292.

In the GREIMS' case the Court of Errors and Appeals reversed Vice-Chancellor Stevens. In reversing him this Court said:

> "We agree with the learned Vice-Chancellor that this case is not without difficulties, but we think most of the difficulties of the Court below have arisen when, after decreeing without hesitation of the guilt of the wife, it was endeavored to establish condonation and condemn the petitioner to a life of most loathsome bondage.
>
> "The decree below, so far as it finds condonation, should be reversed."

We direct the Court's attention to the very excellent discussion in *Graham* v. *Graham* (50 N. J. Eq. at page 708), and, adopting the reasoning of Lord Stowell in the case of *D'Aquillar* v. *D'Aquillar* (1 Hagg. Ec. 773, cited in the Graham case), we say that Mrs. Rich has by her defense of condonation admitted that her denial of desertion was false and that this Court cannot give to her uncorroborated defense of condonation that credit which she might have received but for the inconsistency between her two defenses. Certainly, following the logic of the English case, her testimony cannot overcome that of her husband, who is not discredited otherwise than by her testimony.

In the case of *Hann* v. *Hann* (58 N. J. Eq. 212) Vice-Chancellor Grey, upon finding the defendant wife guilty of adultery, refused to believe her uncorroborated testimony of sexual

intercourse which she relied on to make out the defense of condonation. The Court said:

> "Her credibility is entirely overthrown, and while she may testify truthfully, her testimony, when *contradicted by that of her husband,* cannot be accepted *unless supported by other proof.*"

It will be observed that in the Hann case husband and wife continued to occupy the same bed and yet the Court refused to believe the wife, against the husband's denial, that while so occupying the one bed there was sexual relationship. The Court said:

> "The burden of sustaining this defense (condonation) is upon the defendant, who sets it up. In my view she has failed to carry it even when aided by the presumption of forgiveness, which attends upon continued occupation of the same bed."

CONCLUSION.

Our best argument in this case is the book of testimony. The testimony of Mrs. Rich is a mass of contradictions and evasions. Her defense of condonation was a last-minute desperate effort to stem the tide of the evidence that was mounting against her. We cannot believe that if sexual intercourse had taken place during the pendency of the suit, she would not have informed her counsel. We believe counsel, but do not believe his client. Her testimony concerning the sexual intercourse doesn't even rise to the degree of being a figment of the imagination. It is nothing but a bald fabrication on the part of Mrs. Rich, and her own counsel is as much deceived by her story as she is willing that the Court be deceived in that respect. This may be harsh language but we are dealing with

a harsh woman who, we think, would much more miss her husband's purse than his person.

Courts require but few essential facts, their imagination based upon their experiences in life supplies the rest. It requires little imagination to justify the assertion that Mrs. Rich today is resisting the decree for divorce, not because of any moral odium involved, not because of any family or personal pride, not because she hopes to win back him whose advances she has spurned for these many years, but only because so long as she keeps him matrimonially fettered she is reasonably sure of her meal ticket. So far as she is concerned, the issue is now measurable with a dollar yardstick.

Mr. Rich kept on voluntarily paying his wife thirty dollars a week, then reduced it to twenty, and then declined to pay further unless she joined him in his home. His terms were set forth clearly in the letter, Exhibit A, page 286. He testified that he paid her money for several years in the hope of avoiding a public scandal and in the further hope of winning her back. In these hopes he was disappointed. Such scandal as flows from an unhappy marriage has already been visited upon him. He failed to win back his wife, but instead brought down upon himself litigation, and plenty of it. Now that he has suffered in both respects, he says, pointing to the record in this case and employing the language of Justice Vroom (*Greimes* v. *Greimes,* 80 N. J. Eq. 233), "Do not condemn me to a life of most loathsome bondage."

The case is purely a fact case. The facts came from the lips of witnesses whom the Court below viewed and appraised. Aided by such view and appraisal he found the facts against complain-

ant. We respectfully submit that those facts were correctly found and that upon such findings and the few principles of law applicable thereto, the Decree Nisi was properly awarded and should be affirmed.

Respectfully submitted,

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