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IN CHANCERY OF NEW JERSEY

To His Honor, Edwin Robert Walker,

Chancellor of the State of New Jersey:

Complainant, Gertrude T. McDonald, of the Borough of Deal, in the County of Monmouth and State of New Jersey, says that:

1. On the Thirteenth day of April, 1928, she was married to the Defendant, Henry J. McDonald, by the Reverend Robert F. Keegan, a minister of the Gospel, at St. Patrick's Cathedral, in the City of New York and State of New York.

2. Following the said mariage she and the Defendant resided at Number 48 Esplanade, in the Borough of Deal, County of Monmouth and State of New Jersey for about a period of a year and a half, after which time and about October, 1927, they moved to Number 10 Whitehall, in the said Borough, and continued to live there until about October 1, 1928, when they moved to Number 70 Esplanade, in the said Borough, which was the home of the mother and father of the Defendant. Later, and after the death of the Defendant's father, and at the request of the Defendant, they moved to an apartment in the City of Red Bank, County of Monmouth and State of New Jersey, adjacent to an apartment occupied by the Defendant's mother, where the Complainant and Defendant continued to live until the Twenty-eight day of November, 1929, when the Defendant abandoned the

Complainant and has ever since failed and refused to support her, except for the sum of $200.00, which he sent her on December 17, 1929, and which she especially charged was entirely insufficient for her support and maintenance, all of which is more particularly hereinafter set forth.

3. No children were born of the said marriage. Complainant had three children at the time of her marriage to the Defendant by a former marriage, named John N. Moore, seventeen years old; Harry N. Moore, fifteen years old and Patricia Moore, eleven years old.

4. After the said marriage and during the time Complainant and Defendant lived at Number 48 Esplanade, in the said Borough of Deal, New Jersey, and also at their residence at Number 10 Whitehall, in said Borough, and up until October 1, 1928, they lived happily and without interference or coercion on the part of the Defendant's mother as subsequently developed and as is here set forth. During the time from the said marriage up until October 1, 1928, the Defendant amply supported and maintained the complainant.

5. After October 1, 1928, and after the Complainant and Defendant went to live with the mother and father of the Defendant at Number 70 Esplanade, in the said Borough of Deal, there developed a gradual lack of affection on the part of the Defendant towards his wife. He assumed an indifferent attitude toward her, continually finding fault, and at times became abusive. The Defendant allowed his mother to say things concerning his wife's character without defending her and which statements the Defendant knew were untrue. Defendant was also present a number of times when his mother upbraided his wife unjustly and wrongfully, and the children of his wife by a former marriage, and although

Complainant appealed to her husband to protect her against such accusations and treatment, the Defendant refused to do so. The Defendant's mother in his presence severely ridiculed the Complainant. On one occasion the mother of the Defendant told her that her son had gained nothing by his marriage to Complainant and that Complainant had planted herself in a tub of butter. The Defendant did not deny such statements and did not protest or protect the Complainant at the time. Matters finally became so unbearable that the Complainant became nervous and ill and suffered great mental anguish brooding over the apparent loss of affection of her husband and the treatment which she was subjected to, and by reason of these things required medical attention because of the fact that she was losing weight, and did in fact lost thirty-one pounds from the time of her entrance to the home of the Defendant's parents up until the abandonment of her by the Defendant. When the Complainant's condition became so aggravated that she felt she could no longer go on, she pleaded with her husband to return to their home at Number 10 Whitehall, in said Borough of Deal, which he refused to do.

6. On or about January 10, 1929, the Defendant's parents arranged to go South to their Winter home at Palm Beach, in the State of Florida. The Complainant was requested to go with them, but because of the illness of her daughter it was impossible for her to do so, but she insisted nevertheless that the Defendant go with his parents, and on or about the latter part of February, 1929, the Defendant went to Florida to join his parents at their home. It had been the intention prior to Complaniant and Defendant taking up their home with his parents, that they would return to their own home at Number 10 Whitehall, in said Borough of Deal, in the Spring. Con-

sequently, while the Defendant and his parents were in Florida, the Complainant, on or about March 23, 1929, opened her own home at Number 10 Whitehall, in said Borough of Deal, in preparation for her husband's return from the South. On Easter Sunday, March 31, 1929, she received word that the father of the Defendant was dead. On the following day she received a telephone call from her brother, Harry McManus, stating that it was the wish of her husband and his mother that she do not kiss her husband's deceased father. There was no reason given for the request. A few days later the body of the deceased arrived at Elberon, New Jersey, and Complainant went to the home of Defendant's parents to prepare the house for the funeral cortege. When her husband arrived at the house Complainant was deeply shocked because of the decided change in her husband's attitude toward her. The mother of the Defendant requested her to kiss the deceased and Complainant informed her of the message she had received, whereupon the Defendant's mother said that it was true that she had requested that the Complainant do not kiss the deceased, but that she now decided that that would be "carrying spite beyond the grave," and therefore Complainant and Defendant's mother both kissed the father. Immediately on his arrival Defendant greeted and kissed Complainant, but thereafter for one whole day did not speak to her. Complainant requested him to give an explanation of his conduct and she was informed by the Defendant that he no longer cared for her as he should. Complainant was so deeply shocked and aggrieved at her husband's statement and actions that she returned to her home at 10 Whitehall, Deal, New Jersey, for the night. The next morning which was the morning of the funeral, Complainant informed her brother, Ambrose McManus, about

her husband's statement to her of the previous night, and she was then informed by her brother that the Defendant had said to him (Complainant's brother) at the depot in Elberon, New Jersey, "that he was through with her and intended to leave her." The next evening after the funeral Complainant again asked her husband for an explanation of his conduct and repeated to him what he had told her brother. The Defendant admitted the statement to her brother and explained, "when I went South I heard from my father and mother that you hurt my father's feelings and that you had lied to me and consequently it had affected my feelings toward you, and upon my father's death I became very much embittered towards you, and I will under no circumstances leave my mother now that she is alone." Thereupon the Complainant said, "Well what about me?" and the Defendant replied, "I want you to come here and live with us," but at the same time the Defendant imposed certain conditions, namely, that Complainant's daughter could live there, but that Complainant's boys could only come there at Christmas and Easter. Complainant informed Defendant that she would not consent to such an arrangement and that she was going to their home at 10 Whitehall, Deal, New Jersey, and that if he thereafter sent word that he cared for her and loved her that she would again return to him because of her love for him. The next evening the Defendant telephoned her that he did love her and requested her to come and live with him and his mother, which she did.

7. There was no improvement in matters as far as the mother of the Defendant was concerned, and she still continued to harass Complainant and made it very unpleasant for her by her constant bickering and her actions. The Defendant likewise did not display true and

sincere affection, but continued to treat her with an indifferent attitude. Whenever the Complainant showed affection towards the Defendant in an effort to regain his love, his mother would make remarks about it and went so far as to discuss it with the servants in the home and to make remarks to the servants concerning Complainant's character, and when Complainant confronted her with the servants the mother denied the statements and accused Complainant of being a deceitful wretch, and on one occasion the mother asked the Defendant in Complainant's presence whether or not the Defendant had not told her (the mother) at Palm Beach, that he had ceased to care for the Complainant, which the Defendant admitted. During this time and continually after her husband's return from the South, he sought the company of his mother and spent his entire evenings with her, and the only time Complainant was alone with her husband was when it was time to retire. Her husband did not take her out as he had before except on occasions when the mother went with them. Complainant's condition became such through worriment and anxiety over her husband's attitude that she again threatened to leave him unless he went elsewhere to live with her, but because of the pleading of her husband and his mother she continued to live with them, hoping to regain the affection of her husband and endeavoring to make matters pleasant.

8. On or about October 1929, Complainant's husband and his mother suggested that they move to the City of Red Bank, New Jersey, to an apartment house owned by the Defendant, and that his mother take an apartment on the first floor and that they take an apartment on the second floor, but that all should have their meals together at the mother's apartment. Complainant consented to this arrangement because she believed it would

give her an opportunity to live to some extent alone with her husband. After moving to Red Bank, New Jersey, the situation did not improve, and her husband continued to spend nearly all of his time with his mother in her apartment. About four times a week the Defendant would go to New York on business, and upon his return would invariably go to his mother's apartment where Complainant would meet him at meal time. After dinner Complainant remained in her mother-in-law's apartment for a while and would then go to her own apartment because her husband sought the conversation and company of his mother, in preference to Complainant's. Defendant and his mother would, on some occasions, go for a walk and Defendant would not return to their apartment until late in the evening about time to retire. During all of the eight months they lived at Red Bank, New Jersey, and at the mother's home in Deal, New Jersey, Defendant and Complainant never went out alone either in the day time or in the night without the mother accompanying them. Complainant protested against this as she desired her husband's company alone on some occasions, but her protests were unavailing and only caused trouble. The mother was extremely jealous of Complainant, and although she several times tried to reason with her on this subject, it was of no avail. The mother continually, likewise sought the company of her son. The Defendant is not a well man and suffers from a nervous disease, and there were times, especially at Red Bank, New Jersey, when, because of his mother's attitude toward Complainant and Defendant, that his condition became so aggravated that public scenes were created, at which time the mother would likewise go into a rage, which made the situation unbearable, and brought their trouble to public notice.

9. Complainant protested many times to the Defendant that she could not put up any longer with his actions and those of his mother and recited the effect that the arguments and worriment had upon his health and that of the Complainant, and spoke to him of his treatment of her as a result thereof, and his mother's continual statements to her that the Defendant no longer cared for Complainant, that it was necessary for the Defendant to make a home for them separate and apart from his mother since the way they were living had likewise very much affected her health. Some short time prior to November 28, 1929, Complainant informed Defendant that he would definitely have to choose between making a home for her away from his mother, and his mother, and the Defendant informed the Complainant that he chose to live with his mother, and would not leave her. Thereupon Complainant made up her mind to leave and so informed Defendant. Again the Defendant and his mother made all sorts of promises that matters would be different and they persuaded Complainant to remain, which she did, again reiterating her love for her husband and her desire to live happily with him.

10. The Defendant and his mother then arranged to go to Pinehurst, North Carolina, and it was agreed that Complainant should remain home because her boys were returning from school for the Thanksgiving Holiday. On Friday, November 22, 1929, Defendant remained very late at his mother's apartment and Complainant was alone in her apartment waiting for him, and when he came to his apartment Complainant asked him whether this conduct on his part was going to continue for the rest of her life. In other words, that is, whether she would only have his company when his mother had retired, and she reminded him of his promises of a few days

before. The Defendant flew into a rage and Complainant remonstrated with him and said "things have come to a pretty pass when because I love you so and desire your company that you get into a rage about it." The Defendant replied "you had better go ahead with your original plans," meaning that Complainant was to leave, and live separate and apart from her husband. The next day, November 23, 1929, Defendant left with his mother and a sister-in-law of his mother, for Pinehurst. The Defendant telephoned that day from New York to Complainant's brother, Ambrose McManus, at Elizabeth, New Jersey, and said, "this is worse than the eternal triangle, there is no happiness this way for any of us; no matter what I do someone is going to be hurt and as long as my mother lives I will choose her and you look after your sister's interests."

11. Her brother did not impart this information to her for about twenty-four hours. When she learned of the message Complainant was very much aggrieved, but not surprised, since her husband had made it plain to her upon his leaving and on many other occasions by his statements and actions, that he preferred living with his mother to living with his wife, and on the Twenty-eighth day of November, 1929, Complainant moved from the apartment at Red Bank, New Jersey, to her home at 10 Whitehall, Deal, New Jersey.

12. Defendant returned from Pinehurst on the Monday following Thanksgivng Day, December 2, 1929. Complainant did not hear from him directly or indirectly until her Solicitors in these proceedings received word from the Defendant through his lawyer that he had caused a letter to be written to merchants with whom they were dealing that no credit was to be extended to her, and later on the Seventeenth day of December, 1929,

he forwarded to Complainant a check for $200.00, since which time down to the filing of this Bill of Complaint, Comp ainant has not received any further moneys for her support and maintenance. Complainant at this time became quite ill and required the attention of a physician and a nurse.

13. She shows and charges, that ever since the Twenty-eighth day of November, 1929, the said Defendant has abandoned her without justifiable cause and has separated himself from her and has refused and neglected and still does refuse and neglect to support and maintain her except as herein set forth.

Complainant therefore prays:

1. That the said Henry J. McDonald may answer this bill of complaint, and each statement therein made.

2. 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 the support and maintenance of Complainant and her children.

3. That the said Defendant may be compelled to give reasonable security for such maintenance, and to pay the same from time to time under the compulsory order of this Court, as provided by Statute; and in case the said 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 may be made by this Honorable Court.

4. That the Defendant may be compelled to pay to Complainant a proper amount for counsel fees, and that she may have such other relief as the circumstances of her case may require.

5. That the State's writ of subpoena issue out of and under the seal of this Honorable Court, directed to the said Henry J. McDonald, commanding him by a certain date and under a certain penalty therein to be expressed, to be and appear before your Honor and this Honorable Court, then and there to answer all and singular the said premises, and to abide by and perform such order and decree made therein, as to your Honor shall seem meet, and shall be agreeable to equity and good conscience.

And this Complainant will ever pray, etc.

ALFRED A., ALFRED A., JR.,
AND RICHARD V. STEIN,
Solicitors for Complainant.

ALFRED A. STEIN,
Of Counsel.

IN CHANCERY OF NEW JERSEY

Between
GERTRUDE T. McDONALD,
Complainant,
and
HENRY J. McDONALD,
Defendant.

ON BILL, ETC.
ANSWER.

The defendant, HENRY J. McDONALD, of the Borough of Deal, County of Monmouth and State of New Jersey, answering the complaint in the above entitled cause says that:

1. Paragraph One is admitted.

2. Defendant denies the allegation in Paragraph Two that defendant abandoned the complainant and has ever since failed and refused to support her and says, on the contrary, that the defendant, ever since his marriage to complainant, has amply and suitably supported her and provided for her and that on the 28th day of November, 1929, the complainant abandoned the defendant and has ever since that time refused to return to live wtih him, although he has stood ready and willing to provide a home for her.

3. Paragraph Three is admitted.

4. Paragraph Four is admitted.

5. Paragraph Five is denied.

6. Defendant denies the allegations in Paragraph Six, but says that complainant, during the last months of the life of the father of this defendant, had made one or two statements to and concerning defendant's father which had caused some difficulty and unpleasantness, and that complainant and defendant quarrelled about it after the death of defendant's father, but that defendant and complainant became reconciled immediately, as a result of defendant's efforts to get the complainant to return to him.

7. Paragraph Seven is denied.

8. Defendant denies the allegations in Paragraph Eight that he mistreated his wife in any way while they were living at Red Bank, New Jersey, but says that his conduct in all respects was proper, dutiful and affectionate.

9. Defendant admits that complainant objected to the defendant's mother, but defendant denies the other allegations in Paragraph Nine and says that the defendant at all times tried to live amicably with complainant and to consummate an arrangement which would be satisfactory to the complainant and to defendant's mother as well.

10. Defendant denies the allegations in Paragraph ten and says that the separation between complainant and defendant was caused by the complainant herself. In November, 1929, it was planned that defendant should go to Pinehurst, with his mother, and defendant requested complainant to go along. Complainant declined to go

because one of her sons was returning from school for Thanksgiving. On the night before defendant was to leave, defendant stayed in his mother's apartment for a short time to arrange some details of business for his mother and complainant objected to it very strenuously. Defendant then left for Pinehurst with his mother and when he returned to New Jersey found that during his absence the complainant had deserted him.

11. Defendant has no knowledge or information as to what information complainant gave to her brother. The remaining allegations in Paragraph Eleven are denied.

12. Defendant denies the allegations in Paragraph Twelve and says that he never deserted complainant or abandoned her, but that during his absence complainant deserted the defendant and that defendant has always been ready and willing to receive complainant back in his home, and that defendant has made several efforts to prevail upon complainant to return to him.

13. Paragraph Thirteen is denied.

Wherefore this defendant prays to be hence dismissed and to have his costs in that behalf most wrongfully sustained.

.....

Solicitor of Defendant.

Docket 77 - 178.

IN CHANCERY OF NEW JERSEY.

Between GERTRUDE T. McDONALD, *Complainant,* and HENRY J. McDONALD, *Defendant.*	ON BILL, ETC. FINAL DECREE.

This cause coming on to be heard on the Eighteenth, Nineteenth and Twenty-second days of September, and on the Sixteenth and Seventeenth days of October, and on the Eighth and Thirteenth days of November, 1930, in the presence of Alfred A., Alfred A., Jr., and Richard V. Stein, Solicitors for and of Counsel with the Complainant, (Alfred A. Stein appearing) and Ward Kremer, Esquire, Solicitor for the Defendant, on Bill, Answer and Oral Proofs taken in open Court, whereupon and upon duly considering the pleadings and proofs and hearing and considering the arguments of Counsel, from all of which it now appears satisfactorily to the Chancellor that the Complainant and Defendant were lawfully married on or about the Thirteenth day of April, 1926; and that the Defendant, without any justifiable cause, abandons the Complainant and separates himself from her and refuses and neglects to maintain and provide for her; and that the parties have their domicile in this State; and that the Defendant was personally served with process within this State.

It is, thereupon, on this Twenty-first day of November, 1930, by his Honor, EDWIN ROBERT WALKER, Chancellor of the State of New Jersey, ORDERED,

ADJUDGED and DECREED, that the Defendant do pay to the Complainant, or to her Solicitors, the weekly sum of One Hundred Fifty ($150.00) Dollars per week from and after the date of this Order for the support of the Complainant, and that the Complainant give up and surrender the premises in which she now resides at Number 10 Whitehall, Deal, Monmouth County, New Jersey, on the First day of February, 1931, and that commencing on said First day of February, 1931, the Defendant be, and he is hereby required to pay to the Complainant, or to her Solicitors, the additional sum of Two Hundred ($200.00) Dollars per month each and every month in advance, which sum is allowed the Complainant for living accommodations elsewhere.

And it is further ORDERED, ADJUDGED and DECREED, that the said Defendant do further pay to Alfred A., Alfred A., Jr., and Richard V. Stein, Solicitors of the Complainant, the sum of Fifteen Hundred ($1,500.00) Dollars in full as a counsel fee and costs, all of which is hereby adjudged and decreed to be a reasonable counsel fee, and that the said Solicitors and the Complainant do have execution for said counsel fee according to the practice of this Court.

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

E. R. WALKER,
Chancellor.

Respectfully advised,
R. H. McADAMS,
Advisory Master.

A True Copy.
FERD GARRETSON,
Clerk.

Docket 77-178

IN CHANCERY OF NEW JERSEY

Between
GERTRUDE T. MCDONALD,
Complainant,
and
HENRY J. MCDONALD,
Defendant.

ON BILL, ETC.
AMENDED FINAL
DECREE.

This matter coming on to be heard on Notice of motion for a modification and amendment of the Decree dated the twenty-first day of November, 1930, and filed in the above entitled cause on November 24, 1930, in the presence of Alfred A., Alfred A., Jr., and Richard V. Stein (Alfred A. Stein appearing), Solicitors for the Complainant, and Ward Kremer, Solicitor for the defendant, and the Court having heard the arguments of Counsel and considered the same;

It is, thereupon, on this Twenty-fourth day of January, 1931, by his Honor, EDWIN ROBERT WALKER, Chancellor of the State of New Jersey, ORDERED, ADJUDGED and DECREED, that that portion of the said Decree heretofore entered in the above entitled cause which provides that the Complainant give up and surrender the premises in which she now resides at Number 10 Whitehall, Deal,

Monmouth County, New Jersey, on the first day of February, 1931, and that commencing on said first day of February, 1931, the Defendant be required to pay to the Complainant, or to her Solicitors, an additional sum of Two Hundred ($200.00) Dollars per month in advance for living accommodations elsewhere be, and the same is hereby vacated.

It is further ORDERED, ADJUDGED and DECREED, that in all other respects the said Decree be and the same is hereby ratified and confirmed.

ROBERT H. MCADAMS,
Advisory Master.

E. R. WALKER,
C.

IN CHANCERY OF NEW JERSEY

Between
GERTRUDE T. McDONALD,
Complainant,
and
HENRY J. McDONALD,
Defendant.

ON BILL, ETC.
NOTICE OF APPEAL.

SAT BELOW
ROBERT H. McADAMS, ESQ., ADVISORY MASTER

To ALFRED A., ALFRED A., JR., *and* RICHARD V. STEIN,
Solicitors for Complainant.

Please to take notice that the defendant, Henry J. McDonald, hereby appeals from the Amended Final Decree made by the Chancellor on the advice of Advisory Master Robert H. McAdams, filed in the above entitled cause on the 27th day of January, 1931, and from the whole and every part thereof, to the Court of Errors and Appeals in the Last Resort in all causes.

Dated February 3, 1931.

WARD KREMER,
Solicitor and of Counsel with Defendant,
Henry J. McDonald,

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

WARD KREMER,
Of Counsel with Defendant,
Henry J. McDonald,

NEW JERSEY COURT OF ERRORS AND APPEALS

Between GERTRUDE T. McDONALD, *Complainant-Respondent,* and HENRY J. McDONALD, *Defendant-Appellant.*	ON BILL FOR MAINTENANCE. 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 HENRY J. McDONALD, the appellant in the above stated cause, respectfully shows that your petitioner finds himself 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 24th day of January, 1931, in a cause above entitled, to wit: an action brought by the said Gertrude T. McDonald against your petitioner for maintenance upon the ground of abandonment, in this respect, to wit: that the said Decree orders and adjudges and decrees that your petitioner pay to the complainant, Gertrude T. McDonald, or her solicitors, a weekly sum of One Hundred Fifty ($150.00) Dollars from and after the date of the Order, for the support of the complainant.

Your petitioner appeals from that portion of the Decree, which decrees as aforesaid, upon the ground that the same is erroneous in that the evidence did not war-

rant the Court in finding that your petitioner was guilty of the charge of abandonment, and that the evidence did not warrant the Court in finding that the complainant was entitled to the weekly sum of One Hundred Fifty ($150.00)) Dollars from the date of the Decree.

That the said Court should have dismissed the bill filed by the said Gertrude T. McDonald against your petitioner.

Your petitioner therefore prays that the said Decree of the 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 direction to dismiss the bill filed by the said Gertrude T. McDonald against your petitioner, and that your petitioner may have such other and further relief in the premises as to this Honorable Court shall seem meet.

WARD KREMER,
Solicitor and of Counsel
with Appellant.

NEW JERSEY COURT OF ERRORS AND APPEALS

Between GERTRUDE T. McDONALD, *Complainant-Respondent,* and HENRY J. McDONALD, *Defendant-Appellant.*	ON PETITION FOR MAINTENANCE. ON APPEAL FROM CHANCERY. ANSWER TO PETITION OF APPEAL.

The answer of Gertrude T. McDonald, the above named respondent, to the petition of appeal of Henry J. McDonald, the above named appellant.

The respondent not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto, nevertheless, admits that a decree was on the Twenty-fourth day of January, 1931, made and entered in the Court of Chancery of New Jersey, in the above entitled cause as in said petition mentioned and as therein set forth, but as to the substance and form thereof this respondent begs leave to refer thereto when the same shall be produced.

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

ALFRED A., ALFRED A., JR.,
AND RICHARD V. STEIN,
Solicitors for Complainant.

ALFRED A. STEIN,
Of Counsel.

NEW JERSEY COURT OF ERRORS AND APPEALS

Between
GERTRUDE T. MCDONALD,
Complainant-Respondent,
and
HENRY J. MCDONALD,
Defendant-Appellant.

ON BILL FOR MAINTENANCE

ON APPEAL FROM CHANCERY.

NOTICE OF ARGUMENT.

SAT BELOW:

ROBERT H. MCADAMS,
Advisory Master

To ALFRED A. ALFRED A., JR., and RICHARD V. STEIN,
Solicitors for Respondent:

SIRS: Please take notice that we shall bring on the argument of the appeal in the above entitled cause before the New Jersey Court of Errors and Appeals, on the third Tuesday of May, 1931, at the State House, in the City of Trenton, at ten-thirty o'clock in the forenoon, or as soon thereafter as counsel can be heard.

Respectfully,
WARD KREMER,
Solicitor for Appellant.

Dated—March 20, 1931.

NEW JERSEY COURT OF ERRORS AND APPEALS

Between
GERTRUDE T. McDONALD,
Complainant-Respondent,
and
HENRY J. McDONALD,
Defendant-Appellant.

ON BILL, ETC.
STIPULATION.

It is hereby stipulated by and between Alfred A. Stein, solicitor for the complainant, and Ward Kremer, solicitor for the defendant, in the above entitled cause, as follows:

1. Complainant and defendant in the said cause were lawfully joined in the bonds of matrimony on the 13th day of April, 1926.

Dated—April 7, 1931.

(Signed) ALFRED A. STEIN,
Solicitor of Complainant.

(Signed) WARD KREMER,
Solicitor of Defendant.

D-1 IDENT *Copy*

JJ 9/19/30

Phone Asbury Park 1037—1485-M

Asbury Park, N. J., July 23d, 1930

M H. J. McDonald - 70 Esplanade, Deal

To HESS FUEL CO., *Dr.*

Coal, Wood and Fuel Oil

1102-1106 Corlies Ave. Neptune, N. J.

Oct. 30—Bill rendered		668.10	0
Nov. 9—on a/c		516.60	
	Balance	151.50	
14—2 ton nut—70 Espl		28-	
16—10 " Stove—Green house		140-	
Feb. 4—2 " " " "		28-	
Mar. 1—2 " " " "		28-	
" 25—2 " " 70		28	
Apr. 4—2 " " 70 Espl		28-	20
9—3 " " & nut " "		42	
15—1 " " " "		14-	
19—¼ " " 48 Espl		3.50	
21—1 " " 70 "		14-	
30—1 " " 70 "		14-	
May 13—1 " Nut 70 "		14-	
26—4 " " & stove 70		56	
June 10—½ Cord Wood		9-	
			598-
	Credits		30
May 23—on a/c		403.50	
July 21		102.50	
23		92	598-

Paid July 23/30
M. HESS
A.

D-1

JJ 10/17/30

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

I, THOMAS M. FARLEY, Clerk of the said county and Clerk of the Supreme Court of said State for said County,

DO HEREBY CERTIFY that the

CERTIFICATE OF INCORPORATION

of

JOHN M. McDONALD LUMBER CORPORATION with acknowledgment thereto annexed, was filed and recorded in this office on the 20 day of July 1929 at 10.23 A. M.

IN WITNESS WHEREOF I have hereunto subscribed my name and affixed my official seal this 20 day of July 1929.

THOMAS M. FARLEY, Clerk.

IN CHANCERY OF NEW JERSEY

Between
GERTRUDE T. McDONALD,
Complainant,
and
HENRY J. McDONALD,
Defendant.

TESTIMONY.

Transcript of stenographer's notes of evidence taken in the above entitled matter before HON. ROBERT H. McADAMS, an Advisory Master in Chancery of New Jersey, at his office, Kean Building, Elizabeth, New Jersey, on the eighteenth day of September, A. D. 1930, at 10:00 o'clock A. M.

APPEARANCES:

ALFRED A., ALFRED A., JR., and RICHARD V. STEIN,
Attorneys for the Complainant,
by ALFRED A. STEIN (Present).

WARD KREMER, Attorney for the Defendant (Present).

MR. STEIN—Will your Honor permit me to call out of the regular order one of the witnesses other than the complainant?

THE COURT—No objection.

MR. KREMER—May I say this before you call the witness? There have been, in the course of these proceedings, one or more attempts on the part of the defendant to effect a reconciliation, and he has asked his wife to return to him. Those efforts began last December, and were repeated again this Spring. I believe, as the testimony develops, that it will be seen that there is nothing in the case within the authorities in our State, that justifies departure, that is, so far as the actual conduct on the part of the defendant is concerned.

I wish now to renew that former application before your Honor. Mr. McDonald desires that his wife return to him. He has the same apartment ready at Red Bank that he had when she left, and he now makes this offer. Mr. McDonald has an apartment house at Red Bank, and at the time his wife left the apartment, they were living there.

THE COURT—What is the number, so that they can be identified?

MR. KREMER—345 Broad Street, Red Bank.

He desires that his wife should return, and asked me now to make this offer here in open Court as it has been made between the parties, requesting that she return and expressing willingness to go so far as he may to effect a

reconciliation, and to do everything possible to go on as they had been going, and to perform his duties as a husband and take care of her in every other respect.

MR. STEIN—In reply to that, and in order that the Court may not become confused, let me say this: The difficulty arises just at that point and has been caused by reason of living there as they were in the apartment at Red Bank.

THE COURT—Do you refer to the same apartment?

MR. STEIN—The same apartment that counsel now offers. There was no offer on the part of the husband that comes through counsel. There have been conferences about this matter and attempts to settle the difficulties that arose. The difficulty is that the defendant will not give up his mother and has made his choice, and he has chosen his mother as against his wife. You will find that all through the case that was the trouble, and the offer that is made is a hidden offer. It is, "Come back to mother," which we decline to do.

MR. KREMER—If your Honor please, in order that the record may state exactly what I mean, I do not quite follow Judge Stein's saying that the offer came from me and not Mr. McDonald, because he can hardly speak here at this time, but he has spoken, so far as language would express his wishes, last December and again in April or May of this year. Mr. McDonald's apartment at Red Bank is for himself and his wife separate and apart from his mother. There is nothing to be concealed here, and I do not want to hold anything from your Honor. At the time this lady departed and they separated, his mother

had another apartment in the same building. Of course, there are some thirty-five or forty apartments in the house, and we submit that it is not living with your mother-in-law to occupy an apartment in the same building in which she also occupies one, although they did make it a practice of taking their meals there in his mother's apartment, and that seems to be the moot question.

THE COURT—I think it would be better to allow that to develop in the testimony.

MR. KREMER—For the purpose of the record, I want to make the offer on the record.

HARRY McMANUS, a witness called on behalf of the Complainant, being first duly sworn according to law, on his oath, saith:

DIRECT EXAMINATION

By MR. STEIN:

Q. Mr. McManus, you are a brother of the complainant in this proceeding? A. I am, Judge.

Q. And you know the defendant, Henry J. McDonald? A. I do.

Q. Do you remember when the complainant and the defendant were married? A. I do.

Q. Do you now recall the date of the marriage? A. I think it was the 13th of April, 1927. I am not positive of the year.

Q. Were you present at the wedding supper at Sherry's? A. I was.

Q. In New York City? A. Yes.

Q. You were not present at the ceremony, but you were at the wedding supper? A. That's right.

Q. After the marriage, do you know where the complainant and the defendant went to live? A. In Deal, New Jersey, at, I think it was 48 Esplanade.

Q. Do you know how long they lived there in that place? A. It seems to me about a year and a half.

Q. Where did they move to thereafter? A. It was 10 Whitehall.

Q. Also in the Borough of Deal in this State? A. Yes, Borough of Deal.

Q. After that, do you know whether they lived together as man and wife? A. Yes.

Q. Where was the next place? A. I think the next move was to Red Bank.

Q. Are the couple living together now? A. No.

Q. Do you know when they became separated, approximately? A. The latter part of November, a year ago.

Q. Was there a time when the complainant and the defendant lived in the home of the mother and father of the defendant? A. Yes.

Q. About where was that? At what place? A. It is 70 Esplanade, Deal, New Jersey.

Q. Did you have occasion to visit them there at 70 Esplanade while they were living with the mother and father of the defendant? A. Yes, sir.

Q. Prior to the time when the couple went to live with the mother and the father of the defendant at 70 Esplanade, can you say whether or not your observation was that they were happy? A. Yes, I would say so.

Q. After they went to live with the old folks at their home at 70 Esplanade, was there any change, so far as you could observe, in that condition of happiness? A. Well, there was a gradual change, I would say, Judge.

MR. KREMER—I object to this. I think the witness should state specific occurrences that he observed, and not any conclusions.

MR. STEIN—I shall ask him to do that.

THE COURT—It will be predicated on his actual knowledge, of course, or stricken out.

By MR. STEIN:

Q. What did you observe of the change in the happiness of the couple? A. Specifically, I don't think that I can quote from the time of their going into 70 Esplanade.

Q. Generally, what did you observe? A. There was more or less the beginning of a lack of freedom. There wasn't the same—at least I sensed that there was not the same feeling existed.

MR. KREMER—I move that that be stricken out as a conclusion as to what he sensed.

MR. STEIN—I propose to show facts from which the witness had a right to say that he sensed.

MR. KREMER—I object to that as a conclusion. I have no objection to the facts.

MR. STEIN—I will consent that it be stricken out.

THE COURT—Of course, conclusions and evidence that may be introduced in this case, which are not strictly evidential, are not going to be influenced in any way in the final determination of the case. So that we may understand ourselves in the trial of this case, I think we can obviate the necessity of technical objections and allow the record to show an objection. What is good evidence will be considered, and what is questionable will not be considered.

On the question of testimony of this witness, it is quite evident that unless you lead him right to the point, he must rather give his impressions to justify his testimony in the first instance, so I shall allow it on the theory that it must be coupled up properly or it will be stricken from the record in its entirety.

MR. STEIN—I shall be very glad to have it stricken out if it is not connected.

THE COURT—I do not think it is necessary for us to get into technical objections on the question of whether or not the evidence is strictly evidential, because, in the last analysis, it is the record in these cases which controls. What is good will be considered, and what is bad will be disregarded.

MR. KREMER—I don't want to be technical, but I think that when a witness says, "I sensed difficulties," that that is highly objectionable.

THE COURT—If that is followed up by the proper ground work, of course it is evidential, but if it is not, then we will consider an application to strike it out.

You must realize that I want all the facts in this case and all the surrounding circumstances.

By MR. STEIN:

Q. When you say that you sensed, do you base that upon any actual observation of the couple, things that you saw, that made you say you sensed?

By THE COURT:

Q. What do you mean by "you sensed?" A. Well, your Honor! I can only say that there wasn't the same feeling as far as I personally was concerned, when I walked into the house or was with them under these particular circumstances, that existed when they were alone or in their own home.

Q. How did it evidence itself? A. Well, there was—I would say through the freedom of action. There was consultation to a large extent, it seemed to me, if there was a person going one place or another, or the conversation would not be as free or open. It would be more guarded, and there was constant consideration, it seemed to me, in the effect that a statement or action would have on all four, rather than just the one or two. There was not the same freedom or openness, either in statement or in action. There was more deference to other people who were there, and after you had visited a few times or after you had spent some time in the company of the foursome, you felt that atmosphere. That is as definite as I can tell, so far as 70 Esplanade is concerned.

MR. KREMER—I renew my motion to strike it out.

THE COURT—I will let it stand.

By MR. STEIN:

Q. Do you recall the month of January, 1929, when you were in Florida? A. Yes.

Q. In Miami, Florida? A. Yes.

Q. At that time, was the mother and father of the defendant in Florida? A. Yes, sir.

Q. And you were wintering in Miami? A. Miami Beach.

Q. In the latter part of February, 1929, did you meet the defendant in Miami, Florida, at the home of his parents? A. I am not sure about the date; I don't know whether it was March or February.

Q. But you did meet him in 1929 in the Winter, in Miami, Florida, at the home of his parents? A. That's right.

Q. Where was the parents' home? A. Palm Beach.

Q. Had you known before the defendant arrived there from either of his parents that he was coming there? A. Oh, yes.

Q. In that conversation, what was said? By the way, which parent was it?

MR. KREMER—I object to that as not binding on the defendant. He was not present.

(Argument.)

MR. KREMER—For the purpose of the record, may I again state my objection on the ground that any statements made by the mother or the father to Mr.

McManus out of the presence of this defendant are not binding in any sense on him.

MR. STEIN—I shall connect it up, or it may be stricken out, if it is not connected.

By MR. STEIN:

Q. At that time while you were in Miami, you visited the home of the parents in Palm Beach? A. Yes, I did.

Q. And before the defendant came there, was there any conversation between you and the mother concerning the defendant's coming there? A. There was.

Q. What was that conversation, briefly? A. As briefly as possible, I will tell you that I think it was the latter part of February that same year. Mr. McDonald, Senior, Mrs. McDonald, and Mr. McDonald drove down from Palm Beach and paid us a visit at our little place. It developed during the visit that Mrs. McDonald was particularly upset because of the inability of Jack to come down to join them at Palm Beach.

Q. By *Jack,* you mean the defendant? A. Yes.

MR. KREMER—I move that that be stricken out as calling for a conclusion. It does not state anythink that she said.

By MR. STEIN:

Q. What did she say that makes you say she was particularly unhappy? A. The desire was that Mura, the butler, accompany Mr. McDonald down to Palm Beach.

Q. Is that what the mother said to you that she wanted to have happen? A. Yes.

Q. In other words, what the Court wants, is what the mother said to you, as nearly as you remember. A. My sister's child was very seriously ill. Mura was apparently necessary there.

Q. Who was Mura? The Japanese butler? A. That is right. Mrs. McDonald said that she was going herself to go up to Deal with or without Jack's knowledge and bring him back. I had just come down from the North a day or two before, and I offered, instead of her, to go up myself on the pretense of business, to make it appear convenient, and to bring Jack down with me, or at least to come down with Jack, he not necessarily knowing the purpose of my special trip. Mrs. McDonald thanked me for that, but did not accept the offer at that time. A few days later, or shortly thereafter, when we had guests at Miami Beach, we had been invited at the time of Mr. McDonald's visit to come over and spend a week-end or a day or two at Palm Beach, which we did. At that time the subject of the conversation, of course, was this projected visit of Mrs. McDonald up North to get her son and bring him back, because my sister would not allow the butler to bring him down, and the atmosphere and the feeling was very evidently a bad one prevailing.

MR. KREMER—I move that that be stricken out as calling for a conclusion.

By MR. STEIN:

Q. Why do you say that?

THE COURT—A conclusion, of course. As I said before, on the question of the record, your objections are noted by the stenographer, and whether or not I strike it out, it is not going to affect your record. In this instance, unless this witness does connect specifically this statement, your motion to strike that portion out will be granted.

By MR. STEIN:

Q. Please do not give your conclusions of things or say that you saw that there was evidently ill feeling. Tell what happened, and let the Court decide whether or not there was ill feeling. Do you see exactly what is wanted? A. Well, we were—we had dinner, and—

THE COURT—Pardon me just a moment, please. For the purpose of keeping the record straight, the statement of the witness as to the ill feeling will be stricken from the record on the motion of counsel.

THE WITNESS (Continuing)—We had dinner, and there were two other people, our guests, there, Mr. McDonald, Senior, and Mrs. McDonald, and the decision for Mrs. McDonald to leave, I think it was on the following day, having purchased her tickets, and to go up North and bring Jack down, was apparently an irrevocable one.

MR. KREMER—I move that that be stricken out for the same reason.

THE COURT—Yes.

By MR. STEIN:

Q. Why do you use your own conclusions? Please tell us what she said. If she said, "I am going up there," then say that. A. Yes, she did. She said, "I am going up and bring Jack down." That particular subject was the main topic of conversation, so that at about ten o'clock that night I telephoned my sister at Deal that if she could possibly let Mura come down with Jack by all means to do it, as the situation in Palm Beach was going to prove very embarrassing for everybody concerned.

MR. KREMER—I move that what he said to his sister be stricken out.

THE COURT—Motion granted.

MR. STEIN—I am going to connect that up and show by the sister that that communication took place, and I shall follow it up and show what the mother afterwards said and what the brother of this defendant was told in connection with all this thing. This will all be connected, but I cannot prove it at one time.

(Argument.)

By MR. STEIN:

Q. As the result of that telephone conversation with your sister, do you know, as a matter of fact, whether or not the defendant came to Palm Beach? A. He did.

Q. In company with whom? A. Mura, the butler.

Q. Do you know at whose suggestion the butler came with the defendant? In other words, did you suggest that in your telephone talk or not? A. Yes, I did.

Q. Before the defendant arrived in Palm Beach, what

was the condition of health of the defendant's father, if you know? A. He was in poor health.

Q. After the defendant arrived in Palm Beach, did the father live or die? A. The father died.

Q. Do you remember what month he died in? A. It was March.

Q. In the year 1929? A. Yes.

Q. Was that fact communicated to you? A. Yes.

Q. And did you see the body at the home in Palm Beach? A. I did.

Q. Were you at the home at the death? A. I was.

Q. Did you talk with the defendant? A. Yes, sir.

Q. Did you take any part in assisting him to make arrangements for the funeral? A. Yes.

Q. While you were there in the house after the father's death, did you hear the defendant's mother say anything concerning your sister? A. I did.

Q. What was it that you heard her say, and whom did she say it to? A. There was in the room at the time Mrs. McDonald, Jack, my wife, and myself.

MR. KREMER—If the Court please, I should like to note an objection. This would not be binding on the defendant.

MR. STEIN—I agree with you, not if it does not concern this couple, but it does concern them.

By MR. STEIN:

Q. What was it that was said concerning this complainant by the mother of the defendant? A. Well, Mrs. McDonald, Senior, said that Mr. McDonald, senior, before he died, said that he hoped he died before he laid eyes on Mrs. McDonald, Junior, again.

MR. KREMER—I move that that be stricken out as having no bearing whatever upon the cause of action that is before the Court.

THE COURT—I shall let it stand on the theory that there is a general scheme here that is leading up to the complainant's testimony that would make it competent.

By MR. STEIN:

Q. What else did she say with reference to the complainant and her husband? A. Well, that they had each other and no one else counted.

Q. Who had each other? A. Mrs. McDonald, Senior, and Jack had each other and that no one else counted.

Q. Did she make any personal reference to the complainant in any other thing that she said?

MR. KREMER—Same objection.

A. Well, I can't quote specifically.

Q. Then do not quote at all. Was the defendant present when these things were said? A. He was.

Q. On the night of the defendant's father's death, and also on the next morning, did you telephone the complainant as the result of anything that the defendant said concerning his father? A. I did.

Q. What did you telephone the complainant as the result of what the defendant said?

MR. KREMER—This is objected to for the same reason that the conversation between this witness and

his sister, the complainant, could not be in any sense binding on the defendant.

THE COURT—It is allowed.

A. I gave the complainant a message that he had asked me to give her.

By MR. STEIN:

Q. How did you give that? A. By telephone.

Q. What was this message? A. That she was not to kiss the body.

Q. What body? A. Mr. McDonald, Senior.

Q. At the time that the defendant requested you to communicate this to the complainant, what else did he say to you with reference to his future life with the complainant? A. That he did not love my sister as he should any more, and that they were going to break up.

Q. Did he say why he did not love your sister any more as he should, and why he was going to break up? A. Yes, because of the way she had treated his father.

Q. How was this received by you from what you knew of the past?

MR. KREMER—I object to that.

THE COURT—Objection sustained.

By MR. STEIN:

Q. Did you account or attempt to account for this change of feeling?

MR. KREMER—I object to that, if the Court please.

By MR. STEIN:

Q. What did you say to him about the change of feeling? What did you say to the defendant about it? A. I told him first that I was utterly surprised; secondly, that it was no time to discuss a subject of that kind, and if he took my advice, he would pull himself together, because, after all, he was talking about my sister as well as his wife, and if he gave himself about ten days, he might see things in a different light.

Q. What did he say in reply to this? A. Nothing specifically that I remember.

Q. The next morning, did you meet the defendant at the railroad station? A. I was with him all night. I was there.

Q. Please answer the question. A. Yes, I did.

Q. For what purpose did you meet him at the railroad station? A. I was assisting him in getting the body and the party off.

Q. To where? A. To North, back to Deal, New Jersey.

Q. At that time did you talk to the defendant about what he had said to you about leaving your sister and so forth, and that he was through? A. Yes.

Q. What did you say to him at that time? A. He again repeated practically what he had said before.

Q. What did he say? A. He almost repeated what he had said the previous night.

Q. Can you use his words as nearly as you remember them? A. That he did not love my sister as he should

and as he had, that he had decided to break up with her because of the way that she had treated his father.

Q. Did you ask him to specify in what way she had treated his father? A. No, I did not. I told him that I thought that he ought not to discuss the subject any further now.

Q. Did you tell him that again at the railroad station afterward, the next day? A. I did; I repeated that advice.

Q. Let me ask you whether or not you did, as a matter of fact, telephone your sister at Deal not to kiss the body of the defendant's father when it arrived? A. Certainly, I did.

Q. What did she say?

MR. KREMER—I object to that, if the Court please.

MR. STEIN—I think it is important, if your Honor please.

MR. KREMER—I will withdraw the objection.

By MR. STEIN:

Q. What did she say? A. She expressed amazement. She insisted on knowing why, and I would not tell her.

Q. Why? A. I said that I would only deliver the message and for her to be as calm and as cool as possible, and not to get overexcited or aroused about it, but I would not go into detail over the telephone with her now.

Q. And you did not go into details? You did not tell her any reasons why? A. No, sir.

Q. You returned from Miami Beach how long after that? How many weeks? A. I think it was less than two weeks.

Q. After you returned, did you have a talk with your sister? A. Not for at least two months, it seems to me.

Q. That was the first time you saw her to talk to her at all? A. I won't say that I had not seen her, but I had not discussed the matter at all.

Q. Then did you discuss the matter? A. Yes, it was about at least two months after my return from Miami Beach.

Q. What have you to say as to the physical appearance of your sister before you went to Palm Beach and her physical appearance after you returned from Palm Beach, and after all this communication that had taken place, with reference to her husband no longer living with her and not loving her and not to kiss the body of her father-in-law? Was there any change in her appearance?

MR. KREMER—I object to that. In the first place, I have not heard the witness say yet that he told Mrs. McDonald, Junior, that her husband no longer loved her. He testified that he was told that, but I have not heard him say that he communicated it to her.

THE COURT—We are at a disadvantage because this witness is called out of the usual order.

(Argument.)

MR. KREMER—I will withdraw the objection.

MR. STEIN—I can prove and connect his testimony that she did look very much different and why, and she will tell why.

THE COURT—Then it is admitted on the theory that it is at present out of order, and because of it being out of order, the objection is waived, but the objection will obtain if it is not connected properly, and then a motion to strike out will be entertained.

MR. KREMER—My motion being that if a woman is so constituted that she worries herself sick because of trouble with her husband, that is not actionable.

THE COURT—As I said before, unless the testimony comes in its proper sequence to develop whether or not the cause was attributable to the defendant or the mother of the defendant, of course, this evidence is not competent; on the other hand, if it is connected up and they were the cause, then it becomes competent, so we will allow this witness's testimony a little latitude, and I think we will get along better.

By MR. STEIN:

Q. Did you notice any difference in the physical appearance? A. A very decided one.

Q. Did she look physically healthy or—

By THE COURT:

Q. How did she look? A. She had lost weight. She had, to me, grown older. Her face I would describe as a little haggard. She was worn.

Q. You say that you did not tell your sister right away what had transpired in addition to what you told her over the telephone? A. No.

THE COURT—When this witness saw the sister

after he came back, was it a couple of months afterward?

MR. STEIN—Yes, your Honor.

By THE COURT:

Q. Is that correct? A. I would say that from the last time I saw her, there was a lapse probably of three months until I saw her again.

Q. You are referring now to the time you saw her before you went South and after you returned? A. Yes, I think so.

Q. A lapse of three months? A. I would say I had not seen her for about three months.

By MR. STEIN:

Q. Please answer this question yes or no: Did your sister, when you then met her, tell you how her mother-in-law and her husband had acted toward her?

MR. KREMER—I object to this as purely leading.

MR. STEIN—I am not asking what was said, but whether or not she did say something, because then follows the connecting link.

THE COURT—I will allow the question.

MR. KREMER—I object on the further ground that it is not binding on the defendant, what she said to her brother.

THE COURT—Unless there is connection the

objection will be sustained on the ground that it is not binding.

By MR. STEIN:

Q. Yes or no, please. A. Yes.

Q. And after your sister had told you that, did you then tell your sister everything that the defendant had said to you? A. I did.

By THE COURT:

Q. When was that in relation to the time you came from Florida? A. It would be about close to two months thereafter.

Q. About two months after the death of the father? A. Yes.

MR. STEIN—Cross-examine.

CROSS-EXAMINATION

By MR. KREMER:

Q. Mr. McManus, you said that from the time that you went South and had last seen your sister, until you came North and saw her again, an interval of about three months had elapsed? A. To the best of my memory, yes.

Q. When you telephoned her from the South, the only thing that you told her was that she was not to be permitted to kiss the body of Mr. McDonald, Senior? A. Yes.

Q. And that is all? A. Yes.

Q. You did not disclose to her then any of the other things that Mr. McDonald had told to you? A. No.

Q. And then you came up North and you saw your sister? A. Yes.

Q. And you saw that her appearance was much changed? A. Yes, it was.

Q. Do you want the Court to understand that this haggard condition and her ageing, as you describe it, and her loss of weight were all attributable merely to the fact that you had told your sister over the long distance telephone that she could not kiss the body of Mr. McDonald, Senior? A. No, I didn't say it is all attributable to that

Q. That is all you had told her? A. Yes.

Q. What else could it be attributable to? A. Why I should think that it was one of a series of circumstances that would naturally take place in the story or in the drama, or whatever you want to call it.

Q. But that was the only information you had imparted to her about everything that Henry J. McDonald had said to you? A. Specifically, yes.

Q. You referred to an occasion when Mrs. McDonald, Senior, said, as near as I can recall your words, that her husband, Mr. McDonald, Senior, had made a statement that he never wanted to lay eyes on his daughter again? A. Words to that effect.

Q. Are you sure that Henry J. McDonald, the defendant, was present when that was said? A. Yes.

Q. Are you positive about that? A. Yes, I am positive about it.

Q. As a matter of fact, wasn't he in another part of the house? A. No, sir, he was not.

Q. You also told us that Henry J. McDonald, the

defendant, complained of the treatment that his wife, your sister, had accorded to her father-in-law? A. Yes.

Q. Did he tell you what that treatment was? A. No. I remember that she was supposed to have answered him disrespectfully, but I can't quote specifically what.

Q. He did not tell you why his father was displeased with Mrs. McDonald, Junior? A. Not specifically, no.

Q. Except that she had spoken disrespectfully? A. Yes, that is all I would say specifically.

Q. Mr. McDonald, Senior, had just died, had he not, while you were in Florida? A. Yes.

Q. And Mrs. McDonald, Senior, was in a highly wrought up condition as the result of his death, wasn't she? A. Certainly.

Q. You are the brother of the complainant, of course? A. I am.

MR. KREMER—That is all.

GERTRUDE T. McDONALD, the complainant, being first duly sworn according to law, on her oath, saith:

DIRECT EXAMINATION

By MR. STEIN:

Q. Mrs. McDonald, you are the complainant in this proceeding and the wife of the defendant? A. I am.

Q. And you were married to the defendant when? A. April 13, 1926.

Q. And where? A. St. Patrick's Cathedral, New York.

Q. And by whom? A. The Rev. Robert S. Keegan.

MR. STEIN—I offer at this time, without objection on the part of counsel, a certificate of marriage from St. Patrick's Cathedral, Fifth Avenue, New York, showing the marriage of the defendant, Henry J. McDonald, to Gertrude Theresa McManus, by the Reverend Robert S. Keegan on the 13th day of April, 1926, in the presence of John W. McDonald and Adelaide McDonald.

(The paper referred to was received in evidence and marked "Plaintiff's Exhibit 1.")

By MR. STEIN:

Q. After the wedding ceremony, was there a wedding breakfast?

MR. KREMER—I object to that. I don't see what difference it makes.

MR. STEIN—It will make some to me in the order of proof.

THE COURT—I will allow it.

A. Yes, there was a reception at Sherry's around five o'clock.

Q. At the time of your wedding, was any member of your family present? A. No.

Q. Outside of Mr. and Mrs. McDonald, the father

and mother of the defendant, was anyone else present? A. No.

Q. Where was this wedding breakfast? A. At Sherry's.

Q. At the wedding breakfast, were any of your family present? A. Yes.

MR. KREMER—May I ask the purpose of this?

THE COURT—I do not know that it is necessary for counsel to disclose the purpose of it. I can see where there is a possible purpose and where it may be of some importance in the case.

MR. STEIN—If I have to say it, this girl was never wanted.

By MR. STEIN:

Q. Who, of your family, were present at the wedding breakfast? A. Mr. and Mrs. Ambrose McManus.

Q. And other than that? A. Mr. and Mrs. Harry McManus.

Q. Who else? A. Mr. and Mrs. J. A. Burke, my sister, and Mr. and Mrs. Ward.

Q. After the marriage, did you go to live and cohabit with your husband anywhere? A. Yes.

Q. Where did you first go to live as man and wife? A. 48 Esplanade, Deal.

Q. From there where did you go? A. To 10 Whitehall Avenue, Deal.

Q. From there where did you go to live? A. We went to live with his parents at 70 Esplanade.

Q. And from there where did you go next to live? A. Together at Red Bank.

Q. Where was it that you separated from him, if you did separate? A. At Red Bank.

Q. And when? A. November, 1929.

Q. Since your separation from your husband, where have you lived? A. 10 Whitehall Avenue, Deal.

Q. Are you still living there? A. I am.

Q. So that from the time of your marriage up to the present you have always lived in New Jersey? A. Yes.

Q. And particularly in Monmouth County? A. Yes.

Q. During your married life, was it a happy married life? A. Very happy for two and a half years.

Q. Did you live happily together, you and your husband, until you went to live with the father and mother of the defendant? A. Yes.

Q. Under what circumstances did you leave your home to live with the mother and father of the defendant at 70 Esplanade? A. Mr. McDonald, Senior, was beginning to have this illness that he eventually died from, and he was very lonesome and melancholy. Mr. McDonald had intimated that he was, and I knew that my husband worried about him, and that his father derived a great pleasure in his company. My children were at school, and the suggestion was made that we go and live there.

Q. Prior to your marriage to Mr. McDonald, you had been married? A. Yes.

Q. And you were married to whom? A. Harry N. Moore.

Q. As the result of that union, there were how many children? A. John N. Moore, Harry Moore, and Patricia.

Q. What are the respective ages in the order that you name them? A. John, 17; Harry, 16; and Patricia, 12.

Q. For the reason that you have just given, you went to live with the mother and father of the defendant? A. Yes.

Q. In that home, did you have your own separate rooms? A. Yes.

Q. How many of them? A. We just had our own bedroom for our own use and used the entire house.

Q. That was about when, that you went there? A. October, 1928.

Q. After you had gone to live there, did things become unpleasant for you? Please answer yes or no. A. Yes.

Q. In what way and what was it that prompted any unpleasantness, just generally speaking? A. Apparently a remark of mine.

Q. What was the remark? A. The remark was made—Mrs. McDonald and I were close friends. We went every place together.

Q. Prior to this? A. Prior to this, I felt as I would to my own mother. I did not keep any confidence from her. One night previous to this we had been to New York to the theatre. It had originally been planned that my husband and his mother and father and I were to go in for two days' shopping prior to Christmas and to take in a theatre party in New York. The morning that we were to go in, Mrs. McDonald came to our room and said that Mr. McDonald was not feeling well and that she would not be able to go in. I told my husband, who was shaving, and he said, "We will go in anyhow."

He said, "It would be nice for us to get off by ourselves." So I was waiting there, and we went downstairs to breakfast, and my mother-in-law asked us where we were going. I said to New York, that we were going in anyhow. She seemed rather surprised. The four of

us had breakfast, and when we were leaving her, she made the remark, "You need not worry about me. I am perfectly capable of taking care of myself." That came from a clear sky.

On the way to the station, my husband asked me what was meant by the remark and I replied that I did not know. I felt, however, that Mrs. McDonald was not very anxious for us to go without her. I said, "I will call up and maybe you will be coming in later," which I did. I called up from New York at twelve o'clock. Sadie Williams, the maid, answered the phone and said that Mrs. McDonald had left on the nine o'clock train, the next train.

Q. Without going into that explanation, it was this remark? A. No. I had to tell this to lead up to the remark that was vital. Mrs. McDonald and her husuband came in and joined us, and my husband seemed to resent it.

MR. KREMER—I don't want to object to the story, but I do object to the witness drawing a conclusion.

By MR. STEIN:

Q. Tell us what he did. A. He did object to it, and it was very noticeable, so that Mrs. McDonald, the next morning, remarked to me that she did not think that Jack had wanted them to come in. I tried to eradicate that impression, but there was a little feeling made that night which led up to greater complications. The remark that I made, that I think changed Mrs. McDonald's attitude toward me, was made several years later. Mrs. McDonald came to my room and I was dressing. I came out of

the bath and was waiting to get ready for dinner, and Mrs. McDonald said, "I want to talk to you." So I laid down on the couch while she was speaking, and she said she thought that after they came from Palm Beach—rather, after they are back from Palm Beach that they would go to California, and I said, "I think that would be fine." "I was only saying the other day, or at least, Jack and I were saying the other day that it is too bad you and Pop—as I always called him—don't go away more together and not depend upon Jack and I; that after all, you are still young enough to have a lot out of life, and that if you go with us, you are not always among your own friends, because our friends are not your friends." I meant it in the kindliest way. I did not mean that she was intruding at all. I just wanted her to have some life of her own, but she took the attitude that I was implying that she and her husband were not wanted by her son and myself, and she resented it very much.

That night at dinner, she left the table crying and went up to her room. I followed after dinner and found the door locked. She was with her sister-in-law and her laundress, and when I asked her what she was crying about, and what I had said to have her cry like that, she replied, "If you never said anything to me the rest of your life, you have said enough to last you to your grave." I could not understand why she should put a different interpretation on my remark than I had intended, and so that there might not be any further trouble and that everything could be thrashed out, I sent for my husband to come up and to hear the conversation. I repeated it verbally in front of everyone there, just what I had said, and asked him to judge whether or not my remarks warranted the reaction of Mrs. McDonald, and he said, "No,"

that he had said it and he had meant it just as I had meant it.

Q. This was in October, 1929? A. No, just before Christmas.

Q. That is where I am. October, 1929, is where I am speaking about. A. This is December, 1929.

Q. Was that before the old folks went to Palm Beach? A. Yes.

Q. Wasn't it 1928? A. Yes, I stand corrected.

Q. Before your folks went to Palm Beach? A. Yes.

Q. What other difficulties, if any, did you have in your married life from October, 1928, until the time that Mr. and Mrs. McDonald went to the South, Palm Beach? A. Well, the atmosphere of the house changed immediately after that. Mrs. McDonald apparently resented this remark.

Q. Do not tell us about the atmosphere changing, but tell us what things happened. A. Well, in the first place, after we would finish a meal, instead of sitting around together, which we usually did, from then on Mrs. McDonald would go upstairs and call her son up, and she and Mr. McDonald, Senior, and he would be there the evening together. I was getting neglected, and sometimes I would object, and at one time I did object, and my father-in-law said I had a right to object. There wasn't the feeling of confidence and good fellowship that always existed between the four of us. I felt,—justly so—that I was a trespasser on the place.

MR. KREMER—I move that that be stricken out.

MR. STEIN—I will consent that what she felt be stricken out.

By MR. STEIN:

Q. When the defendant was at his business, and you were at home alone with his mother, did anything transpire between you and your mother-in-law which you communicated to your husband on his return, any unpleasantness? A. No, the unpleasantness did not happen between my mother-in-law and myself. It was the things she would say to my husband that I objected to, and not what she said to me or I to her.

Q. How many domestics were there in the home of Mrs. McDonald while you were living there with her from October 1st, 1928, until after the return from Palm Beach? A. There was a cook, Mary Carter, and there is the up-stairs maid.

Q. What is her name? A. Sadie Williams.

Q. And there was a Japanese butler? A. We called him Mura. There was a chauffeur, Joe Schlesser, and there was a laundress.

Q. Were there times when these domestics communicated to you things which Mrs. McDonald said to them concerning you? A. Not at that time.

Q. When did that come to your attention? A. Upon their return from Palm Beach.

Q. Are the persons you have named here as witnesses? A. They are.

Q. Did you communicate that to the defendant, that his mother had been discussing you with the servants? A. Not at that time, but later I did.

Q. Well, at any time? A. Yes, later.

Q. When? How much later? A. After they had come from Palm Beach, after his father's death.

Q. What was the defendant's attitude with reference to that?

MR. KREMER—I object to that. What was said might be competent, but not what she thinks.

MR. STEIN—I insist that I have a right to show by this witness what the husband's attitude was with reference to certain remarks.

THE COURT—I will allow it.

A. Apparently it wasn't any attitude. Nothing was done about it. He simply acquiesced to it.
Q. He did nothing about it? A. Yes.

MR. KREMER—I move that be stricken out as calling for a conclusion.

By MR. STEIN:

Q. So far as you know, he did nothing about it? A. Exactly.

THE COURT—It is not going to have any effect on my mind.

MR. KREMER—I object to it as immaterial.

(Argument.)

By MR. STEIN:

Q. Was there an occasion or were there occasions after you went to live with your mother-in-law at 70 Esplanade, when she discussed or spoke to you about your marriage to her son? A. Yes.

Q. What was said on such occasions about your marriage to the defendant by the mother A. On one occasion—

MR. KREMER—Perhaps I may have one objection, and then I shall not have to interrupt and object to all these statements made by the mother-in-law out of the presence of this defendant on the ground that they could not be binding on him.

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THE COURT—I will allow it.

THE WITNESS (Continuing)—On one occasion, Mrs. McDonald told me that her son had gained nothing by his marriage to me, which I resented.

Q. When was that, as nearly as you can remember? A. I should say just about a year ago.

Q. Was that at Red Bank or at Deal? A. That was at Deal, 70 Esplanade.

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Q. On that occasion was anything else said about what you had gained, if anything, by this marriage? A. Yes, she said that the gain was entirely on my part, that I married wealth.

Q. Was there ever any occasion when the defendant's mother, in his presence, made little or small of you?

MR. KREMER—Please do not lead her.

By MR. STEIN:

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Q. Was there ever any occasion when the defendant's mother in his presence, said things concerning you? A. Yes.

Q. When was that, as nearly as you remember, and what was it? A. Shortly after the talk I told you we

had at Christmas time, it was followed a few nights later by Mrs. McDonald coming to my room, when I spoke about the remark I made that changed her attitude. A few nights after that, I had been to New York with my little girl to the theatre, and I telephoned home what train I would be home on, so that the chauffeur could meet me, but no one was there, so I walked up from the station, and when I came upstairs, my mother-in-law and my husband and his father were in Mr. McDonald's, Senior's, bedroom. He was ill at the time. I felt badly that I had not been met, as long as I had telephoned, but I kissed all three and then went to my room. I was only there a short time, looking over some Christmas cards, when Mrs. McDonald came into my room very much excited, with my husband, and came over to me and shook her finger in my face, and said, "That woman! She said she hates me, and she is insanely jealous of me because you love me."

I replied, "That is not so. That is the way you feel toward me."

That is all that was said.

Q. While you were living at 70 Esplanade and before the old folks went south, was there an occasion when you insisted on leaving that house and going back to your own house at No. 10 Whitehall? A. Yes, that following morning.

MR. KREMER—I object to that as leading. I do not see why counsel should not let the witness unfold her own story.

THE COURT—Every time there is a deviation from the strict evidence, there is an objection.

THE WITNESS (Continuing)—I resented this remark and Mrs. McDonald's attitude toward me that night, and I thought it was very unwarranted. The next morning I told my husband that I intended to go to a hotel until my home was opened.

Q. Did you go? A. No, I did not.

Q. Why not? A. Because my husband came and asked me if I would apologize to his mother, which I refused to do, because I did not think I had any occasion to apologize. He then asked me to go and talk to her, which I did. We both explained that inasmuch as I loved my husband, and she loved her son, that our quarreling was only hurting him, and that she was willing to be sorry for what she had said last night, and she wanted me to stay, which I did.

Q. When was it that the old folks, Mr. and Mrs. McDonald, went South? A. January, about the 7th or 10th, or the first week in January. That would be 1929.

Q. The defendant did not go with them? A. No.

Q. Why? A. We never did go until a month later.

Q. Did he go a month later? A. No.

Q. Why not? A. Because my daughter was very ill and he stayed with me.

Q. Do you mean Patricia? A. Yes.

Q. Did you insist on his going? A. Yes, I asked him to go.

Q. What was his reply? A. He thought his duty was by me.

Q. And he remained? A. He did.

Q. Did he subsequently go when your daughter became a little better? A. Yes, he did.

Q. About when was that? A. The latter part of February.

Q. While the mother and father of the defendant were in the South, and he was home with you, was there a communication over the telephone or otherwise between the defendant and his folks, in your presence? A. Yes.

Q. Did you talk with them over the wire as well? A. Several times.

Q. What were those calls about? A. They were to inquire the progress that Patricia was making, and to find out when we would be able to come down, and if not, would Jack be able to come down if I wasn't.

Q. Did Jack eventually go down? A. Yes.

Q. Who went with him? A. Mura, the butler.

Q. Had you received a telephone call previous to Jack's leaving, your husband? A. Yes.

Q. From your brother Harry? A. Yes, I had.

Q. What was the call about?

MR. KREMER—I object to that on the ground that it is not evidential. A statement made by Mr. McManus to this lady out of the presence of Mr. McDonald could not be binding on him.

(Argument.)

THE COURT—It is not a question of offense. It is a question whether or not the co-operation here of the testimony of the prior witness is such as to make it competent. If it is, I will permit it to stand, but if it is not, I will entertain a motion to strike it out.

MR. KREMER—My objection is that it offends the rule against hearsay.

By MR. STEIN:

Q. What was the call about? A. My brother called me at night. My husband was there. He knew of the call, and I repeated the conversation to my husband at the time. It was in regard to Mura going down. Harry was at Mrs. McDonald's house at dinner, he and his wife, and Mrs. McDonald was very much upset that Jack was not down and had purchased tickets to come up and get him. I was perfectly willing that Jack should go, too, but I wanted someone else to go with him, because I felt that Mura should stay there. Out of this large house, there was only two to help me, and I didn't see why someone else would not do as well as Mura. Then Harry told me that Mrs. McDonald did not feel right about anybody alse going down if Mura was not coming down, and that she was coming up. He said, "That is not right, and if you can possibly spare Mura, send him down."

So I came back and I told my husband that although his mother herself had told him he could not come down alone, and that if that was his intention, she was coming up unless Mura went down.

Q. Why was it necessary for anybody to go down with your husband? A. Because my husband has had an illness for years, a nervous condition, and at times he has what we would call a little affliction or attacks where he does not know just where he is at the moment, and we never felt safe letting him travel any distance alone.

Q. Your husband did go then with Mura. A. He did.

Q. You and your husband were all right together at the time? There was no trouble between you? A. None.

Q. Did you receive any telegrams from him while he was down there? A. I received a telephone call.

Q. I said a telegram. A. No, I did not.

Q. While he was down there? A. No, Judge Stein, I did not.

Q. You received telephone calls from him? A. And letters.

Q. And letters? A. Yes.

Q. I show you a telegram dated—— A. That is from Pinehurst later.

Q. (Continued)—dated Palm Beach, November 6th, 1929, and another from Palm Beach dated November 2, 1929. Did you receive those from there? A. No, these were sent to me when I went down to Mrs. McDonald's house later.

Q. They were sent to you by whom? A. By my husband, but that was not at that time; that was in November, 1929.

Q. You have not the letters with you? A. You have them.

Q. Did you make preparations to go back to your own house at 10 Whitehall? A. Yes.

Q. About when was that? A. Well, I was arranging to go back or to be back by the time he came home, which we expected to be before Easter.

Q. Was it prior to Palm Sunday? A. Yes.

Q. Did you actually open your house? A. Not to occupy it, no; just had it cleaned and in readiness .

Q. Before Mr. McDonald's body was brought back home, had you transferred your daughter Patricia, who was sick, to your own home at 10 Whitehall? A. Yes.

Q. Your husband knew that you were making preparations to go back to your home at 10 Whitehall? A. Yes.

Q. Your going to the home of the parents was then not of a permanent character or not intended to be so? A. No.

MR. KREMER—I am not objecting to these questions, but I think the last five questions were leading.

THE COURT—Manifestly leading.

By MR. STEIN:

Q. I think you already said that when you lived at the home of your parents-in-law, that you went there at the request of your husband because your father-in-law was sick? A. Yes.

Q. At that time had you and your husband talked over the matter of how long you would stay? A. It was understood we would return to our own home in Spring.

By THE COURT:

Q. How was that understanding made? A. We simply went while Mr. McDonald was ill to make him feel better, with no idea of making a permanent home with them.

Q. You say it was understood? A. Between myself and my husband. I had three children and naturally felt they should be in their own home.

Q. What we want is the evidence of that understanding, whether or not it was a conversation? A. Conversation between myself and my husband.

Q. How did that take place? A. Many times Mr. McDonald had no desire himself to give up his home.

Q. What did he say? A. Simply that we would go there and stay with his father and mother until his father was better, and then we would go to Palm Beach with them and come back to our own home in the Spring direct from Palm Beach. That was the understanding.

By MR. STEIN:

Q. Did you receive word eventually that Mr. McDonald, Senior, had died? A. Yes.

Q. When was it you received that word, as nearly as you can remember? A. On Palm Sunday.

Q. Who sent you the word and how did you receive it? A. I heard it first from Mura, the butler. I had been to Church, and upon my return, he had had a phone from Palm Beach.

Q. The following day did you receive a communication from Palm Beach over the telephone? A. Yes, Monday I heard from my brother, but I had talked twice before that.

Q. To whom? A. I talked for a while to my husband on the phone, and I talked later, again the same day, to my brother on the phone.

Q. At the time you talked with your husband on the phone, what did it concern? A. Simply to tell him how shocked and grieved I was about his loss.

Q. On the following day that your brother telephoned, what was the message? A. I had moved home and returned to—

Q. What was the message that your brother telephoned you? A. He said, "Gertrude, I have some bad news for you. You have had a lot of trouble, and it looks as if you are going to have more."

I said, "What do you mean?"

I couldn't understand the significance of the remark.

He said. "I have a message to give you, and as much as I dislike to do it, I have promised that I would."

I said, "What message?"

He said, "Not to kiss the body."

I said, "I don't understand. Will you repeat it?"

I thought I must have heard wrongly, so he repeated it, and I said, "Who told you that? Did Mrs. McDonald tell you that or did Jack tell you that?"

He said, "Jack told me to tell you that."

I simply hung up the receiver; I couldn't talk any more.

Q. Were you at home at 70 Esplanade when the body of the defendant's father arrived? A. I was.

Q. Did you meet your husband there? A. I did.

Q. How did your husband treat you when he came in? A. He kissed me very casually, that's about all. Nothing said.

Q. Nothing said? A. No.

Q. What were his actions toward you after that? A. He just seemed to avoid me. In fact, he did avoid me, and did not talk to me until I demanded an explanation.

Q. When was it you asked for an explanation? How much later? A. The body arrived Tuesday morning, and Wednesday night I asked him for an explanation.

Q. What did you say to him? A. I had gone in to be with my mother-in-law awhile, and we had talked over things that made me upset, so I went to look for my husband and found him in another room sitting alone. I said to him, "Jack, what is the matter?"

He turned to me and said, "Don't you know?"

I said, "No, I don't know. I can only presume that you don't love me."

He said, "No, I don't care for you the way I did."

Q. That was Wednesday night, you say? A. Yes.

Q. And the next morning was the funeral? A. Yes.

Q. On the next morning did you communicate what your husband had said to either of your brothers, about not caring for you any more? A. Yes, my brother Ambrose was there.

Q. And on that occasion, did your brother Ambrose communicate anything to you that your husband had told him? A. Yes, he did.

Q. What was it that your brother told you that the defendant had told him?

MR. KREMER—I object on the ground that it is hearsay.

(Argument.)

THE COURT—She may answer the question.

A. He told me that coming from the station the night the body was brought home, that Jack, of his own accord, had said, "Ambrose, I am through with Gert and intend to leave her."

Q. The next evening, on Thursday, which was the day after the funeral, did you again speak to your husband and ask for any explanation as to what he had told your brother Ambrose? A. Yes, I did.

Q. What did he say with reference to that? What did you tell him your brother Ambrose had told you? A. We went into the room.

Q. What did you tell your husband that your brother Ambrose told you that he had said? A. I told him that Ambrose had said that he intended to leave me, and if so, why.

Q. Is that all you told him your brother Ambrose had said, that he intended to leave you? A. He didn't love me any more and intended to leave me.

Q. What did your husband then say? A. He said that he had said those things, and if I would listen, he would explain why he had said them.

Q. Did you listen? A. Yes.

Q. And did he explain? A. He tried to explain, I suppose.

Q. What did he say by way of explanation of what he told you and what he told your brother Ambrose? A. He said when he arrived at Palm Beach that he had heard from his mother and father things that made him feel I had lied to him, and that I had also hurt his father's feelings very badly, and for that reason, his attitude had changed toward me, and it had culminated into great bitterness at the time of his father's death, so much so that it caused this attitude. I demanded an explanation of where I had lied and also in what manner I had offended his father, because it was the first I knew of it.

Q. Did you get the explanation? A. Yes, I did.

Q. What did he say? Just what you repeated here or anything more? A. Yes, his explanation in regard to father was that on coming downstairs and going to the movies with my two boys, it being a rainy day outside, I told them to get caps to wear, and John, the oldest boy, had come out with Mr. McDonald's cap on. He asked me if he might wear it, and Mrs. McDonald was there, and so was Mr. McDonald, Senior, so I told him to ask Pop, as it is his cap, and Mr. McDonald said, "No, you may not. I have told you not to wear my things before."

I was surprised, because it seemed a small matter, and without realizing or intending any hurt to Mr. McDonald,

as I was thinking more of the child's feelings in the matter, I said, "Never mind, it is a small matter. I will buy you a new hat." That was the insult to Mr. McDonald.

Q. At that time, when you confronted your husband with what he had said to your brother, was there anything further said as to whether you would live with the mother-in-law or go back to your own place or anything about that? A. When Mr. McDonald was explaining his remark? Yes, he went on to say that he had said those things, but he wanted me to come there and live.

Q. Where? A. At 70 Esplanade. He said that under no circumstances would he leave his mother, so I said, "What about me?"

He said, "I want you to come here, too, and Patricia."

I said, "What about the boys? After all, Jack, I had those children when you married me, and you knew it, and where I go, they go."

His remark was, "Well, of course, mother is not used to children. They may come home at Christmas and Easter, but at other times I would expect them to be away." I objected.

Q. What did you say? A. I said, "I could not go under those circumstances, because my children are entitled to a home and a feeling that they are at home.

Q. What did you do? A. I said I would go back and stay at 10 Whitehall Street in my own home, and if he wanted to join me there are at any time, all right, and that even if he could not come to me, but would tell me that he had not changed toward me and that he loved me and needed me, I would go to him at 70.

Q. Did you go to No. 10 Whitehall, then? A. I did.

Q The next day, Friday, did anything happen? A. Yes, my husband called me up, or at least, he asked me

when I was leaving Thursday night to come in and see his mother the next day, which I did. Mrs. McDonald and I discussed the matter about my coming there, and I told her I could not come under the conditions and attitude my husband was showing toward me, and if he did not care for me, I did not want to live with him, and until he could tell me that and mean it, I did not intend to. I told her what I had told him and what I have told you. That night around dinner time the phone rang, and it was my husband. He said to me then, "Are you coming down this evening? I promised to run in for a few minutes. Will you come?"

I said, "No, you know what the understanding was, and if you love me and need me I would come there."

He said, "I do all those things. I want you to come."

Of course, I was rather taken back because it was such a drastic change from the attitude of a few days before, but I realized that through the excitement a lot of unpleasant things occur, and also, I was in love with my husband. I did not want any wider breach than had already been made, so I thought, "Let's not make it go any further. All right, I will go back."

Q. And did you go back? A. Yes, I went back.

Q. When you went back, did matters improve any? A. No; my husband seemed to change. One moment he seemed the same way toward me and at other times he just appeared totally indifferent to me.

Q. You will have to specify in what way he appeared to be indifferent to you so that the Court can judge what it was. A. The night I returned, for instance, I was taken very ill. I became paralyzed from my waist down. My husband sent for the doctor, Doctor Ackerman. I was delirious and thought I had been run over by a fire truck. That was the impression I had. Doctor Acker-

man came and said it was a nerve condition brought on by strain. Some nerve was being pressed upon, which was temporary. This happened through the night. In the meantime, Mrs. McDonald, Senior, having heard some excitement, came to our room and asked what was the matter. At that time I was normal and told her I had been ill, and I said, "It is just nerves."

She turned to Jack and said, "Put on your bathrobe, dear, and come in my room and have breakfast with me."

He did, which I thought was certainly indifference and lacking consideration for me, when I was as sick as I had been and knowing the things and mood I had returned in, because I wanted to be assured of affection and not slighted. There were many instances like that.

Q. Did you learn of any discussion on the part of the mother with the servants concerning you? A. Shortly thereafter, yes.

Q. What did you do about that? A. I didn't do anything for the time being. I finally demanded that the maid, who was especially telling of these occurrences that led up—

MR. KREMER—I object for the same reason that what the maid told her could not be binding on Mr. McDonald.

MR. STEIN—I have not undertaken to prove what the maid told her.

By MR. STEIN:

Q. Was there a time when Mrs. McDonald and you were brought face to face with the maids to discuss these things? A. Yes, I demanded that she would confront

my husband and his mother with the things she had been telling me.

Q. Did you bring it to the attention of your husband, the things that had been said? A. Just at that time.

Q. What did the mother say in the presence of the defendant concerning these things that were discussed? A. She denied them.

Q. What else did she say? A. She also said that when Jack came down to Palm Beach, that his feeling had already changed toward me, and he had told her so.

Q. Was that in his presence? A. Yes.

Q. What did he say when she said that? A. I asked him if it was true.

Q. What did he say? A. He said yes.

Q. What effect, if any, did this have upon you and your health? A. Well, naturally, I was frightfully shocked and frightfully upset.

Q. Did you say anything to your husband as to what you were going to do under those conditions? A. Yes, I said, "This is all I have stood and all I can stand. It is one thing to come and try to live here and pick up our lives after it had been upset like this, but in the meantime, this talk has been going on behind my back when I have been trying to do everything to make a success of our life, but I can't counter-act that sort of thing."

Q. Did you tell your husband what you were going to do? A. Yes, I said, "I am going home; I am through."

Q. Did you go? A. No.

Q. Why not? A. Because again, my husband pleaded with me not to have it end this way, that he wanted another attempt to have our life together, and my

mother-in-law also came to me and said she admitted a few minor things, but not the main things

Q. Did you agree to try it over again? A. Yes, if the subject of Palm Beach or all that happened there was never mentioned again.

Q. Did you move from the mother-in-law's home eventually to Red Bank? A. Yes.

Q. About when did that move take place? A. I think it was the first of October, the first week in October.

Q. Of what year? A. 1929.

Q. At whose suggestion did you move to Red Bank? A. It was Mr. McDonald's suggestion.

Q. You moved into the apartment called the Les-Gertrude owned by Mr. McDonald? A. Yes.

Q. Did you have an apartment there of your own? A. Yes.

Q. On what floor? A. Second floor.

Q. And Mrs. McDonald, the mother of the defendant, had an apartment there? A. Yes, on the first floor.

Q. Where did you and your husband take your meals? A. With Mrs. McDonald.

Q. All the meals? A. Yes.

Q. Was that the understanding when you went there? A. Yes.

Q. Why did you go to Red Bank to the apartment? A. Well, Mrs. McDonald figured that the house under the circumstances, through the winter, was big and depressive, and that it would be better in an apartment, and I thought it would be better in an apartment, and I thought it would be better for me, too.

Q. Why did you think it would be better? A. I thought my husband would have more companionship in

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one apartment, even though we were not keeping house, than if we were living in one house together.

Q. After you moved to Red Bank, did you find that that was correct, your idea about it? A. No, things were not any different.

Q. What about the defendant's conduct toward you? Did that change any? A. Not at that time, no.

Q. Where did your husband spend most of his time at night when he was through with work, if you know? A. Always in his mother's apartment.

Q. Where was he during the daytime? A. Well, if he was down at Deal or Red Bank, wherever he would go, Mrs. McDonald would go also. I was asked to go along too, but when he went to business, he went to Brooklyn or New York at that time. ?

Q. When he returned, did he come right to your apartment? A. No, he always went to his mother's apartment first.

Q. You were satisfied with that? A. I wasn't satisfied, but I made no comment on it.

Q. How many months did you live in Red Bank with your husband before the separation? A. Not quite two months, October and most of November.

Q. Two months? A. October and part of November.

Q. During that time did you go out with your husband alone? A. No.

Q. Who was always with you? A. His mother.

Q. What did you say about that? A. Well, I objected, not altogether.

Q. To whom did you object? A. To my husband. I told him that of course I realized his mother's loss and

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lonesomeness, and I was perfectly willing to make allowances, but still, I expected some time when we would be alone together. I did not expect him to go out socially, as he was in mourning, but I did expect him to spend some time with me in my own apartment, or possibly have a few friends in.

Q. What were the actions of the mother toward you during the time you lived there in that apartment, in the presence of your husband? A. There was no open quarreling or anything of that type. I knew from what Mrs. McDonald had said herself that she liked to be alone with Jack. That is one reason I went to my apartment, to leave them alone, but if I was alone with Jack or went any place with him, Mrs. McDonald objected to that.

Q. Were you entirely satisfied with the way things were going? A. No, not at all.

Q. What was the trouble? A. I wanted some of my husband's companionship and I thought I was entitled to it.

Q. What did you do about that when you did not get it? Whom did you speak to? A. I spoke to my husband.

Q. What did you say to him? A. He said that under the conditions of his mother, while she was this way, he would have to do it, and if necessary, for the rest of his life.

Q. What did you weigh before you moved to Red Bank, as near as you can remember?? A. Well, before this trouble, I weighed 138 pounds.

Q. What did you weigh about November 28, 1929? A. 98 pounds

Q. What was the matter with you? A. Worry and grief.

Q. About what? A. My husband's attitude, and the fact that I was living in a home where things were not congenial, and where I knew myself and children were not welcome, and it had been made evident on many occasions, and all these things made me unhappy.

MR. KREMER: I object to that as a conclusion. I think it would require medical testimony to establish that because this lady lost weight it would be attributable to this worry. I object to it as a conclusion on her part.

THE COURT: The testimony will be permitted to stand.

MR. STEIN: If your Honor desires medical testimony, I should be very glad to supply it, if you should feel that you want it.

By Mr. STEIN:

Q. When did you separate from your husband? A. After he had left for Pinehurst.

Q. When did he leave for Pinehurst? A. Just before Thanksgiving. I think it was on a Saturday.

Q. Some time shortly before he went to Pinehurst, had you had a talk with your husband at Red Bank concerning your condition of health and things that transpired as to what you or he would do about it? A. Yes.

Q. What was that talk? A. There was one thing that led up to our living together which affected the whole situation, and that it, when I went to Palm Beach and returned, my husband and I were closer than we had been since this all happened, and I was very happy that week.

Then, this particular night that I had to make this decision, he came home from business. Mrs. McDonald and I had gone to New York for the day. In fact, Mrs. McDonald and I were closer that particular day than we had been in a long time, and upon our return, his mother and himself were planning a trip to South America at that time and had requested that I go. I told him that as they were going over Christmas, I would not go, as every time the children came home on the holidays, I did not think it was right that I should be away. My husband had gotten tickets for South America and made reservations, and my mother-in-law changed her mind about going, and that day in New York we talked it over in the train, and she decided to go. She told my husband that she had decided to go and that he could go ahead and get the tickets. In the meantime I had gone up to our apartment, and he was down with his mother, and when I came down, Mrs. McDonald was in her apartment crying, and my husband was reading a newspaper. I said, "What is the matter with Mama?"

He said, "I guess I put my foot in it about this South American trip. I told her that she had already spoiled one trip for me, and if she wanted the tickets, she could go ahead and get them herself."

I said, "Why did you say that?"

She said Jack had never spoken to her that way in his life before. I tried to patch it up and went in and started to have dinner. In the meantime, Jack had gone into her room.

I had never seen my husband in the condition he was that night. He was a man temporarily insane. He started to dash from the living-room, and I after him. I was in

negligee, and he flung me practically across the room, going out. I knew that he was in no condition to go out, and I did not know what he might have in his mind, so I telephoned downstairs to Mrs. Daley and asked her to have Mr. Daley go out with him and for her to come up with Mrs. McDonald, as I, too, wanted to go out to see what I could do with my husband. Mrs. Daley came up and took Mrs. McDonald out in the car, and Mr. Daley, in the meantime, came back and said, "I couldn't do anything with him." Then I went out and grabbed a coat, and I found him sitting on a log where a house was being torn out. I went up to him, and I said, "Jack, come back to the apartment." He said, "For God's sake, Gert, go away, let me alone." I knew the man was in a frightful condition, so I did. I walked away where I could watch and still not bother him, and I waited about a half an hour, and then I walked back to him and said, "Jack, if you go home, you can go up to our own apartment and be alone, but I would feel much better if you would go back."

So he did. He went upstairs and locked the door, and when I came up, I couldn't get in, so I called Mr. Daley again and asked him to use his pass key. I was very much frightened. I didn't know what he had in mind in his condition, and I would not have been surprised if he had attempted his life. So I opened the door and went in, and he was walking up and down the floor. I stayed in the bedroom and I didn't say one word to him. In the meantime I had asked someone to have the doctor come, and the doctor came, but he would not see him. I had a talk with the doctor, and he left some medicine to give him later. About a half hour went by and Mr. McDonald seemed to

be perfectly normal again. He said, "Gert, where is mother?"

I said, "She is out with Mrs. Daley. I will phone and see if they have come in."

I phoned down to the apartment and found that they had just come in, and I said, "Would you like to go down and see your mother?"

He said, "Yes, I would. I will go now."

I said, "I will go, too."

So we went down, and Mrs. McDonald called me in her bedroom, and she said, "I want to talk to you."

She said that she had had—that she could not stand the strain.

I said, "I can't stand it, either."

It was a case of Jack choosing between us. He would have to choose his mother or choose me. Jack heard us and came in, and he said, "I have heard every word you said."

I said, "That is perfectly all right. There is nothing you could not hear, and it is something you would have to hear."

So he said to his mother, "Listen, if you leave this house and go home to 70 Esplanade, you will never see me again."

Then he turned to me and said the same thing, or, "If you leave me, I won't live with either of you in that case. Why can't we get along in peace? I love my wife, but I can't come home every night to complaints and bickerings."

That is the first time I knew that he had come home to complaints, and asked him, "what do you mean by coming home to complaints?"

He said, "Every night mother says that you don't talk to her. You are morose and seem sullen, and she intimated that because I took some furniture in the apartment and moved it back to a different place that I was being led around by the nose. All those things don't help my condition of mind when I am trying to get along."

In other words, he spoke as if he was anxious for harmony for all of us. His mother spoke up then and said, "That is not the way you talked to me at Palm Beach."

Then the whole thing opened up again.

I said, "What is not—"

Q. What was it? A. That that was not the way he talked, that he did not love me when I was not down there, that they were sufficient unto each other and did not need me at all. So I went upstairs, and I thought—I was very much excited and very much wrought up—that I would go upstairs before I said more than I cared to say and be sorry for, and I went upstairs. I think it was nearly midnight then. At five o'clock in the morning I was sent for by the colored laundress to come down, that Mrs. McDonald was not feeling well, and I brought some spirits of ammonia and came down. In the meantime I could hear up in my apartment some of the things that Mrs. McDonald was saying to my husband, and among them was that I did not play fair with her, that I talked about her, and also that I was a drunkard. I heard that very distinctly, so I came downstairs at five thirty at the request of the laundress, and I gave my husband these spirits of ammonia and asked him to come upstairs to our apartment, and I asked his mother to come upstairs, but he went to bed and asleep. I went in the sitting room and asked Mrs. McDonald to be seated. She was very

much wrought up and said no, that she wanted to speak to me, and she did. Then again she told me that Jack had no business to marry me, that he could have married a nice girl, and that also he never should have married any woman with three children, that it was too much responsibility, and so forth. I said at the time, "That is up to Jack, and not up to you. He was old enough to know what he wanted when he married me."

I tried not to say too much, because I knew I was frightfully excited. That went on to eight o'clock in the morning, and one thing led to another, and about eight o'clock in the morning Mrs. McDonald made a remark that I resented, and I asked her to leave the apartment, which she did. Then I started to go to bed and get some rest. The phone rang and wakened both my husband and I, and then, when he had his coffee, which I had sent up for myself and gave to him, because I felt he needed something, not having had any dinner the night before, I told him, "I am sorry for this troubled night you have had, but I can't go on living this way. I am fit for the insane asylum now. Mentally and physically I am broken. Now, Jack, you have got to choose between your mother and me. Either live with your mother and I will go home with the children. I love you; it is not a case of that, but simply that I can't stand it, that's all, and I don't think you can stand it. You showed it last night that you would not be able to stand it much longer, and your mother is not benefiting."

He said, "I love you, but in that case, I choose my mother."

So that was all there was to that at the time.

Q. That was how shortly before they went to Pinehurst? A. About a week.

Q. Was there anything more until they went to Pinehurst? A. Well, yes; I did not leave or I did not separate from my husband. I didn't have the courage to. I had told him, in fact, that I was going to make arrangements to go to my own home, and he asked me if I was going to stay at the apartment, and I said, "No, Jack, I would not be content to live here. We would come back and forth if we were separated, and it would be just that much more agony to the situation. At least, if I haven't your love and protection, I think I am entitled to my home. I will go home with my children there."

Q. Did they go to Pinehurst? A. Yes.

Q. About when was that? A. That was a week later.

Q. Were you to go to Pinehurst? A. I was asked to go.

Q. And you did not go? A. No.

Q. Can you tell us whether or not it was the latter part of November, 1929, that they went to Pinehurst? A. Yes.

Q. What happened on the day they went to Pinehurst? A. In the meantime I had told my husband that I would not leave.

Q. That you what? A. That I would stay there, and that week, or an interval after this terrible scene I have just described, went by very placidly. On Friday night he was down to his mother's apartment going over some checks and fixing her check books for her until about ten o'clock. I was up in my apartment reading. I came down to say good-night to both my husband and his mother, but she was not in the apartment at the time, and I said, "I am going to bed now."

He said, "Wait a minute, I am going up."

So I waited. In the meantime his mother returned to the apartment and sat down and Jack said, "Aren't you going to bed?"

She said, "Not immediately."

I waited, but he did not say good-night, and he did not say he was going up, so finally, I said, "Well, I am going up. Good-night."

I went upstairs, and I was very indignant at my husband. He was leaving me next day to be gone for two weeks, and he knew my reason for not going was on account of my children coming home from school. In fact, I told him afterward I would join him if he stayed there. I thought the least he could do was to spend a little of the evening before with me.

Q. Did you tell him so? A. Yes, I did. When he came upstairs, I was angry. I said to him, "Jack, you are going away tomorrow for two weeks, and you didn't think enough of me to come up and spend some time with me. Is this what my life is going to consist of, that I only see you and only have your company after your mother has retired?"

He did not try to pass it by me or give any explanation or say that he was sorry or anything. He jerked up from the chair and said, "Good God!" and went into his bedroom. Later on I joined him, but he did not say good-night, so finally I did. I said, "Jack, it is too bad when a woman thinks so much of her husband as I do that because I object to not seeing more of you when you are going to be separated from me, that you would not even say good-night."

His answer to that was, "You had better go ahead with your original plans"—referring to the fact that a week

previous I had intended to leave. I did not say anything else. The next morning he went to Church and from there I think he went to the cemetery with his mother. Anyhow, they did not leave for New York until, I think, the three o'clock train in the afternoon, and he did not make any explanation in the interval of why he had taken that attitude or that he was sorry or that he had changed his opinion about my going.

MR. KREMER—I object to the witness testifying to what he did not do.

By Mr. STEIN:

Q. He made no reply? A. He made no reply.

Q. And the next day he went? Did you go to see him off? A. To New York? No, I was in the apartment.

Q. On the following day after your husband and his mother left for Pinehurst, were you informed by your brother Ambrose that your husband had telephoned him from the station in New York? A. Yes, on Sunday I received that message, a telephone message from Ambrose.

MR. STEIN—If your Honor please, I am going to ask her to repeat what was told. I shall place Mr. McManus on the stand afterwards and prove that the defendant did speak to him and say those things.

By MR. STEIN:

Q. What did your brother tell you that your husband telephoned to him?

MR. KREMER—I object for the same reason, that it is hearsay.

THE COURT—Yes, I am allowing these questions on the basis that if they are not properly connected, they will be stricken from the record.

By MR. STEIN:

Q. What was it that your brother told you that your husband had said to him? A. He said, "Gert, I have just had a telephone call yesterday afternoon from Jack."

Q. That information was not imparted to you until the next day? A. He left on Saturday and Ambrose told me Sunday. I said, "My Jack?"

He said,, "I would not call him your Jack, if I were you."

I said, "Why?"

He said, "Jack's message was that conditions at home were worse than the eternal triangle and that he would have to choose between his mother and you, and as long as his mother lived, he would choose his mother, and that I was to take care of your interests. That was the message."

Q. When you received that message, what did you do? Did you remain or leave or what did you do? A. I didn't do anything at that time. I stayed there until the following Thursday, and then I moved.

Q. Where? A. Back to our own home, 10 Whitehall Avenue.

Q. Do you know when your husband returned with his mother from Pinehurst? A. I think the following Monday.

Q. Did he get in touch with you? A. No, he did not.

Q. From the following Monday would be some time in December, 1929. Did you hear indirectly from your husband from that time on until you commenced this proceeding? A. No, not until after I had started proceedings.

Q. Did you receive any money from your husband toward your support from that time in the early part of December, 1929, until the commencement of this present proceeding? A. I received a check for $200 in December some time

Q. December, 1929? A. Yes.

Q. Is that right? A. Yes.

Q. And nothing more than that? A. No.

Q. You received nothing more than that until the Court made an order that he pay you certain alimony? A. Yes.

Q. Did you charge certain necessaries and certain stores against your husband for your maintenance while this condition existed from the time of the separation until the order for maintenance? A. Yes, sir.

MR. KREMER: May I ask the purpose of that?

MR. STEIN: The purpose of it will be, if your Honor please, not only to show the constructive abandonment and lack of support, but the viciousness of it in that the defendant made no provision for her, and even sent a notice to the merchants not to give her anything to eat by way of necessaries, through a lawyer named Edward Newman.

At least, we suppose he had his authority.

MR. KRAMER: Then I object to it because any temporary alimony has been taken care of by the Vice Chancellor's order. I think the issue here is whether or not it should be permanent.

(Argument)

By MR. STEIN:

Q. Was it after you had gotten this word from your brother, that it was said was given to him by your husband, that you finally decided that you would leave? A. Yes.

Q. The defendant is the only child of his mother? A. Yes.

Q. That is, the only living child? A. Yes.

MR. STEIN—Cross-examine.

THE COURT—We will adjourn at this time until 1:20 P. M.

(A recess was had until 1:20 o'clock P. M.)

AFTERNOON SESSION.

GERTRUDE T. McDONALD resumed the stand, and testified further as follows:

CROSS-EXAMINATION

By MR. KREMER:

Q. Will you please tell us again the date of your wedding? A. April 13, 1926.

Q. 1926? A. Yes.

Q. Immediately after your marriage, you came to live at No. 48 Esplanade, Deal? A. Yes.

Q. That house was owned by your husband? A. Yes.

Q. Wasn't it, in reality, a gift from his parents to you and himself as a wedding present? A. I never considered it as such. I knew it was built originally not for either of us, and then given to Mr. McDonald as a wedding present.

Q. His mother gave it to him as a wedding present? A. I believe so.

Q. And she helped to get it furnished for you, didn't she? A. For us, yes.

Q. And she went about picking out furniture and fitting up the house to be occupied by her son and yourself?

Q. She did a good deal of that work before the date of the marriage? A. Yes.

Q. She got the place in readiness for you, didn't she? A. Yes.

Q. And you saw something of Mrs. McDonald, Senior, during the two or three months before you were married? A. Oh, yes.

Q. You talked to her of your approaching marriage? A. Yes.

Q. And she talked to you of it? A. Yes.

Q. And then you moved into the house at 48 Esplanade as soon as you were married? A. After we returned from our wedding trip, yes.

Q. How far is 48 Esplanade from the house that your mother-in-law and father-in-law occupied? A. Just one removed.

Q. I beg your pardon? A. One house removed.

Q. Do you mean next door? A. No, there is a block in between occupied by another house.

Q. They are on the same street? A. Yes.

Q. And you saw a good deal of your mother-in-law after you were married? A. Yes.

Q. You went about with her a great deal? A. Yes.

Y. You say that she was like a mother to you? A. Yes.

Q. And you were like a daughter to her? A. Yes.

Q. And you four, meaning you and your husband and your mother-in-law and father-in-law, went about for two and a half years serenely? A. Yes.

Q. You went to the City with your mother-in-law? A. Yes.

Q. You went everywhere with her? A. Yes.

Q. You made a companion of her? A. Yes.

Q. You got along splendidly with her? A. Very nicely.

Q. And you had three children by a former marriage? A. Yes, sir.

Q. Did they live in the house at 48 Esplanade? A. Yes.

Q. All three of them?? A. Yes.

Q. When did you leave the house at 48 Esplanade to go and live at 10 Whitehall? A. About a year and a half later.

Q. That would be 1927? A. October.

Q. October, 1927? A. Yes.

Q. In the fall of 1927, you acquired the new home? A. Yes.

Q. Did your mother-in-law help to fit that up? A. No.

Q. Was that all furnished? A. No, we used our same things.

Q. As a matter of fact, didn't your mother-in-law put a lot of her things in there? A. No.

Q. Aren't there any of her belongings in No. 10 Whitehall now? A. Not that we did not have at 48 Esplanade, no.

Q. Were there some of her belongings moved into your home at 48 Esplanade? A. Personal gifts?

Q. Furniture or personal gifts? A. She gave us presents from time to time, yes.

Q. After you were married? A. Yes.

Q. Did she give you any presents for the house at No. 10 Whitehall? A. I think one rug.

Q. Is that all? A. Yes.

Q. No. 10 Whitehall is a much more pretentious home than No. 48 Esplanade, is it not? A. I like it better.

Q. It is a much more pretentious home, isn't it? A. Yes, I think it is.

Q. It cost more? A. Yes.

Q. How far is it from the other home? A. Oh, probably ten blocks; I would not know accurately.

Q. And it is located on the ocean front between ocean drive in Deal and the ocean? A. Yes.

Q. Coming down to the fall of 1928, at that time you told us this morning that you returned to No. 70 Esplanade, to the home of Mr. and Mrs. McDonald, Senior? A. Yes.

Q. And before you went you talked it over with your husband? A. Yes.

Q. Who asked you to go? A. Why, I don't know that he asked me to go or whether it was just discussed with the whole family, just an agreement made between all of us, but whether or not he, or she, or I asked, I don't know.

Q. What were the reasons that she advanced for you to come back?

MR. STEIN: Do you mean the mother-in-law?

MR. KREMER: Yes, Mrs. McDonald, Senior.

A. What I said this morning, Mr. McDonald's illness and the illness of her son and his son.

Q. Wasn't there any other reason? A. No.

Q. Your husband had been going into real estate investments, had he not, during that year or so prior to October, 1928? A. Building a new apartment, you mean? Yes.

Q. And he had some other real estate that he purchased, did he not? A. I don't know of any.

Q. Didn't he have a row of houses on Broad Street,

Red Bank, near the apartment? A. Long before I married him, yes.

Q. But he had them? A. Yes.

Q. And then he started to build an apartment? A. Yes.

Q. Didn't he say to you that for financial reasons it would be advisable for him to cut down expenses and live in his father's house? A. He said it as a help, but he did not suggest it on that ground.

Q. That was one reason that actuated him to go back there and live there? A. I daresay.

Q. Don't you know it? A. It wasn't the main reason.

Q. I didn't ask you that; I asked you if it was not one of the reasons? A. Yes.

Q. Why didn't you tell us this morning when Judge Stein asked you the conversation that took place about going back to 70 Esplanade? Why didn't you tell him and tell the Court that your husband asked you to go back to help him save money? A. He didn't ask me to go back to help him save money.

Q. He suggested that to you as one of the reasons. didn't he? A. Could I explain how it works into it?

Q. Yes. A. The main thing was that Mr. McDonald—we had no talk of going for financial reasons prior to his father's ill health. If Mr. McDonald had a financial change, they existed long before his father's ill health. That was when I agreed to go, that it would be a help, but he did not ask or suggest it on that ground.

Q. That was one of the reasons that led him to go back, wasn't it? A. It may have led him, but it had nothing to do with my going back. I went on his father's account..

Q. The financial need made no difference to you? A. I did not dwell on it seriously to that extent.

Q. So you went back in October, 1928, to 70 Esplanade? A. Yes.

Q. Up to that time everything had been harmonious between you and your mother-in-law? A. Exactly.

Q. How long had you been at 70 Esplanade before the first little tiff took place that you told us about this morning? A. Probably two months.

Q. Then it arose because you and your husband went to New York on a party without including the in-laws? A. No, it arose over my remarks to his mother that I spoke of, which was followed by our trip to New York.

Q. I mean it had to do, did it not, with the contemplated trip that all four of you were to make to New York, and then your mother-in-law and father-in-law could not go on account of your father-in-law's condition, and you and your husband decided to go alone, and that incensed your mother-in-law? A. Yes.

Q. Of course, you got over that right away, all of you, didn't you? A. No, I don't think it was over gotten over. I think everything that followed—

Q. Didn't you get over it?? A. Yes.

Q. But you think they did not get over it? A. Yes.

Q. When you went to live at 70 Esplanade, did you take your children with you? A. Yes, when they were at home. They were at school at the time. They were to spend their Christmas vacation with us.

Q. Patricia was not at school, was she? A. Yes.

Q. I understood you to say this morning that Patricia had taken ill, and that that is the reason you did not go to Florida. A. That is true, but we took her out of school when she was ill.

Q. Where was she at school? A. At Summit.

Q. When did she go home to Deal? A. She came over a week end in January prior to Mr. McDonald, Junior's departure to join his father, and was taken ill.

Q. When they went South, was Patricia in the house? A. No.

Q. They went South when? A. Early in January.

Q. And up to that time there had been no serious friction? A. I think so.

Q. Well, beyond the remarks having to do with the New York trip? A. Yes, I told you about my going to leave and the conversation we had. That was in December when I was going to leave and go to a hotel.

Q. And that is the time that your mother-in-law said, "Now, the things I said hurt Jack, and the things you said hurt him, and I am sorry for what I said, and you should be likewise"? A. Yes.

Q. How long before they went to Florida did that take place? A. About a month.

Q. During that interval of a month was there any more trouble? A. No serious trouble, no.

Q. Your husband's behavior was all right during that time, wasn't it? A. Toward me??

Q. Yes. A. Outside of at Christmas time, not being with me, for instance, trimming the tree and doing things he had always done, yes, as far as our mutual relationship was.

Q. He was doing his best to keep things smooth in the house, was he not? A. I think so.

Q. You had not had any serious quarrel with him of any kind? A. No.

Q. Then you told us about your brother telephoning up from the South to have your husband come down? A. Yes.

Q. How long had they been South when he started to do that? A. He only phoned one time until after the death of Mr. McDonald.

Q. When was it he phoned you? A. Just prior to Mr. McDonald's departure, the latter part of February.

Q. Prior to your husband's departure? A. Yes.

Q. That was about a month or two months after the in-laws had gone down? A. No, they left about January 10th, and this was the end of February.

Q. During that interval of January 10th to the end of February, you and your husband were still living at 70 Esplanade in Deal? A. Yes.

Q. Your mother-in-law was calling up from the South to find out about Patricia? A. Yes

Q. She called you up and talked to you about how Patricia was? A. Called up every other night.

Q. And she was evincing an interest in your little girl? A. Not necessarily, although I think that was the case. I don't want to create a wrong impression that Mrs. McDonald was unfriendly when I spoke to her over the phone.

Q. Neverthless, she would call up to find out how Patricia was? A. Yes.

Q. And she was interested in her? A. Yes.

Q. And your father-in-law was likewise interested? A. Yes.

Q. He called up and asked about her? A. They were usually both on the telephone.

Q. And you talked to them? A. Occasionally.

Q. When you talked to them, was everything agreeable? Was the conversation agreeable, and did they express affection for the little girl over the phone? A. They naturally expressed more interest in her welfare, yes.

Q. Then there was not any serious rift between you and your mother-in-law up to that time, was there? A. No, I think the trouble we had had—I think it was over.

Q. And what happened was one of those quarrels that might take place in any family? A. I suppose it could happen with people living—two families living together, yes.

Q. It is one of those things that come under the matrimonial instruction that you take a man for better or worse?

MR. STEIN: I object to that.

MR. KREMER: I will withdraw it.

By MR. KREMER:

Q. There was some discussion about who should take your husband to Florida? A. Yes.

Q. And it was decided that he should go down with a Japanese butler? A. Yes.

Q. And he went with the Japanese butler? A. Yes.

Q. And the next thing you knew was when your brother called you up to tell you that Mr. McDonald, Senior, was dead, and you were not to kiss the body? A. Of any trouble, yes.

Q. Had you had any trouble with Mr. McDonald, Senior, at all? A. Not that I know of, no, never.

Q. You never had any? A. Never.

Q. And this information shocked you? A. Frightfully.

Q. And that is all your brother said to you? A. Yes.

Q. He didn't tell you why or anything about it? A. No.

Q. I understood you to say that that was along in February, the latter part of February. A. He phoned about Mr. McDonald's death? No, it was in March he died.

Q. What time in March? A. He died on Palm Sunday.

Q. How soon did they bring him home? A. The following Tuesday morning he arrived in Elberon.

Q. Your husband went down the latter part of February? A. Yes.

Q. Did he communicate with you after he got there? A. Yes.

Q. He called you up? A. Yes.

Q. And everything was all right? A. Yes.

Q. And you had not had any quarrel with him up to the time he came back? A. No.

Q. And then shortly after Palm Sunday, they brought Mr. McDonald, Senior, back to Deal? A. Yes.

Q. And you said that your husband came in. What did he do when he came in? A. I ran up to him and kissed him, and he kissed me in return.

Q. Then what happened? A. Nothing.

Q. How soon after that was it that you spoke to him about the information you said your brother had given you? A. Not until after the funeral on Thursday.

Q. What did you say to your husband then? A. I demanded an explanation of his saying to my brother that he did not care for me any more and was leaving me.

Q. What did he tell you?? A. He said he had said those things.

Q. He told you that it was on account of your treatment of his father? A. Yes.

Q. Did he tell you what that treatment was? A. Yes.

Q. What did he say it was? A. It was the episode of my boy's cap. He felt he had been humiliated in front of the children by my reply to my son when he had told them not to wear the cap, "Never mind, John,"

Q. As a matter of fact, didn't your husband tell you that it was due to something entirely different that you had said in the presence and hearing of his father? A. No, that was the explanation he gave me why his father's feelings were hurt.

Q. Didn't he tell you his father's feelings were hurt, and that he was incensed about it because you had made a statement about his father in reference to some stocks and securities, that his father had spoken about, and you said to Mrs. McDonald with Mr. McDonald, Senior, present, "Why doesn't he either sell his securities or shut up?" A. I never said that.

Q. Did your husband tell you shortly after the funeral that that was the thing that had hurt his father and incensed him? A. He quoted both those things about the cap episode and the other one, but I denied that. I said something that could be interpreted that way, but that was not what I said.

Q. When you were asked this question what it was your husband said to you, why didn't you relate that? A. Judge Kremer, there is a lot of things I cannot relate. We would not have time for them, and that did not occur to me, that's all.

Q. That was what your husband really complained about, wasn't it? A. Not any more than the cap episode

Q. Did he complain about it as much as the cap episode? A. He simply quoted both as examples of his father being hurt.

Q. Why do you say that he did not complain of that as much as he did of the other things? He complained of both, didn't he? A. He mentioned both, yes.

Q. As a matter of fact, had you not made that statement in the presence of your father-in-law? A. No.

Q. Had you not become impatient about his talk about some of his financial cares and said, "Why don't you sell your old securities or shut up?" A. No, I didn't say it that way.

Q. What did you say? A. In the same conversation I had with his mother, she took exception to our speaking about this trip to California. She said the reason they did not go around more by themselves was because they were saving their money for my husband, and he said, "I would rather you would not do that. I would rather you enjoy life while you can." Then as we were talking about Jack's condition, I said, "It would be much better for Jack if he would sell these stocks or keep still about them," and Mr. McDonald was passing by the door through the hall at the time, but he was not in the room. At that particular moment he was not in the room.

Q. You said he ought to sell his stocks or keep still about them? Didn't you say that? A. The thing I may have said—people put a different interpretation on it.

Q. You did use the words *keep still?* A. Yes.

Q. Isn't it a fact that you said that he ought to sell those securities, whatever they were, or keep still about it? A. Yes.

Q. Instead of *shut up* about it? A. Yes.

Q. You said, "Keep still about it? A. Yes.

Q. And that hurt your father-in-law, didn't it? A. Apparently.

Q. And that was related to you by your husband? A. Yes.

Q. And your husband told you, did he not— A. He used the expression, "Shut up", which I objected to.

Q. And your husband told you that your father-in-law had said that he had been very good to you and kind and affectionate to you, and that he was injured that you would say a thing like that about him, isn't that a fact? A. Yes.

Q. And that was what incensed your husband, wasn't it? A. Yes, that and the other remark.

Q. And that was what actuated him upon his father's death to send that instruction? You know that to be the truth, don't you? A. Of course I know it to be the truth.

Q. After you got up here and the funeral took place, you wanted to leave again, isn't that so? A. He had never come there. I was living in my own home.

Q. You did not come to the house? A. I wasn't living there after the funeral.

Q. You were living there up to the time your husband went South? A. Yes, but I had moved back to 10 Whitehall.

Q. When? A. Prior to his return with his father's body.

Q. After you got the message from your brother? A. Yes, I had already moved before I took the message from my brother.

Q. Why had you done that? A. Because our moving to No. 70 Esplanade was not a permanent proposition. It was understood we would go back in the spring. Sec-

ondly, I had a sick child, and I thought it was no place to have a sick child to nurse when there was a death in the house.

Q. After your husband came up, he got in touch with you, didn't he? A. I was there the night the body was brought home.

Q. At that time did you stay in No. 70 Esplanade? A. Yes.

Q. And then did you go back to Whitehall? A. Yes.

Q. After you went back to Whitehall, your husband got in touch with you? A. Yes.

Q. And he asked you to come back to him? A. To come back and live with his mother, yes.

Q. And he said to you, "You come back now and we will forget all this. That has gone by, and I need you, and I love you." Didn't he say that? A. He said that after I had gone home, and he sent for me to come back.

Q. Why didn't you tell us that this morning? A. Yes.

Q. You say that that is in the record? A. Yes.

Q. After he did that, you came back, didn't you? A. Yes.

Q. And that was in the early spring of 1929, the funeral having taken place after Palm Sunday? A. Yes.

Q. Sometime in early April, 1929, I assume? A. Yes.

Q. And you proceeded to live there, you and your husband and your mother-in-law? A. Yes.

Q. What was her condition of health? A. Naturally, she wasn't well at the time.

Q. And she was very much shocked at the death of her husband, wasn't she? A. Yes.

Q. And she grieved over it a great deal? A. Yes.

Q. And your husband did also, didn't he? A. Yes.

Q. He was the only child? A. Yes.

Q. And you lived there throughout the spring and summer of 1929? A. Yes.

Q. And in the summer of 1929, your husband returned to the house at No. 10 Whitehall, didn't he? A. Yes.

Q. How much rent did he get for it, if you know?

MR. STEIN: I object to that as not being cross-examination.

MR. KREMER: I will withdraw the question.

By MR. KREMER:

Q. Didn't he tell you that it was expedient that it should be rented for financial reasons?

MR. STEIN: I object to that as not cross-examination.

THE COURT: I will permit the question.

A. No.

Q. He did not tell you that? A. No.

Q. Why was it rented? A. Because there would be no advantage in having a house idle. I mean, you could rent that house for the money you would get from it, but not necessarily because it was necessary. No one was living there, and there would be no benefit in leaving it idle.

Q. You don't think he needed the money at all?

MR. STEIN: I object to that.

THE COURT: Yes.

By MR. KREMER:

Q. You continued to live there throughout that summer with your mother-in-law? A. Yes.

Q. Did everything go smoothly that summer? A. No.

Q. What was the next thing that happened? A. Their objections to the children, which I resented.

Q. Who objected to the children? A. My mother-in-law.

Q. How old were the children? A. At that time they were sixteen and fifteen.

Q. Were all of them there? A. My little girl was eleven. She was there all the time.

Q. Were the children partly to blame sometimes for the troubles that took place?? A. I don't think so.

Q. You don't think they were at all to blame? A. No, I don't, really.

Q. Was the trouble about the children serious? A. No, it wasn't serious; it just went to make life a little bit more unpleasant.

Q. It got under your skin a little bit? A. No; a home had been offered me and my children, and it wasn't a home for them.

Q. At any rate, you did not leave during that summer? A. No.

Q. And everything was going fairly smoothly, except for the children? A. May I add that I sent my boys to camp that summer. They were there very little, but in the short time they were there, there were criticisms.

Q. Boys of fifteen and fourteen are rather rambunctious at that age, aren't they?

MR. STEIN: I object to that.

By MR. KREMER:

Q. Weren't they rather rambunctious? A. No.

Q. In the fall you moved up to Red Bank? A. Yes.

Q. At that time did you talk that over with your mother-in-law? A. Yes.

Q. And also with your husband? A. Yes.

Q. Had you left any more after that one time after the funeral? A. Yes, I had come back and gone away one other night over night.

Q. When was that? A. Directly after my return.

Q. Did your husband come after you then? A. No.

Q. Did he call you up? A. No, he called me up. I was taken sick, and he called up and asked how I was.

Q. But you came back that time? A. Yes.

Q. You went up to Red Bank more or less after that time, all three of you? A. Yes.

Q. That was in the fall of 1929? A. Yes.

Q. The apartment house was open and had been completed? A. Yes.

Q. And you said that you took an apartment on the second floor, and your mother on the first floor? A. Yes.

Q. How big an apartment was yours? A. They are both six room apartments.

Q. And yours was completely furnished? A. With my own furniture.

Q. Furniture out of 10 Whitehall? A. Yes.

Q. You moved some furniture? A. Yes.

Q. Didn't you make that move partly for financial reasons, living at Red Bank, I mean? A. Do you mean that Mr. McDonald's mother considered that for financial reasons?

Q. Yes. A. I daresay.

Q. And partly to help in the management of this building, so that he could be close to it? A. That, I don't know.

Q. Didn't he tell you that? A. No.

Q. But didn't he tell you that he found it advisable financially that he should retrench and go up and live in the apartment house? A. No, the main thing was that Mrs. McDonald—the association of No. 70 Esplanade was depressing to her.

Q. And she took an apartment on the floor below? A. Yes.

Q. What time in the fall did you get up there? A. Early in October.

Q. And your husband was ging to New York to business also, wasn't he? A. Yes.

Q. He had a business in Brooklyn that you mentioned? A. Yes

Q. What kind of a business? A. Lumber business.

Q. And he would go how many days a week? A. Possibly three, possibly four; it varied. There was no set time.

Q. While he was gone, you went about with your mother-in-law? A. Yes.

Q. You would go to New York with her? A. Yes.

Q. And you and she were companionable at that time? A. Yes, I tried to be with her altogether.

Q. Didn't she treat you all right? A. I didn't

think—apparently on the surface she was, but complaining to my husband about me afterwards, I didn't think it was justified.

Q. The only complaint, as I recall that you told us, was that she said that you were jealous of his love for her, is that right? A. No, that is the prior testimony.

Q. What was she complaining of at this time that was disturbing to you? A. She told my husband that I was not companionable to her, that I was moody, and I didn't talk to her, even though I was with her; in other words, that there was no closeness there. Secondly, she told him that I led him around by the nose, to use her own expression, and all those things being small, at the same time they hurt, when I was trying my best to do what both my husband and she wanted me to do.

Q. Those statements of her standing alone, you would not have left on account of them alone, would you? A. No, not on those statements alone, no.

Q. Your husband was treating you all right? A. No.

Q. What was he doing that you found objectionable? A. The fact that, as I said this morning, I had no companionship with him. He was with his mother exclusively.

Q. Your apartment had six rooms? A. Yes.

Q. A bedroom? A. Yes.

Q. It was a complete home, separate and apart from hers? A. Yes.

Q. And your husband would come home from New York, and he would stay in his mother's apartment? A. We were not housekeeping. I had no dining-room or kitchen that was used.

Q. You three had agreed to that, that you would take your meals in her apartment? A. Yes.

Q. But your home was separate and apart from hers? A. For the winter.

Q. I am speaking now of the time that you were living in the Gertrude at Red Bank? A. Yes.

Q. That was the name of the apartment named after you? A. Yes.

Q. Who named it? A. My husband.

Q. You say that he would go in to see his mother when he would come home from his work? A. No. I didn't say that; I said he would go in and stay there.

Q. Where would you be when he would come home? A. I would be up in my apartment, and then I would come down. Every evening I would be waiting down there, because I knew it was his custom.

Q. You knew that you were going to have dinner there? A. Yes.

Q. And that is why he went into her apartment, and why you went there, because you were taking your meals in her apartment? A. Yes.

Q. Then there was nothing unusual, was there, in your husband walking into his mother's apartment where he would find you and have dinner? A. Nothing unusual, no.

Q. There was nothing objectionable about it, was there? A. It all depends upon the viewpoint. I think I would have felt a great deal better if he came up to me first and we came down together, or spent the evening with me after dinner.

Q. Just so far as dinner is concerned, isn't it a fact that you were often in your mother-in-law's apartment waiting for your husband there? A. Yes, I tried to make everything as agreeable as possible.

Q. And he knew that he was to find you there? A. Yes.

Q. Then, what would the point be of his going up to the empty apartment and coming downstairs again?

MR. STEIN: I object to that as argumentative.

By MR. KREMER:

Q. Isn't it a fact that your husband came to your mother-in-law's apartment usually pursuant to agreement that you and he had, either tacitly or expressed, that you would meet there and have your dinner? A. No, we ate all our meals at Mrs. McDonald's. Whether or not I was going to be there or not did not enter into the thing. Mr. McDonald did not expect me there any more than he did in our own apartment.

Q. You had all your dinners there? A. Yes.

Q. And every night? A. Yes, but if he wanted to sit down to dinner until I came down, that does not necessarily mean that I felt he should be pleased about it. I do not mean to imply that he did.

Q. In any event, that is the way you lived during that fall? A. Yes.

Q. There was some talk of your going to South America? A. Yes.

Q. And you were to go to South America? A. Yes, I was asked to go.

Q. Mrs. McDonald asked you to go? A. Yes.

Q. And the reason you did not go was because you were expecting your children home from school at that time? A. Yes.

Q. It would have been about Thanksgiving? A. Yes, and Christmas.

Q. And you said to your husband that your duty was to your children, that they were coming home from school, and they would not get any other chance to see you, and you thought you had better not go to South America? A. I didn't answer it that way, no.

Q. How did you answer it? A. I told him I would love to go to South America very much if he could wait until after the holidays, as long as the children were coming home. They had been away to camp a year prior, and that Easter, at his father's death, their vacation had been spoiled, and I thought I had better be there, and would he wait until after Christmas to go, and the reply was, no, that his mother did not want to be home for the holidays, and they would go at that time. I said, "Do you think I am justified in staying with the children as long as you are going to have your mother with you?" and he agreed with me I was.

Q. There was no friction about that trip, in other words? A. No.

Q. Your mother-in-law wanted you to go and had invited you? A. Yes.

Q. And your husband had invited you? A. Yes.

Q. And you stayed home on account of your children? A. Yes.

Q. And there wasn't any quarrel among any of you, so far as the South American trip was concerned? A. No.

Q. That trip was abandoned, was it not? A. At the time I didn't know it was abandoned until after I had left.

Q. Isn't that about the time they were going to Pinehurst? A. They were going to Pinehurst just over

Thanksgiving, because Mr. McDonald could not get away as soon as he expected.

Q. You said that about a week before they went to Pinehurst, you and your mother-in-law had a violent quarrel during the night? A. All three did.

Q. That is the time you said that your husband was highly excited and went outside and sat on a log some place? A. Yes.

Q But that quarrel was all patched up, wasn't it? A. I thought so.

Q. I understood you to say this morning that the next week after that was perfectly placid? A. Yes.

Q. And that quarrel again arose over the division of time on the part of your husband between you and your mother-in-law, is that right? A. Yes.

Q. And you objected to his being with her too much? A. Yes.

Q. And not giving enough of his time to you? A. Yes, especially on the eve of departure, yes. I had not made any objection prior to that.

Q. I am speaking of a quarrel a week before they went. That was not on the eve of departure, was it? A. No, that was a week prior.

Q. That quarrel was because your husband was giving too much attention to his mother, was it not? A. No, it arose between my husband and his mother.

Q. Your husband told you then that he loved you, as you said, didn't he? A. Yes, he told his mother that he loved me, and she said that was not the way he talked at Palm Beach.

Q. You knew the reason for his displeasure at Palm Beach, did you not? A. As a matter of fact, he went on to add that the reason he spoke that way at Palm Beach was because he had been harrassed into it.

Q. In other words, you thought that your husband loved you and was expressing that love for you? A. I thought we were beginning to get back to where we were when we were first married, yes.

Q. But he did express his love for you up there in the apartment a week before he went to Pinehurst, and he told you in the presence of his mother, and he told her so, didn't he? A. Yes.

Q. And you thought that the next week after that quarrel went along placidly? A. Yes.

Q. Did you have any conversation with your mother-in-law the day after the quarrel? A. Which quarrel are you speaking of?

Q. The one when he went out and sat on the log. A. Yes.

Q. And things were smoothed over? A. No, not for several days.

Q. They were eventually smoothed over? A. Yes.

Q. So you say that the week went placidly by? A. I probably should not have said placidly by for two or three days. We argued back and forth whether or not I was going.

Q. And she wanted you to go, didn't she? A. No.

Q. Didn't she want you to go to Pinehurst? A. I mean go from the apartment, not to Pinehurst.

Q. I beg your pardon. As a matter of fact, didn't your mother-in-law suggest that she would go back to 70 Esplanade and leave you two? A. Yes, she did.

Q. She offered to pull out. Why wasn't that done? A. Because her son would not allow her to.

Q. He did not want her to go, and he did not want you to go? A. Yes.

Q. Did you object to that attitude on his part? A. No.

Q. You realized that your mother-in-law was alone, didn't you? A. Yes.

Q. And that her condition of health was none too good? A. Yes.

Q. And that some allowance had to be made by her son for that fact? A. I made great allowances.

Q. Didn't you realize that you would have to make some allowance for that condition of affairs? A. I did. This is nine months afterwards.

Q. Even with the months afterwards, didn't you consider that it was your obligation to make some allowance? A. I did make allowances, and I would have continued making allowances, if my allowances and my living the life that I was living was being appreciated either by my mother-in-law or my husband, but the attitude of Mrs. McDonald was that the sacrifices were on her part to have her home upset with myself and my children, and not that it was hurting me to give up my home, and also, in the interval I had been told things that she had said at Palm Beach about me and was still saying, and I did not think—considering what I was trying to do—that there was any appreciation being shown for my efforts.

Q. Did you think it was your position because of your mother-in-law's attitude in saying things about you behind your back that you were going to leave your husband? A. No.

Q. That is what actually caused you to leave, isn't it? A. No, I simply saw that my husband's health was suffering, and my health was suffering, which was the main issue, and I would not be able to go on. I was a physical and mental wreck.

Q. During this time when you say that was taking place, you were going to New York with your mother-in-law and going about with her regularly, weren't you? A. Yes, there was no open animosity shown.

Q. And except for these occasional quarrels, things were going smoothly? A. Yes.

Q. Do you want the Court to believe that because you knew your mother-in-law was giving you a dig here and there, and you would have an occasional quarrel with her, that your weight dropped off? A. I would not want it.

Q. Do you want the Court to believe that it was that situation which caused your weight to fall off from 130 pounds to 98 pounds?

MR. STEIN: I object.

THE COURT: I will allow the question.

A. Yes.

Q. On the last night before they went to Pinehurst, you had another quarrel? A. With my husband, yes.

Q. Your husband came home that night, and you had dinner in your mother-in-law's apartment? A. Yes.

Q. And you said that you were going upstairs, didn't you? A. Yes.

Q. And he said he was going up, too, is that right? A. No, he was working on his mother's books, and I left him there. I went down to say good-night. That was about ten o'clock, and he said, "Wait, I am coming up." I waited, and when his mother came back, he found out she was not going to retire, and he waited, and I went up alone.

Q. And he said he would be up in a few minutes? A. He didn't say anything the second time.

Q. Are you sure it was ten o'clock? A. No, I couldn't say.

Q. It might have been considerably earlier? A. No.

Q. And he was working on some books for his mother, and some accounts that he had to get ready before they went away? A. I wasn't objecting to that.

Q. It is a fact, isn't it? A. Yes.

Q. That is what he was doing? A. Yes.

Q. And he came upstairs sometime later? A. Yes.

Q. How much later after you had gone? A. About a half hour.

Q. And then didn't you say to him, "How long is this going to go on, that you have to stay downstairs holding your mother's hand? A. Yes.

Q. You said that, didn't you? A. Yes.

Q. Why didn't you tell us that this morning? Didn't you remember that either? A. No, because, as a matter of fact, that is just the remark that was made to me when I had asked him to go up one other night. I said, "Come on upstairs, Jack," and his mother spoke to me about it. She said, "I think it is very inconsiderate of you to ask Jack to go with you when you know he always sits every night and holds my hand." That is what I was referring to.

Q. You said that to him, and you said he became angry and said, "My God," and went in the other room? A. Yes.

Q. Do you think that retort on his part was justified or not?

MR. STEIN: I object to that.

By MR. KREMER:

Q. When you knew that your husband had some work to perform below in the apartment? He had something to do there of a business nature?

MR. STEIN: I object to that.

By MR. KREMER:

Q. You knew he had some accounts and books to go over there? A. I didn't object to his spending the evening.

Q. I asked you if you knew that? A. Yes.

Q. You knew that that was what kept him there? A. Yes.

Q. And you told us and have been telling us that you were trying to do everything you could to see that things went smoothly, is that right? A. Yes.

Q. Do you think that the question you asked him when he came upstairs was calculated to make things go smoothly?

MR. STEIN: I object to the question.

THE COURT: I will allow the question.

(The Stenographer read the last question as follows:

"Q. Do you think that the question you asked him when he came upstairs was calculated to make things go smoothly?")

A. I didn't object to his spending the evening with his mother fixing her books. It was when he said to wait for him and then did not come up that I objected.

Q. Will you please answer the question?

(The Stenographer read the last question as follows:

"Q. Do you think that the question you asked him when he came upstairs was calculated to make things go smoothly?")

A. No.

Q. In other words, isn't it a fact that these tiffs that you had, this one and the other you refer to, were about six of one and a half a dozen of the other, due in part to your hot temper and partly to your mother-in-law's temper? A. Absolutely not.

Q. You think this one was all your husband's fault, too? A. I think it was lack of consideration on my husband, yes.

Q. Then you quarreled that night some more, and he went to bed and would not say anything more to you, is that right? A. He told me to go ahead with my original plans. That is what was said after that.

Q. Didn't you believe that that was said in anger, or in part provoked by what you had said to him? A. Yes.

Q. You have been married before, and you had been through these marital experiences. Don't you know that there are many things that are said in the heat of anger by a husband, which are not seriously meant?

MR. STEIN: I object to that.

THE COURT: What is likely to happen between a man and his wife has nothing to do with it.

By MR. KREMER:

Q. There had been many things which you had said to your husband and which he said to you in the course of your married life that had been forgotten, isn't that so? A. Yes.

MR. STEIN: I object to that.

By MR. KREMER:

Q. The next day he went to Pinehurst with his mother, did he not? A. Yes.

Q. And he kissed you good-bye before he went? A. Yes.

Q. And you did not say anything to him that you were going back to 10 Whitehall? A. I had no intention of going back to Whitehall at that time.

Q. When your husband went to Pinehurst, you had no intention? A. No.

Q. All of these things had happened, but you did not intend then to leave? A. No.

Q. And he went on out there? A. Yes.

Q. Did he send any word to you? A. No.

Q. Did he call you up? A. No.

Q. Didn't he communicate with you from Pinehurst? A. No.

Q. When did you decide that you were going to go back to Whitehall? A. After the telephone conversation with my brother.

Q. Your brother told you that Jack had called him up? A. Yes.

Q. He said that he had better look after his sister—

MR. STEIN: No, I insist that the language be used that was testified to.

THE COURT: Substantially the language.

By MR. KREMER:

Q. I understool you to say this morning that when your brother called you up, he said that your husband had called him on the telephone and had said that he was through, and that your brother would look after your interests? A. Yes, he said that he was choosing his mother in preference to me.

Q. Did he say that your brother would look after your interests? A. Yes.

Q. Did your brother tell you what he had said in reply? A. I believe he did.

Q. What did your brother tell you he had said in reply? A. I am not positive of the quotations. As I understand it, he said, "I am sorry for you."

Q. Didn't your brother say that he said he did not blame him? A. No, he didn't tell me that.

Q. That was your brother Ambrose? A. Yes.

Q. Not the one who was on the stand this morning? A. No.

O. After you got that communication from your brother, you left? A. Yes.

Q. Why didn't you wait for some direct communication from your husband? A. I don't know why I should have waited after a message like that.

Q. You did not get it from your husband directly, did you? A. I didn't get any of these blows from my husband directly; they were all done by telephone.

Q. Didn't you think that you might see whether or not your husband had said that in anger? A. He left on Saturday, and I left on Thursday, and I still had not heard from him.

Q. You did not communicate with him to find out whether or not he wanted you to go or to stay? A. No.

Q. You did not have any word from him after he kissed you good-bye that he wanted you to go? A. No.

Q. You simply had a second-hand instruction from your brother, and on that you picked up and got out? A. Yes.

Q. Is that right? A. Yes.

Q. Why did you go back to No. 10 Whitehall? A. Because that was my home.

Q. Did you advise with counsel before you went back there? A. Yes.

Q. And was it as the result of the advice with counsel that you went back? A. No, I told my husband I was going to 10 Whitehall.

Q. Wasn't the apartment just as much your home as 10 Whitehall? A. No, I wasn't housekeeping there. I didn't have my housekeeping set or kitchen or dining-room utensils to keep house with.

Q. Your husband had been living with you in the apartment at Red Bank? A. Yes.

Q. He was not going to live at Whitehall? A. No, unless he came back to me there.

Q. Would you have welcomed him back there? A. Yes.

Q. You would? A. Yes.

Q. Is that what you told him when he came here? A. Yes.

MR. STEIN—I object to that; there is no evidence—

MR. KREMER— I will withdraw the question.

By MR. KREMER:

Q. You told us this morning that after you left the apartment in Red Bank, you had no more communication with your husband until this suit was started? A. Yes.

Q. Is that the fact? A. Yes.

Q. Didn't your husband come to see you at 10 Whitehall with his mother? A. After he had engaged you as counsel.

Q. When did he come to see you? A. After he had sent out notices from Mr. Newman, and I had been living there about ten days.

Q. You do not know when he engaged me as counsel, do you? A. Yes, I do.

Q. When did you start this suit? A. My husband was notified on about the Tuesday or Wednesday before I actually left. The letter was written to him at Pinehurst, and he got it Friday or Saturday.

Q. Written to him by whom? A. By my attorney.

Q. You mean that your husband left on Saturday, and on Tuesday you consulted your attorney? A. I do.

Q. And you waited for no word from your husband whatever before doing that? A. I think that when a man—

Q. You waited for no word from your husband one way or the other before retaining an attorney? A. No.

Q. You say that within three days after he was gone, you were in your lawyer's office, is that right? A. Yes.

Q. Do you know when your husband got back? A. Yes.

Q. When did he get back? A. I believe Monday.

Q. Which Monday? A. Monday after Thanksgiv-

ing, which was on Thursday, the first of December, around that time.

Q. He went the Saturday before Thanksgiving and came back the Monday after? A. Yes.

Q. How soon after he got back did he come to see you? A. About ten days.

Q. Are you sure of that? Are you sure it was no sooner? A. It was past a week, but just how many days past, I couldn't say.

Q. Up to that time you had not served any papers on him, had you? A. Yes.

Q. You mean that this petition had been filed? A. He had been requested by my attorney to come up and see me.

Q. You did not actually start this suit until after January 1st? A. No.

Q. And your husband came to see you after he had been back a week or ten days? A. Yes.

Q. At 10 Whitehall? A. Yes.

Q. And he had his mother with him? A. Yes.

Q. Didn't he ask you then to come home with him? A. Yes, he asked me to come back under the same conditions I had left, to come back to Red Bank and live in the apartment.

Q. And you refused? A. Yes.

Q. Why? A. Because it was going back to the same conditions. I did not consider it living by ourselves. I considered it living with his mother and knew it was only for the winter. It was not a permanent arrangement, our living in separate apartments. The idea was that we would go back to 70 Esplanade.

Q. Did he tell you again then that he loved you and wanted you home? A. He wanted me to go back. He

admitted that he had not played the game and wanted me to give him another chance.

Q. Why didn't you? A. I told him he could come there to me anytime he wanted, but I would not live with his mother.

Q. He had gone West and started before Thanksgiving and returned Monday after Thanksgiving, and within a week or ten days he came to where you were, you having left his house at Red Bank, and he asked you to come back and live in the apartment in Red Bank with him, is that right? A. Yes.

Q. And you refused? A. Yes.

Q. Didn't you think it was your duty to give consideration to the fact that he was contrite and wanted you to come home?

MR. STEIN—I object to the question as to what the witness thought.

THE COURT—Objection sustained.

By MR. KREMER:

Q. Up to that time that last week at Red Bank had been placid. The only quarrel you had had was about his staying at his mother's apartment the night before he went away, and that was your reason for refusing to return to him? A. No, my reason was the entire life I lived for nine months, not that particular quarrel.

Q. As you have outlined it to us today? A. Yes.

Q. Didn't your mother-in-law also ask you to return at that time? A. Yes.

Q. Didn't she express affection for you? A. No.

Q. What did she say to you? A. She asked me to come back and live with them.

Q. She said she wanted you? A. She simply said, "Gertrude, will you return?" and I said, "No", that was all.

Q. Then late in December your husband made other efforts to get you to come home, didn't he?

MR. STEIN—When and where, please?

By MR. KREMER:

Q. Didn't you talk to your husband at Elizabeth? A. Yes.

MR. STEIN—Where?

By MR. KREMER:

Q. In December, in Judge Stein's office? A. Yes.

MR. STEIN—I want the time and place fixed with both you and me present.

By MR. KREMER:

Q. You met at Judge Stein's office? A. Yes.

Q. You and your husband? A. Yes.

Q Was it on one or two occasions in December? A. Two—one occasion in December.

Q. Was it the day before New Year's? A. Yes.

Q. And you were there practically all day? A. Yes.

Q. Didn't your husband ask you to come home then? A. He asked me to come back and live with his mother.

He said then as he said right along that he would not leave his mother and live with me alone.

Q. Didn't you agree to come back on certain conditions A. I agreed to come back if we lived alone.

Q. Isn't it a fact that you agreed to come back and live in his house with his mother if he would convey to you the property at 10 Whitehall? A. No.

Q. Isn't that the truth? A. No.

Q. Do you deny that? A. I do.

Q Didn't you say to him that you wanted that house conveyed to you as a security for some disturbance that might happen in your matrimonial affairs in future, so that you would have a place to go? A. Yes.

Q. You did say that? A. Yes.

Q. And didn't you, on that account, ask him to convey the house to you? A. Yes.

Q. Well, you said a moment ago that you did not. A. No, I said that the conditions were that we go alone.

Q. Didn't he say to you that you were about to have a birthday and perhaps it would be conveyed to you for a birthday present? A. No.

Q. Didn't he agree to convey it to you? A. I believe you told me he did, but he never did.

Q. Didn't he say so to you himself on the way home to Red Bank? A. No.

Q. In any event, wasn't it agreed between you that you would come back to live at 70 Esplanade and try to see if things would not go smoothly, provided that he would convey the house to you as security in the event they did not go smoothly? A. No.

Q. You say that is not the truth? A. No.

Q. You say that you would have gone back to live with him at 10 Whitehall if he conveyed the house to you? A. Yes.

Q. If he went back to live with you at 10 Whitehall, would you have gone with the conveyance of the house? A. Yes.

Q. If what you say is the fact, that you were to return to Whitehall to live with him and would have done so, why was it necessary at all to convey the house to you?

MR. STEIN—I object to that as argumentative.

THE COURT—Objection sustained.

MR. KREMER—I have a right to impeach the credibility, and I think it is admissible for that purpose. considerable latitude is allowed in impeaching the credibility of a witness.

MR. STEIN—No objection is offered to counsel arguing that later on.

THE COURT—I think the testimony discloses the exact situation, and there must be some slight distinction between the interpretation placed upon a statement by the witness and counsel.

By MR. KREMER:

Q. But you say that the offer you made was to go to Whitehall if he would give you the house? A. No.

MR. STEIN—I object to that as not being the testimony.

THE COURT—I do not understand that to be the testimony.

By MR. KREMER:

Q. What was said? A. I said that I would return to Mr. McDonald. There was no talk about his coming to Whitehall, and if certain guarantees were made at Whitehall or anything else, that the same situation would not arise whereby I would have to leave, which was the case, that I would not have to go through this financial embarrassment he had already placed me through.

Q. By financial embarrassment, you mean that which took place immediately before the conversation during the two or three or four weeks before that? A. Yes.

Q. In the interval between your leaving Red Bank and the conversation New Year's Eve? A. Yes.

MR. STEIN—Five weeks.

By MR. KREMER:

Q. Wasn't it agreed between you that you should come back? A. No.

Q. Didn't you agree to come back to 70 Esplanade to live with him? A. No, there was no agreement reached.

Q. Next time was New Year's Day, and you went to see his mother? A. Yes.

Q. And you had another quarrel with her? A. Yes.

Q. And she quarreled with you? A. Yes.

Q. And it was as the result of that quarrel that you decided you would not come back, house or no house, isn't that true?

MR. STEIN—That is objected to as putting a

statement into the mouth of the witness and asking her whether or not it is true.

MR. KREMER—I think you may do that.

THE COURT—Not when you are misquoting a statement.

By MR. KREMER:

Q. Didn't you say to him the next day after you had met your mother-in-law and had quarreled with her that you would not come back? A. Yes.

Q. And didn't you have your husband on the telephone New Year's morning? A. At your office? Yes.

Q. And didn't he again ask you to come back? A. No.

Q. And weren't you informed then that the house would be given to you, as you had requested the day previous? A. No.

Q. Weren't you? A. No.

Q. Didn't I tell you that? A. As a matter of fact, what you said was he was over there now getting ready to convey the deed, but you did not know what the aftermath of this other quarrel would be. I never did hear from my husband about the house or anything else after that.

Q. Since that meeting on New Year's Eve, has not your husband sought to see you, and didn't he see you once again this spring? A. Yes.

Q. And didn't he seek you out in New York, or where did he find you? A. He telephoned my home.

Q. Did he make an appointment to meet you? A. Yes.

Q. And did you meet him? A. Yes.

Q. Where? A. At Judge Stein's office.

Q And he asked you to meet him somewhere's else, didn't he? A. No, he said any place that I said.

Q. Didn't he ask you again there to come back to him? A. Yes, under the same conditions, to live with his mother. He never asked me to live with him alone.

Q. He asked you to come back to the apartment at Red Bank? A. Yes.

Q. To live in the same apartment you had lived in? A. No, he didn't say about the apartment. As a matter of fact, he was not in the apartment at that itme. He was with his mother at 70 Esplanade.

Q. When he came to see you down there after he got back from Pinehurst, he asked you to come back to the apartment, didn't he? That is what you told us before. When he came to see you down there at Whitehall after he had returned from Pinehurst, he asked you to come back to the apartment, did he not? A. Yes.

Q. And to live with him there the same as you had previously? A. Yes.

Q. But this spring, when he saw you at Elizabeth, he asked you again to come back to 70 Esplanade, didn't he? A. Yes.

Q. And you refused to do that? A. Yes.

Q. Did you make any suggestion as to what you would do? A. The same as I had before, that I would live with him by ourselves.

Q. You offered to live in that apartment at Red Bank? A. I didn't designate any place.

Q. Didn't you refuse to live at Red Bank this fall? A. With my husband alone? No.

Q. In the same apartment you were before? A. Under the same conditions, yes.

Q. You refused to do it? A. Yes.

REDIRECT EXAMINATION

By MR. STEIN:

Q. You received $200 from your husband September 17th, 1929? A. Yes.

Q. Was that received in my office? A. No.

Q. Or as the result of a meeting in my office? A. I imagine so; I don't know. I just received it through the mail, that's all.

Q. And other than that $200, you have received nothing except as provided for and ordered by the Court? A. That is right.

Q. Did you receive that regularly? A. No.

Q. Was it necessary for you to have your counsel get in touch with counsel of the defendant each time the alimony was due? A. Yes, nearly every time.

Q. Was there alimony due this morning when you stepped into this court room?

MR. KREMER—I object to that. I think that is obviously an attempt to discredit Mr. McDonald unfairly. No application has been made upon which you—

MR. STEIN—That is not my purpose. The purpose is to refute now the impression which was sought to be given by the cross-examination that the defendant was anxious to have his wife return to him and to do what was right by her.

I will withdraw the question.

AMBROSE McMANUS, a witness called on behalf of the petitioner, being first duly sworn according to law, on his oath, testified as follows:

DIRECT EXAMINATION

By MR. STEIN:

Q. Mr. McManus, you are a brother of the complainant? A. Yes, sir.

Q. Do you remember when your sister was married to the defendant? A. April, 1926.

Q. Were you present at the wedding supper that was given following the marriage? A. Yes, sir.

Q. After the marriage, did the complainant and the defendant go to live together? A. Yes.

Q. As man and wife? A. Yes.

Q. Do you know where? A. At 48 Esplanade, Deal.

Q. Will you tell the various places in which the complainant and the defendant lived as man and wife after their marriage, as you recall them? A. 48 Esplanade, 10 Whitehall, 70 Esplanade, Deal, and, of course, in Palm Beach in the winter, and at Red Bank in the apartment.

Q. From Red Bank, do you know whether or not the parties separated at that place? A. Yes, sir.

Q. Where did the complainant go to live then? A. At 10 Whitehall.

Q. Is she living there now? A. Yes.

Q. Has the complainant continued to live in the State of New Jersey, particularly in Monmouth County, since her marriage? A. Yes, sir.

Q. Did you have occasion to visit the complainant and the defendant in the various homes in which they lived? A. Yes, sir.

Q. From what you saw of their married life, can you say whether or not they were happy, and up to what time?

MR. KREMER—I object to that. The witness should state what he observed.

MR. STEIN—I will reframe the question.

By MR. STEIN:

Q. Do you know whether or not there had been any difficulty in the matrimonial life of these parties? Please answer that question yes or no. A. Up to what time?

Q. At any time, commencing any time. A. Yes, I do.

Q. About when did that matrimonial difficulty commence, so far as you know? A. After they went to live together at 70 Esplanade.

Q. What was it that you observed that makes you say that there was matrimonial difficulty? A. Nothing actually that I observed.

Q. What makes you say that there was difficulty?

MR. KREMER—I object, if he did not observe any.

THE COURT—If it was communicated to him in such a way that makes it competent.

By MR. STEIN:

Q. If you did not observe any, what makes you say

that there was matrimonial difficulty? A. Well, I was in constant communication with my sister, not constant, but every time she came to Elizabeth, she came to see me, and she phoned me two or three times a week, and I was familiar all the time through that source that an unrest existed, which did not exist prior to that time.

Mr. KREMER—I object on the ground that it is hearsay.

MR. STEIN—May I not show what the complaints of the sister were to him and connect it up afterward by showing what the defendant told him?

(Argument.)

THE COURT—If you will exclude the conversation between the sister and the witness, except the fact that complaints were made, and then substantiate the statements alleged to have been made by the defendant, I will admit it.

MR. KREMER—Exception.

By MR. STEIN:

Q. I understand you to say that you were in communication with your sister, and that your sister visited you and came to your home during the time that they lived at 70 Esplanade? A. Yes.

Q. Without saying what was said, do you say that there were unhappy differences, from what was told you? A. Unquestionably.

MR. KREMER—I object to that.

THE COURT—I think you better confine it to exactly what was communicated to him, not the conversation itself, but that something had occurred at the same time that subsequently was corroborated by the statement of the defendant.

By MR. STEIN:

Q. Don't answer this if counsel objects. Did you learn from your sister that the defendant had told her that he had lost affection for her, and that he was indifferent toward her, and subsequently have that verified by the defendant himself?

MR. KREMER—I object to that on the ground that it is leading and secondly, that it is not evidential, that his sister told him. It could not be proved in that way. It would have to be proved by his personal knowledge of an occurrence that happened in the household, or a statement made in the presence of the defendant.

THE COURT—I will sustain the objection, but I will allow a question to be formulated that will show that the sister communicated to him that differences had arisen between her and her husband, which was subsequently verified by a statement of the husband.

MR. STEIN—That is what I asked before. I will, however, pin down the differences to specific things when I prove what the defendant said to the witness.

By MR. STEIN.

Q. Did you learn from your sister, the complainant in this proceeding, that there were differences between her and her husband after they moved to 70 Esplanade? Answer yes or no. A. Yes.

Q. And did you learn from your sister that there was a change in the defendant, so far as his affection for her was concerned?

MR. KREMER—Same objection.

THE COURT—I don't think this is the time. I will allow the general question to stand.

By MR. STEIN:

Q. Do you recall about the month of January, 1929, the illness of the daughter of the complainant, little Patricia? A. Yes, sir.

Q. And did you at that time know that the parents of the defendant were contemplating their usual winter trip to Palm Beach A. Yes, sir.

MR. KREMER—I object, unless he states how he knows.

By THE COURT:

Q. How do you know? A. Well, there was nothing except the friendliest relations existing between all of us.

Q. Was that communicated to you? A Yes, sir.

By MR. STEIN:

Q. Do you know whether or not the defendant left for Florida about the end of February, 1929? A. I do.

Q. And at that time was the little girl, Patricia, ill at home? A. She was recovering.

Q. Do you know whether or not the parents of the defendant had preceded the defendant to Florida? A. Yes, sir.

Q. Do you know whether or not there was any discussion between the complainant and the defendant as to the defendant joining his parents at that time? A. Yes, sir.

Q. How did you know that discussion? A. By conversation with the defendant.

Q. What was that discussion? A. Jack, the defendant, was very much upset about making a decision as to whether or not to stay with Gert and Patricia, or whether to go with his mother and father. He felt that his duty was with Gertrude and Patricia, and he had stayed there. He saw that Patricia was getting well, and he told me of his mother's anxiety to have him go down there, and, of course, his father's too, and he said—

Q. Did he say it to you? A. (Continued)—to me how annoyed he was at the fact that he was just being treated more or less as a child by the family, and he said, "What would you do?" I said, that under the circumstances, I would go down.

He said, "If I don't go down with Mura, if I go down alone, it will be a big uproar about it, and if I take Mura down, he should be here with Gert."

Q. Mura was the butler? A. Mura was the Japanese butler. I said, "Under the circumstances, Jack, I would take Mura and go down," which he did.

Q. At that time was anything said by the defendant to you concerning his mother with reference to the trip down South? A. Only the fact that in these conversations he told me of the regular telephone calls and of the expressed desire each time as to when he was coming.

Q. What did he say about that with reference to the mother? A. He was very anxious to serve both ends of the thing and do the very best he could in a very difficult situation.

Q. Did he go? A. Yes, sir.

Q. About when was that? A. As nearly as I remember, it was in the end of January or the early part of February.

Q. Do you know whether or not the defendant's father died at Palm Beach? A. Yes, sir.

Q. During 1929? A. Yes, sir.

Q. About when was that? What month was it? Do you remember? A. About March.

Q. You got that information? A. Yes, sir.

Q. Do you know where your brother, Harry McManus, was at that time? A. In Miami.

Q. How did you receive word of the sister's father-in-law's death? A. My sister phoned me and told me.

Q. Were you also informed as to when the body was to be sent up here from the South? A. I am not sure about that; I am not sure just how the information came.

Q. I asked you if you were informed. A. Yes, sir, eventually.

Q. And when the body arrived here, were you at the station? A I was.

Q. At what station did it arrive? A. The Elberon station.

Q. Do you remember what time of the day it was?

A. It was about, between two and three in the morning, to the best of my recollection.

Q. Did you meet the mourners? A. I did.

Q. Was the defendant among the mourners? A. Yes, sir

Q. What did you do there, if anything, with any of them or for any of them? A. I greeted them, and I went back to old Mrs. McDonald's.

Q. That is the widow? A. Yes, and Mrs. McDonald, and I think Father McCue, who was at the station with me to meet them, and went back to the house, and as Jack did not come with us, I went back to get him.

Q. When you went back to the station to get Jack, did you notice anything with reference to his actions toward you? A. Well, of course, there were very extentuating circumstances, and naturally, Jack's actions were strained.

Q. Was there a difference in his actions toward you? A. There wasn't any action towards me at all. He just simply came with me because it was obvious that that was all there was to do, and we got into the machine.

Q. And you charged that to the situation, to the death, and so on? A. Yes.

Q. Is that what you want us to understand? A. Yes.

Q. On the way over to the house in the car, to the funeral house, did the defendant say anything? A. Yes, sir.

Q. What did he say? A. We said very little, conversation that I don't recall at all until the defendant, or Jack, burst out and said, "Ambrose, I am going to leave Gert." I didn't say anything for a minute or two. I said, "Well—

Q. Go on, please. A. (Continued) "—these are pretty serious times just at the present, and at least, regardless of what apparent conclusion you have come to, wait until this thing is all over with.

By *this thing,* I meant the funeral arrangements, and so on.

Q. You said that to the defendant? A. Yes, and he said, "Oh, I will do that."

Q. You attended the funeral? A. Yes, sir.

Q. On the morning of the funeral, did your sister have a talk with you concerning her husband? A. Yes, sir.

Q. What did she say? Up to that time had you told her what he told you? A. I didn't tell her that night. I am not sure that I told her the first thing in the morning, but sometime during the next day, I think certain other circumstances came up that I don't recall exactly what they were, which prompted me to tell her what Jack said. I wasn't anxious to precipitate that thing any faster than possible.

Q. Was that before the morning of the funeral that you told her? A. No, that was after—yes, it was before the actual funeral.

Q. The funeral was on Thursday, wasn't it? A. I think so, I am not sure.

Q. What did your sister say?

MR. KREMER—I object to that. What she said in reply might be perfectly all right.

THE COURT—Objection sustained.

By MR. STEIN:

Q. You know how it affected your sister? A. Yes, she broke down completely.

Q. On the morning of the funeral, did you notice your sister and the defendant? A. I did.

Q. Did you notice whether or not he spoke to your sister at all? A. Well, there was evidently—I wasn't with them, but evidently there was very little said while they were in our presence.

Q. After you told your sister what the defendant had said did she ask any advice of you? A. Yes, sir.

Q. What advice did you give her?

MR. KREMER—That is objected to.

MR. STEIN—If your Honor please, I think that is highly proper. Here was a sudden situation that arose out of a clear sky. After this man goes away, there is an entire change of attitude, and it is brought home to her that he tells her brother he is through with her. No real explanation was then given to her as to what this was all about, and she did not know at that time that this was because of something she was supposed to have said some time back, which displeased the father, which has never—

THE COURT—I think the question asked was whether or not the sister followed any advice that he may have given her at that time. I think that is competent, but I do not think it is competent to testify what advice he gave her.

MR. STEIN—Your Honor does not know what I want to show, and I cannot tell you except in a general way. There is no jury here, but yet I hesitate to do it.

What I want to show is how this was received by the wife, and what she said in reply to it, and how she unbosomed herself to her brother, that she kept away from the family and carried on alone, and what the advice of her brother was in order to show your Honor that what she finally did on Thanksgiving Day was the result or the culmination of a long time of suffering mentally, which had its physical imprint on her appearance. That is the object—

THE COURT—I know, but I am afraid that it is objectionable.

MR. STEIN—I will abide by your Honor's decision and simply ask this question:

By MR. STEIN:

Q. Did she seek your advice? A. She did.
Q. Did you give it? A. Yes, sir
Q. Did she follow it? A. Yes, sir.
Q. About how much did your sister weigh, as nearly as you could judge at that time?

MR. KREMER—I object to that unless he knew.

MR. STEIN—His judgment.

THE COURT—I think that if you are going into the question of the effect upon the physical condition of the complainant, we will be compelled to go beyond the lay testimony.

MR. STEIN—That would be true if I was trying to show anything that was within the realms of tech-

nical knowledge, but it has always been permissible for a lay witness to testify—

THE COURT—I will allow him to testify what her condition was at a certain time and what it was at a subsequent time.

MR. KREMER—That is objected to just for the purpose of the record and for another reason in the record, that it is not always the effect upon a litigant or complainant in an action of this sort that is actionable, but whether it could be contemplated by the defendant as likely to produce that effect. In other words, if his wife worried herself into a condition of this sort, it would not necessarily involve any cruelty, unless it could be reasonbaly anticipated by him that such conduct on his part would bring about that result.

(Argument.)

(The Stenographer read the last question as follows: "Q. About how much did your sister weigh, as nearly as you could judge at that time?")

THE COURT—I think it is objectionable.

By MR. STEIN:

Q. After this time in March, 1929, when you communicated to your sister what the defendant had said to you, and at the time when the complainant left the defendant in November, 1929, can you say whether or not there was a difference in her physical appearance as to weight and so forth? Please answer yes or no. A. Yes.

Q. And what was that difference? A. Well, over that period from that time I told her what Jack told me, as I have just testified, from that time until the time she left the apartment in Red Bank, her health, her looks, the appearance of her was unquestionably changed very much for the worse, and she was very much lighter in weight and looked very badly, so much so that friends interested in her were very much concerned about her.

MR. KREMER—I move that that be stricken out, about the people interested in her.

MR. STEIN—I will consent that that be stricken out.

By MR. STEIN:

Q. As a matter of fact, after your sister had left the defendant, was she sick and confined to her home ill? A. Is this right after the funeral?

Q. No, after your sister had left the defendant, was she actually confined to her home ill? A. Yes, for several days.

Q. Days only? A. Days and nights.

Q. Did she have a doctor in attendance? A. I think so; to the best of my recollection she did.

Q. Were you there? A. I wasn't there when the doctor was there.

Q. Do you know whether or not she had a nurse? A. I am not sure; I know there was a nurse in the house.

Q. Where was that? At 10 Whitehall? A. Yes, sir.

Q. Was there anybody else sick in the house at that time? A. I will have to take that back. I don't know

after that. After my sister left the apartment to go to 10 Whitehall, I don't know whether she had a nurse or not. I don't recall.

Q. After this incident where the defendant told you that he was going to leave your sister, and that he was through with her, did you have another talk with him over the telephone? A. Yes, sir.

Q. About when was that? A. That was just before Thanksgiving, some time in the fall of 1929.

Q. Did you call the defendant or did he call you? A. He called me.

Q. Did he say to you where he was calling from? A. Yes, sir.

Q. Where did he say he was calling from? A. Pennsylvania Railroad in New York.

Q. Did he say where he was going? A. Yes, sir.

Q. Where did he say he was going? A. To Pinehurst.

Q. Did he say whom he was going with? A. To the best of my recollection, he did. Of course, I knew this condition, and to the best of my recollection, he said he was with his mother.

Q. In this telephone call by the defendant to you, what did he say to you at that time in November, 1929, on his way to Pinehurst? A. He asked me if I knew anything about what was going on.

Q. What did you say? A. I said, "Some things, of course."

He said, "Well, I am up against it. This thing is worse than the old eternal triangle. I have got to make a decision. I have got to do something, and I am going to go with my mother, and you take care of Gert," or, "you take care of Gert's interests," whatever it may be.

Q. What did you say to him? A. I said I didn't know—it ended about there. I might have said, "I am awful sorry about all this," or something like that.

Q. Did you say anything further to him than that? A. No, I don't think so.

Q. Did you impart this information to your sister right away or not? A. No, I didn't right away.

Q. Did you tell her about this conversation over the phone? A. Yes, I told her the next day. I waited until the next day because I just wanted to make sure in my own mind whether or not to tell her at all, because it was such a terrible situation that I did not want to have a part in precipitating it, but finally I came to the conclusion that I had better tell her.

Q. Did this defendant talk with you about her or anything else, or call you up for that express purpose and tell you that? A. That is all that Jack had on his mind apparently that day.

Q. Did he say anything else? A. Nothing else.

Q. The next day you say you told your sister? A. Yes, sir

Q. How did you impart this information to her? A. By telephone.

Q. At what place? A. She was at the apartment in Red Bank.

Q. In this talk with your sister, in which you imparted this information, did she then tell you—don't answer this if counsel objects—what her husband said to her the night before he went?

MR. KREMER—I object to that.

THE COURT—Objection sustained.

MR. STEIN—Cross-examine.

CROSS-EXAMINATION

By MR. KREMER:

Q. You referred to the funeral and the conversation that you had with Mr. McDonald, the defendant, at that time, in which you said he was going to leave his wife, and you told him to consider whatever he was going to do, and not to do it until after that arrangement had been made? A. Yes, sir, that is right.

Q. They did not separate at that time, did they? A. No, sir.

Q. That blew over, and they continued to live together? A. Yes, sir.

MR. STEIN—I object to the character of the question. It is making testimony when the witness says, "Yes, sir, that blew over." The witness does not know whether or not anything blew over.

THE COURT—It is characterizing the testimony in a manner that is not justified.

MR. STEIN—He puts in the mouth of the witness testimony which he has not given.

MR. KREMER—He may deny it, if he wishes.

THE COURT—The objection arises because you characterized the conduct as blowing over.

By MR. KREMER:

Q. In any event, you do know that they did not separate at that time? A. Yes, sir.

Q. And throughout the summer of 1929 they were living together, weren't they? A. Yes, sir.

Q. You continued to see them? A. No, not after that episode. I saw my sister, but I don't ever recall seeing Jack. I saw Mrs. McDonald one or two times, but I don't ever recall seeing or talking to Jack at that time.

Q. You mean Mrs. McDonald, Senior? A. Yes.

Q. Did you see her at Deal? A I saw her at Deal and in Elizabeth.

Q. And you saw her at Deal in the house at 70 Esplanade? A. No, sir.

Q. Where? A. In front of an automobile in front of Judge Stein's house one morning. I had spent the night with Judge Stein, and the next morning my sister, Mrs. McDonald, and some other lady called for me, and we all rode to Elizabeth together.

Q. You and your sister and Mrs. McDonald, Senior? A. Yes.

Q. Did you observe the relations between them then, and their conversations? Were they friendly? A. Yes, I understood the relationship.

Q. They were both living in the house at 70 Esplanade? A. Yes.

Q. And had been ever since a few days after the funeral? A. That is right.

Q. You knew that of your own knowledge? A. Yes.

Q. That is why you do know, as a matter of fact, that whatever quarrel they had had about the time of the funeral had blown over?

THE COURT—I wish you would omit that *blown over*. They were living in the same condition.

By MR. KREMER:

Q. (Continued)—had been overlooked, had it not?

MR. STEIN—I object to that. It may not have been overlooked.

THE COURT—The fact is that they did continue to live together, whether or not it was smouldering, or what it was. The fact is that those episodes passed over, and they did continue to live together.

MR. KREMER—What I am trying to establish is that these quarrels which they had had, the one where Mr. McDonald, Junior, went South, and at the time of the funeral, had not culminated in an estrangement between him and his wife.

MR. STEIN—There is no question about that.

THE COURT—The use of some of the phrases might.

MR. KREMER—I will withdraw the question.

By MR. KREMER:

Q. As a matter of fact, you know, do you not, that the quarrel at the time of the funeral about kissing the father's body had been composed, and Mr. McDonald and his wife were living together as man and wife? A. I only know that they were living together.

Q. You say that you did not see your sister at 70 Esplanade? A. Not during that period, no, not that I recall.

Q. Did you see them at the apartment? A. No, I did not.

Q. Did you see Mr. McDonald at all throughout the summer or fall of 1929? A. I may have, but I don't recall.

Q. When did you next see your sister? A. After what time?

Q. After April. A. After April, 1929?

Q. Yes. A. I suppose I saw her the night after the funeral, and then two nights after that, if I am not mistaken.

Q. Then you saw her at this time when you were at Judge Stein's house? A. Yes.

Q. What time of the year was that? A. That was in the summer, the following August, 1929.

Q. She was looking well then? A. Fairly well.

Q. And you told me that you saw her in the fall at the time she telephoned you, is that right? A. That is right.

Q. And you saw her three or four days later? A. That is right.

Q. And that she had lost a great deal of weight and looked very badly? You did not mean the Court to understand that the loss of weight and the change of health all took place in those three or four days between the telephone call, do you? A. No, sir, that loss of weight and everything took place from the time of Mr. McDonald, Senior's, death to the time they left the apartment at Red Bank.

Q. You said that in the summer, when you saw her, she was looking fairly well. Of course, you do not know what causes might have intervened to bring about the loss of weight on the part of your sister, do you? A. I

can answer this question, but not by my own actual observation. I can answer your question, and you would not like it.

Q. I don't want something that somebody told you. A. I only know through what my sister told me of what was going on during that July period.

Q. You do not know from your own knowledge what caused the change in her appearance, do you? A. Just what she was telling me.

Q. Mr. McDonald called you up on a Saturday morning, and he said that he was at the Pennsylvania Railroad station? A. I think it was Saturday morning.

Q. Did he tell you he was leaving for Pinehurst? A. To the best of my recollection, yes.

Q. And he told you he was having trouble again? A. He asked me if I knew what was going on, referring to that.

Q. And he told you he was going to leave? A. Yes.

Q. And that you should look after your sister's interest? A. Yes.

Q. He had told you that in the spring, and it did not happen. A. That is true, but a lot of water had passed under the dam between the spring and the fall.

Q. You had only seen her down there that one time at Judge Stein's house, had you not? A. Oh, no, I had seen my sister time and time again.

Q. Coming to see you? A. Yes.

Q. When he told you that, what did you say to him? A. I probably expressed sorrow. I was deeply sorry that the thing had come to pass, and said, of course, that I would take care of my sister's interests.

Q. Didn't you tell him that you did not blame him? A. Not that I recall. ?

Q. You would not deny it? A. I think I would, yes.

Q. Let us put aside that. I ask you under your oath if you did not say to him, "I don't blame you, Jack"? A. I don't recall.

Q. Your memory is quite clear about everything else that happened and on what you said over the phone that morning? A. Yes, pretty clear.

Q. But you do not recall that? A. (No answer.)

10

REDIRECT EXAMINATION

By MR. STEIN:

Q. Remembering what your brother-in-law, the defendant, had told you on the day when the body of his father arrived at Elberon, and what your sister had told you in the meanwhile, you knew, of course, what the
20 defendant meant when he told you to take care of your sister's interests? A. Yes, sir, I did.

MR. KREMER—I object to the question, and ask that the answer be stricke nout.

THE COURT—No, it may stand.

THE WITNESS—I am sure that we both understood each other perfectly.

30

By MR. STEIN:

Q. And since that time have you been looking after your sister's interests? A. I have.

Q. And after that telephone call, was it or was it not necessary, as a matter of fact, in order to keep your sister supplied with food, for you to advance her money? A. Yes, sir.

Q. And do you know, as a matter of fact, that the defendant did not furnish her with any money?

MR. KREMER—I object to all this as leading.

MR. STEIN—I am asking him whether or not he knows, as a matter of fact, whether or not the defendant, with the exception of the $200, did not send her any money from that time until the time the proceedings were commenced.

By MR. STEIN:

Q. Why was it necessary for you to supply your sister with money? A. Because she had no other income at that time.

RE-CROSS-EXAMINATION

By MR. KREMER:

Q. You knew that her husband was trying to get her to come back, didn't you? A. Yes.

By MR. STEIN:

Q. Do you know that from hearsay, or as a matter of fact? A. I knew it from the same way that I knew lots of other things that I know.

MR. STEIN—That is all.

SADIE WILLIAMS, a witness called on behalf of the petitioner, being first duly sworn according to law, on her oath, testified as follows:

DIRECT EXAMINATION

By MR. STEIN:

Q. By whom are you employed now? A. Mrs. Smith.

Q. Mrs. Benjamin T. Smith, of Elizabeth, New Jersey? A. Yes, sir.

Q. Were you formerly in the employ of Mrs. Adelaide McDonald, the defendant's mother? A. Yes, sir, Judge Stein.

Q. Were you a maid there on the 16th of October, 1925? A. Yes, Judge Stein.

Q. How long did you continue in her employ? A. Until October 7, 1929.

Q. Do you remember the time that the defendant and the complainant became married? A. I do, Judge Stein.

Q. Do you know where they went to live after they were married? A. 48 Esplanade, Deal.

Q. And after that where did they go? A. 10 Whitehall Street.

Q. Has the complainant, to your knowledge, lived here in New Jersey, in Monmouth County, ever since her marriage at various places? A. Yes.

MR. KREMER—I object, unless she states how she knows.

By MR. STEIN:

Q. Do you know that she lived at 48 Esplanade, Deal, with her husband? A. I do.

Q. Where did she move to next? A. 10 Whitehall.

Q. Where did she move to next? A. 70 Esplanade.

Q. And where did she move to next?

THE COURT—That is not necessary.

By MR. STEIN:

Q. Were you in the employ of Mrs. McDonald when the complainant and her husband lived at 70 Esplanade with the old folks? A. I was, Judge Stein.

Q. Do you remember a time while the defendant and his wife were living at 10 Whitehall in Deal when Mrs. McDonald was entertaining some friends in her home, among them a certain young woman? A. I do, Judge Stein.

Q. After the guests left, did Mrs. McDonald, Senior, engage in conversation with you with reference to this particular young woman? A. Yes, Judge Stein.

Q. And with reference to her son? A. Yes.

Q. What was it that the mother of the defendant said at that time?

MR. KREMER—That is objected to, as it has not been shown that the defendant was present. I do not see how anything she might have said to this witness could be material in any sense.

MR. STEIN—The only reason I offer it is to show the animosity.

THE COURT—I will allow this on the theory that this conversation by the mother, coupling it up with the attitude and the claim that has been made that there was an influence and a communication to a maid in the house subsequently communicated to the plaintiff, may have had the effect as to her right to take the position that she did. If I am wrong, you gentlemen have your remedy.

(The Stenographer read the last question as follows: "Q. What was it that the mother of the defendant said at that time?")

A. She said she would rather Mr. McDonald married this young lady, that his marriage with Mrs. H. J. McDonald had been a mistake.

Q. Did you subsequently convey this statement that the mother of the defendant made to the younger Mrs. McDonald, the complainant? A. Yes.

Q. You told her what she had said? A. I did, Judge Stein.

Q. Had you on any other occasions prior to this time heard from Mrs. McDonald statements which were to the effect that she did not approve of the marriage of the complainant and the defendant?

MR. KREMER—I object to this as leading.

MR. STEIN—I will withdraw the question.

By MR. STEIN:

Q. In October, 1928, the young folks came to live with the old folks at 70 Esplanade, did they not? A. They did.

Q. Do you recall anything that the elder Mrs. McDonald said to you at that time about her son coming over to live with her? A. Why, she said she was very glad to have her son come back to her again, and she said it was worth the trouble of having Mrs. H. J.'s children to have him back with her.

Q. When the young folks came there to live, did everything seem to be pleasant at first? A. Why, yes, as far as I could see.

Q. Did you notice whether or not there was any trouble between the younger folks, the complainant and the defendant, later on, as they lived there?

MR. KREMER—I object to this as leading. Every question has been a leading question.

THE COURT—It is leading.

MR. STEIN—Is the question leading if I ask the witness if she noticed whether or not there was any strained relations or difficulty between the couple?

By MR. STEIN:

Q. Was there any trouble later on between the younger couple? Answer that yes or no, please.

MR. KREMER—I object to that as leading.

(Argument.)

By MR. STEIN:

Q. Do you remember Christmas, 1928? A. Yes, I do, Judge Stein.

Q. Was there anything that happened around Christmas, 1928? A. Yes, it was a little disagreement with the family. Mrs. McDonald told me that the next morning.

Q. Which Mrs. McDonald? A. Mrs. J. W. McDonald.

Q. The mother of the defendant? A. Yes.

Q. What did she tell you? A. Well, she told me that they had had a spat.

Q. Who had had a spat? A. She and Mrs. McDonald.

Q. Did she say what it was? A. Yes, she did tell me what it was.

Q. What did she say it was? A. As near as I can recall, Judge, it was concerning going to California. It seemed as if Mrs. H. J. McDonald had said that she and Mr. H. J.—or Mr. H. J. had said that they would rather be alone, and Mrs. McDonald did not like the idea of Mrs. H. J. telling her that he said that. That is what Mrs. McDonald told me.

Q. After that, did you notice anything between the complainant and the defendant's mother in and around the house that was different than before? A. During the same time?

Q. After this. A. I left shortly after Christmas for Palm Beach. I think it was the day after Christmas.

Q. When would these discussions take place between you and Mrs. McDonald? A. Mrs. J. W.?

Q. Yes. A. In the morning I had to take Mrs. McDonald's breakfast to her. and as a rule, she would tell me.

Q. As a rule, what? A. She would always tell me what had happened previously, if they had had any disagreements.

Q. Can you recall any things that she said to you concerning the younger Mrs. McDonald, the complaint? A. Do you mean during that particular time?

Q. Yes. A. Why, as I said, she told me that she thought Mrs. H. J. had no right to tell her that he said that, even though he did say it. She said she had no right to tell her.

Q. What else did she say about the younger Mrs. McDonald? A. She said that Mrs. McDonald was going to leave, and she asked my opinion if she should apologize to her, and I told her I thought she should, that they both should come to some mutual agreement.

Q. What else was said? A. I don't remember anything else concerning that now.

Q. Not only that, but concerning anything? A. After that I went to Palm Beach.

Q. Before you went to Palm Beach, was anything more said then about the younger woman? A. I can't recall, Judge Stein.

Q. Well, you brought breakfast there every morning, is that right? A. Mostly every morning.

Q. Was there only this one discussion about this trip to California and finding fault with the young woman because she wanted to be alone and did not want to travel with the older folks? A. I can't recall, Judge Stein.

Q. Don't answer this question until it is finished: Was there anything said by the elder Mrs. McDonald about the younger woman's habits?

MR. KREMER—I object to that as leading.

THE COURT—Objection sustained.

By MR. STEIN:

Q. After Christmas, 1928, where did the elder McDonalds go? A. To Palm Beach.

Q. Did you go with them? A. I would go down before.

Q. You went down in advance of them? A. Yes.

Q. Did they arrive down there while you were there? A. Yes.

Q. Was there any discussion at Palm Beach? Was there anything said by the elder Mrs. McDonald to you concerning Mrs. Henry J., the complainant? A. Was it in the year 1928?

Q. After Christmas, after you went to Palm Beach. A. I don't remember if it was 1928, but I remember the cap episode. Mrs. McDonald told me of that when she came to Palm Beach.

Q. What did she say? A. She said one of the boys was going to put on Mr. McDonald's cap, and he objected.

Q. Who objected? A. Mr. McDonald objected, and she said that she thought Mrs. McDonald did not speak right about it.

Q. That Mrs. Henry did not speak right about it? A. Yes, that she did not speak right about it.

Q. How did that come about? How did she come to tell you that? A. Well, the same as everything else, I guess. She had to relieve her mind.

Q. Do you remember when Henry McDonald came down there to the old folks at Palm Beach? A. During Patricia's illness?

Q. Yes. A. Yes.

Q. At that time, did Mrs. McDonald say anything to you about the young folks, about the son, and so forth, and the daughter-in-law, about coming down and so on before he came down? A. Yes, Judge Stein.

Q. What was said by her to you then? A. She said she thought that Mr. McDonald's place was down there with her and his father, and she thought that Mrs. McDonald should urge him to come instead of keeping him in Deal, and that she should think of his health and strength.

Q. When he did come down there, speaking of the defendant, when he first arrived, how was he acting? A. He kept mostly to himself. I should think.

Q. Well, you ought to know, you were there. A. I do.

Q. About March, 1929, the afternoon just before the death of Mr. J. W. McDonald, do you remember whether or not Mrs. McDonald, Senior, spoke with you? A. Yes, she did, Judge Stein.

Q. What did she say on that occasion? A. She said she was going to have her son back no matter what it cost.

Q. How did that come about? A. Because he was coming—he was preparing to return to Deal, and she knew he was going to the 10 Whitehall Street house with his wife, and she wanted him to stay with her at Florida.

MR. KREMER—I object to the last part of the answer.

THE WITNESS—No, she wanted him to stay with her at 10 Whitehall Street when he returned to Deal.

Q. How did you know that? A. Because Mrs. McDonald told me.

Q. Prior to the defendant's arrival at Palm Beach, was there a conversation between you and Mrs. McDonald about what was going to be done in the spring in the

way of having friends and visitors at the house? A. I don't recall anything in the way of having friends or visitors in the house in the spring, but Mrs. McDonald said that this young lady from California was visiting in New York at the time. That is just prior to Mr. McDonald's coming to Palm Beach, and she thought it would be nice if they would visit them in Palm Beach, and he possibly would renew his friendship with her.

Q. Had you said anything to Mrs. McDonald or put any questions to her which would bring about this kind of conversation with you? A. No, Judge Stein, I had no right to. It wasn't my affair.

Q. Do you remember Palm Sunday, March 24th, 1929? A. Yes, Mr. McDonald died that morning.

Q. Do you remember the defendant's mother by the bedside of her husband at that time? A. I do.

Q. Do you know whether or not at that time, while she was at the bedside of her husband, she said anything concerning the complainant? A. Yes, she said, "She has killed my husband, and I am going to have my revenge over my dead husband's body."

Q. Did you know whom she was talking about? A. Yes, Mrs. H. J.

Q. Why? A. Because she had made such threats before. She had made such remarks before concerning Mrs. H. J.

Q. That same day after the body was removed to the undertaker's parlor, did you see Mrs. McDonald, Senior, to talk to? A. I did.

Q. At that time did she say anything to you about her son or about this complainant? A. Yes, Judge Stein.

Q. What did she say? A. Mr. McDonald and Mrs. McDonald had gone to the underatker's parlor, and the body had been removed from the house, and Mrs. Mc-

Donald says—she was in Mr. McDonald's room at the time, and she says, 'Well, Sadie, I have lost my husband, but I have gained my son. I have made him promise me that he is going to leave Mrs. H. J. when he gets home."

Q. What was she doing at the time that you noticed when she said this? A. She was only sitting by the window.

Q. When was the body taken North with respect to this talk or this remark that she made? A. Monday.

Q. The next day? A. Yes.

Q. How long did you remain at Palm Beach after the body was taken away? A. About a week or ten days.

Q. Doing what? A. Closing the house.

Q. You arrived at the Senior Mrs. McDonald's home, the defendant's mother's home, about when? A. Well, I stayed there about a week or ten days afterwards, and we motored up. I guess it took us about five days to get home.

Q. Was the complainant in the house at 70 Esplanade then? A. Mrs. H. J., no, she wasn't.

Q. Who was there? Just the mother? A. The mother, Mrs. McDonald, and Mr. McDonald.

Q. Did the complainant come back to the home then later on at 70 Esplanade? A. Later on, yes, she moved back.

Q. What did you see and observe concerning the defendant and the senior Mrs. McDonald after that in and around 70 Esplanade? A. Well, do you mean after Mrs. H. J. came back?

Q. Yes. A. Well, I noticed that he spent more time with his mother than he did with his wife, and, of course,

that was natural, because Mrs. McDonald was alone, but it would have been more natural had his wife been included.

MR. KREMER—I move that that be stricken out.

MR. STEIN—We will strike all the naturals out.

By MR. STEIN:

Q. You noticed that the son and the mother were more together then? A. Yes.

Q. Did you know Mura, the butler? A. Yes, Judge Stein.

Q. Was he discharged or did he leave? A. He was discharged.

Q. Do you know why? Was anything said by the elder Mrs. McDonald? A. Yes.

Q. What did she say to you? Did she say it to you? A. Well, she asked him to put something away so that the children would not have it, and he did not do it immediately, and she sent me down to do it, and I went down and did as she asked me to do, and shortly after, Mrs. McDonald went down, and she told me that she heard Mura and the cook speaking together, and she called him up and discharged him.

Q. Did she say why? A. She said he was telling the cook about what she had told him to do, and he did not do it. She said she would not have anybody in her employ that would befriend Mrs. McDonald and take sides with her.

Q. On the day after Mrs. McDonald, Senior, returned one day from New York some time in the summer of

1929, do you remember any incident there that took place? A. Do you mean when we were home or out?

Q. Did you go with her to the cemetery during that time? A. Quite often.

Q. On the way to the cemetery was anything said by the mother of the defendant about the complainant? A. Yes, Judge Stein. She had been to New York the day before that, and when she returned home that evening, Mr. and Mrs. H. J. were in one of the rooms downstairs, and she said when she walked in and saw Mrs. H. J. making a fuss and kissing Mr H. J., she said she could have killed her.

Q. She said that to you? A. Yes, she told me that.

Q. During that summer did you notice anything about the younger Mrs. McDonald which was different than what you had noticed of her before? A. Yes, she was not as lively. Often I would see her, especially in the morning, when Mrs. McDonald was out, and Mrs. H. J. was home. She would be sitting around crying and not her natural herself.

Q. At such times as you saw this, did you say anything to the younger Mrs. McDonald? A. Yes, I spoke of it.

Q. What did you say to her?

Q. At such times did you say anything to the younger

MR. KREMER—I object to that.

MR. STEIN—Do you object if I prove that it was then that she began to tell to the younger Mrs. McDonald what the older Mrs. McDonald had said to her?

By MR. STEIN:

Mrs. McDonald? A. Yes, I told her what had happened in Palm Beach, as I had heretofore stated.

Q. By *happened,* what do you mean? A. What happened in Palm Beach when she was not there.

Q. What did you tell her had happened? A. Well, I can't recall it all.

Q. I mean, you say that you told her what happened? A. During Pat's illness, when she wasn't there.

Q. Did you tell Mrs. McDonald, Junior, at any time the things that Mrs. McDonald had told you? A. Yes, I did.

Q. All of them? A. Yes.

Q. All the things you have here related? A. I don't say not all of them, because every time—maybe I can't think of them all.

Q. Tell us what all of these things were that you told her, if you know how many of them you told her. A. Well, one thing I remember I told her that Mrs. McDonald said she was spending too much money on books when she could have saved more money by joining a library; and one Sunday I remember Mr. McDonald and Mrs. H. J. were going out to Church, and she had on quite a nice looking dress, and Mrs. McDonald did not like it. She said she never was satisfied unless she had on that frock and was switching around in it.

Q. Did you tell her any of the things that were said down at Palm Beach? A. Yes, I did.

Q. What things did you tell her? A. I told her that Mrs. McDonald said that Mrs. H. J. had killed her husband.

Q. Did you ever tell her that she said she had lost her husband and had now gained a son? A. Yes, I did.

Q. Did you ever tell her that she said she would make her son promise to leave her as soon as he gets home? A. I did.

Q. You did tell her that? A. I did.

Q. After you told Mrs. McDonald, Junior, about these things, what did she say to you, the younger Mrs. McDonald?

MR. KREMER—That is objected to.

THE COURT—Objection sustained.

MR. STEIN—If your Honor please, I want to show that the younger Mrs. McDonald said, "I want you to confront his mother with this in my presence," and she did confront her.

THE COURT—You may show that they did confront each other.

By MR. STEIN:

Q. Was there a time ever afterwards when you confronted the elder Mrs. McDonald with the younger Mrs. McDonald and repeated these things? A. Yes.

Q. You repeated the things that you have said that Mrs. McDonald, Senior, said concerning the complainant? A. Yes.

Q. At whose request did you do that? A. Mrs. H. J. asked me if I would do that.

Q. About when was that? A. It was the evening I left there.

Q. That was when? A. In October.

Q. Of what year? A. Last October, 1929.

Q. What did the senior Mrs. McDonald say? A. She denied everything, she said.

Q. Besides denying everything, what else did she say? A. She told me I was fired.

Q. And you were? A. Positively.

Q. Do you recall anything else that the senior Mrs. McDonald said to you during the time that you were there, which you have not told us? A. Yes, I remember once she told me not to make the children's beds. She said that if I made them, she would kill me.

Q. Outside of that, do you remember anything further? If you don't, it is all right, and if you do, it is all right. A. I can't recall anything else now.

MR. STEIN—Cross-examine.

CROSS-EXAMINATION

By MR. KREMER:

Q. Why did you tell all these things to Mrs. McDonald, Junior, that you heard Mrs. McDonald, Senior, say? A. Well, I didn't think Mrs. H. J. was getting a fair treatment.

Q. And you did not tell her from time to time as they happened, did you? A. Why, yes, I couldn't tell her everything all at once.

Q. But immediately upon your telling Mrs. McDonald, Junior, she asked you to go and confront her mother-in-law? A. Not immediately.

Q. You said it was the night you left. A. Yes, the night that I left she asked me that afternoon if I would confront Mrs. McDonald, and I told her I would.

Q. That is when you told her all these things? A. Told who?

Q. Told Mrs. McDonald, Junior. A. Not all of them that afternoon.

Q. The bulk of them you told her that afternoon? You told her most of them that afternoon? A. No, not most of them, some of them.

Q. You knew, you had been discharged? A. I didn't know it then; I wasn't discharged then.

Q. Do you mean to say that you were discharged on account of these statements? A. I was, yes.

Q. You had a good job there, didn't you? A. Well, it was not so pleasant there at all times.

Q. You did not mean to leave your job, if you had not been discharged? A. Yes, I was going to leave.

Q. Anyway? A. Yes, it was getting to be—things were very unpleasant there.

Q. What was unpleasant for you? A. I didn't like to be involved in those conditions and things around there, and everything that went on mostly was told to me, and I wasn't interested.

Q. You didn't have to be involved, if you did not repeat it to Mrs. McDonald, Junior, did you? You could have kept it to yourself, what you say Mrs. McDonald, Senior, told you? A. I could have, yes.

Q. You deny that you were fired for any other reason than that? A. I was not fired for any other reason.

Q. You say that although you had that job and you had not left it, that you risked going before your employer, who was paying you, and confronting her with Mrs. McDonald, Junior? A. Yes.

Q. You were discharged that very night? A. Yes.

Q. And on that afternoon you had told Mrs. McDon-

ald, Junior, a lot of things that you said her mother-in-law had said about her? A. Yes.

Q. But you say that you did not know then that you had been fired for an entirely different reason? A. Nobody had told me I had been fired.

Q. Isn't it a fact that you told these things to Mrs. McDonald, Junior, just out of spleen because you had lost your job? A. No, I didn't lose my job. Mrs. McDonald was as nice to me that evening when I served her dinner as she ever was.

Q. Didn't Mrs. McDonald, Senior, discharge you from her employ because you were unduly familiar with a white chauffeur in the house? A. No.

Q. Do you remember a white chauffeur named Joseph Schlesser?

MR. STEIN—I object to the term unduly familiar to assail the character of the witness without any specific charges. I insist that counsel specify what he means by being *unduly familiar.*

By MR. KREMER:

Q. Didn't Mrs. McDonald accuse you of intimacy and intercourse with a white chauffeur in her employ? A. No, she did not.

Q. Weren't you guilty of that offense? A. No, I was not.

Q. Was not a man seen coming out of your bedroom in the house by other servants in the house? A. Never has he been in my bedroom.

Q. You deny that he was ever seen coming out of your bedroom unclothed? A. He never was in there.

Q. Wasn't that the reason that you were discharged? A. No, I would like to have the person that said he was seen coming out of my bedroom unclothed prove it.

Q. You say that that is not the fact? A. No, it is not; positively untrue.

Q. Of course, you haven't any bias at all against Mr. Henry J. McDonald? A. I have not.

Q. You do not dislike him at all? A. Not at all.

Q. You do not come here prejudiced against him? A. No.

Q. You never made any statements antagonistic to him, did you? A. No, I did not.

Q. Do you know a chauffeur named John Kane, who once worked for the McDonalds, or Daniel Kane? A. I know Daniel Kane, yes.

Q. Didn't you criticize Mr. McDonald severely to Kane, and call him a heel, and say that you hated Mr. McDonald?

MR. STEIN—When and where, please?

THE COURT—Specify the time, please.

By MR. KREMER:

Q. Shortly after your discharge, didn't you do that? A. No, never, I never saw Daniel Kane after I was discharged from the McDonalds.

Q. Didn't you talk to Kane when he first came to work there and say that you hoped that that heel, alluding to Mr. H. J. McDonald, would not keep him out all night like he did the other chauffeur?

By THE COURT:

Q. When did he go to work there? A. He came there three years ago.

By MR. KREMER:

Q. Do you remember that? A. I remember when Kane went to work.

Q. But you deny you have any such conversation? A. No, I never had any such conversation with the man in any way, shape or form about Mr. McDonald.

MR. STEIN—I might say that in fairness to this witness, I expect counsel to make good the charge which he has made. It is a terrible thing for a man to undertake in a judicial proceeding, if he does not make good.

THE COURT—There is no such discussion on this. We will adjourn now until ten o'clock tomorrow morning. All the witnesses subpoened in this case will return here tomorrow morning at ten o'clock. (A recess was had until ten o'clock A. M. Friday, September 19th, 1930.)

Elizabeth, New Jersey, Friday, September 19th, 1930.

(SECOND DAY)

MORRIS HESS, a witness called on behalf of the petitioner, being first duly sworn according to law, on his oath, testified as follows:

By MR. STEIN:

Q. Mr. Hess, do you know the complainant and the defendant both? A. Yes, sir.

Q. You know where the complainant lives now at 10 Whitehall in Deal? A. Yes, sir.

Q. You know that the defendant is not living there with her? A. I don't know.

Q. You do not know that the defendant is not living there with his wife? A. No, he ain't living there.

Q. You know that he is not living there? A. Yes.

MR. KREMER—I object to that as leading.

THE COURT:—It is admitted.

By MR. STEIN:

Q. Did you have coal supplied to 10 Whitehall to Mrs. McDonald after she went there in 1929? A. Your Honor—

Q. Did you have such a coal bill? A. I got this—

By THE COURT:

Q. Did you have a coal bill? A. I got a coal bill.

I got this in a court action against Mrs. McDonald for the coal bill.

By MR. STEIN:

Q. I am asking you whether you had a coal bill. A. I got a coal bill.

Q. And you have brought suit on that coal bill against Mrs. McDonald? A. Yes, sir.

MR. KREMER—I object to that. I fail to see the materiality of it.

THE COURT—It all goes to the same proposition. Of course, it must be connected up with all the rest of it, but I will admit it.

By MR. STEIN:

Q. Did you endeavor to collect that coal bill from Mr. McDonald? Answer yes or no. A. No.

Q. Why not?

MR. KREMER—I object to that.

THE COURT—Yes, if it was delivered at 10 Whitehall and ordered by people in possession.

By MR. STEIN:

Q. Have you been paid by the personal check of Mr. McDonald for coal delivered to his mother? A. Yes, sir.

MR. KREMER—I object to that.

THE COURT—Objection sustained.

MR. STEIN—If your Honor please, the materiality of the thing does not appear now, and that is the reason I did not want to call him. I am anticipating something here, and I will have to ask the witness to come back.

THE COURT—At this time it is not material.

MR. STEIN—Counsel consented that I use the testimony. The witness is withdrawn, and he will have to stay here.

MARY M. CARTER, a witness called on behalf of the petitioner, being first duly sworn according to law, on her oath, testified as follows:

DIRECT EXAMINATION

By MR. STEIN:

Q. You are a domestic in the home of Mrs. J. W. McDonald A. Yes, sir.

Q. When was that? A. That was in November, 1928, I think.

Q. What address? A. 70 Deal, Esplanade.

Q. 70 Esplanade, Deal? A. Yes.

Q. Before you were employed by the defendant's mother, Mrs. J. W. McDonald, you were in the employ of whom? A. Mrs. H. J. McDonald.

Q. For how many years? A. Three years with Mrs. H. J. McDonald.

Q. Did you have occasion to observe the complainant and the defendant in and around their home during the time you were employed by them? Did you have a chance to see them in and around the home? A. I did.

O. Can you say from what you saw of them in and around the home whether or not they were a happy couple?

MR. KREMER: I object to that.

THE COURT: She may say what she saw, but she cannot characterize whether or not they were happy.

By MR. STEIN:

Q. What did you observe of them? A. Nothing but happiness in their home when they were there.

MR. KREMER—I move that that be stricken out.

By MR. STEIN:

Q. What is it that makes you say that there was nothing but happiness? What did you see them do? A. I didn't see anything else but happiness.

Q. What did you see them do that makes you say they were happy? A. Well, I saw them loving one another very nicely when Mr. McDonald would come home, and she would meet him at the door and she would kiss him, and they would walk across the floor until dinner was ready, and then I would call them to dinner.

Q. When you went to the home of Mrs. J. W. McDonald as a domestic, were the young people living there

then, that is, the complainant and the respondent? A. They was.

Q. After you arrived at the home of Mrs. J. W. McDonald, was there any conversation between you and Mrs. J. W. McDonald? Answer that yes or no, please. A. Yes.

Q. How did that conversation come about, and where were you when the talk took place?

MR. KREMER: In order to try to avoid objecting repeatedly, and in order, at the same time, that I may have the benefifit of any objection I may make for the purpose of the record, I will object formally to every statement made by Mrs. J. W. McDonald, Senior, to this witness out of the presence of the defendant as not being binding on him.

THE COURT: The question will be allowed.

MR. KREMER: I take it that your Honor will allow that one objection to go to all the conversation?

THE COURT: Yes, the conversation between the senior Mrs. McDonald and this witness.

By MR. STEIN:

Q. What was that conversation? A. A few days after I were at Mrs. McDonald's, Mrs. J. W. McDonald, she came to the kitchen, and she asked me if I had ever seen through her house. I said, "No, Mrs. McDonald." She said, "Well, I will have Sadie take you through."

Q. Sadie was the witness that was on the stand yesterday afternoon? A. Yes.

Q. You mean Sadie Williams? A. Yes, so in a

day or so after that, Sadie had taken me through the house. Well, in a day or two after that, Mrs. McDonald came out in the kitchen, and to let her know that I had gone through the house, I said to her, "Why Mrs. McDonald, you got a lovely home. My! but you ought to be happy."

She says, "Well, I am not."

I says, "I don't see why."

She says, "I want my boy with me."

I says, "Well, you have your boy and his wife, and they seem to be happy, and I don't see why you should not be happy to know that they were happy."

She says, "I want him all to myself."

I replied, "You did not expect to keep him with you always, did you? He is like the majority of young men who wanted a wife himself."

She says, "I am afraid the children bother him."

I says, "No Mrs. McDonald, the children I don't think bothers Mr. McDonald, because they have been playing together. I often see them playing together. I think he is very found of the children."

She says, "Well, he says they don't, but I am afraid they do."

With that, there wasn't anything more said. She went about her business, and I went about my own.

CROSS-EXAMINATION

By MR. KREMER:

Q. You are in the employ of Mrs. McDonald, the plaintiff, now? A. Yes.

MR. KREMER: That is all.

THERESA B. JAMES, a witness called on behalf of the petitioner, being first duly sworn according to law, on her oath, testified as follows:

DIRECT EXAMINATION

By MR. STEIN:

Q. Where do you live, Mrs. James? A. With Mr. Edward A. Cameron, 737 Westminster Avenue, Elizabeth.

Q. Were you at one time a cook in the home of Mrs. J. W. McDonald? A. I was.

Q. She is the mother of the defendant, Henry J. McDonald? A. She is, yes, sir.

Q. And at the time that you were a cook there, do you know where Henry J. and his wife lived? A. At 70 Esplanade.

Q. In the same house with the mother-in-law? A. Yes.

Q. While you lived there in the house, will you tell us what you observed as between the complainant, Mrs. Henry McDonald and her husband, and the mother-in-law? A. There wasn't much that I could see, because I was mostly in the kitchen, but what I did see was on the lawn, walking around in the afternoons, after supper. I usually saw Mrs. McDonald, Senior, and Mr. H. J. always together, the young Mrs. usually somewhere alone.

Q. For instance, where alone? A. Up on the porch or walking around alone by herself on the lawn.

Q. Were you there in the summer of 1929? A. I was.

Q. At that time were Mrs. McDonald's children by her first husband at home from school? A. Yes, they came home shortly after I came there.

Q. Do you recall a conversation which Mrs. J. W. McDonald, the mother of the defendant, had with you at that time while the children were at home? A. Yes.

MR. KREMER: I object to this for the same reason, and for the further reason that I anticipate upon the examination of the affidavit filed in the preliminary hearing in this case that this has to do with the complaint made by the mother-in-law abotu the children eating some cake.

THE COURT: If it applies to the action of the children, I will exclude it.

MR. STEIN: The only reason I offer it is for the purpose of showing the whole atmosphere that the wife went through there at that time, living as she was with her mother-in-law. If one of the disturbing factors, or one of the things was that the children were annoying Mrs. McDonald, my contention is that the husband should have provided a home elsewhere, where this woman would not have been subjected to the things that happened. Naturally, they were her children.

THE COURT—Yes, but I feel that in allowing the testimony to go in of these circumstances or conversations that were had directly relating to the complainant and the defendant, I have gone just as far as the rules

will permit me. Now, to bring in the children, and to describe the actions and conduct that might have been objectionable to the parties, I think is going farther than I dare to go.

MR. STEIN: I will withdraw the question.

By MR. STEIN:

Q. About the middle of September, 1929, did you leave? A. I did.

Q. Did you leave of your own accord? A. Yes.

Q. And after you left, did you receive any word that you might come back?

MR. KREMER: I object to that as entirely leading.

MR. STEIN: I won't follow that question up. That is probably anticipated in the course of cross-examination. I will let counsel ask that.

By MR. STEIN:

Q. Do you remember just before you left a conversation with the defendant's mother in the presence of her son? A. Concerning my leaving?

Q. A conversation concerning whatever it was, your leaving, or whatever it was? A. I do.

Q. Was the defendant there then, that is, Henry J. McDonald? A. Yes, when I gave word that I was leaving and gave notice, Mrs. McDonald, Senior, said that I was leaving on account of young Mrs. McDonald's children, and I denied it.

Q. What did you say?

MR. KREMER: I object to what she said.

THE COURT: I will allow the conversation in its entirely to go in.

A. I said, "no, I am not leaving on account of the children," and with the other servants she insisted it was.

MR. KREMER: I object to that and ask that it be stricken out.

MR. STEIN: With the other servants.

By MR. STEIN:

Q. Was that in the presence of her son? A. No.

Q. What was said? You say that you insisted that you were not. What did you say? That is what the Court wants to know, what you said in reply to that. A. I didn't say anymore at the present time, but the next morning is when I said why I was leaving. When young Mrs. McDonald came down the next morning she said, "Theresa, I am very sorry that you are leaving. I hope that you are not leaving on account of my children."

I said, "No."

Q. Was the husband there then, Henry J? A. He was upstairs.

Q. Was he there? A. Yes.

Q. He was there? A. Yes.

By THE COURT:

Q. Was he where he could hear this conversation? A. No.

By MR. STEIN:

Q. What I meant before was whether or not he was where he could see it. A. No.

Q. The day before, when you say he was present, where was he then? A. In the dinning-room.

Q. Was he where he could hear what you were saying to Mrs. McDonald that day? A. Yes, because I was talking to her between the dinning-room door and the pantry.

MR. STEIN: Cross-examine.

MR. KREMER: No questions.

LUKE S. MIMURA, a witness called on behalf of the petitioner, being first duly sworn according to law, on his oath, testified as follows:

DIRECT EXAMINATION.

By MR. STEIN:

Q. Mura, you live where? A. Just now I work. I live 102 Montrose Avenue, South Orange, New Jersey.

Q. With a Mrs. Burke, a sister of the complainant? A. Yes.

Q. Did you ever work for Mrs. J. W. McDonald, the mother of the defendant in this case? A. I did.

Q. When did you first go to work there? A. It was February, 1928.

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Q. How long did you continue to work there? A. I stayed there at her place until the middle of September that year, and I quit and come back again sometime about the middle of November of the same year.

Q. Of 1928? A. Yes.

Q. Do you remember around Christmas time, 1928, a conversation with Mrs. J. W. McDonald. the mother of the defendant? A. Yes.

MR. KREMER—If the Court please, I interpose the same objection unless Mr. Henry J. McDonald was present.

THE COURT—We will establish first that he was there.

MR. STEIN—He wasn't present, but this was—

THE COURT—The question is allowed on the same theory.

THE WITNESS—Well, one day I was cleaning the sun parlor, and she came in, and we started to talk one thing to another, and she said, "I am sorry that Mr. H. J. married his young Missus."

I said, "Didn't you know they were going to be married?"

She said,' Yes, I know, but he is only my son, and I can't object to it."

I said, "It seems to me they are happy and contented. Why are you worrying about them?"

That is what I said to her, and of course, she did not say.

Q. When you said, "They seem to be happy and con-

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tented. Why are you worrying about them—" A. I said to her, but she don't say nothing.

Q. Do you remember some weeks later? At that time Mr. J. W. McDonald was also living at 70 Esplanade, Deal? A. Yes.

Q. Do you remember the time—if there was such a time—when Mr. J. W. McDonald and his wife, the mother of the defendant, went south? A. Yes, I remember.

Q. At that time when they went South, was it 1928? A. They went—the old couple went after New Year's 1929.

Q. At that time, did the son, the defendant here, go with them? A. No.

Q. Do you know the little daughter of the complainant, little Patricia? A. Yes, I do.

Q. At that time was Patricia well or was she sick? A. At that time? What do you mean by that time?

Q. When the old folks went South. A. When they left, she was well, but after they left, she went back to school and came back in a couple of weeks later and caught—she became sick.

Q. Do you know when the defendant, Henry J. McDonald, joined his mother and father in the South later on? A. Yes, sir, of course I do, because I talked—

Q. Do you know that he did? A. Of course he did.

Q. Who went with him to the South, if you know? A. I went with him after Mrs. McDonald came and said good-bye as far as Manhattan Transfer.

Q. Talk a little more slowly. You were saying what now? I asked you whether you went South, and if you went with him, and you said you did? A. Yes.

Q. What were you saying about Manhattan Transfer? A. I said anyway Mrs. H. J. McDonald go as far as New York, but the train comes, and she come back as

far as Manhattan Transfer, and she can change for a train there for Deal.

Q. Are you trying to tell the Court that Mrs. H. J. went with her husband as far as Manhattan Transfer in Newark? A. Yes.

Q. This lady complainant went with her husband and you as far as Manhattan Transfer, when he was going South? A. Yes.

Q. Is that right? A. Yes.

Q. And then she went back to Deal? A. I don't know where she went.

Q. You do know that you and Mr. McDonald, Junior, Henry J. McDonald, went South together then on the train? A. Yes.

Q. On the train did Mr. McDonald say anything to you, anything at all concerning his wife? A. Yes.

Q. What did he say? A. Well, after Mrs. H. J. left, and Mr. H. J. was so quiet, he does not seem to me—it seems to me he is lonesome, and he sits very quiet looking out the window, so I started to talk, and we started to talk one thing to another, and he said, "Do you know, Mura, I miss Mrs. H. J. a great deal."

I said, "I imagine you do, Mr. McDonald."

He continued and said, " I hate to leave her alone with the sick child, but you see, I have a mother and father down South, and they are worrying over me, so I have to go and join with them."

That is what he said. Of course, that part of what we talked and of other things was not much interest in this case, I suppose.

Q. You know that Mr. J. W. McDonald, the father of the defendant, died down South that winter? A. Yes, I know, but I wasn't there.

Q. Didn't you remain in the South? A. No, I just stay—we get there on Sunday morning, and the next day I took a train and come back to Deal Beach.

Q. Was there any special reason why you came back right away? A. Yes, we have to come back to the story about the beginning I left Deal. Mrs. H. J. McDonald had short help, she was short-handed, and she does not like much to go. She said, "Mura, you better go, but don't stay. Come back right away."

MR. KREMER—I object to this.

By MR. STEIN:

Q. You came back? A. Yes.

Q. Why? Without telling all this story, was it because she was short-handed? A. Yes, she needed help.

Q. All right, you are back in Deal now. Do you remember the day when the body of Mr. McDonald was brought home? A. Yes, it was early in the morning. I meet Mr. McDonald right at the front door.

Q. Did you notice Mr. McDonald, Henry J., the defendant, and his wife here at that time? A. That early morning.

Q. Did you notice them? Did you observe them? A. Yes, of course I did.

Q. Was there any difference that you could see between the way Mr. and Mrs. McDonald, the complainant and the defendant, were acting then and before Mr. McDonald went South?

MR. KREMER—I object to the question.

THE COURT—Objection sustained. There might

have been a thousand reasons other than the one scene that changed his attitude at that time.

MR. STEIN—We have already proved the reasons, and it is simply cumulative evidence, of course.

THE COURT—It is not allowed. He may tell what he did see.

MR. STEIN—I am trying to say that I was going to ask him whether or not they did not speak together.

THE COURT—When you characterize it—

By MR. STEIN:

Q. What did you see between Mr. and Mrs. H. J. McDonald, if anything, after he came back? A. Right at that time I didn't notice much until the funeral service was over, and then I thought there was something going on in the house upstairs, and one morning I noticed this: I brought up breakfast for them, Mr. H. J. McDonald and Mrs. H. J., in their bedroom, and I think that was Saturday morning Mrs. J. W. McDonald was living in another room in the house on the same floor while I brought up the breakfast. First I brought up breakfast for Mr. and Mrs. H. J. McDonald, and I left their bedroom. I noticed Mrs. H. J. McDonald was ready to eat, and Mr. H. J. McDonald know that the breakfast was there, but he went to his mother's room and was talking something. I don't know what he talk, but anyway, they talk, and I know that because I brought up breakfast to Mrs. J. W. McDonald. It was almost time they get their breakfast through, and so I went to get the trays, and when I went upstairs, I no-

ticed that Mrs. McDonald, Mrs. H. J., was eating alone, and Mrs. H. J. McDonald is not finished breakfast, and I think that is funny.

Q. Don't tell us what you thought. A. But then I noticed something going on in the house. One or two days later I brought up again lunch to Mrs. J. W. McDonald, and she told me, she said, "Mura, Mr. H. J. is upset over his father's death, and he does not care for Mrs H. J."

That is what she said to me. It give me quite different that when he left the house for South, he was so happy and cheerful and just like a good husband, but when he came back like that, he showed how different.

MR. KREMER—I move that those opinions of the witness be stricken out.

THE COURT—No, he is not now describing conditions which he found. I think they are all right as long as they are not personal observations and not drawing conclusions.

By MR. STEIN:

Q. How long after the death of Mr. J. W. McDonald did you work there? A. I think about three or four weeks after.

Q. Did you leave or were you discharged? A. I got fired.

Q. What for? You were fired because of what? A. Because, well, I have to explain this in detail. They used to take two grades of milk, A and B, one quart of A grade and a couple of quarts of B grade. That day Mr. H. J. McDonald went to New York.

Q. You can explain that when counsel asks you that. A. Yes, I got fired because—

CROSS EXAMINATION

By MR. KREMER:

Q. When did you go to work for Mrs. Burke? A. I went in the latter part of April.

Q. This year? A. Yes.

Q. Did you ever know Mrs. Burke before? A. I met her.

Q. Mrs. Burke is a sister of Mrs. McDonald, Junior? A. Yes.

Q. A sister of the complainant in this suit? A. Yes.

Q. Did Mrs. McDonald introduce you to Mrs. Burke? A. Yes.

Q. Mrs. McDonald, the complainant in this suit, got you your job with her sister, and that is where you are working now? A. No, I went first to her place and I asked her if I can get the job. Don't tell me that.

Q. You went first to her place? A. To Mrs. McDonald's place.

Q. And you asked Mrs. McDonald to get you a job, and she got you a job with her sister? A. No, sir, I said I am going to quit. I want to work by the shore. She says, "Suppose you work for my sister's place?"

Q. Where were you working then when you went to see Mrs. McDonald, Junior? A. Then I quit, and before that I was working in Stamford—I mean Greenwich, Connecticut.

Q. But this job that you have with Mrs. Burke, you obtained through Mrs. McDonald, the complainant in this suit? A. No, sir.

Q. Well, you said that you asked Mrs. McDonald, the

complainant, to help you get a job. A. No, I didn't say that. You misunderstood me. I will make it very simple so you don't make misunderstand. I went to Mrs. H. J.'s place. That is the second time I went. The second time I went I asked Mrs H. J., "I am going to quit this job because they are going away out in the country, and I don't like that. I like some place near the seashore."

Mrs. McDonald says, "Well, suppose you work for Mrs. Burke, my sister's place?"

I say, "All right, I can go every week-end out in the shore and enjoy it and that just suits me."

That is what I told her.

Q. And you never knew Mrs. Burke before that? A. Yes, I know. I met her many times.

Q. Where? A. 70 Deal Esplanade.

Q. Do you mean that Mrs. Burke came there? A. Of course.

Q. And after you talked to Mrs. McDonald, the complainant, about getting that job, and she said suppose you go to see Mrs. Burke, what happened next? A. After I met her?

Q. After Mrs. McDonald, the complainant, suggested to you that you should get a job working for Mrs. Burke, what happened next? A. All right, I will tell you that, too. I went there. Then the Missus said, "You wait there if my sister comes to my place, then you ask her if she take you or not."

I said, "That is fine."

I waited one day, and she came, and she said—

Q. She came where? A. She came to Deal Beach.

Q. To Mrs. McDonald, Junior's house at Whitehall? A. Yes.

Q. That was this spring, in April? A. Yes.

Q. How did you know she was coming? How did you know Mrs. Burke was coming there? A. I tell you. She said she is going to ask if Mrs. H. J.—if Mrs. Burke came to the beach, she said she is going to call up the phone if she can come.

Q. Call up whom? A. Mrs. Burke, and I said, "If she can come to the Beach, that will be fine." Finally she came, and I met her.

Q. How did you find out that Mrs. Burke was at Mrs. McDonald's house at the Beach? How did you find it out that Mrs. Burke was there? A. I was there already when she came. I went before, and she said, "Suppose you work for Mrs. Burke?"

That is what Mrs. H. J. said to me.

THE COURT—As I understand the witness, he was at Mrs. McDonald's house, and the question arose as to his working for Mrs. Burke. Mrs. McDonald called up Mrs. Burke, and when she found that she was coming there, the witness waited.

By MR. KREMER:

Q. Is that what happened? A. Yes, I was waiting there, and we met.

Q. She called up Mrs. Burke at the same time you were there at her house? A. Yes.

Q. And told her that you were there? Did you hear the conversation over the telephone? A. No, I didn't hear it.

Q. You did not hear what Mrs. McDonald said? A. No.

Q. But Mrs. McDonald, Junior, told you that Mrs. Burke was coming over? A. Yes.

Q. And you waited? A. Yes.

Q. And then Mrs. McDonald and Mrs. Burke and you were together? A No, we didn't talk three together. After lunch, I think, Mrs. Burke and I went upstairs to a small room, and we talked it over.

Q. And she employed you then? A. Yes.

Q. That was in April, 1930? A. April of this year.

Q. Just tell me again what that conversation was about Christmas time when Mrs. McDonald, Senior, spoke to you. A. Well, one morning, it was after Christmas, I was cleaning the sun parlor, and she came there, and she started to talk about the children of Mrs. H. J. Mrs. J. W. gave them riding boots, new boots for a Christmas present.

Q I didn't ask you that. A. That is part of the story. She started—

THE COURT—He is trying to give you the answer, but he said it was part of the story that was not embodied in the former answer.

By THE COURT:

Q. Go on and tell what occurred in that conversation with Mrs. J. W. McDonald. A. Mrs. J. W. said to me, "I am sorry Mr. H. J. married Mrs. H. J."

I said, "Didn't you know they were going to get married?"

"Yes, I know, only Mr. H. J. is the only son, and I don't want to object."

Q. You never told Mrs. H. J. about that conversa-

tion, did you? A. No, she does not know that at all. If you want to know dates, I will tell you when.

Q. But you never told Mrs. H. J. about it? A. No, I have not.

Q. The other conversation that you had with Mrs. J. W. McDonald, that you told to Judge Stein, took place later? Tell me that one again, please? A. What time?

Q. There were two things that you quoted Mrs. H. J. as saying. A. Will you give me which one you want first? ?

Q. I mean Mrs. J. W. You said that later on she mentioned Mrs. H. J. McDonald again. Is that right? A. That is the time Mrs. J. W. said, "Mr. H. J. does not care."

Q. And you never told that to Mrs. H. J., did you? A. I tell that just recently. While I was there, I didn't tell anything to her.

Q. You did not say anything to her before this suit was started? A. No.

MR. KREMER—I move that those two statements made by Mrs. J. W. to the witness be stricken out, and that his answer be stricken out for this reason: As I understand the rule as laid down by Vice Chancellor Berry, in a case having to do with mental cruelty, which was cited by the Chancellor, the case of Equiro against Equiro (?), and in that case statements were made by the husband to various people concerning his wife. The Vice Chancellor held that under the rule that unless those statements were communicatd to the petitioner, they could have no bearing on the case. In other words, they could not affect her mental state nor the relationship between her and her husband unless they were brought home to her. In this case, this man admits that

these two statements of the mother-in-law were made to him, but he never went any farther with them, and therefore, they could not have any effect upon the matrimonial relations.

THE COURT—They are objectionable on that theory, but I will allow them to remain on another theory, the theory that it tends to demonstrate the attitude of the mother in this instance, toward her son's wife, and the possible influence that that attitude may have had on her son in relation with his wife.

MR. STEIN—I am offering it upon another ground that is to corroborate the witnesses who have testified heretofore to statements made by the mother to them concerning this couple, which were communicated to her, in order to show the probability of the truthfulness of the statements of this witness in that respect.

MR. KREMER—I don't see how you can prove the possibility of one statement being made by showing that another thing at another time was said.

MR. STEIN—That is one further reason why I offer it.

MR. KREMER—It does seem to me that we must bear in mind that after all the mother-in-law is not on trial. It is a question of the matrimonial relations between this man and his wife, and for that reason, I think that statements made by her out of the presence of the defendant are not binding unless brought home, and then not binding unless—however, I simply want my objection on the record.

RUTH POLHEMUS, a witness called on behalf of the petitioner, being first duly sworn according to law, on her oath, testified as follows:

DIRECT EXAMINATION

By MR. STEIN:

Q. You are employed by the Oxford Markets in Allenhurst? A. Yes.

Q. In what capacity? A. Bookkeeper.

Q. And you were so employed in May, 1930? A. Yes, sir.

Q. And prior thereto? A. Perhaps a month; I don't remember the exact date.

Q. In your employment, did you have occasion to call on Mrs. J. W. McDonald for any purpose? A. No, sir.

Q. Did you have occasion to call on Henry J. McDonald? A. I don't understand your interpretation of to call on Mr.—

Q. Did you go to the home of Mrs. J. W. McDonald? A. No, sir.

Q. Did you have a conversation with Mrs. J. W. McDonald concerning an account? A. I was instructed to try to communicate over the telephone with Mr. H. J. McDonald.

Q. At what place? A. At his home at Deal Esplanade.

Q. Did you do that? Did you carry out that instruction? A. No, it was impossible. I tried a number of times, but I never talked with Mr. McDonald.

Q. Tell us what you did that you call trying. A. I called the house perhaps five times, and one reason I think that I was instructed, and very often we would find that in all collections of bills—

MR. KREMER—I object.

By MR. STEIN:

Q. Just tell us what you did. A. I called the house about five times.

Q. To whom did you speak there? A. I don't know.

Q. Whom were you trying to reach there? A. I was trying to reach Mr. McDonald.

Q. After that? A. Each time I was told—

MR. KREMER—I object to what was told.

By MR. STEIN:

Q. You do not know who was talking to you then? A. No, I don't know who was talking to me.

Q. So you cannot tell what you were told. Failing to reach Mr. Henry J. McDonald over the wire, what did you do next after all these calls? A. The last time I was told that the person—

MR. KREMER—I object.

Q. What did you do eventually about that? Did you go to the house? A. I never reached Mr. McDonald.

Q. Did you go over to the home? A. I did not go to the home.

Q. Did you have a talk with Mrs. J. W. McDonald? A. I can't swear to that. I was told it was Mrs. H. J. I think, if I may be permitted to tell exactly what happened the last time—

Q. Yes, but first I have to show that you have a right to tell it. A. The person who talked to me the last time told me she was Mrs. J. W.—she did not say that. She said it was Mr. McDonald's mother.

Q. What did you say to that person over the wire?

MR. KREMER—May I ask the purpose of this testimony?

MR. STEIN—The purpose is to show that there was a meat bill which had been contracted while the couple were still living together partly, and partly after Mrs. McDonald had left her husband under circumstances here related. They were endeavoring to collect this bill, and I want to show that Mrs. McDonald said over the wire that she represented her son in what she was then saying concerning that bill. Of course, further cumulative evidence to show the entire affairs of the mother and the control over the son which she wielded during that time and afterwards and still wields—

MR. KREMER—I object to that.

THE COURT—Objection sustained.

MR. STEIN—I can, of course, introduce it in rebuttal, but I cannot put it in now. The witness will have to wait.

(The witness was withdrawn)

GERTRUDE McDONALD, recalled.

DIRECT EXAMINATION

By MR. STEIN:

Q. Mrs. McDonald, in your direct examination I neglected to ask you certain questions that I will ask you now. Do you know Sadie Williams? A. Yes.

Q. While Sadie Williams was in the employ of Mrs. J. W. McDonald, did Sadie Williams communicate to you certain conversations had between her and Mrs. J. W. McDonald concerning you? A. Yes, she did.

Q. What she tell you that Mrs. J. W. McDonald had said to her concerning you or your husband?

MR. KREMER—I object to this for the same reason, that not coming from the defendant, it is not admissible. Statements made by him might be admissible if communicated, but by another person, it would not be.

By MR. STEIN:

Q. Can you fix the time when these things were told you? A. I can give a period of time.

Q. Can you fix the time definitely when they were told you? A. Between August and September.

Q. Of what year? A. Last year, 1929.

Q. Tell some of the things that she told you or all of them that you remember.

MR. KREMER—I wish further to object. This

testimony should have been developed yesterday, and I think it may properly come as rebuttal, but it is obviously the result of the examination of Sadie Williams yesterday, and I think it is objectionable for that reason.

MR. STEIN—I have your Honor's permission to introduce further direct testimony.

THE COURT—It might be if this witness had been covered, but I don't recall that the questions of fact would have been objectionable at the time. It could be developed after the witness testified.

(Argument)

MR. KREMER—I would like that objection to stand.

By MR. STEIN:

Q. Towards the end, when Mrs. McDonald said, "Will you confront my mother-in-law," will you tell us the things that you remember that Sadie Williams told you that Mrs. McDonald, the mother of the defendant, said concerning you or him? A. The first thing she told me was the attitude of Mrs. McDonald at the time of her husband's death, when she stood over him and said I was responsible for his death, and she would have revenge over her husband's dead body. Secondly, she went on to say that that same day that she was speaking to Mrs. McDonald, Mrs. McDonald said that she had lost her husband, but she had gained her son. Prior to that on the same day she told me that before Mr. McDonald

died, and my husband was getting ready to come back to Deal, she said that she intended to have her son back at all costs. That all happened at Palm Beach. Then, when she came back to Deal, Esplanade, where we all were living, and apparently my husband and I had effected—tried to forget all this Palm Beach and live together again with his mother, while I was living there and trying to adjust myself to the changed circumstances—

MR. KREMER—I object to that and ask that it be stricken out.

By MR. STEIN:

Q. I want you to tell just what I asked you to tell, just what this woman told you. A. She told me that Mrs. McDonald said to her that Mr. McDonald did not care for me, and why didn't he pay me a sum of money and get rid of me, that she was tired of having me around the house. That is another thing she told me that was also said at that time. She told me things about the children, objections that Mr. McDonald had been making to the children about certain food being bought for them.

Q. What else did she tell you? A. She told me I was buying things which I didn't need, and spoke about extravagance, the purchase of books and things like that, but they did not make any impression.

Q. What else was told you that she had said? A. She told me that she had been forbidden to do anything for the children, make their beds or anything of that sort of work, and if she did, that she would be killed. That was the expression used.

Q. Was there anything told you about some visits that had been made there by friends? A. She told me

there was an invitation issued while at Palm Beach to a young lady and her mother to whom my husband had given quite a lot of attention, but prior to our marriage, and that she had been invited down to Palm Beach while I was in Deal, and Mrs. McDonald had made the remark at that time that she hoped her son would fall in love with her again, and Sadie was supposed to have remarked, "Well, what about Mrs. H. J.?"

She said that Mrs. McDonald then said, "Well, she will get over it."

That was all told to me by Sadie.

Q. Prior to the time you went to live together with your husband and with the mother and father of the defendant, how was your health? A. Very good.

Q. And thereafter, until Thanksgiving, 1929, when you left your husband, what was the condition of your health? A. I was in good health up until the time of Mr. McDonald, Senior's death.

Q. From that time on until the time you left the home in Red Bank, how was your health? A. Very poor.

MR. KREMER—I object to that as calling for a conclusion.

MR. STEIN—I will follow it up.

THE COURT—Objection sustained.

By MR. STEIN:

Q. What was the matter with you? A. I had a nervous breakdown due to shock and grief.

MR. KREMER—I object to that. It is calling for a conclusion as to what it was due to.

THE COURT—Yes.

By MR. STEIN:

Q. You had a nervous breakdown? A. Yes.

Q. Who attended you? A. Doctor Harry Slocum of Long Branch, and Doctor James Ackerman, of Asbury Park.

Q. You spoke yesterday of having lost considerable weight? During what period did you lose this weight? A. Between March and November.

Q. Of what year? A. March, 1929, and November, 1929.

Q. Since you have separated from your husband, do you know whether or not your weight has increased? A. Yes.

Q. How much do you weigh now? A. 117.

Q. When did that increase in weight commence? A. Well—

Q. As near as you know, if you know. A. I started to pick up again about March.

Q. Of 1930? A. Yes.

Q. And you have been gradually picking up since? A. Yes.

Q. I want to ask you to go back once more to Sadie Williams. I will ask you what you did about those things that she told you that Mrs. McDonald had said. A. At first I didn't do anything. It didn't make any difference.

Q. Did you do anything about it? A. Yes, finally I did.

Q. What did you do? A. Finally I asked Sadie, as long as she had told me these things, would she confront, not me, but my husband and his mother in front of me with these things.

Q. Did that happen? A. Yes.

Q. Who was present when that took place? A. My husband.

Q. Who else? A. My husband and myself.

Q. And who else? A. Sadie.

Q. Were these things repeated at that time by Sadie before the mother, which you have testified and that she testified to? A. They were.

Q. What happened to Sadie after the story was told? A. She was discharged then.

Q. What was said in discharging her and by whom? A. Well, Mrs. McDonald, of course, called her an ingrate, and that she was working for her and had no right to tell me those things, and that she was to get out then and there that night.

Q. Did she get out then and there? A. That night.

Q. Was she discharged in your presence for any other reason than the reason you have given? A. She was not.

MR. KREMER—I object to that.

By MR. STEIN:

Q. Was there any other reason given for her discharge other than what you have told us here? A. There was not.

CROSS EXAMINATION

By MR. KREMER:

Q. Of course you do not know what Mrs. McDonald may have said to her at some other time? A. I know Mrs. McDonald was very attached to the girl.

Q. You just stated that there was no other reason given. When you say that, you mean that that is all that was said in that conversation to which you were alluding? A. No, but she had already been discharged. She would not discharge her again in my presence.

MR. STEIN—I consent that that last part be stricken out.

By MR. KREMER:

Q. You don't know what Mrs. McDonald may have said to this girl the day before or at other times that day or the day after, do you?

THE COURT—Aren't we just beating about the bush on this proposition?

MR. KREMER—The witness has undertaken to give an opinion.

THE COURT—It is perfectly obvious that the occurrence brought about the discharge.

By MR. KREMER:

Q. This Sadie Williams had been talking to you all

along? A. I said between August and the time she was discharged.

Q. It did not all happen that day? A. No.

By THE COURT:

Q. When did the discharge take place? A. I think it was October 3d.

By MR. KREMER:

Q. Isn't it a fact that practically everything that Sadie Williams told you was told that day? A. No, on the contrary.

Q. But you had never seen fit to complain of it before? A. Exactly.

Q. Did you make a confidante of this negress? A. No, I did not.

Q. Under what circumstances did she repeatedly come to you and tell you things that your mother-in-law was saying? A. She told you herself because—

Q. You tell me, please. A. Because I was unhappy, and she saw that I was unhappy, and she saw the treatment was not fair, that I was trying my best to make a bad situation possible.

Q. Did she tell you these things, that she saw that you were unhappy? A. No.

Q. How did you know that? A. Because my mother-in-law demanded to know why she did it, and that was her explanation.

Q. I didn't ask you why she did it.

THE COURT—She said her mother-in-law asked her why she did it.

By MR. KREMER:

Q. Did you talk to Sadie Williams to ask her about your mother-in-law? A. No.

Q. Did you ever say anything to her about your mother-in-law? A. No.

Q. When she would tell you these things, what would you say? A. I would not say anything; I would just listen.

Q. You did not say anything at all? A. No.

Q. She would just come in out of a clear sky and start to carry tales to you? She would come in without any welcome on your part, or without any provocation or anything said by you to invite a remark, and she would simply state to you what your mother-in-law had said about you? A. Yes, it wasn't a case of coming in; she was usually working around the room at the time, and very often I was there in that room, and I was depressed, and I was sick at the time also.

Q. And you never made any response to her whatever? A. She asked me if I was happy, and I said, no, I wasn't, and then she told me. She said, "Some day I will tell you what happened at Palm Beach."

I said, "Why not tell me now?" and that is what strted it.

Q. And that is the way you would discuss matters with her? A. Matter, yes.

Q. You say that Doctor Slocum treated you? A. Yes.

Q. When did he treat you? .A The night that I got the message from my brother Harry from Miami not to kiss the body, I went home in a state of collapse. We had a trained nurse at the house at the time, who was

still attending Patricia, who sent for Doctor Slocum, who was my child's physician at the time.

Q. He came down to see you? A. Yes.

Q. On a good many occasions, did he come to see you? A. He came only twice at that time, and Doctor Ackerman once.

Q. And that is the only medical attention you had from March to November? A. Oh, no.

Q. What other doctors treated you? A. Later on Doctor Ackerman treated me for a condition which he said was brought on by nervous excitation, which was called pyolitis, and that took a period of about two weeks. Again later on after Mr. McDonald and I separated in November, Doctor Slocum again treated me.

Q. You stated that you began to lose weight and began to suffer a nervous condition, which you attribute to grief and shock. At the time of the death of Mr. J. W. McDonald, that is when your health began to retract, is that right? A. Yes.

Q. You had Doctor Slocum twice at that time? A. Yes.

Q. How long was it before you had Doctor Slocum again, if you had him at all? A. I didn't have him again until November.

Q. You never had him anymore until November? A. No.

Q. How soon after the word about kissing the body did you first have Doctor Ackerman? A. I had had him that night, Monday night.

Q. The same night? A. The same night that Doctor Slocum was there.

Q. Did Doctor Ackerman come especially for you or to see the baby? A. He came to see me.

Q. How long after that did he come again? A. I called him when I had this pyolitis condition. I was running a fever and chills.

Q. How long a time elapsed until you called him about the pyolitis? A. I think that was in April.

Q. The message about your father-in-law's death was when? A. I am not attributing my ill-health entirely to his father's death.

Q. The message about the death was when? A. In March.

Q. What time in March? A. I believe he died the 24th; the message was on the 25th.

Q. And then you had Doctor Ackerman? How many days or weeks elapsed until you had him on account of a condition of pyolitis? A. Probably a month to five weeks.

Q. During that time you did not need any medical treatment? A. I needed it, but I did not send for it.

Q. Do you know that you needed it? A. Yes, I do.

Q. When he came, what did he prescribe for you? A. He said it was a run-down condition.

THE COURT—I do not consider that the witness is qualified to testify as to what was prescribed.

(Argument)

By MR. KREMER:

Q. It was about a month from the time Doctor Ackerman saw you in March until he saw you in April, and after he saw you that time, how soon did he see you again? A. He continued to treat me for about two weeks at that time.

Q. What did he do for you? A. He gave me a form of bromide as a nerve sedative, and also gave me a tonic.

Q. And you began to lose weight? A. I constantly lost weight.

Q. You say it was due entirely to this thing? A. Not to the shock of father's death. It was due mostly to my husband's attitude through all this time.

Q. I think you said that your husband has asked you to come back. He telephoned you at Whitehall and had you come back and said everything would go all right? A. Yes, that is what he said.

Q. Weren't you, in fact, having trouble with your teeth at that time? A. No.

Q. Didn't you then, or shortly after that, have some teeth extracted? A. No.

Q. Have you ever had any extracted? A. A month or two months ago, this summer.

Q. Weren't you suffering then from a condition that was produced by your teeth? A. On the contrary, the teeth were produced by the condition.

Q. And you deny that the loss of weight could be attributable in any way to the teeth? A. Attributable to the vacillating attitude of my husband.

MR. STEIN—With the exception of the medical testimony, in case that should be required by your Honor, I will close. I should like to reserve myself the right to produce medical testimony, if the Court deems that is necessary.

THE COURT—I do not want you to put the question up to the Court whether or not I deem it necessary.

MR. STEIN—I cannot produce these doctors today, but I will ask the privilege to close with the right to.

MR. KREMER—With that exception, do you close?

MR. STEIN—Yes.

MR. KREMER—If the Court please, I do not admit this bill as a verity, but for the purpose of this motion, I move to dismiss the bill on the ground that the case is utterly devoid of any evidence to show the paying capacity or earning power of the defendant. Your Honor is asked in this case to award a sum in payment, and there is nothing on which you can predicate such an award.

MR. STEIN—As to that, I ask leave to open in order to put that in.

THE COURT—I will allow the case to be opened so that proper evidence may be adduced.

MR. STEIN—I desire to offer on the question of alimony on the defendant's ability to pay the files of this Court in this suit between the complainant and the defendant, being docket 77, 78, and marked specifically, that portion of the record contained in the notice and application for alimony and counsel fees pendente lite, together with the affidavits thereto annexed, and the proofs therein made of Gertrude T. McDonald, the petitioner, and in which is fully set forth the knowledge which the complainant possesses concerning the property and the ability of

the defendant to support her, and also the affidavit of Ambrose McManus attached to the petition for alimony pendente lite, and the affidavit of Harry J. McManus, in so far as that affidavit relates to the ability of the defendant to pay.

MR. KREMER—Of course, the objection to these affidavits as evidence on that subject must be obvious. The only purpose of an affidavit and the only use to which it can be put is on preliminary applications for alimony pendente lite. A case of this kind must be tried on the testimony of the witnesses and not on affidavits. Affidavits are directed to be used on preliminary hearings in order that some immediate relief could be given, but I have never heard it suggested that you could bring in an affidavit used on application for alimony pendente lite or any preliminary hearing in a divorce case.

MR. STEIN—It is withdrawn. I shall ask the petitioner, Mrs. Gertrude T. McDonald, to resume the stand.

GERTRUDE T. McDONALD, the petitioner, recalled.

DIRECT EXAMINATION

By MR. STEIN:

Q. Mrs. McDonald, what is your husband's business? A. Lumber business.

Q. Where? A. Brooklyn

Q. Whereabouts in Brooklyn? A. A section called the Erie Basin, Columbus Avenue, I believe, is the name of the street.

Q. What is the name of the concern that you describe as the lumber business? A. J. W. McDonald & Company, Incorporated.

Q. Do you know whether or not it is any longer incorporated, or whether it is now conducted as a partnership?

MR. KREMER—I object unless she knows.

A. It was a corporation when I lived with Mr. McDonald.

MR. KREMER—I object to that unless she knows.

THE WITNESS—I do know.

By THE COURT:

Q. How do you know? A. Because I saw the corporation papers brought home for his mother to sign, and it was discussed in my presence.

By MR. STEIN:

Q. What is your husband's interest in that lumber business?

MR. KREMER—I object to that. The minutes of the corporation would be the best evidence of the shares that he owns and what his interest is.

THE COURT—The objection is sustained, unless this witness can show that she has personal knowledge or access to the records of the corporation itself.

MR. STEIN—I will withdraw the witness for the time being.

(The witness was withdrawn.)

HENRY JOHN McDONALD, being called as a witness in behalf of the petitioner, being first duly sworn according to law, on his oath, testified as follows:

DIRECT EXAMINATION

By MR. STEIN:

Q. Mr. McDonald, you made an affidavit in this proceeding on an application for alimony pendente lite? A. Did I make an affidavit? I did.

Q. In that affidavit did you disclose that you were a

partner in the lumber business known as the J. W. McDonald Company in New York?

MR. KREMER—I object to that as leading. He may be asked what interest he has.

THE COURT—I don't know whether Judge Stein was quoting from the affidavit or just simply—

MR. KREMER—I object to that. The question is not what he said in some affidavit; the question is what he knows.

THE COURT—I will permit it, because it is part of the record in these proceedings.

(Argument.)

By MR. STEIN:

Q. Are you in the lumber business in Brooklyn? A. I am.

Q. What percentage of that business do you own? A. None.

Q. When did you sell it? A. I sold it a month or so ago, I guess.

Q. Do you know? A. About two months ago.

Q. To whom? A. To my mother.

Q. How much did you get for it? A. I turned it over to her for money I owed her, in part payment for money I owed her.

Q. Was it done for the purpose of defeating your wife's alimony?

MR. KREMER—I object to that as leading. This is his witness.

THE COURT—Of course, this is a hostile witness, and I will allow a certain amount of latitude.

A. No.

By MR. STEIN:

Q. You had already secured your mother, had you not, for whatever she gave you or loaned you? A. No.

Q. You had not secured her before? A. No.

Q. Didn't you, as a matter of fact, make an affidavit in this proceeding, in which you said that you did secure her? A. Yes, to a certain amount.

Q. I asked you whether or not you secured her before. A. Yes, but not to the full amount.

Q. I asked you whether or not you had secured her before these proceedings were ever commenced. A. Yes.

Q. Was this business over in Brooklyn a partnership or a corporation? A. A corporation.

Q. How many shares of stock did you have in the corporation? A. Five hundred and fifty.

Q. How many shares were there outstanding altogether? A. One thousand.

Q. Did you say in your affidavit in these proceedings that you were ninety percent owner of the J. W. McDonald Corporation? A. Ninety percent owner? If there is ninety percent ownership there, then it is a mistake.

By THE COURT:

Q. Who owns the balance of the shares? A. My mother owned four hundred and fifty, and I owned fifty.

Q. You owned how may? A. My mother owned four hundred and fifty, and I owned five hundred and fifty, and that makes up the thousand.

By MR. STEIN:

Q. Did you say in your affidavit in these proceedings that ninety percent of the income from that lumber business was yours? A. I did at that time, yes.

Q. Did you say it? A. Yes.

Q. Upon what was that ninety percent of the income at that time based? A. On the earnings of the corporation.

Q. Was it based upon your interest in the business? A. Based upon my interest in the business?

Q. Yes. A. No.

Q. Didn't you say at that time in your affidavit that no one held any interest in this business except an old employee, William D. Downs? A. I did.

Q. Did you? A. I did.

Q. Did you say at that time that he was the only one that had an interest, and that his interest was only ten percent? A. That is right.

Q. When did your mother get an interest in this business? A. She always had an interest in it.

Q. Why didn't you say that in this affidavit? A. It is in the affidavit there.

Q. You say that it is in the affidavit? A. Yes.

Q. Did you say in your affidavit in these proceedings this: (page 17), "I am in the lumber business in Brooklyn, New York"? A. I did.

Q. "During my father's lifetime, he had a partnership which we later incorporated, know as the J. W. McDonald & Son, Incorporated, and I am now the president of this company." A. That is right.

Q. "I do not draw a salary, but I have been drawing $200 a week from this business throughout 1929." A. That is right.

Q. "William D. Downs, who has been employed with us for years, has a ten percent interest in this business." A. That is right.

Q. "During the year 1929, the company showed profits of approximately $30,000." A. That is right.

Q. "We suffered considerable loss in business, however, due to the defalcation of an employee, who got away with about $25,000." A. That is right.

Q. Did you mean, when you said that, that the profit would have been approximately $55,000, if it had not been for the defalcation of the $25,000? A. No.

Q. You did not mean that? A. No.

Q. What did you mean by putting that in there, that your father had a considerable loss in business due to the defalcation of an employee who got away with $25,000? A. Just exactly what it says there.

Q. Why did you mention it? A. To let you know that he got away with it.

Q. What interest was it unless it was to show that the profit would have been greater except for that fact? A. Not necessarily.

Q. Did you ever recover the $25,000? A. No.

Q. "We had to have an audit of the company's affairs, and they were in a very chaotic condition. It was necessary to restock the lumber piles, and we had to have capital to do this." Did you say that? A. Yes.

Q. "It was necessary in order to continue the business successfully to replenish the stock, and as the company had no other assets, I had to take the funds of the business and re-invest them in new stock and equipment." Is that right? A. Yes.

MR. KREMER—I object to this reading into the record.

By MR. STEIN:

Q. Why did you deem it necessary to tell the Court all this, for instance, that in order to continue the business and to replenish the stock, you had to re-invest the money from the business in new stock and equipment, if it was not for the purpose of showing that your income would have been greater except for the defalcation that happened? A. No particular reason at all.

Q. "The net income from the business for the year 1930 will, in my opinion, be between $15,000 and $18,000 under present business conditions." A. Yes.

Q. "Ninety percent of this income will be mine." Did you say that? A. If I said it, then it must have been a mistake, because I would not have had ninety percent of it at all. I would have my proportion. I would have fifty-five percent, and my mother would have forty-five.

Q. You say that you have in here that your mother was a part owner, do you? A. Yes.

Q. So you say that is a mistake now, the ninety percent income? A. Yes.

Q. "I assume, therefore, that if the company makes $18,000, I will receive about $16,000 dividends for my share of the profits." Is that a mistake? A. Yes.

Q. What is wrong about it? A. How could I get that much out of that?

Q. You swore to this. A. Yes.

Q. It was read to you, wasn't it? A. Yes, but that is a typographical error that they have in that, because it could not be right.

Q. These are all typographical errors, are they? A. Yes.

Q. Who made these typographical errors? Do you know? A. I don't know.

Q. Your lawyer did not put anything in here that you did not tell him, did he? A. No, I don't know whether or not he did; he could not have.

Q. After it was all written, it was read to you, wasn't it? A. Yes.

Q. And these statements here were read to you, weren't they? A. Yes.

Q. And you swore to it? A. Yes.

Q And then you say, "This will be my income from the lumber business for the year 1930", referring to the $18,000, of which you will receive $16,000 is that right? A. Yes.

MR. KREMER—That statement is not accurate. He said if he made that.

THE COURT—He said in the prior affidavit if it made $16,000 or $18,000, and if it was $18,000, his share would be in proportion.

By MR. STEIN:

Q. Your mother is a woman possessed of considerable wealth, isn't she?

MR. KREMER—I object to that.

MR. STEIN—The reason for the question now asked is the next question.

MR. KREMER—I object to the question.

MR. STEIN—I will withdraw it for the time being.

By MR. STEIN:

Q. Did you say in your affidavit, "Heretofore the running expenses of the house at 70 Esplanade, Deal, have always come out of the business'? A. Yes, sir.

Q. "And I anticipate that they will still have to come out." A. Yes, sir.

Q. "And that this will amount to $150 a week or $7500 a year, which my mother will draw from the business." A. Yes.

Q. Isn't that the only time you mentioned your mother in connection with the income in this affidavit? A. That is her portion of what the business would earn.

Q. Isn't that the first time you ever mentioned your mother in connection with this matter? A. That is approximately what the business would earn, her portion of it.

MR.STEIN—I will ask the stenographer to read the last question.

(The Stenographer read the last question as follows: "Q. Isn't that the first time you ever mentioned your mother in connection with this matter?")

MR. KRAMER—I object to that on the ground that the affidavit speaks for itself as to what is in it.

THE COURT—The question may be answered.

A. I don't believe that it is.

Q. In connection with the lumber business in your affidavit, isn't that the only time you mentioned your mother, and that, as a matter of fact, you do not mention her in connection with the business, only with the income and the expenses of the house, isn't that right? A. I really don't remember that, whether it is there.

Q. Then you say, "The amount left to me, therefore, after this deduction will be approximately $8,500 out of the business." A. That is right.

Q. Do you want to tell the Court now that you have disposed of your interest in the business? A. Yes.

Q. To your mother? A. Yes.

Q. And that you no longer have any income from there at all? A. Oh, no, oh, no.

MR. KREMER—He has not said that.

THE COURT—If he has disposed of his interest in the business, he certainly could not have any income from it.

THE WITNESS—My salary.

THE COURT—That is not from the business; it is from his employment in the business.

By MR. STEIN:

Q. Who is running that business over there now since you are out of it?

MR. KREMER—I object to that. There is no testimony that he is out of it.

By MR. STEIN:

Q. You are out of the business? A. No.

Q. What interest have you still in the business? A. I have a salary.

Q. What interest have you in the business? A. A salary in the business. That is my interest in it.

Q. You mean you are working over there? A. Yes.

Q. You do not own any part of the business? A. No, absolutely not.

Q. You have no interest in the business? A. No, I have none.

Q. You understood me the first time?

By THE COURT:

Q. What is your position? A. President.

Q. What are your duties? A. Buying and selling of lumber, getting new accounts and holding the ones that we have got.

Q. What other offices are there in the company? A. Secretary.

Q. Who is it? A. W. D. Downs.

Q. Are there any other officers? A. I am the treasurer also.

Q. You are President and Treasurer, and Mr. Downs is Secretary, and that constitutes the personnel of the corporation? A. That is it.

By MR. STEIN:

Q. Your mother does not hold any executive position? A. No.

Q. Did I understand you to say that you gave your stock to your mother as further security for what you owed her? A. Exactly.

Q. You did not sell it to her? A. No.

Q. You still own it? A. I assigned it over to her, gave it to her, her interests.

Q. You gave it to her? A. Exactly, for additional collateral for the loan that I owed her.

MR. STEIN—Will the stenographer please read that answer?

(The Stenographer read the last answer as follows: "A. Exactly, for additional collateral for the loan that I owed her.")

THE WITNESS—That's it.

By MR. STEIN:

Q. You understand the difference between assigning stock as collateral and giving it away, don't you? A. Yes, I think so.

Q. Let me ask you again, did you give this stock to your mother? A. I assigned it to my mother.

Q. As collateral? A. Yes.

THE COURT—I think the question has been answered.

By MR. STEIN:

Q. So now you still own stock, do you? A. No, she owns it.

Q. Your mother now owns it? A. Yes.

Q. Who fixed your salary in this corporation? A. That had been fixed by the corporation itself.

Q. Who, in the corporation? A. Myself.

Q. And who else? A. And the Secretary.

Q. And who else? A. That's all.

Q. Have you a board of directors over there? A. Yes.

Q. Who are they? A. There is Mr. Downs, and my mother, and myself.

Q. Did the board meet? A. Yes.

Q. Are there any minutes of this meeting? A. Yes.

Q. I mean minutes of the meeting when your salary was fixed. A. Yes.

Q. Will you bring those minutes here? A. Yes.

Q. You will bring them here to Court at the next adjournment? A. Surely, yes.

Q. Will you also bring Mr. Downs with you? A. Yes, he is right here now.

Q. Are the minutes here? A. No, but Mr. Downs is here.

Q. The minutes are not here? A. No.

Q. Do the minutes show what your salary was fixed at? A. Yes.

Q. Was your mother present at that board meeting? A. Yes.

Q. When was that meeting held? A. At the time of the corporation being formed.

Q. When was the corporation formed? A. In 1929.

Q. What time in 1929? A. I think it was—

Q. Was it before or after your wife and you separated? A. No, before.

Q. Before your wife and you separated? A. Oh, yes.

Q. At that time your salary was fixed? A. Yes.

Q. Is that what you mean, that your salary was fixed in 1929, while you were still living with your wife? A. Yes.

Q. Is that right? A. That is right.

Q. And your salary is the same now as it was then? A. Yes.

Q. So if you made an affidavit on January 25, 1930, this year, as to what your income from that business was, you told the truth? A. Yes.

Q. And that income has not changed then at all from that business so far as you are concerned? A. No, not as far as I am concerned.

Q. Whether you gave your stock to your mother or not? A. No.

Q. You get the same income that you said you got in this affidavit? A. No, the same as I received right along, which is approximately $8,000 a year.

Q. What do you mean *approximately?* A. It is $8,000 a year.

Q. How do you make the $8,000? A. That is what I get.

Q. Do you mean $8,000 over and above what you give your mother? A. No, certainly not, $8,000 to me.

Q. You do not pay anything anymore toward the support of your mother in her home? A. That is taken out of the business; that is separate and apart from mine.

Q. Was that so when you made this affidavit? A. That was always that way.

Q. Did you say so in your affidavit concerning this business as to what your mother got out of the business? A. Yes, the household expenses there.

Q. Did you say in this affidavit in January 25, 1930, that your mother got anything out of this business?

MR. KREMER—I object to this. The affidavit speaks for itself.

THE COURT—I will allow the question.

By MR. STEIN:

Q. Did you make any such statement in your affidavit on January, 25, 1930, that your mother was drawing any money out of this corporation? A. I don't remember.

Q. You did not make such statement? A. I can't remember whether or not it is in there or not now.

By THE COURT:

Q. You made a statement to the effect that you were getting ninety percent of the income from this business, and that the other ten percent went to Mr. Downs. Now you say that the income or the cost and maintenance of your mother's home came out of the business? A. Yes.

O. How? A. By drawing it so much each week.

Q. Was that in addition to the ninety percent that you received? A. No.

Q. Then how did you get the ninety percent? A. I wasn't getting ninety percent.

Q. What did you mean when you said you got ninety percent? A. That's wrong.

Q. You testified here now that got ninety percent of it? A. No, I did not.

THE COURT—I am wrong on that. He said he got fifty-five percent.

By THE COURT:

Q. You mean that the forty-five percent that was paid to your mother is the amount that was necessary or that was applied for the maintenance of her home? A. Yes, exactly.

By MR. STEIN:

Q. You are the owner of an apartment called the Les Gertrude? A. Yes.

Q. It consists of forty rooms? A. Yes.

Q. What did that apartment cost you? A. Approximately $400,000.

Q. Isn't it true that it cost you $450,000? A. No.

Q. You also own Adelaide Court? A. That is right.

Q. What sort of a building is that? A. Six individual houses built in a group.

Q. Do you own a residence at 10 Whitehall? A. Yes.

Q. It is valued at $75,000? A. Right.

Q. You own a dwelling at 48 Esplanade, the value of which is about $50,000? A. Right.

Q. You own a residence at Silver White Gardens, Red Bank, worth about $25,000? A. Right.

Q. You are the owner of 36 Ocean Avenue, Deal? A. No, I am not.

Q. 36 Ocean Avenue, Deal, and 24 Allen Avenue, Allenhurst, and also a dwelling at 224 Spear Avenue, Allenhurst. These properties were conveyed to your mother as collateral security, weren't they? A. That is right, they were deeded to my mother.

Q. They were conveyed to your mother as collateral security? A. They were given to her for the amount of money loaned to me, for a portion of it.

Q. How much money did your mother lend you? A. $115,000.

Q. That was to put in this apartment house, and it is in there? A. That is right.

Q. Do you mean to say that these properties were conveyed to your mother outright? A. Yes.

Q. So that you no longer own them? A. Absolutely, I don't own them.

Q. Is this the same loan that you speak of for which you made your mother security by some stock in the McDonald Company? A. Yes, right.

Q. The same loan? A. It is the same loan.

By THE COURT:

Q. How much is that loan? A. $115,000.

By MR. STEIN:

Q. What is the value of the property at 36 Ocean Avenue, Deal? That is one of the three properties you say you conveyed outright to her because of this loan. Will you say $85,000? A. Well, $75,000 I would say more than likely, maybe.

Q. And the property at 24 Allen Avenue—

MR. KREMER—I don't want to object, but aren't you going to ask him if there is any mortgage against it?

(Argument)

By MR. STEIN:

Q. What is the value of 24 Allen Avenue, Allenhurst? Would you say about $35,000? A. Yes, sir, around $30,000 or $35,000.

Q. What would you say the value of the dwelling at 224 Spear Avenue, Allenhurst is? A. About $15,000.

Q. Do you know how much the mortgages on those three properties amount to? A. Yes, there is twenty-five on one, there is fifteen on another, and nine on another one.

Q. The total value of the properties, taking your figures, is about $125,000, that is $75,000, $35,000 and $15,000? A. Yes, $125,000.

Q. And you conveyed those properties outright to your mother for the loan, is that right? A. Yes.

Q. You say you do not own them anymore? A. No.

Q. Did you read your wife's affidavit in connection with those properties at the time you made your affidavit here in reply? A. No, I don't know as I did.

Q. Was it brought to your attention that your wife said that the deed which was made for that property, or those properties, was as collateral security for a loan of $160,000, with which you built the Les Gertrude?

MR. KREMER—I object to that.

THE COURT—He is bound by his own affidavit only.

By MR. STEIN:

Q. Have you any automobiles? A. Yes, two.

Q. What are they? A. A La Salle and a Rolls Royce.

Q. And you are the only child of your mother? A. I am.

Q. Is it necessary for you to use any part of the income that you receive to support your mother? A. No.

Q. Do you use any of the income that you receive to support your mother? A. No.

Q. Have you paid any bills since you have been separated from your wife out of your own fund for your mother? A. No, not of my funds, no.

Q. With your own check? A. Yes, with my own check.

Q. Whose funds are they against which you write checks? Did you write checks? A. Yes.

Q. Did you write checks on an account in your name? A. I did.

Q. Where with to pay any bills of your mother? A. I did.

Q. When? A. Oh, any number of times, right recently.

Q. For what? A. For various accounts; I don't remember what they were now.

Q. How about Mr. Hess, the coal man? A. Yes. I believe I gave him a check.

Q. For how much? A. I don't remember what it was now.

Q. Maybe it will help you to refresh your memory. Did you give him one for $900? A. I couldn't say what the amount was.

Q. For coal in your mother's house? A. I couldn't say now, because I don't remember.

THE COURT—Is that the only reason you want Mr. Hess? Suppose you produce Mr. Hess' bill and see whether or not it can be agreed upon.

MR. STEIN—All I can do is to ask this witness.

MR. KREMER—If that is all he wants, we will admit that Mr. McDonald paid the bill and out of his mother's funds.

MR. STEIN—How much was the bill to Mr. Hess?

MR. HESS—He paid me $516 in Brooklyn.

MR. STEIN—He paid you $516.60 for coal delivered to his mother?

MR. HESS—His mother, not his own check.

MR. STEIN—I asked you before when you were on the stand whether it was his own check, and you said yes.

MR. HESS—Pardon me, Judge, I didn't say nothing before.

By MR. STEIN:

Q. Mr. McDonald, did you pay it with your own check? A. That was paid out of the business, that particular bill.

MR. STEIN—Will you answer me this, Mr. Hess: What bills did he pay you with his own check?

MR. HESS—He paid me one small bill.

MR. STEIN—When?

MR. HESS—About $100, that's all what he paid me.

MR. STEIN—When?

MR. HESS—November 9th.

MR. STEIN—Of what year?

MR. HESS—1929—one minute, pardon me.

MR. STEIN—Can't you remember what bills he paid you with his own check?

MR. HESS—I can't remember all my business like this.

MR. STEIN—I am asking you about these checks.

MR. HESS—I know, but I can't remember.

MR. STEIN—Didn't you tell Mrs. McDonald here, when you went to collect a coal bill from her—

MR. HESS—Yes.

MR. STEIN—(Continued) :—that her husband had paid two coal bills for his—

THE COURT—You may examine him on this off the record.

(Discussion off the record.)

MR. KREMER—I should like to have the bill dated July 23rd, 1930 marked for indentification.

(The paper referred to was marked "Defendant's Exhibit I for identification.")

MR. KREMER—Mr. Hess, referring to this bill marked "Defendant's Exhibit D-1 for indentification", who paid you that bill?

MR. HESS—Mr. McDonald.

MR. KREMER—Was it his own check or the check of the McDonald Lumber Company?

MR. HESS—This was a check of the McDonald Lumber Company.

MR. KREMER—You are referring to a payment in November, 1929, of $516.60, is that right?

MR. HESS—Something like that—pardon me, it was two payments. He paid me one check $403.50. That was his own writing, and this was a company check.

MR. KREMER—What kind of a check did you get for the bill of $516 that was paid in October or November, 1929?

MR. HESS—I have this check. I was in Brooklyn and he gave me a check from the company.

MR. KREMER—For the whole $516?

MR. HESS—$516.

MR. KREMER—Then you had no checks from H. J. McDonald personally for any coal delivered to 70 Esplanade?

MR. HESS—I had a little balance, and he gave me a check to square it up for $90.

MR. KREMER—Was that his check or the company's check?

MR. HESS—This was his own personal check.

MR. KREMER—Then the only check you had from Mr. H. J. McDonald of his own was the one for about $90?

MR. HESS—Approximately $90 or $100, I can't remember. This was a personal check.

MR. KREMER—That is all.

By MR. STEIN:

Q. Mr. McDonald, you are paying your wife now

under the order of the Court alimony at the rate of $7,800 a year, are you not? A. That is right.

MR. KREMER—If the Court please, it is now 12.30, and I should like to ask the Court to permit me to reserve cross-examination until after recess.

(Argument)

THE COURT—We will recess at this time until 1:30 o'clock this afternoon.

(A recess was had until 1:30 o'clock p. m.)

(AFTERNOON SESSION)

HENRY JOHN McDONALD, resumed the stand.

CROSS-EXAMINATION

By MR. KREMER:

Q. Mr. McDonald, directing your attention first to the lumber business in Brooklyn, during your father's lifetime whom did the business belong to? A. To my father.

Q. Were you employed in it then? A. Yes.

Q. Were you working then under a salary? A. No, no salary.

Q. What did you draw from the business then? A. I drew whatever was needed from time to time.

Q. Your father died in March, 1929, and you stated this morning that the Company was incorporated in October? A. No, incorporated in July, 1929.

Q. How much stock was issued to your mother? A. 450 shares.

Q. How much to you? A. 550.

Q. Did that represent the total outstanding stock? A. The total outstanding.

Q. For how much money was the company incorporated? A. $30,000.

Q. What is the nature of the J. W. McDonald Lumber Company? What kind of business did it carry on? A. The sale of lumber to steamship trade.

Q. Where did it have its yards? A. At King and Columbia Streets, Erie Basin, Brooklyn.

Q. Does the company own any real estate? A. No.

Q. How does it acquire the yard? A. That is owned by my mother.

Q. The yard is owned by your mother? A. Yes.

Q. How long has she owned the yard. A. From the time it was bought.

Q. When was that? A. That was about twelve years ago.

Q. The company does not own any real estate? A. No.

Q. What does the company own? A. The stock in the yard and the equipment.

Q. That stock consists of what? A. The lumber, various kinds of lumber, and four trucks.

Q. Four automobile trucks? A. Yes.

Q. Is that the sole equipment? A. That is the entire equipment.

Q. How many men do you employ at the present time in your yard? A. Five.

Q. Do you have any other employees besides these in the yard? A. None, other than the bookkeeper and Mr. Downs.

Q. What is Mr. Downs' job? A. He is general manager.

Q. And are you his superior in the business? A. Yes.

Q. Since your father's death, you have had active supervision and control over the business? A. That is right.

Q. For the year 1930, have you been drawing money regularly as a salary or not? A. No, not regularly; as I needed it.

Q. You referred this morning to some minutes which show a salary allotted to you, did you not? A. That's right.

Q. When was that action taken by the board of directors of the company? A. At the drawing up of the incorporation in July.

Q. What salary was it provided that you should receive? A. $8,000 a year.

Q. Have you been drawing your salary this year? A. Yes.

Q. Do you draw it weekly or monthly? A. As I need it, not any specific time.

Q. What arrangement, if any, was made at that meeting in July 1929, about paying your mother?

MR. STEIN—I object to that as not proper cross-

examination, and further, that the minutes speak for themselves on that point.

THE COURT—I will allow it.

A. She was to draw approximately $150 a week.

By MR. STEIN:

Q. Has the company been paying that money to her?
A. Yes.

Q. Throughout 1930? A. Yes.

Q. Will you produce at the next hearing the minutes of the corporation of the J. W. McDonald Lumber Company fixing these arrangements? A. I will.

Q. Can you tell us how much the company has made net, if you know, for the first six months of 1930, that is, after operating expenses are paid but before the salary or interest is paid to you and the dividends on your mother's stock paid to her?

THE COURT—Mr. Kremer, will your books disclose these items definitely?

MR. KREMER—I don't know, if the Court please.

THE COURT—If they will, hand you not better let that question await the production of them?

MR. KREMER—I simply want to straighten out what seems to be an apparent discrepancy between page 17 of his affidavit and the testimony today, to which I think upon the proper picture being presented, you will see that there is no real discrepancy.

THE COURT—Even so, but on the question of the actual net income from this business, I assume that this witness will be testifying just from his general knowledge, and we will have to go all over that question when the books are produced.

MR. STEIN—I will withdraw the question.

By MR. KREMER:

Q. You stated that you have been paying your mother at the rate of $150 a week? A. That is right.

Q. Is that money paid to her weekly? A. Weekly.

Q. It is not paid just as she needs and calls for it? A. No, it is paid weekly.

Q. Directing your attention to the conveyances that were made to your mother as collateral security, as I understood you to say, for instance for a certain loan that she made you, you started to build an apartment at Red Bank known as the Les Gertrude?

MR. STEIN—I object.

THE COURT—You should remember that this is really your witness, so I don't think you are justified in holding to the strict rules of examination.

(Argument)

By THE COURT:

Q. Is that the one that cost $400,000? A. Yes.

By MR. KREMER:

Q. When did you start that construction? A. In the spring of 1928.

Q. To whom did you let the contract? A. Stillman, Harry M. Stillman.

MR. STEIN—I object to that as not cross-examination.

THE COURT—Objection sustained. The construction of the building itself will not make any material difference.

(Argument)

THE COURT—The building was started in July, 1928.

By MR. KREMER:

Q. Where did you get the money to build the apartment? A. I got a construction loan from the National Commercial.

Q. Of how much? A. $245,000.

Q. Where did you get the balance? A. The balance I borrowed from my mother.

Q. How much did your mother lend you all told? A. All told she loaned me $165,000.

Q. Did you give her any security for the loan? A. Yes, I gave her what security I could give at the time.

Q. And you were the owner at that time of certain pieces of real estate that you referred to this morning on your direct exxamination.

THE COURT—Will you please ask what that security was?

By MR. KREMER:

Q. Will you tell the Court what one of those properties was? A. 36 Ocean Avenue.

THE COURT—For my information, will you please develop whether or not the mortgage was given on this property other than a construction loan?

MR. KREMER—I want to get out of the way the security he got from his mother.

By MR. KREMER:

Q. Number 36 Ocean Avenue had a value of how much? A. I would say $75,000.

Q. What was the mortgage against it? A. $25,000.

Q. Is that the only mortgage against it? A. Yes.

Q. So there was an equity there of $50,000? A. Yes.

Q. What was the next property? A. The other one was 24 Allen Avenue.

Q. What was the value of that? A. I would say $35,000.

Q. And the mortgage? A. $15,000.

Q. So the equity was $20,000? A. Yes.

Q. And the next property was what? A. 225 Spear.

Q. And the value of that is how much? A. Approximately $15,000.

Q. What is the mortgage? A. Mortgage of $9,000.

Q. And the equity is $6,000? A. Right.

Q. Were these the only three properties that you conveyed to your mother? A. Yes.

Q. Making a total of $76,000 of equities in real estate? A. Yes.

Q. You conveyed that to your mother? A. Yes.

Q. You conveyed that to your mother as security for a loan of how much? A. $165,000.

Q. Have you repaid any part of the $165,000 to your mother? A. Well, no, not to my mother. It has been reduced. The bank's indebtedness that I have has been reduced by $40,000 in the sale of securities.

Q. The bank's indebtedness? A. Yes, by that I mean she put up the stocks as securities so that I could get the money.

Q. And you have paid off how much? A. $40,000.

Q. To what bank? A. The Bank of America.

Q. In New York City? A. Yes.

Q. Where did you get the $40,000? A. From the sale of securities belonging to her.

Q. You have not paid it out of any funds of your own? A. No.

Q. Then you still owe your mother the same amount of $165,000? A. Yes

Q. Returning to the Gertrude apartments, after you obtained that construction mortgage, and you obtained the $165,000 from your mother, I believe you told us that the construction mortgage was $245,000? A. $245,000.

Q. Making a total of $410,000? Did you obtain a permanent first mortgage? A. Well, that was converted into a permanent first mortgage, by the same people.

Q. Who holds that mortgage? A. The National Commercial.

Q. What interest do you pay on that mortgage? A. Six percent.

Q. Can you tell us what six percent of $245,000 totals? A. Around $14,000.

MR. KREMER—I might say that Mr. McDonald and I have prepared a resume of all these carrying charges on these properties.

THE COURT—I think it would be a desirable thing to give counsel a copy and to give the Court a copy, so that we may follow it without making our own computations.

MR. KREMER—Will it be agreeable if Mr. McDonald refreshes his recollection, and I will furnish the Court and Judge Stein with a copy later.

MR. STEIN—I object to that, because I do not know where it is taken from.

MR. KREMER—Most of it is taken from his personal knowledge.

THE COURT—It maens putting on the record the different items and following them down.

MR. KREMER—It is a matter of computation to compute this interest.

MR. STEIN—I object to the witness using any document such as this, which he apparently did not prepare.

MR. KREMER—This was prepared in your office under his direction, which would be just as competent to use as though he prepared it himself.

MR. STEIN—It is not as competent to use a document unless he himself prepared it, and I should like to cross-examine him upon it before he uses it.

By MR. KREMER:

Q. What is the interest at six per cent on $245,000? A. It would be about $14,700, I think.

Q. Will you take a pencil and paper and figure it out? A. Yes.

Q. How much is it? A. I think it is around $14,700.

Q. Is the mortgage amortized? A. Yes.

Q. At what percent a year? A. Three percent.

Q. What is three percent amortization of $245,000? A. $7,000, just one half of the other, that would be $7,350.

Q. How much were the taxes on the property for 1930? A. For 1930 they are $4,960.

Q. How much do you pay for fuel? A. Well, approximately $3,000.

Q. Do you have a superintendent? A. Yes.

Q. How much do you pay him per year? A. $1,800 a year.

Q. Do you carry insurance on the property? A. Yes.

Q. What is the premium per annum? A. Somewhere around $1,200 or $1,300, I would say.

Q. Do you furnish the tenants with light? A. Yes, the foyers and so on are lighted, but not the apartments.

Q. Do you furnish water to the tenants? A. Yes.

Q. Do you have to pay for any other power? A. Yes.

Q. For what? A. There is the power for the frigidaires, and the water, of course, and the lights for the foyers, and the power for the elevators.

Q. What is the total cost per annum for light, power, and water? A. Oh, around $3,000 or $3,500, somewheres around that; I can't say exactly.

Q. Does it cost anything to maintain and repair the property? A. Yes.

Q. How much a year do you set aside for that? A. Oh, about $4,000, I will say.

Q. Are there any other carrying charges? A. No, I don't know of any others.

Q. How many apartments do you have? A. There are forty apartments.

Q. Can you tell us what the total rents per month are at the present time? A. In the neighborhood of about $3,300 to $3,400 per month.

Q. Does any commission have to be paid to agents out of that, or are they rented direct? A. In a few cases there are commissions paid to an agent, but I think that is only about five or six out of the whole bunch.

Q. In giving us the figure of $3,300 to $3,400 a month, have you made any deductions for those leases in which you pay a commission to agents? A. No.

Q. What commission do you pay? A. Five percent.

Q. On five leases? A. I think there are five leases that were rented by agents.

Q. How much a month are those leases? A. Well, they vary. There is a couple of them at $125 a month, and there is one at $100, and there are two at $75.

Q. That would be approximately five percent on $500 or $25 a month, which has to come off? A. Yes, about that.

Q. Are all the apartments rented? A. No, they are all rented but two.

Q. So that if the rentals are maintained throughout the ensuing year from the present time until a year hence, you would have twelve times $3,300 or $3,400 for income? A. Yes.

Q. And twelve times $3,400 is $40,800 A. Yes.

Q. In your experience in the management of that building, can you figure accurately as to vacancies? A. No.

Q. Are any of these leases, that are now in existence, terminating at any time between now and the end of the year? A. Yes, there are some that terminate along in December and January.

Q. What proportion of them, if you know?

MR. STEIN—I object.

A. I really do not know. I would have to check up on that. I can't tell you.

MR. STEIN—I object to that line of testimony on the ground that what we are entitled to know is the ability of the man to pay at the present time instead of speculating on what may happen in the future.

THE COURT—We will take that into consideration.

MR. KREMER—It is hardly speculating. If these

leases are going to terminate, he will have less money out of this building.

THE COURT—They may renew.

THE WITNESS—They may renew, and they may not.

By MR. KREMER:

Q. Can you tell us, without examining the figures that you have just referred to, whether or not the apartment house at the present time with the present carrying charges and present income, earns a net income for you or shows a net deficit? A. It shows a little deficit.

Q. How much? A. I don't know, possibly two or three hundred dollars or somewheres about that.

Q. So that you have no income for yourself on the apartment A. No.

Q. In addition to the carrying charges, have you paid all the cost of construction aside from the mortgage? A. No, I have not.

Q. Do you owe anything now as a result—

MR. STEIN—I object to that. I understood the witness to say that the building cost him $400,000 to construct, and that he paid for the construction of the building with a mortgage of $240,000, plus $165,000.

(Argument)

MR. STEIN—I will withdraw the objection.

By MR. KREMER:

Q. Do you still owe money for construction costs? A. Yes, I do.

Q. To whom? A. H. M. Stillman.

Q. That is the contractor? A. Yes.

Q. How much do you owe him? A. About $14,500.

Q. How is that indebtedness evidenced? Is it on book account or mortgage, or note?? A. No, on a note.

Q. You gave him a note? A. Yes.

Q. Where is that note, if you know? A. That is in the Asbury Park and Ocean Grove Bank.

Q. You mean discounted by Mr. Stillman? A. Yes.

Q. Are you reducing that note? A. I am reducing that note monthly.

Q. How much a month? A. $500 a month.

Q. Who else do you owe money to? A. Schultz and Eberly.

Q. What were they? A. Decorators, fixtures and supplying carpet.

Q. How much do you owe them? A. At the present time I think it is $2,000.

Q. Is that indebtedness evidenced in any way or on open book accounts? A. That is on a note.

Q. Are you reducing that? A. Also by $500 a month.

Q. Do you owe anybody else? A. Yes, I owe the bank, the Asbury Park and Ocean Grove Bank.

Q. How much? A. $5,000.

Q. Is that on a note? A. That is on a note.

Q. Was that for money used in connection with the construction of the building? A. Yes.

Q. How are you reducing that note? A. I am reducing that at the rate of $1,000 a month.

Q. That is $500 for Stillman and $500 for Schultz & Eberly, and $1,000 for the Bank? A. That is right.

Q. Do you owe anybody else? A. No, not on that building, no.

Q. Do you know Floyd J. Eger? A. Yes, Eger, the Plumber.

Q. How much do you owe Eger? A. $4,400.

Q. Is that indebtedness evidenced in any way? A. Yes, there is a note on that.

Q. Where is that note? A. Eger has it. I don't know whether he had discounted it or not.

Q. Are you reducing that at any fixed basis? A. No.

Q. Where are you getting the money to pay $2,000 a month that is necessary to Stillman, and Schultz, and Asbury Park and Ocean Grove Bank? A. I have been doing it by getting building loans on property that has been owned by my mother, and I have been paying it in that way.

Q. Your mother has loaned you the money? A. Yes.

Q. Building and loan mortgages have been executed on properties that she owned? A. Yes.

Q. And she has loaned you more money? A. Yes.

Q. How much money has she loaned you during the year 1930? A. $30,000, two building loans.

Q. As I understand it, those were not on properties that you owned? A. No, they are on property that she owns.

Q. And you applied those monies how? A. To pay off this indebtedness as I go along.

Q. How much of it have you paid to the Asbury

Bank and Ocean Grove Bank in the last six months? A. I said I reduced it $5,000.

Q. Six months ago how big was that note in the bank? A. I just can't remember now just how much it was there. I have got all the notes of it there, but I think—there was one note of fifteen—no, ten thousand dollars, and that has been reduced to five.

Q. Was there any other note? A. Yes, there was—I don't just remember now what the amount was. There was another note, but I can't remember just what it was. I have the cancelled notes, anyway.

THE COURT—Mr. Kremer, have you any records showing the income of this property?

MR. KREMER—We have all the leases, if the Court wants them put in evidence.

THE COURT—Have you the ledger account on these apartments, of the other properties and this, showing whether or not there is an income or a deficit?

MR KREMER—I will be glad to.

By MR. KREMER:

Q. Do you keep books for the apartment house? A. No, Just the leases, that's all.

Q. Do you have those leases? A. Yes, I have them.

Q. Can you produce them at the next hearing? A. Yes.

THE COURT—Why not make a tabulation of those leasees and distribute them to counsel in order to save time?

MR. KREMER—We will be happy to have that done. If the Court please, I recognize the fact that while this is cross-examination and this witness is my witness, after all, I should like to confront him with a statement made in his affidavit on motion in this case to correct a statement that is made now, but I did not want to do that without asking the Court's and counsel's permission.

THE COURT—I will permit it to be done, because there is evidently a discrepancy in the affidavit.

By MR. KREMER:

Q. I call your attention to page 13 of your affidavit submitted in this case last January, and I ask you if you do not state that you owed the Asbury Park and Ocean Grove Bank $24,000. A. Yes.

Q. Was that correct? A. Yes, but at the present time that indebtedness is $5,000.

Q. And you paid them $19,000 out of these loans? A. Yes, I owed them that much at that time but not now.

Q. Referring to the property known as the Adelaide Court, Red Bank, will you describe what that property is? A. Well, there are six individual houses built in a unit, and they rent for an average of $125 a month.

Q. When did you acquire that property? A. It is about nine years ago.

By THE COURT:

Q. $125 approximately a month each? A. Yes.

By MR. KREMER:

Q. What are the taxes on that property? A. The taxes on that are $1,500 and some odd dollars.

Q. Is there a mortgage on the property? A. Yes, $60,000.

Q. With interest at six per cent? A. Yes.

Q. That is $3,600? A. Yes.

Q. Is there any amortization on that mortgage? A. No.

Q. What do you pay for fuel for that house? A. About $500 or $600.

Q. What about repairs? A. The repairs there would be possibly $1,000.

Q. Do you have a janitor there? A. Yes.

Q. What do you pay him? A. $100 a month.

Q. Do you have any insurance on that property? A. Yes.

Q. What does that cost? A. I would say about $500.

Q. Could you produce for us the insurance bills on that property? A. Yes.

Q. You say there are six houses? A. Yes.

Q. Are they all rented now? A. Yes, at the present time they are all rented.

Q. What are the gross rentals? A. They run approximately about $125 a month.

Q. For six? A. Yes.

Q. That is about $9,000 a year? A. About $9,000 a year.

Q. Did you pay any agent commission on those rentals? A. Yes.

Q. What commission? A. Five per cent, that is, on all of them, they are all rented by agents.

Q. Can you tell us whether or not that property shows a net income or a deficit? A. That is a matter of tabulation. I don't think it shows any income, if you figure it up.

Q. Do you own that property in your own name? A. That is right.

Q. Do you own a house at 10 Whitehall? A. I do.

Q. And is there a mortgage against that property? A. Yes, $29,500.

Q. What is the interest on that mortgage? Is it six per cent? A. Yes, around $1,800 a year, somewhere around that.

Q. What are the taxes on that property? A Thirteen hundred odd dollars.

Q. What insurance? A. A couple of hundred dollars, I would say.

Q. What about repairs? A. Repairs? There have not been any repairs so far. I have not spent any money on repairs there yet.

Q. Did you derive any income from that property in the year 1930? A. No.

Q. Did you derive any income from it in 1929? A. Yes.

Q. And it was rented in 1929? A. Yes.

Q. How much did it bring in? A. $6,000.

Q. And you have to pay the agent commission? A. Yes.

Q. How much commission? A. Seven and one half per cent.

Q. So you rented the property for $6,000 that year? A. Yes.

Q. Who is occupying it now? A. My wife.

Q. Do you own the house at 48 Esplanade? A. I do.

Q. Is there a mortgage against that? A. Building and loan of $25,000.

Q. How much does that cost per month? A. That is $250 a month.

Q. That is $3,000 a year? A. Yes.

By THE COURT:

Q. What is the value? A. The value is about $50,000, I would say.

By MR. KREMER:

Q. The mortgage interest and dues in the building loan amount to $250 a month, or $3,000 a year? A. Yes.

Q. And the taxes? A. The taxes are $500 or $550.

Q. And the insurance? A. $150 or so.

Q. And the repairs? A. Repairs are around—between $300 and $400.

Q. Did you rent that property for the season of 1930? A. Yes.

Q. What rental did you procure from that? A. $4,000.

Q. Did you pay agents commission out of that? A. Yes, five per cent.

Q. Do you know whether or not that property shows a net profit to you or a deficit? A. That shows a deficit, but a very little. It is about evened up. There is not very much difference.

Q. Do you own property at Silver White Gardens? A. Yes.

Q. Wha kind of property is that? A. Well, that is a frame house and part stucco.

Q. Is there a mortgage on that house? A. Yes, a mortgage of $20,000.

Q. Do you pay interest on that mortgage? A. Six per cent.

Q. Is there any amortization on that mortgage? A. No, there was suppossed to be an amortization, but I couldn't make it. I was supposed to make it last May.

By THE COURT:

Q. What is the value of the property? A. I would say that it is worth $25,000.

By MR. KREMER:

Q. You were supposed to amortize the mortgage in May of this year? A. Yes.

Q. For how much? A. $5,000.

Q. Did you make that reduction? A. No.

Q. Why not? A. I couldn't do it; I didn't have the money.

Q. Was it extended? A. Yes.

Q. Until when? A. Until six months; that would be November.

Q. Do you know what taxes are on that property? A. The taxes are around one hundred and fifty odd dollars, one hundred and fifty-eight or one hundred and fifty-nine.

Q. Do you know what the insurance costs? A. I would say the insurance would be in the neighborhood of around $100.

Q. Do you make any repairs to that property? A. Yes, I have made some repairs there.

Q. How much did they cost this year? A. About $125.

Q. Did you rent that property? A. Yes.

Q. For how much? A. $150 a month.

Q. Did you pay any commission out of that? A. No.

Q. Do you know whether or not that property earned an income after all charges are paid? A. Oh, maybe $100 to $150 or so.

Q. Aside from these pieces of real estate, do you own any other stocks or bonds? A. No.

Q. Except for the stock that you own in the lumber company? A. That is all.

Q. Have you any income from bonds that you own? A. No.

Q. Have you any income from stocks? A. No.

Q. Putting these properties altogether, did they produce any revenue for you this year, or will they require any money from you to maintain? A. They will require some money to carry them.

Q. Where are you getting that money? A. By raising these building loans.

Q. Aside from the $5,000 note that you referred to in the Asbury Park and Ocean Grove Bank, and the note of these creditors, that has been discounted there, have you any other notes in that bank? A. In the Asbury Park? No.

Q. Have you any other notes in any other bank that you must pay? A. No.

Q. There was some reference made this morning to some automobiles that you own. Do you own a Rolls Royce? A. Yes.

Q. When did you acquire that car? A. 1924.

Q. Is it a 1924 Rolls Royce? A. Yes.

Q. Where did you get it? A. It was given to me by my father.

Q. And you own another automobile? A. Yes, a La Salle.

Q. You bought that yourself? A. Yes.

Q. When did you buy the La Salle? A. This spring.

Q. Where did you get the money for that? A. Traded in an old Buick that I had.

Q. How much did the La Salle cost? A. $3100, $3180.

Q. Do you know what allowance you got on the Buick? A. Yes, $1300.

Q. You stated in the affidavit previously filed in this case under date of the 25th of January, that you paid $7500 a year to your mother out of the business, or rather, that amount would be drawn by her from the business. Is that true?

MR. STEIN—I ask that counsel state correctly the language he is referring to.

By MR. KREMER:

Q. I ask you if you read and signed this affidavit containing this paragraph: "Heretofore the running expenses of the house at 70 Esplanade, Deal, have always come out of the business, and I anticipate that they will still have to come out. This will amount to $150 a week or $7500 a year, which my mother will draw from the business." Is that true? A. That is right.

Q. Do I understand that this $7500 a year is her share on her stock? A. Yes.

Q. Then you said in an earlier part of that page the following: "The net income from the business for the year 1930 will, in my opinion, be between $15,000 and $18,000, and under present conditions ninety percent of this income will be mine. I assume, therefore, that if the company makes $18,000, I will receive about $16,000 dividend for my share of the profits." Did you mean that you would receive that $16,000 dividends after your mother's $7500 was taken or before?

Mr. STEIN: I object to the witness now interpreting the language of his affidavit, since the language is clear. We are entitled in this case to give the words used their usual acceptation, and it is not proper now for the witness to explain what he meant by the language noted in his sworn statement, unless there is any ambiguity, and I submit there is none in this language.

THE COURT—There is evidently some ambiguity, because there his been an attempt to clear this up. I will allow it.

(The Stenographer read the last question as follows: "Q. Then you said in an earlier part of that page the following: 'The net income from the business for the year 1930 will, in my opinion, be between $15,000 and $18,000, and under present conditions ninety percent of this income will be mine. I assume, therefore, that if the company makes $18,000, I will receive about $16,000 dividends for my share of the profits.' Did you mean that you would receive that $16,000 dividends after your mother's $7500 was taken or before?")

A. No, that is before. That $7500 comes out of the $16,000.

By MR. KREMER:

Q. Mr. McDonald, when were you married?

MR. STEIN—I object to that as not being proper cross-examination.

MR. KREMER—I will make him my witness.

MR. STEIN—I object to that. I have not closed my case yet.

By MR. KREMER:

Q. At the present time you are paying your wife $150 a week? A. That is right.

Q. Under the order of the Court of Chancery? A. That is right.

Q. Where are you getting the money to make those payments? A. From the money that I am borrowing and from what money I am drawing out of the business.

Q. How much have you drawn out of the business from January 1st up until the present time? A. I would say roughly about, nearly $4,000.

Q. And you paid her $150 a week since when? A. Since whenever that decree was. That was in February.

Q. Besides that $4,000 that you have drawn out of the business since January, have you made any other money out of that business or out of any other business A. No.

Q. Have you made or earned any profits out of any

real estate enterprises that you are engaged in? A. No, not so far.

Q. So that $4,000 represents the total of your earnings and income from January 1st up until the present time? A. Yes.

Q. Can you afford to continue paying $150 a week?

MR. STEIN—I object.

THE COURT—You need not answer that question.

RE-DIRECT EXAMINATION

By MR. STEIN:

Q. Let me ask you how much did you give to your wife in 1928, when you were keeping house with her? How much did you give her per week for household expenses? A. $150 a week, I think it was.

Q. In addition to that, how much did you give her for clothes? Did you give her a regular allowance for clothes? A. Yes, $200 a month.

Q. In addition to that, did you pay the salary of the butler, which you maintained in the house? A. That I don't really remember, to tell you the truth.

Q. You would not say that you did not? A. No, I don't remember.

Q. So that you gave your wife, when you were living with her in the house, exactly what you are paying now, $150 a week? A. Right.

Q. Plus $200 a month clothes allowance? A. Yes.

Q. That is $2,400, making $10,800 a year? A. That is right.

Q. At that time you owned the same amount of property that you own now? A. Well, approximately the same, except the apartment.

Q. Except the apartment which you acquired afterwards? A. That is right—well, no, I don't own the same amount of property because I didn't have—I had at that time which I haven't now, 36 Ocean Avenue, 24 Allen Avenue, and 224 Spear.

Q. I know, but in order to borrow from your mother to purchase the Les Gertrude apartment, you parted with the title, as you say, to this property, as security for her? A. That is right.

Q. That was as security, wasn't it? A. Yes.

Q. For her $165,000? Was it $165,000? A. $165,000.

Q. Do you remember saying in the affidavit here, which you made on the temporary alimony, that what you owed was $165,000 and not $160,000? A. I don't remember.

Q. You would not say that you did not say it? A. I won't say that I did not say it.

Q. Do I understand that your mother always got a certain allowance out of this business for the running of her house, too? A. Do you mean the 70 Esplanade?

Q. Yes. A. Yes.

Q. Even when you were living with your wife? A. Surely, when my father was alive, surely.

Q. When your father was alive? A. Yes.

Q. Even then? A. Certainly.

Q. Where did you get the money from to pay your wife $10,800 for household expenses and dress allowance when you were living with her? A. Partly from the business and partly from the building loans that I put on, which is one of them on 48 Esplanade, Deal.

Q. 48 Esplanade, Deal, you did not put any building loan on that when you were living with your wife, did you? A. Surely, I did.

Q. Didn't you change the mortgage on 48 Esplanade since you conveyed the property to your mother? A. No.

Q. You say that a mortgage was placed on there in order to make it possible for you to pay your wife the $10,800 a year? A. Yes.

Q. Isn't it a fact that you placed that mortgage and gave her $20,000 at once wherewith to pay some obligations she had? A. No, not $20,000.

Q. How much? A. Ten.

Q. It was not twenty? A. No, ten.

Q. Where did you deposit the balance of $14,000? A. I don't remember now which bank. I banked in two or three different banks. Part of it may have been in the Asbury Park and Ocean Grove, and part of it in the Asbury Park Trust Company, and part in New York.

Q. During the year 1928, what was the income from your business over there? A. In 1928? I imagine that the income there is around $30,000.

Q. If I understand you correctly from what you have testified to here, you have not been able at any time to defray any of your expenses out of any of your property, is that right? A. Yes.

Q. All the property, you say, shows a deficit? A. Yes, it does.

Q. Some slightly, but, nevertheless, it does? A. Yes.

Q. So that all of the money that was used for the support of your mother and of your wife, while you were living with her—.A. Yes.

Q. (Continued)—all came out of the business? A. That is right.

Q. Is that right? A. That is right.

Q. And yet, as I understood you to say, you drew no salary from the business? A. No, I didn't say I didn't draw any salary; I said I drew money from time to time as I needed it.

Q. I say to you again, I understood you to say that you drew no salary, is that right? A. No specific salary, no, I didn't.

Q. And you were not to draw any salary? A. Oh, yes, I was to draw a salary. It wasn't an incorporation until 1929.

Q. When it was a partnership, did you have a salary then? A. Yes, I drew as I wanted it.

Q. You took it as you wanted it? A. Yes, as I needed it.

Q. When was it that this salary business started that you speak of now, the $8,000? A. Since the incorporation.

Q. And that is since the commencement of this suit? A. It was July that it was incorporated.

Q. July, 1929? A. Yes, July, 1929.

Q. That is July, 1929? A. That is right.

Q. In this affidavit on file in this case, made by you, upon the question of your ability to pay alimony, why is it you did not say in there that you were drawing a salary of $8,000 a year?

MR. KREMER—That is objected to.

THE COURT—What is the date of that affidavit?

MR. STEIN—The date of the affidavit is January

25, 1930, after the alleged incorporation and fixing of the salary.

A. Well, I had no reason why I didn't say it. It should have been in there.

Q. Where you questioned by your counsel as to your income from that business? A. Yes.

Q. Was this affidavit not made in response to the affidavits of your wife concerning your income? A. Yes, it was.

Q. And didn't you intend to answer the things which she alleged in her affidavits? A. I intended to answer what was correct, surely.

Q. And if it was true then that you were drawing a salary of $8,000, why did you say in this affidavit, "I do not draw a salary?" A. I never said I didn't draw a salary, because I did.

Q. When you said that, 'I do not draw a salary," did you intend to conceal the fact that you were drawing a salary? A. No.

MR. KREMER—I think he should read the whole sentence.

By MR. STEIN:

Q. You say, "I do not draw a salary, but I have been drawing $200 a week from this business throughout 1929." Is that right? A. Surely, when I say that, I mean an average of $200 a week.

Q. You did not use the word *average?* A. Well, that is what I meant, anyway.

Q. Is that what you wanted to say? A. Yes.

Q. Did you pay during 1929, after the separation of

yourself and your wife, $150 a week to your mother? A. Yes, her share of the—

Q. I asked you whether or not you paid it to her. A. Yes, absolutely, I did, and I am doing it now.

Q. You are doing it now? A. Sure.

Q. So that you are paying now $7,500 to your mother and $7,800 to your wife? A. That is right.

Q. Or $15,300? A. That is right.

Q. And you are not paying that from the business? A. Surely I am paying that; absolutely it is coming out of the business.

Q. That is coming out of the business? A. Surely, coming from my salary.

Q. That is not coming out of any mortgages? A. Any mortgage? No, not that part, no.

MR. KREMER—I object, unless he shows what that means.

By MR. STEIN:

Q. I mean the $15,300. That sum is not coming out of any mortgages you raised? That is coming out of the business?

THE COURT—You asked if the $7,500 paid to Mrs. McDonald, Senior, came out of the business.

THE WITNESS—Which do you mean?

By MR. STEIN:

Q. I want to know from you whether the $7,500 you are paying to your mother, and the $7,800 to your wife,

namely, $15,000, is coming out of the business. A. No, not all of that; the $7,500 that I am paying to my mother, in other words, that she is receiving, is coming out of the business.

Q. And where is the $7,800 a year that you are paying your wife coming from? A. Out of these monies that I have raised in building loans.

Q. That your mother has raised on building loans? A. Yes, and let me have.

By THE COURT:

Q. That is building and loan mortgages? A. Building and loan mortgages.

By MR. STEIN:

Q. Do you mean the $30,000 mortgage that you spoke of? A. Yes.

Q. Is that right? A. Yes.

Q. It is out of that $30,000 mortgage, that building and loan that your mother placed on the property of her own, that you are paying your wife $7,800 a year? A. Yes.

Q. That is right? A. Yes.

Q. I thought you said a little while ago, in reply to Judge Kremer's question when he asked you about the reductions which you are making on the Schultz and Eberly account, on the Harry Stillman building account, and to the Asbury Park Ocean Grove Bank note, that the $30,000 building loan was raised in order to make those reductions? A. It is, partly.

Q. What part? A. As it goes along.

Q. What part of the $30,000 did you use to make the reductions on these notes, that is, the indebtedness that you testified to that was left over from the Gertrude apartment? A. I will have to get the notes, that's all, and then I can show you, just exactly what the reductions are.

Q. What part of the $30,000 did you use to make those reductions? How much of it? A. As I say, I would have to figure it up; I can't tell you offhand.

Q. Do you know, perchance, that the reductions in the Schultz and Eberly account, and the Harry Stillman account, and the Asbury Park Ocean Grove account since the making of your affidavit of January 25, 1930, amount to exactly $30,000? Do you happen to know that? A. No, I did not. I had not figured it up.

Q. The Schultz and Eberly account, set forth in that affidavit at the time you made it, was $6,000? A. Yes.

Q. And you say it is now $2,000, is that right? A. Yes.

Q. The Harry Stillman building account was $17,500? A. Yes.

Q. And you say it is now $14,500? A. Yes.

Q. And the Asbury Park Ocean Grove Bank account was $24,000, and you say it is now $5,000? A. Yes.

Q. That makes exactly $30,000? A. Yes.

Q. Is that right? A. Yes, it must be according to your figures there.

Q. When was this building and loan mortgage placed by your mother on her property? A. I couldn't tell you the exact date on that.

Q. As nearly as you can tell? A. I really could not say right now; I would have to bring the books. I can bring the books.

Q. Your best recollection is all we want now. Can you tell us whether or not it was placed two months ago? A. It must have been placed before that.

Q. How much longer ago was it? A. Oh, about at least six months ago.

Q. Are you sure of that, six months ago? A. I think so, but I can bring the books.

Q. Your best recollection is that it was six months ago? A. Well, I say I would not be sure of that.

Q. What is your best recollection? Is it six months? A. I will say six months, yes.

Q. Do you know when the order was made for alimony in this case? A. Some time in February, wasn't it? I think it was in February.

Q. In February? A. I think it was in February.

Q. February of this year? With respect to that, can you say about when you had to place this mortgage to make these payments that you say you had? You say you had placed this mortgage through your mother to make these payments to your wife? A. I say part of it.

Q. When was it you made the mortgage? A. I say I don't remember exactly. I can bring the building and loan books. That is the best thing to do, and then I can tell you, and you can see for yourself.

Q. Would you say it was during this summer that you placed that mortgage?

MR. KREMER—I object to that.

A. Bring in the books.

By MR. STEIN:

Q. Did you make that building and loan mortgage

since February of this year? A. That I can't say. As I say, I will bring in the books.

THE COURT—When were the payments made on account of these outstanding bills?

MR. STEIN—I will go into that next.

By MR. STEIN:

Q. You paid $500 a month to Schultz and Eberly? A. That is right.

Q. You said on January 25, 1930, that the account was $6,000? A. Yes.

Q. Did you make your payments in January of $500, and in February and in March? A. To the best of my recollections, I did.

Q. That is all I am asking you. A. All right.

Q. Have you any book record from which you could refresh your memory? A. Yes, I have the note.

Q. I am talking about the payments? A. Well, I have the payments there and returned notes.

Q. Were the payments made by check? A. Yes.

Q. To the Bank? A. Yes, made by check to Schultz and Eberly.

Q. Signed by whom? A. By myself.

Q. Your personal check? A. Yes.

Q. And you commenced making those reductions before the building and loan mortgage was placed, did you? A. Yes, I have been making those reductions right along.

Q. You had to pay Harry Stillman $500 a month? A. Yes.

Q. And you made those payments before the building and loan mortgage was placed? A. Right.

Q. Your own personal check? A. Yes.

Q. And you had to pay the Asbury Park Ocean Grove Bank $1,000 a month? A. Yes.

Q. Did you make those payments of $1,000 a month before the building and loan mortgage was placed? A. Yes.

Q. With your own personal check? A. That is right.

Q. You recently purchased a new car for yourself, is that right? A. Yes, this La Salle.

Q. Where did you get the money for that? A. I got it from part of this loan.

Q. All out of this $30,000? A. Part of these loans, yes, and part from the business.

Q. You had an estimate made? A. In fact, I have not, if it comes right down to it. I haven't paid for the La Salle yet. I have paid $200 on it.

Q. I thought you told your counsel that you had paid for it. A. No, I said I had bought, but it is not paid for yet.

Q. I may be wrong, but I understood you to say that you got an allowance for your Buick of how much? A. $1,300.

Q. $1,300? A. Right.

Q. And you were asked what the La Salle cost you, and you told what it cost? A. Yes, $3,100.

Q. Why didn't you tell counsel then that you had not yet paid for the car? A. I didn't think of it.

Q. But you think of it now? A. Yes.

MR. KREMER—If the Court please, he was not asked.

Q. Haven't you had an estimate made just recently, in writing, for the overhaul of your Rolls Royce through Mr. Norton? A. Yes, I have.

Q. How much was that estimate? A. I guess the whole thing was twenty odd hundred dollars.

Q. Did you have it done? A. No.

Q. Are you going to have it done? A. No.

Q. Why not? A. I can't afford it.

Q. Why did you ask for it? A. I just wanted to find out what it would cost if I wanted to have it done some time.

Q. In arriving at the overhead of your company, and starting with the Les Gertrude, did you meet any of the amortization there? A. Yes.

Q. How much? A. All of it so far, started in January 3.

Q. Of this year? A. Yes.

Q. That is a brand new building, isn't it? A. Yes.

Q. Why do you charge up here in this affidavit, which you filed the 25th of June, 1930, on this new building for repairs $4,600? A. Painting, repairs that had to be made, and refrigerators and so on. I have all the bills.

Q. I said *repairs*. A. Yes.

Q. How old was this building on January 25, 1930? A. About a year or so, about a year and a half old.

Q. And it required at that time $4,600? A. Yes.

Q. Are you prepared to present bills to the Court here— A. Yes.

Q. (Continued)—showing that at the time of January 25, 1930, you had to pay $4,600 for repairs? A. Yes, surely I will show it.

MR. KREMER—That is an estimated carrying charge for the year.

MR. STEIN—Your Honor has the original before you, page 13, "the carrying charges on this property are as follows:"

MR. KREMER—I submit that the affidavit says that the carrying charges are for the year 1930, and the income for the same year spread over the year.

(Argument.)

By MR. STEIN:

Q. You said this afternoon under the item of fuel, that the fuel for that building is estimated to cost $1,500 a year, is that correct?

MR. KREMER—I object to that.

THE COURT—I am under the impression that he said $3,000.

MR. STEIN—No, Your Honor, $1,500.

By MR. STEIN:

Q. You say that the superintendent has $1,800? A. Yes.
Q. For the Les Gertrude apartment? A. Yes.
Q. When did that happen? A. Always did.
Q. In your affidavit you say $1,500. A. Wait a minute—$1,500 is right, $125 a month.

By THE COURT:

Q. Which is correct for the fuel? A. $3,000 is correct.

By MR. STEIN:

Q. Can you show the Court here any bills for the Les Gertrude apartment? By the way, when was that building finished? A. Finished along, I think around September.

Q. Of what year? A. Of 1929.

Q. And this affidavit is made on January 25, 1930? A. Yes.

Q. When did you start to heat that building? A. Wait a minute—1928, it was completed.

Q. Can you tell us now? A. Completed in 1928.

Q. Are you ready to show us the bills for the fuel of that apartment for 1928 in any such sum as $3,000? A. Surely, yes.

Q. Will you have them here at the next hearing? A. Absolutely.

Q. The superintendent of the Les Gertrude is also superintendent or janitor of the Adelaide Court? A. No, he is paid additional for that.

Q. I say that he is the same man who takes care of both buildings? A. Yes, he is the same man.

Q. And do you want us to believe that he gets a salary for forty apartments in the Gertrude of $1,500, and $1,200 in the six one-family houses next door? A. That is what he does. I can't help it whether or not you believe it.

Q. What does he do next door? A. What do you mean next door?

Q. Not next door, but in the Adelaide Court, what does he do? A. Takes care of the furnaces.

Q. Is there a furnace in each house? A. Yes.

Q. How many families are there in each house? A. One in each house.

Q. What else does he take care of? A. It has been split up now, so that in two of them there are two families in each house, two of the six.

Q. Are you getting a little more rent? A. No, less; it is about the same rent.

Q. You say the janitor gets $1,500 in the one and $1,200 in the other? A. Yes.

Q. Did he always get that? A. Yes.

Q. He has never been raised? A. No.

Q. Have you any book account, as the Court asked you a moment ago, showing these items and how they are expended, for instance, insurance, $1,200? A. I have the policies; have no book account.

Q. Will you have them here Monday for my inspection? A. Yes.

Q. Referring to light, power, and water, what power do you use? The elevators? A. Elevators and frigidaires.

Q. Have you operators on those elevators or are they self-serving? A. No, self-service.

Q. Can you show the power, water and light bills for the year 1929? A. Surely.

Q. Will you show them? A. Yes, sure.

Q. Here in this apartment house you have fixed the repairs at $4,600, which you say you actually expended? A. Yes.

Q. You will produce the bills at the next hearing? A. Sure.

Q. In the Adelaide Court, did you spend in any one year $2,000 for repairs? A. Yes, I have spent considerably more than that in this past year here in remodeling this.

Q. I am talking about repairs. You charged this for repairs. You know the difference, don't you? A. Yes.

Q. What is the difference between repairs and remodeling? A. Remodeling is something you change over; repairs are something absolutely necessary, and remodeling is something you change over.

Q. In the property at 48 Esplanade, you say in your affidavit of January 25, 1930, that the insurance is estimated at $200. A. Yes.

Q. And now, this afternoon, you say that the estimate would be $150. A. It is somewheres, I can't tell exactly. I will bring the policies.

Q .I want to point out to you to ask you whether or not there is not some question in your mind as to the correctness of the statement which you made on January 25, 1930. A. The best thing would be the policies themselves.

Q. How did you arrive at the estimate of $200 when you made this affidavit? Did you have anything before you at all to get at it? A. No, I was just approximating it.

Q. Can you show those repairs there of $300? A. Yes.

Q. In either one of those cases of your property, will you produce before the Court the items which go to make up the totals which you give for repairs? A. Yes, I will.

Q. How long is it that you have owned all this property, excepting the Les Gertrude? A. Well, I guess I have owned 36 Ocean Avenue about—

Q. Just together? A. All of them?

Q. Yes. A. I would say about seven or eight years, eight or nine years.

Q. Haven't they always paid just about the same as they have been paying now? A. Yes, just about the same.

Q. Did it ever occur to you that you might better dispose of them— A. Yes, it has, and I would like to.

Q. (Continued)—and reinvest the equities there in more paying basis? A. Yes, it certainly has, and I would like to.

Q. Why didn't you do it before now? A. If you can get rid of that—

Q. I am asking you why you didn't do it. A. Because I haven't had an offer that was anywheres near what they were worth.

Q. When did you first get the idea that you ought to sell them? When did you first try it? A. About a year or so after I had them.

Q. About eight years ago? A. Yes.

Q. And eight years ago you could not have disposed of them at a profit? A. No, I haven't had any offer that was worth them.

Q. I say, eight years ago you could not have disposed of them at a profit? A. Possibly at a profit, but very small.

Q. Did you try? A. Certainly, I have had them in the market right along.

Q. You could have had a profit, although small, but you did not do it? A. Yes.

Q. You have been carrying all of these at a loss ever since? A. Not necessarily all at a loss. It carries itself, but not to amount to anything.

Q. Isn't that what you show here, a loss? A. Yes, a little loss.

Q. And where there is not a deficit, it is a very small profit or return? A. Yes, that's it.

Q. With that property in that condition all these years, eight years back, you took unto yourself this wife? A. Yes.

Q. With the property in that condition? A. Yes.

Q. Not paying you? A. I did.

Q. And you supported her very nicely on that property and your business from that time up until Thanksgiving, 1929, isn't that right? A. That is right.

Q. And the income was about the same then as it is now? A. That's right.

Q. But now you cannot do it? A. I can't do it because a big majority of it was coming from the business.

Q. But it did not before until just now? A. Oh, yes, it did; it always came. A good portion of it came from the business all the time.

Q. When you were first married, too? A. Yes, sure.

Q. But you kept it up all right? A. Yes.

Q. And you are living on that way? A. Yes.

RE-CROSS-EXAMINATION

By MR. KREMER:

Q. You were married then? A. In April, 1926.

Q. During that year, can you tell us how much you drew out of the McDonald Lumber Company? A. During that year I can't really say. I will have to check up on it.

Q. What was the condition of the business? A. The business was in pretty good shape.

Q. Compared to the condition of the business in 1929 and 1930, what was its condition in 1926? A. I would say about fifty percent better.

Q. And how about 1927? A. 1927 was all right.

Q. And 1928? A. 1928 was all right.

Q. From 1928 up until the present time, has the business increased with your company or maintained the same level or depreciated? A. No, it has been gradually depreciating.

Q. For the years 1926, 1927, and 1928, was your income from the business larger or smaller than it is now? A. Yes, much larger.

Q. How much larger? A. I would say at least fifty percent more.

Q. Was it twice as much? A. Yes, I could safely say twice as much.

Q. You have told us that shortly after your marriage, you put a building and loan mortgage on the property at 48 Esplanade? A. Yes.

Q. Prior to your marriage, and prior to the placing of that mortgage, was the house encumbered or not? A. No, there was no mortgage.

Q. For what purpose did you place that mortgage on the property? A. Some bills that I owed and some obligations that my wife had, which she wanted to pay off.

Q. What was the approximate total of the bills that you owed? A. I owned around $15,000.

Q. Did your wife talk to you about bills that she owed? A. Yes.

Q. What did she say to you? A. That she would like to be able to clean them up.

Q. Did she tell you when she had contracted those bills with relation to your marriage?

MR. STEIN—I object to that.

THE COURT—I will not permit that line to be followed any further. He has answered sufficiently.

MR. KREMER—I think it is affected by the evidence that even in these days of supposed affluence, he had to borrow money to carry on.

THE COURT—I really am not concerned with his income in 1926. It is his income in 1930 and 1929 that we are interested in.

By MR. KREMER:

Q. With regard to this automobile that you recently purchased, how much cash did you pay?

THE COURT—Why waste time on that? I think he said he paid $3,100 and got an allowance of $1,300 and paid $200 cash, and I assume he has notes for the balance.

THE WITNESS—That's it, exactly.

By THE COURT:

Q. What is the 200? Is that a payment that was actually made on account of the purchase price or the purchase insurance? A. That is on the purchase price.

Q. Do you carry insurance? A. Yes.

Q. Do you carry insurance through the finance company or through the persons from whom you purchased it? A. No, an individual separate company.

MR. KREMER—I think in view of the fact that Judge Stein has asked me to produce the actual records,

fuel bills and so forth, we will submit the minutes showing the organization of this company and the insurance policies and repaid bills, so that these matters can be more accurately presented to your Honor than in any other way.

By THE COURT:

Q. There is just one item here that I am not clear about. I understand from your affidavit and your testimony that the total cost of the apartment house at Red Bank, the Les Gertrude, was $400,000. A. Approximately that, yes, sir.

Q. How can you definitely determine what the total cost of that was? A. By getting all my bills together and everything.

Q. I wish you would do it, because you say it cost $400,000, and you borrowed from your mortgage $245,000 and $165,000 from your mother, which totals $410,000. A. Out of that there was a bonus.

Q. You say in addition that you owed $50,000 on notes or balances due on this building. There is a difference of $60,000 that you say you would explain from your contracts, or bills, or something, at the next hearing. A. (No answer.)

By MR. KREMER:

Q. You were about to refer to a bonus? A. Yes, there was a bonus that came out of that $245,000.

Q. How large a bonus did you have to pay? A. Four percent.

Q. That was about $10,000 A. Yes.

Q. To whom did you pay the bonus? A. To the National Commercial.

Q. This spring, when you placed the $30,000 building and loan mortgage, or rather, when your mother placed that and loaned you the money, did you borrow any other monies? A. Yes, I borrowed some money here recently from the National Commercial, put a mortgage on our home there, and that has gone toward paying off part of the indebtedness to the bank.

Q. Your indebtedness? A. Yes.

Q. Did your mother lend you that money? A. Yes, that is paying off the indebtedness to the bank.

Q. To which bank? A. The Bank of America where the loan is there of $115,000.

Q. Has your mother loaned you any other monies to finance yourself, either to make these payments due Mrs. McDonald, Jr., or to make any of these reductions during this spring? Have you had any other loans in the building and loan? A. Yes, I had a loan of $10,000 that I got off my mother for the rental of the property in Palm Beach this last winter.

Q. When did she lend you money? A. At the time of the rental of the property, which was last February.

Q. What did you use that money for? A. Paying up some more bills.

Q. Did she lend you any more after that? A. No.

By MR. STEIN:

Q. Bills of your own? A. Bills.

Q. Bills of your own? A. Yes.

Q. What were they? A. They were bills for paints, materials, and stuff that I have used around in the different houses fixing them up.

Q. When? A. This last spring.

Q. You employed $10,000 for bills for paints? A. Not all for paints, but part for interest, part for interest and for taxes.

Q. You have a man employed by the year looking after your mother's houses and your house? A. I did have, but I haven't him any more.

Q. When did you let him go? A. Discharged him here about two or three weeks ago, a couple of weeks ago.

Q. Is there anybody in his place? A. Not so far, no.

Q. That $10,000 was for paint? A. Not all, no, taxes and everything. I can tell you what that is; I can show you the whole business. I have them all stacked up.

Q. Will you bring those along at the next hearing? A. Yes, sure.

MR. STEIN—That is all.

I should like to recall Mrs. McDonald, in order to go over the properties again, although the defendant has admitted much of it.

THE COURT—I don't think we will accomplish very much by that.

MR. STEIN—We will rest with the exception that we ask your Honor's permission, in case we deem it necessary, to have the doctors come in.

THE COURT—And the doctors will be put on the first thing Monday. Of course, it is subject to the doctors' engagements, but if it is possible, I would like to have them here.

(THE COMPLAINANT RESTED.)

THE DEFENDANT'S CASE

HENRY J. McDONALD, the defendant, called as a witness in his own behalf, being first duly sworn according to law, on his oath, testified as follows:

DIRECT EXAMINATION

By MR. KREMER:

Q. Mr. McDonald, when were you married? A. April 13, 1926.

Q. After your marriage where did you go to live? A. To 48 Esplanade, Deal.

Q. Was that house built especially for the occasion, or did you own it? A. No, I owned it.

Q. What did you do with the house in preparation for your marriage and after you were married? Did you do anything to it? A. I didn't do anything.

Q. Did you have anything done? A. My folks fixed it up and furnished it.

Q. Who furnished it? A. My father and mother.

Q. Was that a present to you, the furnishing of the house? A. Yes.

Q. Where were you married? A. St. Patrick's Cathedral, New York.

Q. And you came to live in that house immediately? A. No, we went on a trip to Europe for about six weeks and then returned and went there.

Q. During the first year or two that you lived with your wife, was everything happy or otherwise? A. O. K., all right.

Q. You lived in the house at 48 Esplanade until when? A. I think we lived there for two—around a year and a half.

Q. That would be until the fall of 1927? A. Yes.

Q. Then what happened? A. Then we moved up to 10 Whitehall.

Q. Did you buy the house at 10 Whitehall? A. Yes.

Q. Did you buy it in your own name? A. Yes.

Q. Where did you get the money to buy that house? A. From monies that I drew out of the business.

Q. How much did you pay for the house? A. Sixty-five thousand dollars.

Q. Did you pay all cash? A. No.

Q. How much mortgage? A. Twenty-nine thousand, five hundred dollars mortgage, and I traded in some lots on Cedar Avenue, unimproved property.

Q. How much actual cash did you pay into the house at 10 Whitehall? A. I think it was around ten thousand dollars.

Q. You moved in there in the fall of 1927? A. Yes.

Q. Did your parents do anything with relation to the fitting up of that house? A. There were some things added to it in the way of furniture, but the furniture was also taken from 48.

Q. Up to that time you moved into that house in October, 1927, and after your marriage to your wife, did you have an opportunity to observe the relationship of your wife and her mother-in-law? A Yes, certainly.

Q. Were they together much? A. Yes, a great deal.

Q. Were you in their company? A. Part of the time.

Q. From what you observed of their conversations and their behavior toward each other, were they friendly or not? A. Surely.

Q. Did you ever observe anything of an unfriendly nature between them? A. No.

Q. Did your mother, up until October, 1927, make any statements to you derogatory of your wife? A. No.

Q. Did she ever say anything concerning your wife that was of an objectionable or derogatory nature. A. No.

Q. Did your father? A. No.

Q. In 1927 you moved into the house at 10 Whitehall? A. Yes.

Q. While you were living there, did you continue to go to see your parents over at the other house? A. Yes.

Q. Did they come to see you? A. Absolutely.

Q. You lived there until the fall of 1928? A. Yes.

Q. And during that year, from the fall of 1927 until the fall of 1928, on the average of how many times a week would you say you and your wife saw your parents? A. I guess about four times or possibly five times a week, and possibly every day.

Q. Where would you see them? A. More than likely going down—a great many times going down to 70 Esplanade to the home.

Q. Would your parents come up to your house also? A. Yes.

Q. Would you have dinners together or what? A. Yes.

Q. While you were living at 70 Esplanade, where were your children that your wife had by her former marriage? A. The two boys were at school, and Patricia was home.

Q. While you were living at 48 Esplanade, where were the children? A. They were part of the time at school and part of the time at home.

Q. When they were not at school, where did they stay? A. Sometimes, part of the time the boys were away at camp, but the majority of the time they were home.

Q. In the summer of 1927, were the boys with you or away? A. I think they were home.

Q. And they lived in your house? A. Yes.

Q. And the little girl also? A. Yes.

Q. Did you take care of them together with your wife or did she take care of them out of some other income? A. No, my wife had an income of her own to take care of them.

Q. Did you give any financial assistance to the children? A. At times.

Q. What was the nature of the assistance? A. Sometimes school tuition.

Q. Did you have any quarrels with your wife at all about the children? A. No.

Q. In the summer of 1928, where were the children? A. 1928, I think they were up to camp in 1928.

Q. For the whole summer? A. Yes.

Q. Where was Patricia? A. Patricia was home, but the two boys were at camp.

Q. Patricia made her home with you and her mother? A. Except when she was away to school for a while before she was taken ill.

Q. In the fall of 1928 you moved from 10 Whitehall? A. Yes.

Q. Before you moved, did you talk to your wife about it? A. Yes.

Q. Did you tell her the reasons for your moving? A. Yes, there were two reasons.

Q. What did you say to her about moving? A. Well, one of them was because of my father's ill health, and the other one was because of financial difficulties. I wanted to cut down as much as possible.

Q. What were the financial difficulties that you refer to? A. I had a big,—quite a big load to carry with the building of an apartment, and I needed all the money that I could get hold of to keep up my payments.

Q. What did she say when you suggested that? A. Satisfactory to her.

Q. After that time, during the times that you had been in the society of your wife and mother, had you ever noticed any quarrel between them at all? A. No.

Q. Had you ever heard any conversations of an unpleasant character? A. No.

Q. Did your mother ever criticize your wife to you? A. No.

Q. So you moved over to 70 Esplanade? A. Yes.

Q. When did you move? A. Oh, that was in October, I think.

Q. In 1928? A. Yes.

Q. What part of the house did you and your wife occupy? A. We had rooms down at one end, and the folks had their rooms up at the other end.

Q. It was a large house? A. Yes.

Q. How many rooms? A. Did we have?

Q. How many rooms are there at 70 Esplanade, Deal? A. I guess there is about twenty.

Q. How many rooms did you and your wife have? A. We had our own bedroom, and private bath.

Q. Did you continue to live there that fall? A. Yes.

Q. What was the condition of your father's health? A. Very poor, very bad.

Q. What was the matter with him? A. Well, he was very nervous and just sort of in a bad condition all the way through.

Q. How old a man was he when he died? A. Sixty-three.

Q. When the winter came on, where did your mother and father go? A. They went on down to Palm Beach.

Q. Did they spend the winters in Palm Beach? A. Yes.

Q. At what time did they go? A. They went down the early part of January, I think it was.

Q. Up to the time that they left, so far as you had observed, had you had any quarrel with your wife about anything? A. No.

Q. Had you witnessed any quarrel between your wife and your mother? A. Up to the time they left?

Q. Yes, left for Florida. A. Well, yes, we had a little misunderstanding around Christmas time.

Q. What was that? A. It was about—I had told my wife that I wished the folks would be a little more self-reliant and go out by themselves occasionally and not wait for us, and she told my folks about it and sort of led them to believe that I meant that I did not want them with me at all.

Q. Then, as the result of that— A. What I really meant was that I just wanted—I would like to see them go off and enjoy themselves a little more than they really did.

Q. As the result of that, did your mother and your wife have any altercation? A. Yes.

Q. Were you present at it? A. No—let me see—I think I came into it afterwards.

Q. What did you hear them say? A. I heard my mother say that she did not want my wife to tell her that they were not wanted, that I didn't want them.

Q. What did your wife say? A. My wife said that I had said that, that I really didn't—or at least I really wanted them to go ahead and enjoy themselves and go about without waiting for us, and said that she did not mean it in the way that my mother had taken it.

Q. Was that all there was to the quarrel? A. Yes, that blew over.

Q. Were those differences composed between you? A. Yes.

Q. That was about Christmas time? A. Yes.

Q. How soon after that did your parents go South? A. They went South in the early part of the year, January, I think it was.

Q. You did not go? A. No.

Q. Why not? A. We had sickness home.

Q. Who was ill? A. The little girl, Patricia.

Q. Is that why you stayed home? A. Yes.

Q. What arrangement did you make with your wife and parents about your going down? A. Well, we were going down as soon as we could go down.

Q. You and your wife? A. Yes, we expected to. We did not intend to go down immediately, but then, after Patricia was taken ill, of course, we could not go down for quite some time afterwards. Then, due to my father's ill health, my mother wanting me to come down there because of his ill health and his condition, I went down ahead of time.

Q. Before you went down, did you have any com-

munication from our parents? A. Yes, they were on the phone about every other night.

Q. And they talked to you? A. Yes.

Q. Did they talk to your wife? A. Right.

Q. You had conversations with your mother? A. Yes.

Q. What were those conversations, so far as they related to your wife and Patricia? A. Inquiring about Patricia and wanting to know how she was getting along and so on, wanting to know when I was coming down and when we would all be able to come down, and if all of us could not come down, when was I coming down.

Q. Your mother asked when you were all coming down? A. Yes.

Q. Did your mother say anything in those telephone conversations derogatory to your wife? A. No.

Q. Before you went down to Florida, did you have any conversation with your wife about your going? A. About my going?

Q. Yes. A. Yes, surely.

Q. What was that conversation A. We just talked it over, and she agreed with me that I should go down as soon as Patricia was out of danger.

Q. Did your wife go? A. With me? No.

Q. Why not? A. Because Patricia was not well enough to move.

Q. Did you make arrangements as to when your wife was to come? A. Whenever she could come down, whenever it was possible; in other words, when Patricia recovered sufficiently.

Q. And you went down to Florida? A. Yes.

Q. When did you come back? A. I came back directly after my father's death.

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Q. When was it that you went down? A. I went down there—I think it was the early part of February, about the first week in February.

Q. When did your father die? A. In March, on the 24th of March.

Q. You had some communication with your wife while you were down there? A. Yes.

Q. You called her up? A. Yes.

Q. What did you talk to her about? A. I asked her how Pat was coming along, and so on.

Q. Sometime later your attitude toward her changed while you were in Florida? A. Yes.

Q. What was it that she had done that caused that attitude to change? A. Well, she had hurt my father's feelings by—when he was in poor health and nervous and all that, and very easily upset—by saying to him, "Why don't you sell your securities and shut up?" and so on, and also, when the boys—when he had asked them not to take his things out of the closet—I mean wearing apparel—and wear it, and then, when my father did speak to them about it, my wife said, "That is a favor of small consequence. Never mind, John," and sort of resented the idea of my father reprimanding the boys for doing something that he had asked them not to do.

Q. What was your father's condition of health at that time? A. He was very nervous and in very poor health.

Q. As the result of these occurrences and these things that you say your wife had done, what did you do? A. Well, I sent up word by her brother, Harry McManus, that I was going to—that we were going to separate, that I was going to pull out.

Q. Did you talk to Harry McManus in Florida? A. Yes, I did.

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Q. He was down there also? A. Yes.

Q. And you had conversations with him about that? A. I did.

Q. You sent that word to your wife? A. I did.

Q. That was in March, 1929? A. That is right—no, that was in 1928—let me see, yes, March, 1929.

Q. When was that conversation with Mr. McManus with relation to your father's death? Was it before or after your father died? A. After my father died.

Q. About how long? A. Just the following day.

Q. Then you came North with the body? A. I did.

Q. Did you also send word that your wife was not to kiss the body? A. I did.

Q. And then you came North with your father? A. Yes.

Q. When you got back to 70 Esplanade, Deal, where was your wife? A. My wife was at 70 Esplanade.

Q. How soon after that was the funeral? A. The following day.

Q. Then did your wife stay there or not? A. No, she went back to 10 Whitehall.

Q. Did you and she have a quarrel when you got to 70 Esplanade? A. No, no, we did not have any quarrel then at all.

Q. Did you have any conversation about the message you had sent? A. Yes, we talked about the message sent about not to kiss the body.

Q. You talked about that? A. Yes.

Q. What did you say to her? A. That I thought it was wrong in sending the message.

Q. What did you tell her to do? A. To go ahead and do as she wanted, to do as she felt.

Q. That was before the funeral? A. Yes.

Q. Did you have any further conversation with her before the funeral? A. No, I don't believe so.

Q. Did you have any conversation with her at or about that time about the separation? A. No, I don't think that I did.

Q. Did she stay there or leave? A. At 70? No, she left in a few days there. I think the second day after the funeral.

Q. Where did she go? A. To 10 Whitehall.

Q. After she went, did you communicate with her at 10 Whitehall? A. Yes.

Q. How did you communicate? A. I telephoned to her first.

Q. You talked to her on the telephone? A. Yes.

Q. What did you say to her? A. I wanted her to come back.

Q. What did you tell her? A. Asked her to come back, told her that I really wanted her to come back, and that I missed her and loved her and wanted her to come back.

Q. What did she say? A. She came back.

Q. Besides telephoning to her, did you go up there to No. 10 Whitehall? A. Yes, I went up there.

Q. Did you have any other conversation with her then? A. Yes.

Q. Was there anything new or was it to the same effect? A. The same.

Q. And she came back? A. Yes.

Q. How long was she away? A. I don't know, I don't remember just exactly how long it was, but it wasn't very long.

Q. You say this all took place within two or three days after your father's funeral? A. Yes.

Q. Then, after she returned to 70 Esplanade, you went on living there until when? It was about the latter part of March, wasn't it? Your father's funeral was when? A. Let me see—he died on Palm Sunday, and I got back here on—I would imagine the funeral was around the 30th or so of March; I can't remember exactly.

Q. And then, in a few days or a week, your wife was back and you were going ahead together? A. Yes.

Q. From that time, the first of April, how long did you continue to live together at 70 Esplanade? A. I can't remember now just how long it was.

Q. Where did you move from 70? A. We went down to the apartment.

Q. That was in the fall? A. Yes.

Q. So you lived there from the early part of April until some time in the fall? A. Yes.

Q. During the summer of 1929, did you move back into your house at 10 Whitehall? A. What is that?

Q. During the same summer of 1929, did you go back into your house at 10 Whitehall? A. No, I did not.

Q. What did you do with that house? A. In 1929?

Q. Yes. A. My wife was—wait a minute. That summer, we rented it there at that time.

Q. How much rental? A. That is where we got six thousand dollars.

Q. Why did you rent it? A. I needed the money.

Q. And you continued to live with your wife and mother at 70 Esplanade? A. That is right.

Q. During that spring, did you have any further quarrels with your wife? A. No, not that I remember.

Q. Did you have any quarrels of any consequence? A. No.

Q. How were things going between you and your wife? A. They were going all right.

Q. What was the condition of your mother's health that spring, as you observed it? A. Pretty bad.

Q. Can you tell us whether or not she was very much affected by the loss of your father? A. Yes, very much.

Q. Why do you say that? What did she do that leads you to say that she was very much affected by your father's death? A. Her whole demeanor, her whole attitude and everything.

Q. What outward demonstrations of her sorrow were there? A. When I would come home in the evening, or anything like that, I would find her crying and going hysterical part of the time.

Q. Was your wife present at these times? A. Yes.

Q. What did you do for your mother in that situation? A. I used to try to spend as much time with her and try to comfort her as much as I could.

Q. It has been testified to by some servant that after supper you would go out walking on the lawn with your mother. Is that right? A. Yes, I did.

Q. Was that about this time? A. Yes, I did, lots of times.

Q. And you and your wife and mother continued to live there during that summer? A. Yes.

Q. During that summer, did your mother make any —cast any aspersions upon your wife to you?

MR. STEIN—I object to the question.

By MR. KREMER:

Q. Did your mother make any statement to you derogatory to your wife? A. No, she did not.

Q. Did your mother and your wife have any quarrels in your presence? A. No, I can't remember of any quarrel that they had in my presence, no.

Q. Did your wife make any complaint to you or say anything to you about your mother's behavior? A. Yes, she complained about the amounbt of time that I would spend with her.

Q. Was that during the summer of 1929 that your wife was complaining of that? A. Yes.

Q. What did she say to you? A. She thought that I had not ought to spend so much time with my mother and more time with her. I told her that I figured my mother needed my attention a little more at that time because of what she was going through than my wife did.

Q. What did your wife say to that? A. She didn't seem to agree with it.

Q. Did your wife complain once or more than one occasion of your attention to your mother in her bereavement? A. Yes, quite a number of times.

Q. And you and your wife quarreled about that? A. Yes, just prior to going away, when I was going to take my mother away to Pinehurst over Thanksgiving.

Q. I am speaking now of the summer while you were living at 70 Esplanade. Did you have trouble about that subject then? A. Well, it wasn't of any consequence; it didn't amount to anything, only just at times we would have a little argument over it of no consequence.

Q. You said a few moments ago that after your father's death you would come home and find your mother crying, is that right? A. Yes.

Q. Did she stop that or keep it up? A. No, that is about the same condition that she is in almost now pretty near.

Q. Throughout the summer did it go on in 1929? A. Yes.

Q. I don't know whether or not I asked you this: Did you witness any quarrels that summer between your mother and your wife? A. No, I did not.

Q. Some time in the fall you went to Red Bank? A. That is right.

Q. When was your apartment house completed in Red Bank? A. It was completed along in, I think late in September.

Q. Of what year? A. Of 1928.

Q. So that it was all completed and operating in 1929? A. Yes.

Q. Why did you go up there to Red Bank to live? A. I wanted to cut down expenses, maintaining a house that we were living in there. There was no need of it, 70 Esplanade.

Q. Did you talk to your wife about going up to Red Bank? A. Yes.

Q. What did she say about it? A. She was agreeable.

Q. You opened an apartment in the house for yourself? A. Yes.

Q. And did you furnish it? A. Surely, we took stuff from 10 Whitehall and furnished it.

Q. How big an apartment was it? A. Six rooms.

Q. On what floor was your apartment? A. We were on the second floor; my mother had the first floor.

Q. Your mother had another apartment in the same apartment house? A. Yes.

Q. On what floor was hers? A. The first floor.

Q. Did you discuss that arrangement with your wife before you went up there? A. I don't really remember whether or not we did.

Q. Did you tell your wife that your mother was coming A. Yes, that was all understood.

Q. What did your wife say about that? A. Perfectly agreeable.

Q. Was there any conversation that took place among you as to where you and your wife were to take your meals? A. It was all understood that we were to take our meals with my mother. We were not going to have another additional help down there to take care of ourselves, so we figured we would have our meals with my mother.

Q. You proceeded under that arrangement in the fall? A. Yes.

Q. Were you engaged in the lumber business that fall? A. Yes.

Q. How many times a week would you go up to Brooklyn? A. I don't know, maybe three or four times a week.

Q. What did you do with the rest of your time? A. I would be down around the apartment there, down at Deal and around Allenhurst.

Q. Did you supervise the management of the apartment? A. Yes.

Q. After you got to that apartment, when you came home at nights, where would you go? A. The majority of the time, in fact, I guess nearly every time I would go to my mother's apartment.

Q. Why? A. Well, being the first floor apartment, and also the fact that a good part of the time my wife would be there with my mother, and we would have our meals there, and I figured, naturally, that I would come in to my mother first, and because I knew that she would be on the lookout for me, and would be kind of pleased if I would go in there first, naturally.

Q. You would have your dinners together, all three of you? A. Yes.

Q. Did you have any quarrels at the dinner table? A. No.

Q. Was there any unpleasantness at meal times when you three took your meals together? A. No, never.

Q. In the morning you got up and had breakfast? A. Yes.

Q. Did your wife have breakfast with you? A. Sometimes.

Q. And you would sometimes have your breakfast and go off on the early train? A. Yes.

Q. You were not home at luncheon? A. No.

Q. Did your mother make any statements to you then while you were up there to you derogatory to your wife? A. No, no.

Q. You did have a quarrel up there while you were staying there, you and your wife? A. Yes.

Q. Was there a quarrel about a week before the Pinehurst trip? A. About a week before the Pinehurst trip? Let me see—I don't—

Q. There was some arrangement made to go to South America. A. Yes, we were going to South America.

Q. Tell us about that, please. A. I had all arrangements made, and then afterwards, my wife said she didn't feel as though she should go on account of the boys coming back from school. That would be around Thanksgiving, and we figured on being away for quite some time over the holidays. I did not want my mother home during the holidays, so we decided to take this trip, and then my wife said she didn't care to go because she didn't want to be away when the boys were coming back from school, so we called that trip off. My mother decided afterwards that she did not want to go that far.

Q. Did you have any quarrel with your wife about that trip? A. No, I understood why she wanted to stay home.

Q. Everything was agreeable between you? A. Yes.

Q. You did have some quarrels during that fall? Was there one about a week or so— A. Just before I went, I took my mother to Pinehurst.

Q. You mean the night before? A. Yes.

Q. Was that the only one? A. Yes, that was of any consequence at all, that really amounted to anything.

Q. Mrs. McDonald, Junior, yesterday referred to a quarrel sometime shortly before that when you went out and sat on a log some time. Do you recall that? A. Yes, I was up in the air, upset, I guess.

Q. What happened? A. My mother thought that because my wife changed a piece of furniture around that I could not have my own way. She was rather foolish about it, and I believe they got into some little altercation about that, but it did not amount to anything.

Q. Was that quarrel composed or not? A. Yes, that was all straightened up.

Q. And then it came time for you to go to Pinehurst? A. Yes.

Q. Did you ask your wife to go? A. I did.

Q. What did she say? A. She didn't want to go for the same reason she had given on the other trip, that the boys were coming back, and they would be alone, and she wanted to be with them over Thanksgiving. Of course, that was to be a short time trip.

Q. She was agreeable to that? A. That I ought to take my mother.

Q. Referring now to the night before you went, you came home that night from New York? A. Yes.

Q. Where did you go? A. I won't swear that I was in New York, but I am pretty sure I was that day.

Q. At dinner time where did you go? A. I came home anyway and came into the apartment as usual, and after—

Q. Was your wife there? A. Yes, and after dinner I sat down there with my mother for quite a little time, and I think it was until half past nine or ten o'clock, going over some things for her and some checks she wanted to have me do and some bills to be paid. When I came upstairs, why, my wife seemed to be pretty—

Q. While you were in the apartment, did your wife stay or go upstairs? A. She stayed up a while and thought she would go upstairs.

Q. Had you had any quarrel up to that time? A. No.

Q. How long after she went upstairs did you go up? A. How long it was I don't know. It might have been an hour or an hour and a half. I can't say positively how long it was.

Q. And you went upstairs? A. Yes.

Q. When you got up there what happened? A. My wife seemed to be very much peeved and upset about the fact of my staying down there and wanted to know how much longer this business of my staying downstairs there holding my mother's hand until she went to sleep, was going to be, and I told her as long as I thought it was necessary.

Q. Then what happened? A. I thought it was rather unreasonable, and I told her so, and I told her this, "That if you are going to continue that sort of attitude, you had better go ahead with your original plans," which were around Christmas time after there had been a little

controversy there with my mother and my wife. She had said that she was going to get out.

Q. You mean the previous Christmas? A. Yes.

Q. We are now dealing with the situation in November, 1929, and you are saying that when you said, "Go ahead with your original plans," you relate to a conversation back in the previous December. A. Yes, around Christmas time.

Q. What did she say when you said that? A. When I said what?

Q. "Go ahead with your original plans if you are going to take that attitude." A. Well, she said that— to tell the truth I don't know just what she said, except I know I was peeved, and I went to sleep. She said, "Aren't you going to say good-night to me?"

I said, "Good-night", and that is all there was to it, and the next morning we went to Pinehurst.

Q. Did you kiss her good-bye before you went? A. Yes.

Q. Before you went, you had a conversation with Mr. McManus on the telephone? A. Yes, I did, from the Pennsylvania Station in New York.

Q. What did you say to Mr. McManus? A. I called Ambrose up and I told him that that—I said that the proposition was a pretty tough one and that if his sister was going to continue to take the attitude that she did about sort of begruding the time that I spent with my mother in the condition that she was in, that he had better go ahead and look out for his sister's interest, and that I had told her that if that was the attitude she was going to take, that she could go ahead with her original plans.

Q. And then you went to Pinehurst? A. I went to Pinehurst.

Q. What did Mr. McManus say to you when you told him that? A. He said he was very sorry.

Q. Did he say anything else? A. He said, "I am very sorry, but I can't blame you, but there is no reason why you and I should be bad friends."

Q. You went on to Pinehurst then? A. Yes.

Q. And you came back when? A. We were down there for about—I guess about a week or so.

Q. When you got back, you went back to the apartment? A. Yes.

Q. Did you look to see if your wife was there? A. Yes, but she wasn't there.

Q. What was the condition of the apartment? A. What do you mean??

Q. Was the same furniture in your apartment? A. No, the furniture had been taken out.

Q. What did you do then? A. Well, I went up and asked her if she would come back.

Q. How soon after you got home did you go to look for her at 10 Whitehall, if that is where you went? A. I don't know just how long it was; I think it was pretty near a week, I was sore; I will admit I was sore.

Q. What did you do when you got down to see her? What did you say to her? A. I asked her to come back, and my mother was with me, and she asked her to come back.

Q. Can you give us that conversation, as nearly as you can recall? A. Just asked her to come back, and I said we were sorry and let us start all over again and forget about it, and I told her that I wanted her and that I loved her.

Q. Did your mother sak her to come back? A. Yes.

Q. Did you hear the conversation between your mother and your wife? A. Yes, it was right on the lawn.

Q. What did your mother say? A. She asked her to come back, and said she was sorry, and to let by-gones be by-gones and forget about it.

Q. Did your mother say anything derogatory of your wife at the time? A. No, except, of course, she thought she was unreasonable, and my wife thought that my mother was unreasonable.

Q. When you asked your wife to come back, what did she say? A. She said no, that she would not come back.

Q. What did she say to your mother? A. She told my mother the same thing.

Q. And that was a week after you returned from Pinehurst? A. Yes.

Q. And you went to Pinehurst this Saturday before Thanksgiving? A. Yes.

Q. So that this was sometime early in December? A. Yes.

Q. After you saw her that day with your mother, did you see her anymore down there? A. Do you mean did I go there?

Q. Did you go there anymore and ask her to come back? A. No.

Q. When did you next talk to your wife? A. The next time I talked with my wife was in Judge Stein's office.

Q. When was that? A. That was just prior— right before New Year's.

Q. The day before New Year's? A. Yes, just before the new year.

Q. That was December 31, 1929? A. Yes.

Q. How much of the day were you up there in Judge Stein's office? A. Pretty nearly the whole day.

Q. Were you alone with your wife during any of that day? A. Sure, certainly.

Q. In Judge Stein's library? A. Yes.

Q. How long were you alone with her? A. I don't remember. We were alone for, I guess, an hour and a half or so.

Q. Did you request her to come back then? A. Yes, I did.

Q. How many times? A. I don't know how many times, but I did request her to come back a good many times. I told her I was sorry for everything, and that the whole thing was a mistake, and that I wanted her to come back and forget the whole thing and start over again.

Q. Did you say anything to her then about the affection between you, as to whether you felt affection for her or not? A. Yes.

Q. What did you tell her? A. I told her that I loved her, and that I wanted her to come back. Judge Stein knows that.

MR. STEIN—I move that the last part of the answer be stricken out as not responsive.

THE COURT—Yes.

By MR. KREMER:

Q. What did she say? A. She said yes, that she would come back, but only on certain conditions, and those conditions were that if I put 10 Whitehall in her name, she would return and live with my mother and myself.

Q. At the apartment? A. Yes, come back to the apartment there.

Q. What did you say to that that day? A. I said that I was going to talk it over and that I would make the decision, which I did do a day or so later; I think the following day I made the decision at your office.

Q. After that conversation that day in Judge Stein's office, then you went home as far as Red Bank with her? A. Yes, and you took my wife all the rest of the way.

Q. How did you get down to Red Bank? A. Riding with you and my wife in your car.

Q. The next day did you talk with your wife? A. Surely, over the telephone, I asked her to come to see my mother.

Q. That morning? A. Yes.

Q. What did she say? A. She said she would come up, and she did come up.

Q. Why did you ask her to come up to see your mother? A. Because I wanted them to get together and have everything ironed out and start all over again.

Q. That was New Year's morning? A. Yes.

Q. Then after you had asked her to come up and see your mother, what did you do then? A. Then I went over to your office.

Q. For what purpose? A. To tell you that I had decided to grant her wishes as to the putting of the house in her name.

Q. Then, after you communicated that information to me, what happened? A. I got a telephone call at your office from my wife saying that she would not come to live with myself and my mother under any condition, as I believe they had some argument over there while I was in your office.

Q. Did she tell you that over the telephone? A. Yes.

Q. Did you say anything to her about your decision in regard to the deed? A. Yes.

Q. What did you tell her? A. I told her that I had agreed to it.

Q. Did you say anything to her then as to whether you wanted her to come back or not? A. Yes, I told her that I did want her to come back.

Q. Referring to that conversation that you had in Judge Stein's office, in which you were to give her the property and she was to come back and live with you, where was she to live with you? Was it at Red Bank or at Whitehall? A. At Red Bank. We had not been living in Whitehall; we had been living in 70 Esplanade then, down at the apartment.

Q. After the upset of New Year's, did you make any more efforts to get your wife to come home to you? A. Yes, I did.

Q. When did you make that? A. I called her up and asked her to meet me.

Q. When was it? A. I don't remember just what time it was now. I guess—

Q. Was it in the early or late spring or this summer? A. Yes, it was along in the spring there.

Q. Of 1930? A. Yes.

Q. Where did you call her up? A. I called her up at the house, at 10 Whitehall.

Q. What did you say to her? A .I asked her if she would meet me and talk things over, and she said she would.

Q. Where did you arrange to meet her? A. New York.

Q. Where? A. White's Resturant.

Q. Did you go there? A. Yes.

Q. Did she come? A. No.

Q. What happened? A. I got a telephone call there.

Q. From her? A. Yes.

Q. What did she say? A. She said that she thought it over and thought that it would be much better if she would meet at Judge Stein's office. She thought if she met me outside that Judge Stein might not like it.

Q. And so, as the result of that conversation, you went with her? A. Talked it over.

Q. You went where? A. Went over to Judge Stein's office. Yes, I met Judge Stein and my wife in Judge Stein's office. I came over from White's Restaurant.

Q. And your wife was there? A. Yes.

Q. Did you talk with her there? A. Surely.

Q. Did you ask her again? A. Yes, I did, and she said she would be governed entirely by what Judge Stein, her counsel, told her.

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

Q. Was he present at this time? A. We did most of the talking alone.

Q. You and she? A. Yes. Judge Stein only came in the latter part of the day, and he told me to tell you to get in touch with him, which I am pretty sure I told you at the time, and I think you did get in touch with him.

Q. After that effort in the spring of 1930, did you make any further effort? A. Since then?

Q. Yes. A. No.

Q. Do you want her to come back now? A. Surely.

MR. KREMER—Cross-examine.

CROSS EXAMINATION

Q. Where do you want to her to go?

THE COURT—Gentlemen, it is four o'clock now, and we will adjourn until ten o'clock tomorrow morning.

(A recess was had until Monday, September 22nd, 1930, at 10:00 o'clock a. m.)

IN CHANCERY OF NEW JERSEY

Between
GERTRUDE T. MCDONALD,
Complainant,
and
HENRY J. MCDONALD,
Defendant.

Transcript of stenographer's notes of evidence taken in the above entitled matter before HON. ROBERT H. MCADAMS, an Advisory Master in Chancery of New Jersey, at his office Kean building, on the twenty-second day of September, 1930, at ten o'clock a. m.

APPEARANCES:

ALFRED A., ALFRED A., JR., and RICHARD V. STEIN,
Attorneys for the Complainant,
by ALFRED A. STEIN, ESQ.

WARD KREMER, ESQ.,
Attorney for the Defendant.

Elizabeth, N. J., September 22, 1930.

(THIRD DAY)

(The hearing was resumed.)

(The hearing was adjourned until Thursday, October 16, 1930, at ten o'clock a. m.)

IN CHANCERY OF NEW JERSEY

Between

GERTRUDE T. McDONALD,

Complainant,

and

HENRY J. McDONALD,

Defendant.

Transcript of stenographer's notes of evidence taken in the above entitled matter before HON. ROBERT H. McADAMS, an Advisory Master in Chancery of New Jersey, at his office, Kean Building, Elizabeth, New Jersey, on the Sixteenth day of October, A. D. 1930, at ten o'clock A. M.

APPEARANCES:

ALFRED A., ALFRED A., JR., AND RICHARD V. STEIN,
Attorneys for the Complainant,
By ALFRED A. STEIN, (Present).
WARD KREMER, ESQ.,
Attorney for the Defendant (Present).

(FOURTH DAY)

Elizabeth, N. J., October 16, 1930.

THE DEFENDANT'S CASE (CONTINUED)

HENRY J. McDONALD, the defendant, resumed the stand and testified further, as follows:

CROSS EXAMINATION (CONTINUED)

By MR. STEIN:

Q. Where do you want her to go? You say you want her to come back? A. Yes.

Q. To come back where? A. At that time I wanted her to come back to the apartment.

Q. And live under the same conditions as heretofore? A. No, not under the same conditions; we were to keep house there ourselves in the apartment and not have my meals with my mother.

Q. When did you make that proposition? A. We made that proposition when we were here last time.

Q. Where? A. When we were in Court.

Q. That was what you meant when you answered Judge McAdams that you wanted her to come back? You meant that you wanted your wife to come back and live with you separate and and alone? A. At the apartment for the two months until we went down South.

Q. However, in the same apartment where your mother lived? A. In the same apartment building, yes.

Q. That was what you meant when you said you wanted her to come back? A. Yes.

Q. Have you done anything at all—

THE COURT—I think there is a misconception of the evidence and the time that we are discussing. I think Mr. McDonald now is talking about the agreement that was entered into in the stipulation.

THE WITNESS—Yes.

By MR. STEIN:

Q. The stipulation which was dictated at the last session and reduced to writing has not been signed by you, has it? A. No.

Q. None of the things provided for in the stipulation for you to do were done, were they? A. No.

Q. So that the terms of that stipulation have not been in any way complied with, so far as you are concerned? A. No.

Q. Your wife complained to you several times in the fall of 1928, did she not, that she was not happy living there with your mother and father when you were living at 70 Esplanade, Deal? A. That she was not happy? She didn't say she wasn't happy, no, she did not.

Q. Did you say in your affidavit filed in this cause in reply to the affidavits made on a motion for alimony, this: "In the fall of 1928 my wife complained to me that she was not happy living there with my mother and father, and that my mother and she had quarreled, and she wanted to leave, therefore, and go back to 10 Whitehall"? Did you say that in your affidavit? A. What time was that?

Q. In the fall of 1928? A. In the fall of 1928? No.

Q. Did you swear in your affidavit on file in this cause? A. That I would have to look up. I don't remember whether or not I did. If that is in there—

Q. Did you at that time say to your wife that it was difficult for you to leave your mother? A. She always knew that. I certainly did say that, absolutely.

Q. And that you asked her to get along the best she could with the mother under the circumstances. A. I certainly did.

Q. And she did that, did she not? She tried it again, didn't she? A. Surely she tried it again.

Q. As I understand your testimony, you were very fond of your wife, and very happy, and much in love with your wife until about the time that your father died in Florida? A. Yes, I was, but there were things that happened prior to that that did not make things as nice as they should have been.

Q. Notwithstanding that, you were very much in love with your wife and very happy with her up until the time your father died in Florida, isn't that so? A. Yes.

Q. When did you find out what was said to your father by your wife or said to your mother concerning your father in his hearing? When did you first find that out? A. Before going down to Florida.

Q. Before you went to Florida? A. Yes.

Q. Is that the fact or is it not the fact that you did not find this out until you got to Florida? A. No, I knew about it.

Q. Did you say in your affidavit on file in this cause that when you got to Florida in February, 1925, "he (meaning your father) talked with me, and he was not

pleased with some of the things my wife said to him"? A. That is right.

Q. Was that the first time you heard about this? A. No.

Q. Did you say in your affidavit there, "he told me that when he was back at 70 Esplanade that he had been greatly troubled with some of his financial affairs and that he had stocks and other securities that had disturbed him, and that the general overhead cost in some of his business affairs caused a good deal of worry"? A. That is right.

Q. "He talked about these things in my wife's presence while he was at Deal." A. Yes.

Q. "While he was ill, and on one occasion, my wife had become impatient with what he had said, and said to my mother, 'I wish he—meaning my father—would either stop his bellyaching or sell the bonds. I am sick of hearing about it'." Is that right? A. That is right.

Q. Didn't you also say in your affidavit that when you heard these things in the South, in February, 1929, after you went there and while your father was sick, that your love for your wife for the first time changed? A. It certainly did not help matters any.

Q. Did you say in your affidavit that when you heard these things in Florida in the month of February, 1929, that that changed your affection for your wife for the first time? A. Yes, when it was all brought back again, yes.

Q. You say you had known about it before you went to Florida? A. Yes.

Q. You had forgiven your wife for it, had you not? A. No.

Q. Had you talked with her about it? A. No.

Q. And you never told your wife that your father told you this? A. No.

Q. You never did tell her about it until you came back from Florida? A. That's right.

Q. The night that your father's body was brought to the Elberton station, and from there to the home in Deal, that is the first time you talked to your wife about this thing? A. There had been other cases come up.

Q. I mean about your father, about what your wife was supposed to have said about your father. A. To the best of my recollection, it is the first time I mentioned it, because I did not want to bring it up.

Q. It had not affected your feelings toward her then, had it, before you went to Florida? A. It didn't make me feel any too kindly toward her.

Q. It had not changed your feeling toward her? A. To a certain extent.

Q. To what extent? A. I didn't think it was right for her to say that.

Q. You never talked to her about it? A. No.

Q. And you did not act toward your wife before you went to Florida like you did when you came back with the body? A. I didn't complain about it in the way that I did when I came back, certainly not.

Q. And you did not act toward your wife cooly or indifferently when you went to Florida? It was after you came back? A. I don't know.

Q. Don't you know? A. My wife could answer that better than I could.

Q. What do you say as to how you acted toward her before you went to Florida? A. I would say she could say that better than I can.

Q. I am asking you. You know how you acted. A. I really don't remember how I acted.

Q. Do you remember writing any letters to her? A. Yes, while I was down South.

Q. The sentiments expressed in those letters were your own, and you meant them, did you not? A. Yes.

Q. Referring now to the trip to Florida in 1929, when your father was in his last illness, about what time was it that you arrived in the month of February? A. I can't really tell you.

Q. As nearly as you remember? A. I really couldn't say. I don't remember.

Q. Was it the midde of February or the first or last part of February? A. I think it was around the latter part of February; I can't say positively.

Q. Your father died on Palm Sunday, the 29th, didn't he? A. The 24th.

Q. Of March? A. That is right.

Q. When was it you had the talk with your father about this statement your wife made about selling some of his stocks? How soon after you arrived in Florida did you have that talk with him? A. Possibly a week before he died, somewhere around there; I don't remember exactly.

Q. And it was several days before he died? A. Yes, I can't remember.

Q. What is your best recollection? A. About that, I would say.

Q. Several days before he died? A. Yes.

Q. It wasn't the day before he died? A. A week or so; I don't know exactly.

Q. Was it then that you became very much incensed against your wife? A. Then? Not as much until after my father's death, no.

Q. Why after your father's death? A. It just brought everything back to me, that was all, and I thought

that really she should not have said it, and at that time I felt it more than I would, naturally.

Q. Up to that time you had not discussed it with her at all? A. No.

Q. I show you three letters together with the envelopes in which they were contained, which I should like to have marked for identification, and I ask you whether or not you wrote these three letters and mailed them in the envelopes attached to them. A. Yes, I did.

(The papers referred to were marked "Plaintiff's Exhibits 3, 4, and 5 respectively, for identification".)

Q. The sentiments contained in those letters, P-3, postmarked the 8th, P-4, postmarked March 12th, and P-5, postmarked March 23d, were the sentiments which you felt for your wife at the time you wrote them, isn't that right? A. Yes.

Q. And the letter marked P-5, mailed March 23, 1929, was mailed the day before your father died, isn't that right? A. It must have been if that is the date there.

Q. I will show it to you. A. I will take your word for it.

Q. Is that right (indicating)? A. Yes.

Q. And when you said in this letter, marked P-5 for identification, on the second page, "well, dear, as I have given you about all the dirt which merely amounts to practically nothing, I will have to fall back on the same old sob stuff how much I miss you and all that, but strange as it may seem, somehow or other, I really do, and I suppose it must be because I am very fond of you. Anyway, that is the only logical conclusion I can come to, so will

let it go at that." You meant that when you said it, did you not? A. Yes.

Q. And at that time the folks down at Florida were very much incensed against your wife, were they?

MR. KREMER—I object to that.

THE COURT—That is a conclusion, of course.

By MR. STEIN:

Q. Didn't you just say that your father just previous to that time had reiterated this statement to you that the wife had made a remark about him selling stock and so forth? A. I did.

Q. Was he at that time in a pleasant mood toward her, from what he said and from what you know from his actions? A. He felt as though it should not have been said, absolutely.

Q. Was he angry with her, from what you saw of him? A. He was hurt, very much hurt, absolutely.

Q. And your mother? A. Yes.

Q. She, too? A. Yes, certainly.

Q. Did you express this language in this letter, marked P-5 for identification, "the folks all send their love"? A. Yes.

Q. "And are coming up with me, arriving Friday, about ten a. m., 1929." A. Yes.

Q. Who were the folks that you spoke of there? A. My father and mother, of course.

Q. Did you tell the truth to your wife? Did they send their love to her? A. No, not actually, certainly not.

Q. Well, at all? A. What do you usually say in a letter? Don't you usually send that?

Q. You are the author of this letter, and I want to know whether or not you told the truth when you said that the folks all send their love, or whether that was something you made up. A. That is something I made up; put it that way.

Q. Why did you make that up, feeling as you did at that time toward your wife, as you say? A. Because I wanted things to smooth out, that's why.

Q. What did you do by way of smoothing things out when you came up with the body of your father? A. I told my wife what I thought about the remarks that had been passed.

Q. Is that the first time you told your wife? A. Yes, to my recollection it is the first time.

Q. Did you ask your wife whether or not, in fact, she had said anything like what was reported to you? A. Did I ask her?

Q. Yes. A. I told her—

Q. Did you give her a chance to explain anything before you formed your conclusions about her? A. I don't know as I did.

Q. You told her then that your father's feelings were hurt, and that it had affected your feelings toward her? A. Yes, it did.

Q. In what way? A. I didn't care for her as much as—I told her that I didn't care for her as much as I should after that had happened.

Q. Before you told her these things, did you ask her whether this story, as reported to you, was true, whether she did say what was said to you? A. I don't remember whether or not I asked her whether or not it was true.

Q. Didn't you think it was only fair to her as your wife that you should find out? A. I should have.

Q. Before you concluded? A. We talked that over.

Q. What did you say there? A. I told her I thought it was wrong for her to say it, and she said she did not say it.

Q. She did tell you what she did say, didn't she? A. I don't remember what she did tell me, to tell the truth.

Q. But she did deny saying that which was reported to you she had said? A. That is what she said.

Q. Did you ask her what she really did say? A. No, I didn't ask her what she really said.

Q. You simply took the word of your father as to what she said, regardless? A. Yes.

Q. And of your mother? A. Yes.

Q. Your mother had told you that your wife was supposed to have said— A. My father had told me.

Q. Didn't your mother tell you, too? A. No, my father told me.

Q. I am asking you whether or not your mother did tell you, too. A. No, my father told me.

Q. Do I understand by that that you now say your mother did not tell you what was said? A. No, my father told me.

Q. You say you knew about this before you went to Florida. Had your father told you about it? A. Yes.

Q. Did you speak to your mother about it?

MR. KREMER—I object to that, whether or not he spoke to his mother about it. I don't think it has any bearing on the issue here.

MR. STEIN—I will connect it.

(Argument)

THE COURT—That does not affect the merits of this case in itself, anyway. It is quite evident that it is an attempt to connect these conversations and happenings with Mrs. McDonald, Senior, and it is undoubtedly for the purpose of trying to prove that the influence was of such a character as to affect and control the actions of the defendant. If that is so, I am going to allow it.

MR. STEIN—That is my object, and I will connect it right now with the next question.

By MR. STEIN:

Q. Didn't you say in your affidavit on file in this cause, in reply to the affidavit for alimony, the following: "We continued to live at 70 Esplanade throughout the spring and summer and until October, 1929. We—meaning your wife and yourself—had no serious trouble during these months, although we had occasional quarrels and differences about my mother." Did you say that in your affidavit? A. Yes, I certainly did.

Q. Was it true? A. Surely it was true.

Q. Did you further say: "My wife would complain that my mother did not treat her just right, but from all that I could see, my mother did treat her properly, and I never saw any bitter quarrels between them." You said that, too, didn't you? A. Yes, I did.

Q. What was it that your wife complained about in these occasional quarrels and differences concerning your mother? A. She complained that her children were not shown the proper consideration, and said that the place was just merely a roof over her head and not a home.

Q. That is why you were living temporarily at 70 Esplanade, in your mother's home? A. That's right.

Q. What else did your wife tell you that were the occasions of quarrels and differences between her and your mother? A. I can't recollect now just what they were. They were small things that occurred from time to time. I can't remember.

Q. Small so far as you are concerned? You considered them so, is that right? A. Yes.

Q. And you do not recall any of them? A. No, I can't recall what they were now.

Q. Wasn't your wife very unhappy during that time? A. She didn't appear to be very unhappy.

Q. Did you ever see her in tears concerning these quarrels and differences? A. No, not that I remember.

Q. Never? A. No.

Q. Was it necessary to have the doctor for her on account of her nerves? A. I don't remember of calling up a doctor myself.

Q. Whether you did or did not— A. Whether or not there was a doctor there when I was not there, I can't say. Q. You paid doctor bills, didn't you? A. If there are doctor bills paid, surely.

Q. What was the occasion of the illness? A. I don't remember now, I can't tell.

Q. Who was the doctor? A. That I can't say right now. It may have been Slocum or Ackerman, or it may have been somebody else.

Q. She was attended both by Doctor Slocum and Doctor Ackerman, wasn't she, during these times? A. Not to my knowledge she wasn't.

Q. Don't you know that she was attended by both Doctor Slocum and Doctor Ackerman for nerve excita-

tion? A. No, I really don't. I don't know what the treatment was, and I didn't know what it was for.

Q. Wasn't she in bed sick on several occasions during that time? A. Around the house; she may have been in bed for a while there in the morning, spent part of the day.

Q. I mean actually in bed sick. A. Not that I remember.

Q. You don't recall that? A. No.

Q. And you don't recall whether or not you paid doctor bills for her on account of nerve excitation? A. I can't remember.

Q. Will you say you did not? A. I will say I don't remember; I don't know whether I did or not.

Q. Your wife threatened to leave 70 Esplanade several times because of the troubles between your wife and your mother, did she not? A. Yes, she did.

Q. And do you remember the occasion mentioned in her affidavit which you answered? In the eighth paragraph of Mrs. McDonald, she says that "matters did not improve so far as the mother of the defendant was concerned or of the actions of the defendant toward me."

MR. KREMER—I object to this. I do not object to being confronted with his affidavit to contradict his testimony, but I do not see how we can be bound by what she said in her affidavit.

THE COURT—It is part of the record, of course, at the present time, but I don't want to have the affidavits read into the record if they are used for the purpose of formulating a question.

MR. STEIN—That is true, except that if there should be an appeal in this case these statements will

not be in the record unless they are put in the record, and I want to show admissions made by the defendant by this question. I will agree to have the entire thing stricken from the record if it is not competent, if your Honor will permit it to go down now.

THE COURT—If you formulate your question from the affidavit, it is perfectly proper.

By MR. STEIN:

Q. Isn't it true that your wife endeavored to regain the effection which you say you had partly lost for her while you were living at 70 Esplanade with your mother? Isn't that true? A. What it that?

Q. That she tried to regain the affection which you say she had partly lost, so far as you are concerned? A. Not by the actions, she did not show that, no.

Q. Not by her actions? A. No.

Q. Didn't you say in answer to her eighth paragraph of her affidavit, in which she claims that she did try to regain your affections, this: "On one occasion as she—meaning your wife—said in the eighth paragraph of her affidavit in this case, she threatened to leave unless I went back to her house at 10 Whitehall and left my mother, but I prevailed upon her to stay"? A. Yes.

Q. "And my mother also pleaded with her to stay." A. Yes.

Q. And she did stay? A. Yes.

Q. Recalling that in your affidavit, do you remember your having read the eight paragraph of her affidavit, in which she says she tried to regain the affection which you claimed to have lost for her? A. I can't say that I do remember reading that.

MR. KREMER—I move that question be stricken out, connected with the petitioner's affidavit, which is self-serving, to establish the fact that she tried to regain the defendant's affection, because she says she tried.

(Argument)

By MR. STEIN:

Q. When you made this affidavit of yours that I have just called your attention to, answering the eighth paragraph of your wife's affidavit, you did not deny in your affidavit that your wife had endeavored to regain your affection, which she had lost.

MR. KREMER—I object to that. I think that the affidavit speaks for itself. I don't think it is competent.

THE COURT—I will sustain the objection to this particular question.

MR. STEIN—It is for the purpose of contradicting his testimony now.

By MR. STEIN:

Q. During the time you lived at 70 Esplanade in the home of your mother, your wife wanted you constantly to go back to 10 Whitehall, did she not? A. Yes, she did.

Q. She told you she could not get along in the home there with your mother living together, didn't she? A. She said it wasn't very agreeable to her.

Q. 70 Esplanade, the home of your mother in which you and your wife were living during that period before you went South in 1929—speaking of the fall of 1928 now—is how far removed from 10 Whitehall? What is the approximate distance? A. I would imagine about ten blocks or so, maybe fifteen blocks.

Q. Have you ever timed yourself walking from your mother's house to the home that you occupied at 10 Whitehall? A. No.

Q. They are both in the Borough of Deal? A. Yes.

Q. And they are not a great distance apart? A. Not a great distance.

Q. So that if you lived at 10 Whiteehall, you could see your mother every day and several times a day, if you wanted to, could you not? A. Yes.

Q. And if you lived at 10 Whitehall, you would not have been leaving your mother alone, would you? A. Yes, if I lived there.

Q. You could visit her very readily, could you not? A. That would not be staying with her and living there with her, would it?

Q. I mean so far as leaving her alone is concerned, she would be right near you and you would be right near her, isn't that right? A. I don't know what you call leaving her alone.

Q. Just what do you mean by leaving your mother alone? A. Leaving her alone, that is exactly what I mean.

Q. Moving away from her entirely? A. Exactly.

Q. And not living with her? A. That's it.

Q. And that you were unwilling to do? A. Yes.

Q. And you still are? A. I am. I wasn't up until here recently until this last agreement, and then I agreed

to it then that we would live apart for a time and then go South, and then live at 70 Esplanade, if things were O. K. You remember that agreement.

Q. You say that your mother was grieving very much over the death of your father, and for that reason you did not want to leave her? A. Yes, exactly.

Q. Your father is dead since 1929? A. Yes.

Q. You say in your affidavit, "I told my wife it would be very undutiful on my part to leave my mother"? A. I certainly do think so.

Q. What do you regard as your duty toward your wife? A. I think there is a duty there, but I figured she should co-operate with me on the thing as much as possible.

Q. Whether or not it was possible for her to do so, from the standpoint of peace and happiness, she should nevertheless live there? Is that your idea? A. My idea was for her to co-operate as much as possible.

Q. If she was unhappy and did not have any peace in that home, your idea was that she should live there anyway? A. I told you my idea was to co-operate as much as possible.

MR. STEIN—Will the stenographer repeat the question, please?

(The stenographer read the last question as follows: "Q If she was unhappy and did not have any peace in that home, your idea was that she should live there anyway?") A. Yes, I would say yes.

Q. In November, 1929, didn't your wife again tell you that she was dissatisfied to live under such arrangements as you had there, and that she was going to leave you

unless you left there and went back to your home in Whitehall? A. Yes.

Q. That was the second time she told you? A. Yes.

Q. Isn't it true that you persuaded her once more to stay? A. Yes, I did.

Q. And she did stay? A. Yes.

Q. At that time she told you of some more quarrels and differences between your mother and her, didn't she? A. Yes.

Q. She told you what they were about? A. I don't remember whether she told me what they were about.

Q. Didn't you say in your affidavit here on file on the seventh page thereof, "My wife would complain to me of some things that my mother said to her during the day while I was gone"? A. Yes, I did.

Q. And that was what your wife told you about? A. Yes, but I don't remember what those things were.

Q. You say you don't remember what it was? A. No.

Q. You do remember that your wife complained to you of some things that your mother said to her during the day when you were gone? A. If that is what I said there, then that is what it was.

Q. And if you did not say it there, then what was it, speaking of the affidavit? A. I don't know what it was.

Q. How do I understand you? Do I understand that you don't remember anything about this occasion anymore? A. I can't remember what these things were about, no.

Q. When you made your reply to the affidavit here in this case, could you remember then what it was all about? A. I would say they were the little quarrels

that occured between my mother and my wife, but what they were about, I don't know.

Q. When your wife at times considered these quarrels of such moment that she felt it necesary to go back to her home at 10 Whitehall and not live at 70 Esplanade, do you mean to say that you don't know what they were about except that they were quarrels?

MR. KREMER—I object to that.

MR. STEIN—Strike it out.

By MR. STEIN:

Q. Did you consider it important that your wife was threatening to leave your home and the home of your mother and go back to her own home? A. Certainly I considered it important.

Q. Didn't you want your wife to be happy? A. Yes, I wanted everybody to be happy.

Q. I am asking you about your wife. A. Yes.

Q. Didn't you consider that you owed it to your wife to have her happy? A. Yes.

Q. Didn't you, as a matter of fact, plainly tell your wife that if you had to choose between her and your mother, you would choose your mother? A. No, I don't know as I said I would choose my mother. I said that if there was any friction like that, and she would not do her bit, why, I would stick with my mother.

Q. What bit did you want her to do? A. To try to make things run as smoothly as possible.

Q. She had done that three times, had she not? A. I don't know whether she did.

Q. Don't you know that three times she threatened to leave and three times you persuaded her to stay? A. Exactly.

Q. And three times she did stay, is that right? A. Yes.

Q. What else did you want her to do? A. As I told you, I don't know what these differences or quarrels were, whatever you call them, what they were caused by.

Q. Didn't your wife relate to you what the quarrels were about? Don't you remember that she did tell you at the time what they were about? A. Yes, I imagine surely she did.

Q. So at the time you did know what it was about? A. Yes.

Q. But you did not consider them of sufficient importance? A. No, I did not.

Q. And you persuaded your wife to stay? A. Yes, I wanted her to stay, absolutely.

Q. Now, the same quarrels and differences were taking place after you moved from 70 Esplanade over to the apartment in Red Bank, isn't that so? A. There were certain differences that came up.

Q. Between your mother and your wife? A. Yes, during that time, yes.

Q. And she threatened there to leave you, didn't she, and to go back to Whitehall? A. I can't remember whether or not she threatened there or not.

Q. Well, she spoke to you about not being able to stand it there, and that she was going back to 10 Whitehall unless you could get your mother to do differently, did she not? A. I don't remember whether or not she said that down at the apartment or not. We were there only a short time.

Q. But there were quarrels there? A. Oh, yes.

Q. And you remember when you went to Pinehurst? A. Yes.

Q. And you remember the night before? A. Yes.

Q. I understand you to say that the night before you told her she might go on with her original plans. A. I did, if she was going to continue taking that attitude that she did about the amount of time I spent with my mother; if she was going to object to that, that she might better go ahead with her original plans of leaving me. I called up Ambrose, her brother, and told him the same thing at the time from the Pennsylvania station.

Q. To take care of his sister? A. Yes, that was the night before I was leaving for Pinehurst.

Q. And when you did come back from Pinehurst, you found your wife had accepted your statement that you had made and had gone back to Whitehall and had gone away? A. Yes, she had gone.

Q. After you found that she was gone, did you concern yourself as to how she was living at all? A. Well, I went up there and asked her to come back.

Q. When was it that you went up there to ask her to come back? A. I guess that was ten days or two weeks or so afterwards. I don't remember just what time it was.

Q. You went to her house at 10 Whitehall and asked her to come back? A. Yes.

Q. To come back to live under the same conditions as before there under the same arrangement? A. Yes.

Q. Did you expect her to do that? A. I didn't know what to expect.

Q. You knew from past performances that she would

not do that, didn't you? A. I didn't know whether or not she would. She could always change her mind.

Q. She did not come back, did she? A. No.

Q. What did you do for her? She was still your wife. What did you do for her? A. I didn't do anything.

Q. Did you give her any money? A. No, I did not.

Q. Why? A. Because I figured that she should be willing to come along with me and make the best of things and do her bit.

Q. Her bit? A. Yes.

Q. Did you ever ask your mother in these trying times to do her bit?

MR. KREMER—I object to that.

MR. STEIN—I insist upon the question.

THE COURT—I will allow it.

By MR. STEIN:

Q. Did you? A. I didn't figure it was necessary to ask my mother.

Q. You thought she was all right? A. I did, and particularly under the conditions.

Q. Was there any time at all when you though your mother in this whole situation was probably not doing her bit, as you put it? A. I suppose there were times, certainly, because she had been in a very bad condition, as you know.

Q. Your mother was nervous and irritable after the death of your father? A. Yes.

Q. But before the death of your father, these quar-

rels were going on, weren't they, these differences? A. There had been some differences before.

Q. So that had been sort of a continuous performance? A. Whatever you call a continuous performance.

Q. Did you ever speak to your mother about that and say to her that she should try to help matters out? A. Yes.

Q. And to be more tolerant of things? A. Yes, I spoke to both my mother and my wife.

Q. Did you ever get them together to talk the thing over, your wife and your mother? A. Yes, I think I did; I believe I did.

Q. When was that? A. I don't remember now.

Q. I don't want the exact date. A. I don't know, I can't tell you.

Q. But you did not send any money after you came back from Pinehurst and found that she had gone? A. No.

Q. As a matter of fact, you gave her no money from that time, which was November 28th, until December 17th 1929, when you sent up $200, and after proceedings had been threatened, is that right? A. I guess so. I can look it up. I don't remember how much was sent to her.

Q. Except for the $200, which was sent to her December 17, 1929, there was nothing that you did your wife by way of support at all from the time that she went back to her home in Whitehall until the order was made by this Court requiring you to pay alimony, is that so? A. That is so.

Q. Did it concern you as to how she lived?

MR. KREMER—I object to that.

THE COURT—I don't think it is a proper question. Strike it out.

By MR. STEIN

Q. In addition to not sending your wife any money, did you cause a notice to be sent to persons furnishing necessaries not to give her anything on your credit? A. Not necessaries, no.

Q. What do you hold to be necessaries? A. Foodstuffs.

Q. Clothes are not necessaries? A. She had sufficient clothes.

Q. That is what you say; I am asking you were clothes necessaries? A. Certainly, they are necessary, but I didn't think that—

Q. You were supplying her with clothes theretofore, weren't you? A. Yes, $200 a month.

Q. $200 a month dress allowance and $125 a week to run the house, and you were paying bills that she contracted in addition to that, weren't you? A. Yes.

Q. So that you had established a $200 a month dress allowance, and you thought that that was necessary, did you? A. My wife told me that that was what she needed, and I didn't know anything about that.

Q. You did that from the time you were married? You did that right along? You allowed her that? A. Yes, I allowed her that.

Q. Did you send or write letters or have your lawyers write letters to modistes, dressmakers, and people engaged in selling women's wear not to give her any further credit? A. I believe I did.

Q. Don't you know that you did? A. Yes.

Q. Did you also send word to the coal man not to deliver any coal? A. Yes, I did.

Q. You notified him not to deliver any coal? A. I said I would not be responsible.

Q. As a matter of fact, Hess, the coal man, has now brought suit against you and your wife for a coal bill which she contracted before you were paying her alimony, isn't that so? A. Yes.

Q. That suit is pending now? A. Yes.

Q. Your wife had been supplied by you with an automobile to ride about in, had she not? A. Yes.

Q. And this automobile she had when she went back to No. 10 Whitehall? A. Yes.

Q. And you notified the garage keeper not to furnish her with any further gasoline or repairs or anything else? A. I did.

MR. STEIN—With your Honor's permission, I should like to ask the defendant a question concerning his income, laying a foundation. He says in his testimony the other day at the last hearing with reference to his income from his business, that his mother is to get a certain amount.

THE COURT—$150 a week, is that what you refer to?

MR. STEIN—Yes, and the amount of money he has given his mother out of the business, $7,800 a year. He says that he is paying that to her because of her interest in the business.

By MR. STEIN:

Q. I believe you said at the last hearing that your mother was receiving from the business $150 a week? A. Yes, that is right.

Q. For her household expenses because of what? A. Because of her share in the business.

Q. Were you present when your mother made her replying affidavit in this cause in Judge Kremer's office, or wherever it was? A. Yes, I imagine I was. I don't remember; I think so.

Q. Did you go with your mother on that day to make replying affidavits at Judge Kremer's office in reply to the affidavits which we took in this cause? A. Yes, I took her over there, but whether or not I was in there all the time, I don't know.

Q. Do you remember whether you were present when your mother made answer to the allegations in your wife's affidavits concerning the income from the business? A. I can't say whether or not I was there. I don't remember now.

Q. Were you present when your mother swore that at that time she was receiving between $100 and $125 a week from the business for her household expenses, and then stated in her affidavit, "this money comes out of the share that my son has in the profits of the business"? A. That should not be. I don't remember whether or not I was there, but anyway, that is not so.

Q. What do you mean it should not be? A. That is not correct. My mother has a certain amount from the business, and I do.

Q. You mean that your mother did not know what she was swearing to?

MR. KREMER—I object to that.

MR. STEIN—I am asking him what he means when he says it should not be in there.

MR. KREMER—The question was: "Do you know that your mother didn't know what she was swearing to?"

MR. STEIN—I will withdraw the question.

By MR. STEIN:

Q. Do you mean that your mother did not know where she was getting this money from?

MR. KREMER—I object to that as calling for a conclusion as to what his mother knew.

THE COURT—The difficulty is that you are asking this man to say whether or not he knows what another person knows.

(Argument.)

THE COURT—Objection sustained.

By MR. STEIN:

Q. You mother was thoroughly conversant with the business of J. W. McDonald, wasn't she? A. No, not thoroughly conversant with it at all.

Q. Your mother did in this case undertake to make a reply for you on the subject of the J. W. McDonald business, and what business it was doing, didn't she? A. She made some sort of a statement up there, absolutely, but she does not know all the facts of the business.

Q. I didn't ask you that. Your mother attends meetings of this company, does she not? A. She attended the original meeting, yes.

Q. And none since? A. No.

Q. The meeting that you spoke of was held when the company was again incorporated? A. That is it.

Q. If I understand it correctly, it was once a corporation? A. No, it was a partnership, and then it was an incorporation.

Q. Then the corporation was dissolved? A. Yes, and then there was another corporation.

Q. That is what I am saying. As I understand it, it was once a corporation before the present incorporation? A. Oh, yes.

Q. When the partnership existed, when was that? A. That was before my father's death, quite some time.

Q. Surely, because your father was living when the first corporation was formed. Who was in it? A. My father and myself.

Q. How about your mother? A. Yes.

Q. And then that corporation was dissolved A. Yes, that is right.

Q. And at the time these proceedings were instituted, it was a partnership, wasn't it? A. I am not sure now; I don't know just when—

Q. On January 17th, 1930, it was a partnership, was it not? A. I don't just remember what the date was of the incorporation. I would have to look that up.

Q. You stated at the time when you made this affidavit in this proceeding that the partnership was dissolved, and it was then a corporation? A. It must have been then. I say I don't remember when it was incorporated.

Q. You say in that affidavit in this case that you did not have a salary, but you had a drawing account? A. I have a salary of $500 a month, and I have overdrawn on that.

Q. In the affidavit in this case you say, "I do not draw a salary, but I have been drawing $200 a week from this business throughout 1929." A. That is right.

Q. Who were the persons in 1929 that had the stock of this company? A. In 1929, my mother and myself.

Q. Anybody else? A. No.

Q. I have already called your attention to what your mother says in her affidavit to the effect that the money which she gets "comes out of the share of my son in the profits of the business."

MR. KREMER—I object to that for the same reason.

THE COURT—The question is allowed.

By MR. STEIN:

Q. I have already called your attention to that, which she swears to in her affidavit. A. Yes.

Q. Bearing that in mind, I also call your attention to your statement in your affidavit that ninety percent of the income from the business is yours. A. Yes.

Q. In other words, using your language, "ninety percent of this income will be mine." A. Yes.

Q. There being no one in the corporation but your mother and you, as you say— A. Yes.

Q. (Continued)—in what proportion was the stock held? A. Four hundred and fifty and five hundred and fifty.

Q. You had five hundred and fifty shares? A. Yes.

Q. And your mother four hundred and fifty? A. Yes.

Q. A thousand shares, is that right? A. That is right.

Q. Now that I have called your attention that your mother and you both agree in your affidavits here as to who shall have the income from the business, will you tell me when, if at any time, that situation was changed? A. It was originally that we were to each draw $8,000 a year out of the business.

Q. Why didn't you say so in your affidavit?

MR. KREMER—I am under the impression that Judge Stein went all over this in the hearing before you, over all this testimony. The decrepancy between that affidavit was attacked and ironed out, I believe, to your Honor's satisfaction on the second day of the hearing, and all of this matter that he is now going into—

THE COURT—Substantially all of it.

MR. STEIN—If your Honor please, this was not gone into.

THE COURT—Proceed.

By MR. STEIN:

Q. Why didn't you say so in your affidavit? Can you answer that? A. No.

Q. You cannot tell that? A. No.

THE COURT—Has anybody the date of the incorporation?

MR. KREMER—July, 1929, I am quite certain.

By MR. STEIN:

Q. Does the arrangement which you and your mother had about salaries and so forth appear in the minutes of your company? A. Yes.

Q. Are the minutes here? A. No, they are not.

Q. Did you at the last hearing in response to my question as to whether or not you would bring that here say that you would? A. Yes, I did.

Q. Why didn't you bring them? A. I don't know why we did not get them over here.

Q. I am asking you why you did not bring them. A. I neglected to tell Mr. Downs to bring them over.

Q. I am still asking you why you did not bring them. A. When I said I would bring them, I said I would have Mr. Downs bring them here.

Q. But they are not here. A. No, they are not here.

MR. STEIN—If you Honor please, I should like permission to offer on this question of alimony the petition and affidavits thereto annexed for alimony pendente litum and the replying affidavits filed in this cause.

MR. KREMER—I object to this.

(Argument)

THE COURT—Temporarily then, and until such time as I can scan the rule, we will permit the question to rest. If we do not get the benefit of it on the appeal, I will allow you to offer in evidence whatever portion of the record here that you may desire.

MR. STEIN—With that offer, I am through with this witness.

REDIRECT EXAMINATION

By MR. KREMER:

Q. First, with regard to the minutes of the J. W. McDonald Company, did you have those minutes at the last hearing before the Advisory Master? A. Before Judge McAdams.

Q. Yes. A. No, we did not have them.

Q. Weren't they brought to Elizabeth at the last hearing? A. Yes, you did have them, but they were not opened.

Q. Will you produce them? A. Yes.

Q. Tomorrow morning? A. Yes.

Q. I want to direct your attention first to the conversation that you had with Mrs. McDonald, that is your wife, about your father. When you came North for his funeral, you spoke to her about what you had heard she said? A. Yes.

Q. Concerning your father? A. Yes.

Q. Did she deny or admit it? A. She denied it.

MR. STEIN—I object to that as a conclusion of the witness.

MR. KREMER—I think the answer should be made so you could determine.

By MR. KREMER:

Q. What did she say? A. She said she did not say it.

Q. Do you recall her statement at the hearing in that connection? Do you recall what she said that day at the hearing in this cause? A. I really don't remember just what she said, no.

Q. You do not remember what she said? A. I don't remember—

Q. You don't remember about that? A. Except that she denied that she did not say it.

Q. After that controversy that you had with her about your father, did you continue to quarrel with her about that, or was that quarrel composed? A. No, that thing was closed and finished with.

Q. During the summer of 1929, where were you living? A. At 70 Esplanade, Deal.

Q. Your wife was there? A. Yes.

Q. And your mother was there? A. Yes.

Q. Was there peace in the house generally during that summer? A. Yes, there were little things that came up, but I don't know just what they were, but everything went along.

Q. Were these difficulties frequent or not? A. I would not say they were so terribly frequent, but they occurred.

Q. Judge Stein asked you if you would expect her to live in 70 Esplanade even though she found no peace or happiness there. Can you tell us whether or not there was peace and happiness there in that house that summer? A. Yes, there was.

Q. You say there was? A. Certainly.

Q. At the time that she endeavored or threatened to

leave in November, 1929, where were you living. A. At the apartment in Red Bank.

Q. At that time I think you told us what floor your apartment was on and what floor your mother's apartment was on? A. Yes.

Q. How many rooms are there in the entire building? A. Forty.

Q. When you went away to Pinehurst, did you talk with your wife on the morinig that you left? A. Talked with her the night before, and as I say, I took exception to the fact that she was taking exception to the amount of time I spent with my mother.

Q. What, if anything, did you do the morning that you left? A. Just said goodbye to her and left.

Q. From Pinehurst did you send any word to her? A. I sent her a telegram, yes.

Q. How long after you were gone did you telegraph her? A. I telegraphed her, I guess it was the same day, Thanksgiving Day.

Q. What did you say in that telegram, if you recall? A. "Happy Thanksgiving."

Q. When you came back and you found that she was gone, you went to 10 Whitehall? A. Yes.

Q. Who went with you? A. My mother went with me.

Q. What did you do there? A. Asked her to come back, and she refused.

Q. After that you sent some letters and notices to milliners and modistes and so forth. Can you tell us who those milliners and modistes were to whom you sent letters? A. I can't remember some of them. Milgren is one.

Q. In New York. A. Yes.

Q. Who is Milgren? A. Dressmakers.

Q. What kind of dressmakers? A. Pretty expensive ones, that's all I know about that.

Q. Why did you send that notice to Milgren? A. Because my wife was going over and getting bills from those people and from others.

Q. Have you had any bill from Milgren? A. I haven't had a bill at that time, except for just something that I had agreed to.

Q. To what other dressmaker did you send notices of that kind besides Milgren? A. I really don't remember now the names of them. I can look them up and find out, but I know there are two or three or four of them.

Q. You say there were two or three or four? A. Yes, I don't remember just how many.

Q. Why did you send those notices? A. Because I figured my wife would get things there and then I would be billed for them.

Q. Could you afford to pay for them? A. No.

MR. STEIN—I object to that.

THE COURT—Of course, the question is manifestly leading, but it is answered, and it does not make any difference.

By MR. KREMER:

Q. Can you tell us whether or not your wife was supplied with clothes at that time? A. Yes, she was supplied.

Q. Do you know whether or not she was? A. Yes, I do.

Q. Can you tell us when the incorporation of the lumber company was perfected? A. I don't remember that.

THE COURT—If the records are ging to be produced let them speak for themselves.

By MR. KREMER:

Q. How far is it from your apartment house in Red Bank where you expecting to live to No. 70 Esplanade in Deal? A. Do you mean how long does it take?

Q. Yes, how long? A. Fifteen or twenty minutes.

Q. By automobile? A. Yes.

Q. Since we were here at the last hearing, a stipulation was prepared. Did you see that stipulation? A. Yes.

MR. STEIN—I don't object to this except on one ground: the contents of that stipulation are not evidence now in this case because it was never actually entered into. There was a stipulation which was to be entered into, but it was not done, so, in fact, there is no stipulation.

MR. KREMER—I am not going to allude to the contents of the stipulation, but Judge Stein asked him and made him state that he did not sign it, and that he had failed and refused to comply with the terms of the stipulation, placing the onus upon him. I want to have him tell why he did not sign it. If not, the burden is going to be placed upon him, and I think we have a right to explain why.

THE COURT—Where are we going to get to if we attempt to follow out the whys and wherefores of the failure to carry out the terms of the proposed stipulation? It is not a part of the pleadings in this case.

MR. STEIN—I will consent that that portion of the testimony where I asked him that be stricken out. I mean the portion which I asked him whether or not he carried out any of the terms of the stipulation. I will consent that it be stricken out.

MR. KREMER—That is a different story. Counsel urged it strenuously and asked the question in a manner that indicated that although the stipulation was drawn up, he completely refused to sign it. I don't want to be laboring under that burden. If they stipulate what is to be withdrawn, and every allusion to it to be withdrawn as though no effort had ever been made to have the stipulation entered into, then I am content. I think that we should either be allowed to explain it or that every question referring to it should be stricken from the record.

MR. STEIN—I don't object to your going into it now, and I will take it back now.

THE COURT—If the questions were asked and not objected to, they are in the record, and if Judge Stein is willing to withdraw all references to the stipulation, that will close it.

MR. STEIN—I will do it, and I will find out what they are and take them out, so there is no danger.

THE COURT—The statement to the effect that all references to the stipulation are to be stricken from the record will be sufficient for your record at any future time.

MR. KREMER—Then I take it that the stenographer will examine his record and take them out.

THE COURT—I don't mean that it is necessary that he take them out. They can remain, but insofar as the reference to the stipulation itself is concerned, it is to be considered null and void so far as it being evidence is concerned.

(Argument.)

MR. KREMER—If the Court please, I believe that at the prior examination most of the matters on cross-examination were covered, so that is all.

THE COURT—We will adjourn at this time until half past one o'clock this afternoon.

(A recess was had until 1:30 o'clock p. m.)

AFTERNOON SESSION

HENRY J. McDONALD, resumed the stand and testified further as follows:

By MR. KREMER:

Q. After the last hearing at Elizabeth, did you see your wife again? A. Surely.

Q. Where did you see her? A. At 10 Whitehall.

Q. Did you also see her at 70 Esplanade? A. I did.

Q. How long after the last hearing was that? A. That was only a couple of days afterwards.

Q. Will you describe what took place between your wife and yourself then?

MR. STEIN—I object to that since it does not have any bearing on the case here.

(Argument.)

THE COURT—Any testimony that is adduced that I consider part of the negotiations or arising out of the negotiations for the adjustmeent of their differences I will exclude from the record.

MR. STEIN—Would you mind stating on the record, "which negotiations were instituted at the Court's suggestion"?

THE COURT—The negotiations referred to was an attempt on the part of the Advisory Master together

with counsel to effect a reconciliation between the parties.

(The Stenographer read the last question as follows:

"Q. Will you describe what took place between your wife and yourself then?")

MR. STEIN—I object since this can have no bearing upon the subject matter of this litigation and could only have a bearing upon an attempt at reconciliation to which your Honor has already referred, where the parties attempted to reduce to writing the terms upon which they could live together. Since those negotiations were not completed, no terms were entered into. If this question is allowed to be answered, I will, of course, insist upon my right to go into the question of how this meeting was brought about, and that would necessarily involve the answer that it was as a result of the reconciliation, and it will open the door to that entire matter.

THE COURT—Let us have that question first whether the conversation that you refer to and the meeting arose out of the negotiations in connection with the reconciliation.

By MR. KREMER:

Q. Did the meeting between you and Mrs. McDonald arise out of the negotiations for settlement in the stipulation? A. Arise out of the negotations?

THE COURT—By reason of the negotiations:

A. Our meeting? Yes, surely.

THE COURT—Objection sustained.

MR. KREMER—May I state for the purpose of the record that even though the conversation took place subsequently and may be said to have arisen out of the negotiations unless it had to do with the negotiations it would be competent and relevant.

By THE COURT:

Q. Did this conversation have to do with the negotiations between your wife and yourself and counsel? A. No, it did not.

Q. In what way did it not have anything to do with it? A. It was something that had never been discussed before at all in the negotiations.

Q. It may not have been discussed in the negotiations, but while discussing the negotiations themselves, did these questions arise? A. No, they did not.

Q. How did they arise? A. They arose after we had decided on what terms we would come together.

Q. Then they were part of the negotiations or in connection with the negotiations? A. It was after the negotiations had been agreed upon.

Q. The negotiations had been agreed upon in the courthouse on the last day of the hearing and had been dictated but not reduced at that time to writing, and they were subsequently reduced to writing, and during the discussions between you and your wife relative to the terms of the negotiations or the stipulations, these happenings occurred? A. During the time of the negotiations while we were talking them over?

Q. Not that time, but after it had been reduced to writing. A. These happenings occurred after that, yes.

By MR. STEIN:

Q. That is, the conversations? A. The conversations.

Q. May I ask one question: you say at that time you discussed something that had not been discussed before the negotiations? A. Yes, I had never discussed these questions.

Q. But the something that you did discuss with her then you knew before the negotiations? You had heard of it before? A. Yes.

THE COURT—Objection sustained.

MR. KREMER—I take it that your Honor will rule in the same manner toward all this conversation?

THE COURT—Yes.

MR. KREMER—For the purpose of the record, may I state the testimony of record?

THE COURT—No, I think you had better press it and let us rule on each question.

MR. KREMER—I want to get on the record what I want to show. That one question would develop the conversation. I asked him what took place.

By MR. KREMER:

Q. What did you say to your wife at the meeting at 70 Esplanade, that you just referred to?

MR. STEIN—I object to it because the witness has already stated that the subject of that conversation was something that he knew about prior to entering ino the negotiations and the stipulations for an amicable adjustment. I urge upon your Honor that it is not competent now because it was something that he was holding at the time that he could have talked about and did not talk about, but reserved for himself to talk about after the negotiations had been entered into, and after the stipulation had been reduced to writing, although not signed, and pending the signing of the negotiations.

THE COURT—Objection sustained.

(Argument)

MR. KREMER—Will your Honor permit me, in order to close the matter, to state on the record what testimony I want to offer?

THE COURT—No, I will allow you to ask the witness any question that you wish, and as you ask the question, if objection is made, I will rule on it at the time.

MR. KREMER—I believe I have the right to put on the record and to state what I want to offer. If the Court refuses to hear it, naturally, the Appellate Court will decide.

THE COURT—You may make your offer, and I will rule on it.

(Argument)

THE COURT—I will go back to my original position. I will require counsel to ask the questions that he desires to put on the record rather than to make a statement of what he wants to prove.

(Argument)

MR. KREMER—Will your Honor grant me an exception to your refusal to allow me to put it on the record?

THE COURT—You may ask your question, and I shall rule upon it, and that in itself is error, if I am wrong, so you can take advantage of it on your appeal.

By MR. KREMER:

Q. When you saw Mrs. McDonald at 70 Esplanade, did she refuse to live with you? A. She did.

Q. Did she state why? A. Yes, she said that she would not live with me under any circumstances because of the fact that I had asked her about a man by the name of Colman, whether or not he meant anything to her, and she said that he meant nothing to her and I meant less.

Q. Did you make any accusation against your wife at that time? A. No, I merely asked her whether this man meant anything to her at all.

Q. After she told you that she would not live with you under any circumstances, what did she do? A. She walked out of the room, and I walked around the block with her arguing with her.

Q. Were you willing to receive her back at that time? A. Yes, certainly.

RE-CROSS-EXAMINATION

By MR. STEIN:

Q. Back where?

THE COURT—I don't think we need to go any further.

By MR. STEIN:

Q. You asked her about a man named whom? A. Colman.

Q. And whether he meant anything to her. A. In other words, whether she cared for him.

Q. Why did you ask her that question at that particular time when a stipulation had been prepared for a reconcilation with your wife?

MR. KREMER—I object to that. No allusion is supposed to be made to the stipulation whatever.

MR. STEIN—I have to go into it.

THE COURT—You cannot divorce this testimony from the stipulation if you are going to ask him and permit it to go into the record.

MR. STEIN—My reason is this: these parties at your Honor's suggestion, sat down with counsel and went all over their differences.

THE COURT—From my personal point of view in this case, it does not make one particle of difference what Mrs. McDonald may have said to Mr. McDonald by reason of the meetings and conversations relative to the reconciliation that might have taken place. So far as I am concerned, this case is going to be decided upon the pleadings and the facts as developed up to the hearing and prior to the time when the attempt to effect the reconciliation took place.

MR. STEIN—I understand that your Honor will be obliged, as an impartial judge, to divorce yourself from anything you learned in attempting to reconcile the parties.

THE COURT—Nor do I believe that anything that she may have said in the conversation about her living with the defendant under the conditions as he has testified on cross-examination today will effect this case in any way at all.

MR. STEIN—For the purpose of this record, I want now to show, if I can, just what really was said by the husband at that time to his wife.

THE COURT—I don't think it is going to affect the issue, but if you want it for the record, I will permit you to do it.

MR. STEIN—I do want it for the record, because I think it will clear up some things in the mind of the defendant.

THE COURT—Of course, Judge Kremer, you will object to this, but in reference to your objection, I want to say that it will either be permitted or the rest of the testimony along this line be stricken from the record.

MR. KREMER—In other words, you have got to have it all or none?

THE COURT—Yes.

MR. KREMER—I am willing to have it all.

By MR. STEIN:

Q. I understood you to say before these questions were put to you, that the matter of this man, that you talked with her, was something that was not discussed before the negotiations were entered into for an adjustment between you two, is that right? A. That is right.

Q. But you knew about it then, didn't you? A. Yes.

Q. You knew that somebody had told you that somebody said that this gentleman had been friendly with your wife? A. No, just called on her.

Q. Didn't you at that time when you talked with your wife also say to your wife, "This man is being sued for divorce, and you are being named as co-respondent"? A. No, I did not.

Q. You did not say that? A. No, I said his wife was suing him for divorce, but I never said that my wife was being named as the co-respondent.

Q. Did you say anything to her about a co-respondent in that case? A. No, I did not. I did not know who the co-respondent is.

Q. Did you, in your conversation with your wife, ask about this man and say to her that you knew about this sometime back, and did she say to you, "why didn't you speak of that, Jack, when we were sitting down negotiating or trying to enter into a stipulation for our living together again?" Did she ask you that? A. No.

Q. She did not say to you, "Jack, why didn't you speak of this at the time we were negotiating for a settlement of this whole matter?" A. No, certainly not.

Q. Didn't she say to you, "Jack, you knew these stories that you are telling me about now when we were sitting down in Judge McAdams' chamber to negotiate our troubles"? Didn't she say that to you? A. No.

Q. And didn't you say, "Yes, I knew that then"? A. I said I knew of it.

Q. And didn't she ask you why you did not mention it then? A. No, she did not.

Q. She did not? A. No.

Q. Do you mean to say that she just flew up in a rage and went away without asking these questions? A. What she said to me was: "Did you bring me here to insult me?

I said, "I am not accusing you of anything."

Q. If you were not accusing her of anything, why did you ask her about this man? A. Because I said I wanted to get away to a clean start, and if there was—if this man meant anything to her at all, why not get away to a clean start and admit whatever there was. I did not say that there was anything wrong at all.

Q. You won't say that? A. No, certainly not.

Q. Don't you know that there was nothing wrong? A. I just merely asked her that.

Q. Don't you know that there was nothing wrong?

MR. KREMER—I object to that.

By MR. STEIN:

Q. Do you believe that there was anything wrong between your wife and that man?

MR. KREMER—I object to that.

THE COURT—I will allow the question.

A. I don't know now, of course.

By MR. STEIN:

Q. Do you believe that there was? A. I would not say whether or not I believe it or do not believe it.

Q. Do you suspect that there was? A. (No Answer)

Q. Will you answer that? A. I merely asked a question.

Q. Do you suspect?

MR. KREMER—I object.

THE COURT—The question is allowed.

By MR. STEIN:

Q. Do you suspect that there was anything wrong between your wife and the man you spoke of? A. I can't say whether or not I suspected anything at all.

Q. You won't say? A. No.

Q. Then I take it that you do? Am I right in that? A. No.

Q. Will you answer that? Why did you ask her about the man in the first place? A. Because I didn't want these stories going about.

Q. What did you do to stop the stories?

MR. KREMER—I object to that. I don't think there is any duty upon him to stop the stories.

THE COURT—I don't think you should go that far. The objection is sustained.

By MR. STEIN:

Q. This conversation that you speak of was not a couple of days afterwards, but it was a full week after we sat in the chamber of the Advisory Master and had dictated a stipulation for adjustment, isn't that so? A. Well, I don't remember the exact time. It may have been a week or five days.

Q. During that whole week, was that the first time you saw your wife over at 10 Whitehall after our talk the negotiations here? A. The first time?

Q. Yes. A. I was up there on two different occasions.

Q. The first time that you went there, was it a week after we talked about the chances of reconciliations? A. No.

Q. How soon after the talk for a reconciliation did you go to see your wife at all? A. I think it was a day or so afterwards.

Q. Where A. 10 Whitehall.

Q. And then again after that when did you go to see her to talk about this further? A. Another couple of days afterwards.

Q. Without going into what this stipulations were in that negotiation for a settlement did you ever do anything at all to carry out any one of the stipulations in that settlement in the meanwhile? A. No, I had not done anything.

Q. The first thing that you did then was to ask her about a man that you had heard some stories about before the negotiations for settlement were entered into? A. That is right.

Q. That is the first thing you did? A. That's right.

Q. And then your wife told you she would not live with you? A. That is right.

Q. She cared nothing about the man and less about you, is that right? A. Yes.

By MR. KREMER:

Q. Were you ready to enter into the stipulation? A. Yes, I am ready to go through with that.

By MR. STEIN:

Q. How do you mean ready? A. Willing to.

Q. What did you do about it? A. I just told you there had been nothing done.

Q. And you did not do anything about it afterwards? A. No.

Q. And you never went to see her again after that? A. No, because she said she would not have anything to do with me.

Q. And that was sufficient for you? A. Yes.

Q. And she told you that you had insulted her, is that what she said? A. That is what she said.

Q. Did you beg her pardon? A. I didn't figure that I was doing anything.

Q. I didn't ask you that. A. No, I did not, but I didn't figure I was insulting her when I was asking her. I didn't accuse my wife of anything at all.

Q. You thought it was quite all right to ask your wife whether or not she cared for another man more than she did for you? A. Yes, why not when we were separated? Wouldn't you, as a husband?

MR. STEIN—Don't ask me questions.

By MR. KREMER:

Q. As a matteer of fact, immediately after returning from Elizabeth at the last hearing, what was your condition of health for a day or two after that?

MR. STEIN—I object to that.

MR. KREMER—Counsel wants to make a point that nothing was done. As a matter of fact, up until this breach took place, that was the solicitor's function. I think Mr. McDonald lost a date that he had to go to his specialist, and I had the papers ready to go ahead with the stipulation as soon as it reached me.

(Discussion off the record.)

By MR. STEIN:

Q. On the next day after we talked about the reconciliation and entered into a stipulation, you say you went to see your wife at 10 Whitehall? A. Yes.

Q. At that time did you say to your wife, "why did you sue my mother?" A. I did not.

Q. The night after that you had this other conversation. That same night did you say, "Why did you sue my mother?" A. My wife said to me, she says, "I believe that the only reason that you agreed to any reconciliation was to keep your mother from being sued."

Q. Didn't you first say to your wife, "why did you sue my mother?" and didn't she say to you, "Jack, I suppose that is the reason a reconciliation is being talked about?" A. No, I did not.

Q. And then didn't you say, "If that is the case, then the whole matter is off, and you can go on with your suit." Did you say that? A. No, I did not.

Q. What did you say? A. I told you I asked my wife about this fellow, Colman, whether or not this—

Q. I am talking about the suit. A. My wife said to me, "I believe the only reason why you agreed to a settlement or reconciliation was because of keeping your mother from being sued."

Q. What did you say then? A. I said, "If you feel that way about it, I think that is pretty rotten."

Q. You did not say, "Everything is off"? A. No, I did not say that everything was off. My wife said everything was off.

Q. That is after you accused her of being friendly with this man? A. I did not accuse her.

MR. KREMER—I object to the question. There is no evidence of any accusation.

THE COURT—The objection is sustained.

MR. STEIN—That is all.

MRS. ADELAIDE McDONALD, a witness called on behalf of the defendant, being first duly sworn according to law, testified as follows:

DIRECT EXAMINATION

By MR. KREMER:

Q. Where do you live Mrs. McDonald? A. 70 Esplanade, Deal.

Q. You are the mother of the defendant? A. Yes.

Q. And you are the mother-in-law of the petitioner, Mrs. Gertrude T. McDonald? A. Yes.

Q. Did you know Mrs. Gertrude T. McDonald, the petitioner before your son married her? A. I did.

Q. How long had you known her before they were married? A. About two or three years.

Q. You said you had know her two or three years? A. I think so, Judge.

Q. And you were present at the wedding of your son and your new daughter-in-law? A. Yes.

Q. What did you give them, if anything, for a wedding present?

MR. STEIN—I object.

MR. KREMER—My purpose is to show the attitude of Mrs. McDonald, Senior, to Gertrude McDonald.

MR. STEIN—There is no claim of unfriendliness prior thereto.

THE COURT—I will allow it.

By MR. KREMER:

Q. What did you give them for a wedding present? A. I think they are too numerous; I can't mention them.

Q. Tell us some of the things. A. Well, the house, the entire house was furnished.

Q. Which house? A. No. 10 Whitehall. It was then furnished at No. 48, and they moved in from there.

Q. Which house? A. 48 Esplanade.

Q. You gave that to them for a wedding present? A. I gave it to my son.

Q. What about furnishing it? A. Gave everything to him for his home.

Q. Did you give your son any money in preparation for his wedding?

MR. STEIN—Objection. I thought it would be evidence of friendliness to the wife. These are presents to the son.

By MR. KREMER:

Q. Did you give him anything else for his wedding? A. Well, no, except money.

Q. How much money did you give him? A. I really couldn't tell. I think he has an account of everything.

Q. After their wedding, where did they go on their honeymoon? A. To Europe.

Q. When they returned, where did they live? A. At No. 48.

Q. When were they married? A. The 13th of April.

Q. Of what year? A. 1926, I think.

Q. They went to live, after they returned from the honeymoon, at 48 Esplanade, is that right? A. Yes.

Q. Did you visit them there? A. Yes.

Q. What were your relations with your daughter-in-law during the first year or two of your son's married life? A. Very pleasant.

Q. Did you spend much time in her society? A. All that I could.

Q. How much was that? A. Well, we saw one another pretty much, I think, every day.

Q. You and your husband lived at 70 Esplanade? A. Yes.

Q. How far is that from No. 48? A. Just the next block.

Q. You say that you saw your daughter-in-law about every day? A. Pretty much every day.

Q. Where would you go with her? A. She seemed very fond of me and wanted me to go to New York with her, and I did. Wherever she seemed to want to go, if she invited me, I would go with her.

Q. You did go to New York with her. A. I did.

Q. I suppose you went shopping? A. Shopping.

Q. Did you go any other places with her? A. No.

Q. In the Winter of 1926 to 1927, did you and your husband go to Florida? A. Yes.

Q. You owned a home in Palm Beach? A. Yes.

Q. Did your daughter-in-law go with you that Winter? A. She came down later.

Q. With her husband? A. With her husband, and I took her little child with me.

Q. Which one was that? A. Patricia.

Q. Before you went South, where did Patricia live? A. She lived with Jack and Gertrude.

Q. You took Patricia to Florida with you? A. Yes.

Q. When did your son and his wife arrive that Winter? A. Sometime in February.

Q. How long did they stay?

MR. STEIN—Was that in 1927?

MR. KREMER—Yes, 1926 to 1927.

A. They stayed quite some time; I should say about six weeks.

Q. Did you have any controversy with your daughter-in-law at all? A. Nothing at all.

Q. What was your relationship with her during that period? A. Everything seemed to be all right, apparently all right.

Q. Did you have any arguments with her of any kind? A. At that time we had no arguments.

Q. What did you do for her, if anything, during that first year? A. What did I do?

Q. Yes, I mean by that, was there any exchange of gifts or presents of any kind? A. Many.

Q. Did you give her presents? A. I surely did.

Q. What did you give her? A. I gave her some diamonds, and I gave her everything that I could think of that I though would please her.

Q. Tell us about the diamonds that you gave her? A. I couldn't tell about them, really. They were earrings, and I gave her all the things that I thought she would enjoy and like.

Q. Earrings of yours? A. Yes.

Q. Were they diamond earrings? A. Yes.

Q. What other jewels did you give her besides the diamond earrings? A. I couldn't tell you just what they were; there are numerous things.

Q. Do you recall any other gifts that you made to her? A. I was all the time giving her gifts, linens, and making her things, and doing everything I possibly could for her.

Q. What did you make for her? A. Gowns and negligees and things like that, which I thought would please her. I knew that she liked them, and I did that for her.

Q. Did she make them for you, too? A. No, she did not.

Q. Besides the gowns and negligees, did you give her any other presents or make anything else for her? A. Linens, and little art things that I thought she would enjoy in her room, lamp shades that I thought would please her. I was always doing that.

Q. In the Summer of 1927 you were living where? A. At Deal, 70 Esplanade.

Q. Where were your son and his wife living that Summer? A. I think they were at No. 10 Whitehall.

Q. When was that purchased, if you can recall? A. I really cannot recall that. I don't remember whether it was 1926 or 1927. I know I bought one house, and they liked the one that I bought better, and I gave it to them, and I took the other. I think that was—I can't say.

Q. Was it the first Summer they were married— A. Yes, I think they—

Q. (Continued)—or the Summer after they were married? A. The Summer after that.

Q. You say you bought a house? A. I did.

Q. Where did you buy a house? A. No. 10 Roosevelt. I bought this original house that they have now, but they preferred that, and I kept the other one.

Q. You bought No. 10 Whitehall? A. Yes.

Q. Who bought the house on Roosevelt Avenue? A. Well, it belonged to Jack, and then he asked if I would mind letting him have that, so I gave them the one they liked best.

Q. Who made that request of you for the exchange? A. Both of them.

Q. Did your daughter-in-law speak to you about that? A. She did.

Q. What did she say about it? A. She would like it; she liked it very much better, and I gave it to them.

Q. What was done about furnishing the house at No. 10 Whitehall? A. It was the furniture that we had to furnish No. 48 with.

Q. Who had purchased that? A. I did.

Q. Did you pick it out yourself? A. I surely did.

Q. Where did you buy that furniture? A. From her brother, from Mrs. McDonald's brother, Mr. Ambrose McManus.

Q. Did you furnish the entire house from him? A. I did, with the exception of one bedroom set that was a gift from him to Mr. and Mrs. McDonald.

Q. Approximately how much did you spend with Mr. McManus to furnish that house? A. I can't say.

Q. Could you give us a general idea? A. I have my bills, and in fact, it is not all paid for yet.

Q. In the Summer of 1927, they lived at No. 10 Whitehall, is that right? A. Yes.

Q. And they continued to live there in the Fall? A. Yes.

Q. In the Winter of 1927 and 1928, did you go to Florida again? A. Yes.

Q. Did your daughter-in-law and your son come down? A. Later they came down. I took Patricia with me.

Q. Did you keep Patricia with you all the time? A. I did.

Q. Summer and Winter, too? A. No, just in the Winter.

Q. Who paid Patricia's way and bought her clothes and so forth? A. I am sure I don't know that. I did not do that.

Q. In the Summer of 1928, did you return to Deal. A. Yes.

Q. Up to that time had you had any difficulties with with your daughter-in-law at all? A. Yes, we did.

Q. Before the summer of 1928? A. That Summer, about 1928? Well, no. It wasn't until after they came to live with us.

Q. When did they come to live with you? A. That was just before Mr. McDonald's death. It must have been in 1928.

Q. Summer or Fall? A. It must have been in the Summer, because Mr. McDonald wanted to rent his house, and he could not aflord to keep it.

Q. Which Mr. McDonald? A. My son. It must have been in the Summer, because he rented his house.

Q. At No. 10 Whitehall? A. Yes.

Q. And he and his wife came to live with you? A. Because he felt that he could not afford it, and I felt that our house was large enough, and that we could live there together.

Q. Did your daughter-in-law make any objection to you about coming there to live with you at that time? A. No, I don't think she did.

Q. Where did you place your son and his wife in the house? A. They took my room, which was the room nearest to Norwood Avenue. They took that because she liked that room the best.

Q. Where did you and your husband stay? A. My husband had another room. He was by himself, and I had another front room.

Q. How many bedrooms are there in that house? A. About seven or eight.

Q. And you continued to live there throughout the Summer of 1928, all four of you? A. Yes.

Q. During that Summer, did you go about with your daughter-in-law? A. Yes.

Q. Where would you go with her? A. Well, we didn't have so very many places to go, mostly to New York, and occasionally we would go to the theatre, and they would invite Mr. McDonald and I to go with them, and we would go with them, thinking that they wanted us, and we would accept. At other times she would ask me to go shopping with her, which I accepted, and I thought that she seemed very fond of me.

Q. During that Summer in regard to these presents and gifts that you referred to a while ago, did you continue to make them or did you stop? A. No, I continued making them. I made her things while I was down at Palm Beach and sent them to her, the last Winter Mr. McDonald was with me.

Q. In the Fall of 1928 or toward the Winter, did you and your husband go South again? A. Yes.

Q. Did your son and his wife go with you when you left or not? A. No, Patricia was sick.

Q. Where was Patricia? A. She was in my home at 70 Esplanade.

Q. Did you have any conversation with your daughter-in-law about her going down before you went? A. About who going down?

Q. Did you and your daughter-in-law talk about it? A. Of course, we always did.

Q. What did she say about whether she would go down? A. She would come down just as soon as they could.

Q. And you and your husband went on? A. Yes.

Q. Did your son stay up with his wife or come down with you? A. He stayed up with her.

Q. After you got to Florida, did you communicate with them in Deal at all? A. Every night.

Q. How would you communicate with them? A. Telephone.

Q. Whom would you talk to? A. Sometimes I would talk with my daughter-in-law, and sometimes I would get my son on the phone.

Q. Why did you call up every night? A. For two reasons: before the child was sick, naturally we called up to find out when they were coming down and how everything was at home, and then when we were more than anxious about the child, we called up about her and also how everybody else was, because naturally, I was more than interested in my son because I knew he was not very well.

Q. What was the condition of your husband's health at that time? A. Very poor.

Q. Did your son come to Florida? A. Not until long after.

Q. When did he come down? A. He was there about three weeks before his father died.

Q. His father died when? A. The 24th of March.

Q. And he got there about the 1st of March, 1929? A. Along about that time.

Q. Up until that time that you left for Palm Beach, had you had any serious differences with your daughter-in-law? A. Well, she had made it a very unhappy Christmas for us.

Q. Were you in the North at Christmas? A. Yes.

Q. What happened at Christmas that makes you say that? A. I thought we had gone all over that, that she spoke so rude to Mr. McDonald about his bonds and stocks.

Q. Did you hear that? A. I certainly did.

Q. Where were you when that took place? A. In the room with her.

Q. What did she say to your husband? A. She told him that he ought to sell his stocks or shut up.

Q. What did he say? A. He didn't say anything just at that time, and later on we had another argument, and he told her he did not want her to say anything like that again to him.

Q. Did you ever tell your son about that? A. Never in my life.

Q. You did not say anything about it to Jack? A. Never.

Q. That happened before you went South? A. Yes, that happened at Christmas time.

Q. But you say you continued to call your daughter-

in-law up from the South? A. That is when we were home.

Q. I mean, when you got to Palm Beach, you called her up and talked to her? A. Every day, yes.

Q. You asked her about her daughter? A. I did.

Q. Your husband died in Palm Beach in March, did he not? A. Yes.

Q. And your son was there then? A. Yes.

Q. When did you come North? A. About the 29th.

Q. The 29th of March, 1929? A. When we got home.

Q. Your son came with you? A. Yes.

Q. You brought your husband's remains? A. Yes.

Q. When you got back to the house at 70 Esplanade, was your daughter-in-law there? A. Yes.

Q. Did you witness any arguments between your son and his wife at that time? A. No.

Q. Did you have any arguments with your daughter-in-law at that time? A. No, I did not.

Q. How soon after you got back did the funeral take place? A. The next day.

Q. Your son continued to stay at No. 70 Esplanade? A. Yes.

Q. Did his wife stay there? Was she living there? A. No, she went back.

Q. Went back where? A. To No. 10 Whitehall.

Q. How long did she stay at 10 Whitehall? A. I couldn't tell you that; I don't remember. I would say probably two or three days, and then she returned.

Q. Did you hear any conversations between them from the time she went to Whitehall until she returned? A. No, they seemed very unhappy, and I know that Jack wanted her to return, and she said she would.

Q. You say you had no conversations with her about that time? A. I knew nothing about it.

Q. When she came back, did you continue to live together as before?

MR. STEIN—I move that testimony be stricken out as to the other conversations, inasmuch as she did not hear them.

THE COURT—Unless she heard it, that part of the testimony will be stricken out.

By MR. KREMER:

Q. You did not hear any conversation between your son and his wife about that time? A. You could not help it. They seemed very unhappy. I can't really tell you, I don't know.

Q. You don't know what they said that leads you to say that they were unhappy? A. They did seem unhappy.

Q. If you heard her say anything you may tell it, but — A. She thought that Jack had not treated her just right.

MR. STEIN—I object to what she thought.

A. That is what she said.

By MR. KREMER:

Q. To whom did she say that? A. It was common talk.

Q. Did she say it to you? A. I can't remember that.

Q. Did you hear her say it to Jack? A. I know that she did say that she thought he had not treated her right.

MR. STEIN—I move that that be stricken out, unless the witness can say that she heard it.

By MR. KREMER:

Q. In any event, you testifified that she returned? A. Yes.

Q. And she and her husband continued to live at No. 70 Esplanade during the Spring and Summer? A. Yes.

Q. What were your relations with your daughter-in-law during that Spring and Summer of 1929? A. They seemed to be all right.

Q. Did you continue to go about with her or not? A. She seemed very anxious to be with me and did not want me to go to New York alone.

MR. STEIN—I ask that that be stricken out as not responsive.

THE COURT—Yes.

By MR. KREMER:

Q. Did she talk with you? A. Yes.

Q. What did she say to you about going to New York? A. She did not want me to go alone, because she thought I was so nervous and did not think it was right for me to go anywheres alone. I said, "I am not an invalid, and I have been able to go about, and I don't see why I should take up your time to go with me."

She said, "I want to be with you, mother," and I said, "All right, Gertrude, if you feel that way about it," and I went with her every time she wanted me to go.

Q. In the mornings, what would happen as to breakfast? A. I don't know quite what you mean by that question.

Q. Did you have your breakfast together or apart? A. No, I always had my breakfast with Jack.

Q. Did you see your daughter-in-law in the mornings? A. She very seldom got up to breakfast.

Q. Where was her breakfast served? A. In her room.

Q. Where did you have yours? A. Sometimes in my room if I was not feeling well, but most times I was at the table.

Q. Is that where you had your breakfast? A. Yes.

Q. How many times during that Spring and Summer of 1929, as nearly as you can recall, did you go to New York with your daughter-in-law? A. Many times.

Q. How often a week? A. Well, probably once a week

Q. You went on an average of once a week with her? A. Yes.

Q. Did you have any serious quarrels during the Summer with her? A. The only real quarrel I had with her was when I felt she was trying to make me feel as though Jack did not care for me.

Q. What happened at that time? A. By telling me that she wished that I would go—that his father and I would go off by ourselves and not depend so much on him.

Q. I am alluding now to the Summer of 1929 when

his father was dead. A. That is just what she did say during that time. That is what made me feel so dreadful.

Q. What quarrel did you have during the Summer of 1929, if any? A. Our quarrels were not numerous.

Q. Were they serious? A. Well—

MR. STEIN—I object to that.

MR. KREMER—I will withdraw the question.

10

Q. How many quarrels, from the time of your husband's death up until the time you moved to the apartment house at Red Bank did you have with your daughter-in-law? A. I don't suppose more than three or four quarrels, and they were such as that I have just spoken about now.

Q. Were they permanent, or did you make up again? A. No, she was all right, and everything was all patched
20 up, and forgotten, as I thought.

Q. In the Fall of 1929 you went to live in Red Bank, did you not? A. Yes.

Q. What were the circumstances under which you moved from Esplanade to Red Bank? A. Well, the main reason was I felt as though we should cut down expenses a little bit, and the other reason was that I was so terribly lonesome in that house, so we decided to go in separate apartments.

Q. Did you discuss it with your daughter-in-law? A.
30 We did.

Q. What did she say about it? A She was perfectly agreeable.

Q. At the time you moved from Esplanade to Red Bank, were you quarreling or not? A. No, we had one argument.

Q. What was that? A. That was about some money that I had loaned Jack to the extend of into the thousands, that I had put up my securities as collateral, so that I could get the money to run his apartment and help him finance it, and I said that I though he ought to protect me, and he said he was going to, and I said, "Gert. it will be all right with you and Jack, but you have children, and I am a widow, and I have to look after myself, and I think you ought to sign some of his property over to me."

Q. When did you have this conversation? A. That was after Mr. McDonald's death.

Q. What did she say to that? A. She was lying in bed at the time, and she said, "I don't intend to do it." She said, "If you never get another cent, you would have plently to take care of you, and I don't intend to do it. I have children, and they have to be entertained, and I have to entertain their friends, and I am going to see that they get what is coming to them." Of course, I thought it was a terrible thing to say to me.

MR. STEIN—I object to that.

MR. KREMER—Yes.

Q. After she said that, what did you say? A. I said nothing more about it.

Q. Were there some deeds signed? A. There were some, but not enough to protect me.

Q. Did Mrs. McDonald and her husband sign some deeds for you? A. She did, she told him herself.

Q. Were you present? Did he say she told him herself? A. I didn't tell him anything about our argument at all. She told him, and it must have worried her—

MR. STEIN—I move that that be stricken out as not responsive, and I should like counsel to show that what the witness just testified to about the wife telling her husband was told in her presence, or else that it be stricken out.

By MR. KREMER:

Q. When you say that Mrs. McDonald, Junior, told your son, were you present when she told him? A. About what?

Q. When she told him about the deeds and about the argument about the deeds? A. No, I wasn't present.

Q. Then you did not know that? A. No, but my son told me.

MR. STEIN—I ask that that be stricken out.

MR. KREMER—Yes.

Q. Just state the conversation that took place there between you and your daughter-in-law or in your presence? A. I am trying to.

Q. How much money did you lend your son in connection with the apartment house? A. Well, I really can't tell you that. He knows more about my affairs than I do. I do know that I had about two hundred—

MR. STEIN—I object if the witness says she does not know.

THE WITNESS—(Continuing)—I think I had about two hundred and sixty-five thousand dollars worth of stocks and bonds, which today I have none.

Q. You don't know exactly how much money you loaned him? A. I could not tell you. I have notes that he has given me, and I think he has everything—I think he brought everything with him today.

Q. In what form did you lend him that money? A. I had to put those stocks up as collateral.

Q. Did you give him any of the money in cash? A. Yes, some cash.

Q. Do you recall how much in cash you gave him in connection with the apartment house? A. Quite some —I have notes for that.

Q. In addition to the money that you loaned him for the apartment house, did you give him other money after he was married? A. I certainly did.

Q. How much money, if you can tell us, have you given him since he was married, and independently, any money that you gave him to build the apartment house? A. I couldn't tell you that; I have the checks there.

MR. STEIN—I object to that.

By MR. KREMER:

Q. Can you tell us approximately?

MR. STEIN—I object on the grounds that it has no bearing. If she cannot tell, she cannot tell approximately.

THE COURT——I will allow the question.

(Argument)

By MR. KREMER:

Q. Can you tell us approximately how much money you loaned to your son during his married life? A. He has a check there of $18,000 that I gave him.

Q. When did you give that to him? A. I gave that to him when he was in such trouble here of late. I gave him another check of $15,000.

Q. When did you give him that? A. Here, recently.

Q. During the first two or three years that they were married, did you give him money? A. Always giving him money

Q. Can you tell us any specific sum? A. $1,000 at a time, and $500, and so on at different times. I can't tell you any more than my check book shows, and I can produce that, of course.

Q. Did you give any money directly to your daughter-in-law? A. No, I did not.

Q. In the Fall of 1929 you said you moved up to Red Bank? A. Yes.

Q. Where were you located in Red Bank? A. On the first floor of the six-room apartment.

Q. Where were your son and his wife? A. Both on the second floor.

Q. Where did they take their meals? A. With me in our apartment.

Q. In your apartment? A. Yes.

Q. Why was that done? A. Well, one reason was that the apartment was not large enough for her that she could have a room for her children, and a second reason was that she would like to have a room where she could have a couch and Jack could have a writing room, and they decided to have their meals with me, and I brought my cook with me.

Q. They had their meals in your apartment? A. Yes.

Q. Did you request that they have their meals in your apartment, or did they? A. I don't think there was any thought of that being brought up at all. It was just decided that the apartment was not quite large enough, and that is what they would do.

Q. Did your daughter-in-law raise any objection to it? A. Not to my knowledge.

Q. What time in the Fall did you get to Red Bank? A. I think it was in October.

Q. Did they proceed to take their meals with you? A. Yes.

Q. You would have dinner together every night? A. Yes.

Q. During that time, from then up to Thanksgiving, did you have any quarrels at dinner time? A. No.

Q. Did you have any quarrels with your daughter-in-law at meal time? A. No.

Q. Was there any friction due to the fact that they were taking their meals with you A. I never noticed anything.

Q. During that time did you go about with your daughter-in-law as you had? A. Yes.

Q. Where did you go with her? A. The same places, New York.

Q. How often per week did you go to New York with her while living in Red Bank? A. Not too often, because I wasn't feeling so well; once in a while; I don't think I went very often with her.

Q. During the day, where would your son go? A. To business.

Q. Every day? A. Pretty much every day.

Q. With whom would you spend the day? A. Myself.

Q. Were you with your daughter-in-law every day? A. My sister-in-law lived with me.

Q. Lived in the apartment with you? A. Yes.

Q. Were you in your daughter-in-law's society much or not A. Not so very much.

Q. While you stayed there in Red Bank up until the time that you went to Pinehurst, did you have any quarrel with her? A. Yes, we had a quarrel. I can't say that I had a quarrel or she was really quarreling directly with me, but there was some misunderstanding about going to South America.

Q. Did you have any conversation with her about going to South America? A. I wanted her to go with me.

Q. What did you say to her? A. I asked her to go. My health was in such a bad state that Jack wanted to take me away.

Q. What did she say when you asked her to go? A. she said she would not go. She didn't intend to leave her children, and I said that I thought her duty was toward her husband, that he had tried to come back and tried to be adjusted, and I thought it was her duty to be with him, and she said, "I would not care what you think; I am going to stay with my children."

I said, "All right, Gert, if you feel that way about it, all right."

Then I decided to give up my trip to South America, because I didn't think it was the right thing for me to take him away, so I remained home, and then I heard afterward—

MR. KREMER—Never mind about that, unless she said it to you.

THE WITNESS—She did say it to me. She said, "I think you should go. He is very much disappointed and wants you to go. He has made up his mind to go." I said, "All right, then I will go into New York and we will go and get the reservations again."

I did, and she went with me, and we looked at the steamer, and I had decided I would go, and I said, "I think I will tell Jack, as long as I know he is so pleased. I think I will call him up on the phone and tell him that I am going to go with him."

She said, "Don't do that. If I were you, I would wait, and it will give us something to talk about at the dinner table. Wait until we come home, and we will talk it over," which I did. That night something upset him dreadfully.

He was not himself at all, and when I told him I had gone to New York and looked after the reservations again, I said, "Will you pick them up for me?"

He said, "No, you disappointed me once, and I am not going to get them again. You can take care of yourself." That was most unusual for him to say anything unkind like that to me, and it affected me terribly, and I went into my room and cried, and that's all I know. There was somethink about a desk that had been moved, that Mrs. McDonald did not quite like, and I think they thought that I had moved it, which I did not do, and that made him provoked.

Q. How long was this before you went to Pinehurst, referring to this conversation that you are telling us about now, and the night you got home from New York? How long before you went to Pinehurst was this? A. A few days, and then after that I decided that we would go to Pinehurst.

Q. Did you ask your daughter-in-law to go to Pinehurst? A. I surely did.

Q. What did she say? A. She would not go.

Q. What was the reason? A. The same reason; she would not leave the children.

Q. When you say the children do you mean that she had some boys in addition to the girls? A. The boys were coming home for Thanksgiving.

Q. Was there any quarrel about the fact that she was going to stay with the children? A. I thought she ought to go. I said, "I think your husband comes before the children."

She said, "I don't care what you think."

She was going to stay.

Q. Do you recall the last night before you left for Pinehurst? A. I had some checks to make out.

Q. You do recall the evening? A. Yes.

Q. You all had dinner together? A. Yes.

Q. Was there any trouble at dinner? A. None at all. I asked my son if he would fix my check book, because I am not very familiar with those things, and to make out some checks for me, and he said, "I will after dinner." He had no place to work except the dining-room table, so after it was cleared away, he fixed my check book and made out a few checks for me, and he said, "What are you going to do? Are you going to bed?" I said, "No, I think I will sit up here a little while. Don't you stay down here, because it is not necessary, but you go upstairs."

He said, "No, do you want to get rid of me?"

I said, "No, I don't want to get rid of you, but I would rather you go upstairs."

He said, "I am going to sit down here for a few minutes with you."

So I saw that he intended to stay with me, and I got undressed and went to bed, and he sat on the side of my bed and talked to me and held my hand until he thought I had gone to sleep.

Q. How long did he stay? A. Probably a half-hour.

Q. That was right after dinner? A. I sat up for a few minutes after dinner.

Q. Where did your daughter-in-law go? A. She was in the room, and I asked her to stay, and she said, "No, I am going upstairs to read."

Q. Had you had any quarrel with her up to that time? A. No.

Q. You say that after a half hour your son went upstairs? A. I should think it was about a half hour.

Q. You don't know what happened after he got upstairs? A. Except what they told me.

Q. What she told you or he told you? A. What he told me.

Q. The next morning you left for Pinehurst? A. Yes.

Q. How long were you at Pinehurst? A. About ten days, maybe not ten days, probably a week.

Q. Did you or your son send any communication? A. Jack sent a telegram to her on Thanksgiving Day.

Q. He returned to Red Bank after a week or ten days? A. Yes.

Q. Did you see the telegram he sent? A. I did, because I sent it for him.

Q. What did it say? A. It said just what he said, "Happy Thanksgiving." He was going out to play golf and asked me; he said, "Mother, will you send this dispatch for me?"

And I said, "I will," and I did.

Q. You returned to Red Bank about a week or ten days to the apartemnt? A. I think so.

Q. Did you go in your daughter-in-law's apartment? A. She was not there.

Q. Did you go in the apartment? A. No.

Q. When did you next see her or have any communication with her? A Well, I heard that she was sick. I heard that she was quite sick, and I called up and got Miss Daley to call up the doctor and find out how sick she was, Doctor Slocum.

Q. Did you talk with your daughter-in-law after that? A. No.

Q. You did not see her anymore? A. No.

Q. Did you go down to No. 10 Whitehall? A. I went down shortly after with Jack and asked her to—

Q. What did you say to her when you got down there? A. I asked her to come back with us and forget everything.

Q. How long after you got back home from Pinehurst was that? A. I couldn't tell you, probably two or three days.

Q. You said to come back and forget everything? A. I did.

Q. What did she say? A. That she would not do it.

Q. What reason did she give? A. She didn't give me any reason.

Q. What else did you say to her? A. I said nothing to her but got back in the car and sat down.

Q. I mean when you asked her, are those your words? A. I asked her to forget everything and come back.

Q. Did your son talk with her? A. Yes, he did, about an hour.

Q. Did you hear the conversation? A. No, I did not.

Q. You did not hear any of it? Where did the conversation take place? A. While she was resting on the couch.

Q. You were with her at the time? A. I was in the car.

Q. You did not hear that conversation? A. No.

Q. And then you returned to the apartment? A. I did.

Q. Did she come back? A. No, she did not.

Q. How long did you stay in the apartment? A. Until February.

Q. Did you see your daughter-in-law New Year's Day? A. Yes, she came to my apartment.

Q. That is New Year's Day, 1930? A. Yes.

Q. Will you state to the Court what took place that day when she came? A. Well, I heard that—

MR. STEIN—I object to what she heard.

Q. Just state what took place. A. It was told me that they were going—

MR. STEIN—I object to that.

Q. Just state what was said by you and what was said by your daughter-in-law from the time she came in the door until she left? A. Well, Jack and she, they had come to some understanding, as I believed, and that they were coming back to live together. That is the way I understood it. That is what Jack told me.

MR. STEIN—I move that that be stricken out.

MR. KREMER—Yes.

Q. Just tell what she said that morning. A. I have to tell what happened.

By THE COURT:

Q. Just simply tell us what she said. A. I sent for her as soon as I thought she was coming back.

Q. How did you send for her? A. By telephone.

Q. Yourself? A. I don't know who telephoned; I think it was Jack telephoned.

Q. You had somebody call her up? A. Yes.

Q. And as the result of that telephone call, she came up to your house? A. She did.

Q. When she came in what was said? A. She said she didn't know I was sick, and I said I had been sick for quite some time.

I said, "Gert, I have sent for you because I know and have heard that you and Jack are going to live together again."

She said, "Who told you that?"

I said, "Jack told me that."

She said, "He is a liar."

I said, "That is pretty strong language for you to use, Gert."

She said, "It is not so. Did he tell you what the conditions were that I would come back?"

I said, "No, he didn't tell me any conditions what soever."

She said, "I am not coming back, and I am going to

start action against him, and when I get through with him, I am going to start at you."

I said, "Gert, why do you want to sue me? I have never done anything. Why do you want to do that?"

She said, "You know what alienation of affections means?"

I said, "I certainly do."

So I said, "All right, Gert, if you feel that way about it, don't put me on the stand in this alienation case, because if you do, you are going to be very sorry, because you will be awfully ashamed, and I am going to say something that will certainly make you feel ashamed," and she walked by me and blew the smoke in my face twice, smoking a cigarette.

Q. Did she say anything more? A. Not that I remember.

Q. And then where did she go? A. She went out and put her coat on and went out.

Q. Did you say anything more? A. No.

Q. Since that time have you talked with her any further up until the time you came up to Elizabeth? A. No, I don't think so, not until a few days ago.

Q. During this time that your son and his wife lived together, did you ever say anything to him to influence him against your daughter-in-law? A. No, never in my life.

Q. Did you ever repeat to him any conversation that you had with her? A. Never.

Q. Did you ever repeat to him any quarrels that you had with her? A. Never.

Q. Did you ever tell him anything about what your husband had said about the bonds and his dissatisfaction with his daughter-in-law? A. No.

Q. There has been some testimony here by a servant named Sadie Williams. Do you know Sadie Williams? A. Yes.

Q. How long did you employ Sadie Williams? A. About two or three years.

Q. Which two years did you employ her? A. I had her previous to this last time she was with me, and I discharged her and then took her back again.

Q. Did you discuss your daughter-in-law with Sadie Williams? A. I did not.

Q. Did you ever make any statements derogatory to your daughter-in-law to Sadie Williams? A. I did not.

Q. Do you recall the occasion when she was discharged? A. Do you mean that night that she came in?

Q. Yes. A. Jack came to me and said, "Mother, have you ever said anything to Sadie Williams—" he did not mention the name— "or any of your help about Gert in any way?"

I said, "Not to my knowledge."

Q. What happened then? A. Well, I had noticed that Mrs. McDonald and Sadie Williams seemed to be very friendly, and on one occasion I spoke to Mrs. McDonald, and I said, "I don't know what is the matter with Sadie. She acts so funny to me."

She said, "Why don't you ask her?"—in a very abrupt, mean way.

I said, "Maybe some day I will ask her."

That happened to be down at the apartment, so that night, when Jack asked me this question, I called her in, because I felt that I saw them on several occasions talking together.

Q. Was this when you lived in Red Bank apartment? A. No, this was when I was living at Deal, at 70 Esplanade.

MR. STEIN—I want to find out what she means by "them".

By MR. KREMER:

Q. Whom do you mean by *them?* A. I mean Mrs. McDonald and Sadie Williams. So she came in my room, and I said, "Have you ever said anything unkind or anything that you should not say to Mrs. McDonald?"

She said, "I don't care to discuss this with you at all. I will talk when your son comes in the room."

I said, "I will send for my son."

So then he came in, and I asked her again, and she said several things which I had never said. I don't remember what they were.

I said to Jack, "Jack, why don't you tell the truth? I have been blamed for all this. Why don't you tell the truth? You know you said that you really had lost some love and affection for Gert on account of things that had happened. Why didn't you tell the truth about it?"

He said, "I will," and then he told her, "Yes, Gert, that is so; I have not felt the way I should toward you for the things that have been done to father and other things that you said to mother have changed my affection for you."

He did not say he did not love her; he said, "It has changed my affection somewhat for you."

That is at 70 Esplanade. Then I told her to go, and I said, "I wanted to get rid of you some time ago because

of your relationship with that white chauffeur, and I don't want you any longer."

So they both left.

Q. What did she say when you charged her with that relationship?

MR. STEIN—I object to that.

(Argument)

By MR. KREMER:

Q. Who was the chauffeur in question? A. I think his name was Joe Schlesser.

Q. Was he white or black? A. White.

Q. And the girl was a negress? A. Yes.

Q. What had you observed as to the relationship between the girl and the chauffeur? A. Well, on one occasion I noticed that I went out to the maid's dining-room, and we have two switches there. One lights the porch, and the other lights the dining-room, and I pushed on the wrong switch, and I saw all I cared to see.

Q. Will you tell us what you saw? A. No, I don't care to say.

Q. Whom did you see? A. I saw them both out there.

Q. When you say both, whom do you mean? A. This Joe Schlesser and Sadie Williams.

Q. Where were they? A. They were on the back porch.

Q. Was it dark on the back porch before you turned the switch? A. Yes, it was.

Q. Won't you tell us what their posture was? A.

Well, she got up so quickly that I really couldn't say how it was.

Q. Did you ever see them in any position of intimacy after that? A. No.

Q. There was a Japanese butler in the house? A. Yes.

Q. His name was Mura? A. Yes.

Q. Did you ever discuss your daughter-in-law with Mura? A. No.

Q. Did you ever make any statements to Mura derogatory to your daughter-in-law? A. No, I did not.

Q. Did you ever tell Mura that there was another young lady that you wished your son had married? A. No.

Q. Did you ever tell that to anyone? A. No.

Q. Did you later discharge Mura? A. I did.

Q. When did you discharge Mura? A. What day?

Q. As nearly as you can recall. A. I couldn't tell you that.

Q. There was another servant who testified at the hearing. Do you recall that servant, who is now out of your employ? A. There were three.

Q. There was Sadie Williams, and Mura, and Mary Carter, and Theresa James. Do you know her? A. Yes.

Q. In what capacity was she employed? A. Cook.

Q. Did you ever discuss your daughter-in-law with her? A. No.

Q. When did you discharge Theresa James? A. I didn't discharge her; she left.

Q. How about Mary Carter? In what capacity was she employed? A. As cook.

Q. Did you ever discuss your daughter-in-law with her? A. No, I did not.

Q. Did you ever make any statement derogatory to your daughter-in-law to Mary Carter? A. No.

Q. Did you discharge Mary Carter or did she leave? A. I think she left.

Q. Did you ever have any conversation with Mr. Ambrose McManus about your daughter-in-law and about your son? A. Never spoke to him about it, no.

CROSS EXAMINATION

By MR. STEIN:

Q. You were very friendly to your daughter-in-law, as I understand it? A. Yes, I think so.

Q. You do say there was some unhappiness living together the way you were? I mean, whether or not it was justified on her part, she was unhappy? A. I didn't see any reason for her to be unhappy.

Q. I didn't ask you that; I asked you whether or not the fact is that she was unhappy? A. I can't state that she was.

MR. KREMER—I object to that.

By MR. STEIN:

Q. I understand your testimony to be to the effect that generally there were times when your daughter-in-law was unhappy and your son also? A. I told you that in the beginning. I noticed after we came back with Mr. McDonald's body, I said they seemed very unhappy.

Q. And even before that, there were occasions when there was unhappiness between the two, was there not? A. I didn't say so.

Q. I am asking you. A. No, I didn't say that.

Q. Not what you said, but I am asking you now. A. No, I didn't notice there was any unhappiness.

Q. The incident of this Sadie Williams took place before you went down South? A. Yes, I can relate that.

Q. That was one time when there was trouble in the house there in which you were involved, before your husband died, wasn't it? A. No.

Q. You were not involved? A. It was not before he died, but it was after he died. That is a mistake, Judge, because there was trouble with some janitor named David.

THE COURT—Let us clear this question up as to when it was.

By THE COURT:

Q. Sadie Williams left your employ in October, 1929? A. Discharged, yes.

By MR. STEIN:

Q. If your son should want to live with his wife away and apart from you, that would be all right with you, would it not? A. Absolutely; I offered to do that.

Q. You have no objection to the two of them going away by themselves? A. Not all all, if they care to.

Q. So if your son does not choose to live away from you and live with his wife separately, that is his business, is it? A. Absolutely.

Q. You won't say that there were not differences between you and your daughter-in-law after she came to live at 70 Esplanade, will you? A. I told you the differences.

Q. I am asking you. A. And I told you.

Q. You say there were differences? A. Yes, when she was very unkind to me. There was no reason why she should be.

Q. Regardless of your excuses that you offer, there were differences, weren't there?

MR. KREMER—I object.

10 A. There could not help but be with such a thing as that.

By By MR. STEIN:

Q. What do you mean, *a thing as that?* A. I think I told you.

Q. I am asking you what you mean by the answer, *such a thing as that?* A. The way she talked to me in
20 regard to what I asked her to do.

Q. What I mean is that you are not referring to your daughter-in-law as a thing, are you? A. No.

Q. After your son and your daughter-in-law came to live with you, didn't you say that you noticed that she was making comments concerning you to your son? A. Yes, she did.

Q. Were those comments made by her—speaking of your daughter-in-law—to your son concerning you in your presence? A. No.

30 Q. How did you learn of the comments which your daughter-in-law was making to her husband? A. I don't know what you have reference to now, Judge.

Q. I understood you to say that your daughter-in-law, after she came to live with her husband in your house,

made comments to your son concerning you. A. She told these things herself. She said such things as I have told here to Judge Kremer herself. I didn't tell him.

Q. Why don't you answer my question? Did I understand your testimony to be to the effect that after your daughter-in-law came to live with you, you noticed that she commenced to make comments concerning you? A. Well, I don't know as you would call them comments. She just simply told him things that had happened and said, "I suppose your mother is very angry at me because I did such and such a thing."

Q. Who told you that she said that? A. That wasn't told to me until after all this had happened.

Q. What had happeneed? A. All this trouble had come up. My son did not run to me and tell me all this.

Q. I didn't ask you that. You first learned of the trouble between yourself and your daughter-in-law after this suit was started, is that what you mean? A. Yes, the greater part of it was.

Q. What part did you learn after the suit was started that you did not know before? A. I can't answer your questions, Judge. You don't seem to put them right. If I answer those questions, they have not been asked me yet, so I can't tell you the things she told Mr. McDonald. I can't tell you.

Q. Which Mr. McDonald? I understood you to say that some of the things, that are now sworn to in this case in the way of troubles between you and your daughter-in-law, you knew before the suit was started, and others you learned of afterwards. A. If you have reference to the—

Q. Did you say that?

By THE COURT

Q. Mrs. McDonald, some of them you knew before and some of them you learned afterwards, is that right? A. I am trying to tell you this one thing about this money.

Q. We just want you to answer the question, whether or not you knew some before and some afterwards or all before? A. Some of this happened before and some after.

By MR. STEIN:

Q. What are the things that you knew before, any differences that caused quarrels between you and your daughter-in-law before this suit was started? A. One was this asking her about putting the property in my name. The other was how she spoke to Mr. McDonald. The other was telling me that my son did not want me to go out with him, that he was sorry we had ever—

Q. Lived together? A. No, sorry that we had gone to White Sulphur, that he knew we did not enjoy the people there and was very sorry his father and I had gone. That is what she told me, Mrs. McDonald I am talking about. Those are the things that I knew.

Q. What things did you learn of after the suit was started? A. I don't know if there were any. There wasn't anything to learn about. Those were all the things that seemed to be the trouble.

Q. Did you say in your affidavit on page 20 thereof filed in this cause, "After my son and daughter-in-law lived with us awhile, I noticed that she was making comments to me which were calculated to create trouble? A. Did I say that? I don't remember.

Q. I call your attention to the language in your affidavit to that effect, that, "After my son and daughter-in-law lived with us a while, I noticed that she was making comments to me which were calculated to create trouble." A. That must have been it. I don't know of anything—

Q. Wait a minute, please; I am asking you now whether you remember making that sworn statement? A. I do not.

Q. I am asking you whether or not you remember making that sworn statement, "After my son and daughter-in-law lived with us a while, I noticed she was making comments to me which were calculated to create trouble". A. I said, I don't remember.

Q. Do you remember saying that in your affidavit? A. I said I don't remember saying that.

Q. If I say to you that is in your affidavit on page 20, and show it to you in your affidavit, will you then believe that it is there? A. Why, I would have to.

MR. KREMER—May I ask the purpose of this question?

MR. STEIN—The next question will give it to you.

MR. KREMER—I object to it. I think it is only competent to contradict the witness now, and that is the only use that the affidavit can be put to.

By MR. STEIN:

Q. Have you your glasses with you, Mrs. McDonald? A. No.

THE COURT—He may show it to the witness.

MR. STEIN—The witness says that she has not her glasses with her and cannot read it.

By MR. STEIN:

Q. Will you bring your glasses with you in the morning? A. I cannot read very well without glasses and I have not got my glasses. I have not as yet got glasses.

Q. Don't you read at all, Mrs. McDonald? A. A little; not very much.

Q. Will you read a little now? A. I told you I could not read it. I am perfectly willing to take your word for it.

Q. You say that you do say in your affidavit that, "After my son and daughter-in-law lived with us a while, I noticed that she was making comments to me which were calculated to create trouble." I now ask you to tell the Court what those comments were that you speak of here in your affidavit, or refer to without mentioning. A. I can't really remember. I probably will later on. They may come to me, but just now, I cannot really tell you.

Q. This case has been on for nearly a year, and you knew you made this affidavit and would be likely questioned on it? A. Yes.

Q. But you cannot tell us now what you meant by that passage when you say, "I noticed that she was making comments to me which were calculated to create trouble?" A. Well, as I told you before, it was this trouble that we had along Christmas time. I can relate one now. That has just come to me now.

Q. This was before Christmas time. This was after they came to live in your house at 70 Esplanade, which

was long before Christmas time. Can you recall any of those things that— A. Do you mean before they came to live with me?

Q. No, after. A. Yes, on one occasion, Mr. McDonald, my son, had a janitor and a janitress down at his apartment.

Q. That is not at 70 Esplanade, is it? A. It is at 70 Esplanade.

By THE COURT:

She may answer the question.

THE WITNESS—I can explain. These two people were not just what he desired down there, and they had quite a good deal of trouble. He had trouble with them, and on one occasion, about Christmas time. I went down and gave them a small Christmas gift, that is these people I am talking about, this janitor and janitress.

Q. What were their names? A. Davis, and when I got down there she was—I didn't know she was intoxicated, but she was intoxicated.

Q. Who is that? A. This Davis woman, and she got me in the hall and talked scandalous to me about Mrs. McDonald and said several things—

Q. What has that to do with this here? What I am referring to is that you noticed that Mrs. McDonald was making comments to you, which were calculated to create trouble and not what some janitress told her.

MR. KREMER—I think that a reading of this af-

fidavit will show that there is a typographical error in this affidavit, which counsel can see.

(Argument)

By MR. STEIN:

Q. I am on this affidavit of yours in which you speak of the time when the young folks first came to live with you at 70 Esplanade. In the affidavit you say that you noticed then that she was making comments to me,"—meaning to you—"which were calculated to create trouble." I am asking you if you can remember just what — A. No, I don't remember.

Q. Pardon me, please, will you permit me to finish the question? I am asking you if you can remember just what comments, if any, you had in mind at that early time mentioned in this affidavit? Can you remember? A. What I did mean was that she was telling my son things that were going to cause trouble. That is exactly what it should have been.

Q. What were those things? A. I have been trying to tell you. One was that—I can't recollect just at the moment, but one was that occasioned with this janitress down at the apartment.

THE COURT—What is the date of the incidents narrated in the affidavit? As I understand it, it is prior to December, 1929.

MR. STEIN—It is.

THE COURT—Then I understand from Mrs. Mc-

Donald that this incident in the apartment was at the holidays of 1929, Christmas day.

THE WITNESS—Yes, it was after Christmas that this happened.

MR. KREMER—You have the wrong year; it is 1928.

THE COURT—We may as well get this straightened out now.

By MR. STEIN:

Q. So that that could not be what you had in mind when you made this affidavit?

MR. KREMER—Certainly it could. It is prior to 1929. She said, "After my son and daughter-in-law had lived with us a while, and they came and lived in the Summer of 1928." This happened after that time.

MR. STEIN—The only one that says it was the Summer of 1928 is this witness and you.

By MR. STEIN:

Q. Finish you answer, please. A. Mr. McDonald—I had told my son about it, and he told me by all means please don't tell Gert about that. She spoke very unkind about Mr. McDonald and myself, too, but I didn't know she was intoxicated, and of course, I didn't think anything about it at all. I thought she was in her right mind and knew what she was saying, but she was intoxicated,

and she spoke very unkind about my husband and myself and my son and Mrs. McDonald.

Q. You say that you did not think she was intoxicated, and then you say that she was. What do you mean by that? A. She was intoxicated, but I did not know she was.

Q. How did you find out that she was? A. Because I was told she was.

MR. STEIN—I move that that be stricken out, that the woman was intoxicated.

By MR. STEIN:

Q. You, yourself, did not believe she was, did you? A. I did, afterward by her conversation.

Q. What had that to do with this statement here that Mrs. McDonald, the complainant, had been making comments to you. A. That is a mistake. She never made comments to me.

Q. And you don't recall just what you did mean? A. If you will permit me—

Q. You don't recall now what you meant by that statement in the affidavit? A. What I meant was that she told Mr. McDonald to tell Mr. McDonald things that would occur. I didn't tell him.

Q. Occurred between who? A. Herself and myself.

Q. There were things that did occur between you two women? A. Such as you heard now.

Q. Whatever they were, Mrs. McDonald would tell that to her husband? A. She would.

Q. He was your son? A. Yes.

Q. And your son would tell it to you? A. No, he didn't always tell it to me. He didn't tell anything to me until after this thing all came about.

Q. He never told you anything about it? A. No, he didn't until he went down South, the last time he was South. Some of it he did.

Q. He never told you anything about it, you say? A. Until we were south.

Q. You say in your affidavit on page 21, "she—meaning the complainant—told me on one occasion that she had been out walking with my son, and that he said he would like to go places, but he could never go, because he was tied down to his father and mother." Did she tell you that? A. She did; she didn't say it in just those words.

Q. Did you tell that to your son? A. No, I did not.

Q. Then what did you mean by this in your affidavit, following that statement:

"This made me feel very badly, and I cried about it. I spoke to my son about it, and he denied that he said anything of the kind."

Which is right, that you did speak about it to him, or you did not? A. No, I think he heard it. I don't think I spoke to him about it.

Q. I am asking you which is correct, your sworn statement that you did not tell your son about it, or your sworn statement in this affidavit, "that I spoke to my son about it, and he denied that he said anything of the kind? A. That I can't say.

Q. You cannot say which is right? A. No.

Q. Are they both wrong? A. I don't know; I can't say, but I know that is what she told me.

Q. I want to know if you told your son. A. I don't remember if I told my son.

Q. Did you remember this incident of what you did tell your son when you made this affidavit in this case, or did you say this without knowing whether or not it was so, after relating in your affidavit this: "She told me on one occasion that she had been going out walking with my son, and that he said he would like to go places, but he could never go, because he was tied down to his father and mother. This made me feel very badly, and I cried about it. I spoke to my son about it, and he denied that he said anything of the kind, and that he had never had any intention of giving his wife or anyone else the impression that such comments would create?" A. Yes.

Q. Did you talk to your son about it? A. Everyone knew about it.

Q. Please answer the question. A. No, I didn't have to tell him, because everybody knew about it.

Q. Did you tell your son about it? A. I didn't tell him, because they knew about it in the house. It was public; everybody knew about it.

Q. Did you tell your son about it? A. No, I didn't tell him, that's all I can say.

Q. But you did swear here in this affidavit in this language: "I spoke to my son about it, and he denied that he had said anything of that kind, but he had never had any intention of giving his wife or anyone else the impression that such comments would create." Was that true what you swore to here? A. Yes, that was true, because I think I can explain it.

Q. That answers the question. A. Yes, but am I not allowed to tell how or why I said it?

THE COURT—If there is anything necessary your own lawyer will take care of that.

By MR. STEIN:

Q. There was another occasion after all four of you had been to Hot Springs on a short visit. Do you remember when you returned from Hot Spring that you and your daughter-in-law had another talk about their being alone and not always going with you and your husband? A. I surely do remember that.

Q. What was that talk? A. She informed me that my son and she had taken a walk in Ocean Grove, and while there, he had told her that he wished his father and mother would go by themselves and not have to wait until we were ready to go anywheres to take a trip.

Q. Did you get very sore and angry and put out about it? A. Why wouldn't I?

Q. I am asking you whether or not you did? A. I didn't get sore; I cried, and I felt terrible and went in my room and cried. I felt hurt.

Q. What was there about that statement that should hurt you, that the young folks wanted to be together once in a while by themselves? A. Because my son did not say that.

Q. How did you know? A. Because she said herself she did not say it. She told me I misconstrued the whole thing, and that it was not so.

Q. Did you speak to your son about that? A. He saw me crying, and he knew it. He could not help but know it.

Q. Did you speak to your son about this specific incident? A. Yes, I did.

Q. What did you say to him? A. I asked him why he should make a remark as that, "because your father and I never wanted to go into your affairs or go wherever you want to go. You always asked us, and it was Gert's suggestion that there were four of us, and wherever we went, she thought that we all ought to go." I said I felt very badly about such a thing, and he said, "Mother, I didn't say any such thing at all."

Q. It was a fact that wherever you and your husband went, the young folks went with you? A. Not always.

Q. How many times was it that you and your husband went away alone? A. I couldn't tell in three years how many times.

Q. About how many? A. I couldn't even tell you that.

Q. Can you tell about how many times you and your husband were away together with the young folks? A. I really couldn't tell you.

Q. Can you mention a single occasion when you and your husband were away that the young folks were not with you? A. No, we never went away very much; in fact, we never went away alone and very seldom took a trip and never went anywheres.

Q. But never went alone? A. Very seldom.

Q. Do you now say that on those occasions the young folks insisted on going with you? A. I didn't say that.

MR. KREMER—I object to the question.

THE COURT—The testimony shows conclusively that they did go and go together.

By MR. STEIN:

Q. The defendant is your only son, is he not? A. Yes.

Q. And he has never been very well, very strong or healthy or robust, has he? A. Not very.

Q. He was how old when he married? A. Thirty-six.

Q. You were very much attached to him and he to you? A. Always, very.

Q. And he to you? A. We were attached to all three of us.

Q. And since the death of your husband, you and your son have become more attached than before? A. I don't think he could any more than he had ever been.

Q. I understood you to say that when you and your husband were in Florida, that you called him up every night on the wire?

MR. KREMER—I object to that. She said she called up the family.

By MR. STEIN:

Q. I am asking you whether or not you called up every night on the wire? A. I inquired about him with his sickness.

Q. You called up every night at his home? A. For both.

Q. The question was whether you called up every night on the wire? A. I did.

Q. When you called up, you would ask for both, is that right? A. I did.

Q. When your son finally went South in 1929 to join you and your husband there—just before your hus-

band died—after he arrived, did you call up every night, too? A. I called up several times, and he called up every night.

Q. I am asking you whether or not you called up every night? A. Well, if he didn't, I did, or Mr. McDonald did.

Q. Before your son went to join you down South—that was in March, 1929—had you noticed, previous to that time, any estrangement between the complainant and the defendant? A. No.

MR. KREMER—I object to that.

THE COURT—Gentlemen, we will adjour at this time until ten o'clock tomorrow morning.

(A recess was had until ten o'clock A. M. Friday, October 17th, 1930).

IN CHANCERY OF NEW JERSEY

Between
GERTRUDE T. McDONALD,
Complainant,
and
HENRY J. McDONALD,
Defendant.

Transcript of stenographer's notes of evidence taken in the above entitled matter before HON. ROBERT H. McADAMS, an Advisory Master in Chancery of New Jersey, at his office, Kean Building, Elizabeth, New Jersey, on the seventeenth day of October, A. D. 1930, at ten o'clock A. M.

APPEARANCES:

ALFRED A., ALFRED A., JR., AND RICHARD V. STEIN,
Attorneys for the Complainant,
By ALFRED A. STEIN (Present),
WARD KREMER, ESQ.,
Attorney for the Defendant (Present).

(FIFTH DAY.)

Elizabeth, New Jersey, October 17th, 1930.

(The hearing was resumed.)

ADELAIDE McDONALD, resumed the stand and testified further as follows:

CROSS EXAMINATION (Continued)

By MR. STEIN:

Q. Mrs. McDonald, I believe you referred to an incident in your testimony yesterday concerning some remark that your daughter-in-law made to your husband or made to you where your husband heard it, did you not? A. I don't remember just what it was. I don't remember what you have reference to.

Q. I have reference to the remark which you claimed that your daughter-in-law made in which she said something about "If he is worrying about his finances—meaning your husband—let him sell some of his securities and shut up." Do you remember that? A. I do.

Q. When that remark was made by your daughter-in-law, the complainant here, it was made to you, was it not? A. Yes, we were talking about things.

Q. It was made to you? A. Yes, he overheard it, though.

Q. It was made to you? A. Yes, exactly.

Q. And at the time the remark was made to you, where were you and where was she? A. In her bedroom.

Q. You had gone to her bedroom for what purpose? A. I asked if I could be permitted to go in there and talk with her a little while.

Q. I ask you if you recall for what reason you went there? A. No particular reason; just to be with her and talk with her.

Q. About what? On this particular occasion what did you go to talk about to her? A. I was very worried about Mr. McDonald.

Q. What did you say to your daughter-in-law about Mr. McDonald? A. I don't remember what I said now.

Q. Maybe I can help you. Did you say anything to her about how much your husband was worried? A. Perhaps I did; I don't remember.

Q. Well, but you do remember a part of the talk, do you? A. Whatever is in my affidavit there. I can't remember. That is too long for me to think.

Q. Well, but it was this remark, whatever it was, that your daughter-in-law made to your husband— A. You could not help remember that.

MR. STEIN—Pardon me.

THE COURT—Won't you please listen for the question?

By MR. STEIN:

Q. Do you remember the occasion now? A. No, I don't.

Q. Don't you remember the occasion at all when— A. I do remember going in and talking with her, but just exactly—

Q. And you remember exactly what she said, do you? A. I certainly do.

Q. But you don't remember what you said? A. No, not all.

Q. Any part of it? A. Just what I told you, that I was worried about—I told you I was worried about him.

Q. What did you say? A. I can't tell you what I said.

Q. No part of it? A. No.

Q. Not what you said? A. No, but you may have it there if it is so—

Q. Please don't worry about what I have here. I want your recollection now of that incident. A. Well, I can't tell you.

Q. If I undersand you, you don't remember what you said on that occasion to your daughter-in-law about your husband and his worries, but you do remember what she said? A. Exactly.

Q. And you remember what she said on that occasion because it hurt you so terribly, is that right? A. Surely.

Q. In fact, it was this remark that she made that was the cause, the chief cause of the trouble, wasn't it? A. One of the chief causes.

Q. It was not *the* chief cause? A. One of the chief causes.

Q. I am asking you whether or not it was the chief cause. A. One of them, I say.

Q. What was the other chief cause? A. Oh, several things that happened.

Q. Please mention them. Were you as much impressed with the other chief causes as you were with this one?

A. One of the things that she said was that she thought he was the cause of my son's illness.

Q. That is all that one conversation? A. That is all I remember.

Q. Then, those are the only two things that were the chief causes, the remark which she made to you that if your husband was so much worried about his finances, let him sell some of his securities and shut up? A. That is one.

Q. And she also added at the same time, "He is doing Jack no good," is that right? A. Yes, she did.

Q. That was all in one conversation? A. Yes.

Q. So that one statement was the chief cause of all the trouble, is that right? A. I said one of the chief causes.

Q. What were the other chief causes? A. Well, he was very much annoyed at the attitude she took toward him.

Q. Was that all because of this one cause? A. Several things that she was very insulting to him.

Q. Will you please mention them? A. Well, when he corrected the boys at one time.

Q. When who corrected them? A. Mr. McDonald corrected them.

Q. Your husband? A. I said Mr. McDonald corrected them. My husband corrected the boys.

Q. And Mrs. McDonald corrected your husband? A. Absolutely.

Q. What was said? A. "I think it is a small loss or gain to anyone."

Q. What do you mean by that? A. That is the remark she made.

Q. What did it have reference to? A. A hat or a

cap that he had taken away from the closet belonging to my son and other things he had, too.

Q. This was all in the fall of 1928 before you went South, wasn't it? A. Yes.

Q. Was this difference because of these remarks, that you have related, so great that there was no speaking to one another in the household, your husband to Mrs. McDonald, or to you? A. No, it was absolutely all right.

Q. It was forgotten right away, wasn't it? A. No, I don't think my husband forgot it. He thought about it very often.

Q. How about you? A. It wasn't said to me, but I felt it.

Q. Did you forget about it? A. I forgot about it.

Q. And you forgot it so much that you asked your daughter-in-law to come down South with you, is that right? A. I surely did.

Q. And, of course, at that time she could not go down South because her daughter was sick, is that right? A. Yes.

Q. Did you want her to go? A. I did.

Q. That incident was all forgotten, and there was no more about that, was there? A. No.

Q. But you say in your affidavit "that there were other things said to me which hurt me very much, and it seemed to me that she—meaning the complainant— was doing them with the deliberate intention of creating a breach between me and my son so that we should not all stay together." Will you kindly tell the Court what that was about, these other things? A. Well, on one occasion—I tried to tell you yesterday—Mr. McDonald had a superintendent in his apartment that was not just fitted

for the position, and he was not pleased with him at all. At Christmas time I went down to give them a little Christmas present.

Q. That was in 1928? A. I think it was. It was—yes, 1928, and as I told you yesterday, this woman was intoxicated, but I did not know that she was, and she told me several things that were not very pleasant. One of the things was that she was very disrespectful to me and very disrespectful about Mr. McDonald, my husband, and also Mrs. H. J. McDonald. She said very nasty things, and when I came home—the only one that she spoke nicely of was my son. When I came home I laughed about it, and I said, "We certainly all got a good lecture and razzing down at the apartment today, and you, above all, Gert. We all got it, but you got it worse than anyone."

She said, "What is it?"

I said, "I promised Jack that I would not tell, and I don't intend to tell what it is. It does not amount to anything, and I am not going to tell it, which he had asked me not to do." The things were so terrible that he did not want me to mention them. Nothing was said about it until just a few days before we intended to go South, and at the breakfast table, she said to me, "I want you to tell me what that woman said about me."

I said, "Gert, I promised Jack I was not going to tell, and I do not intend to."

She said, "If you don't tell, I will never forget or ever forgive you for that, and when we go to New York and you want to know how Jack is by telephone, whether or not he has got there all right, I certainly do not intend to tell you."

Of course, naturally, that me me feel pretty badly

to think that she would take that attitude toward me because I did not want to tell her.

Q. What did you think about your having undertaken to tell her that the janitress had talked very terribly about her and then refused to tell her what it was? A. Because I promised not to.

Q. Why did you tell her about it at all? Why did you mention the fact to her that the janitress had said things about her when you promised your son that you would not mention the incident? A. Because he said that she talked about everybody.

Q. Why did you tell her about it at all, if your son had forbidden you to speak to his wife about that gossip? Why did you do it? A. I don't know; it was just simply a joke about it. It wasn't anything serious.

Q. It turned out not to be a joke, didn't it? A. Yes, it did, because she made it.

Q. She wanted to know what it was? A. But I would not tell her.

Q. Did you blame her for wanting to know what it was? A. Yes.

MR. KREMER—I object to that.

By MR. STEIN:

Q. That incident was forgotten and forgiven between all of you? A. It was not, according to my son, the way he felt about it.

Q. According to you? A. No, it was not, because she told something that was not true. I would not tell my son anything about this.

Q. Let us see whether or not it was true. Notwithstanding that you say now that it was not forgotten and

forgiven, you did invite her afterwards to go South with you? A. Why, of course.

Q. And if you had felt very unfriendly to her, you would not have done that, would you? A. No, it is not much a terrible thing as that.

Q. So it did not amount to nothing much, did it? A. As far as I was concerned, no.

Q. You were so anxious to have your daughter-in-law go South with you at the time that you suggested that she go even though her daughter, Patricia, was sick, isn't that so? A. Yes, I did.

Q. Was that anxiety because of the regard you had for her and because you wanted her company, or was it for some other reason? A. No, there was no other reason except that I knew she enjoyed it down there, and I thought she would enjoy being with my son.

Q. The fact is, is it not, that your son was very anxious about having her come along because he was going, isn't that so? A. I am sure I don't know anything about what he thought.

Q. I am now asking you, as a matter of fact, whether or not your son had not talked with you about that and asked you to make sure that Gertrude, his wife, would go down with you and him. A. I don't quite understand.

(The Stenographer read the last question as follows: "Q. I am now asking you, as a matter of fact, whether or not your son had not talked with you about that and asked you to make with you about that and asked you to make sure that Gertrude, his wife, would go down with you and him.")

A. I don't remember of any talk, of that kind.

Q. Whether or not you remember that talk, wasn't it because your son wanted his wife there with him that you were anxious she should go rather than because you wanted her? A. There was never any thought of anything else, that she always came, and we always expected her to come.

(The Stenographer read the last question as follows: "Q. Whether or not you remember that talk, wasn't it because your son wanted his wife there with him that you were anxious she should go rather than because you wanted her?")

A. We all wanted her.

Q. So that everything was all right at that time? A. Yes, as far as I know.

Q. You were the one that must know. It was all right, was it? A. Surely.

Q. So far as you were concerned? A. All right.

Q. When you got South, you went alone, that is, you and your husband, and Jack did not go immediately? He went later, didn't he? A. Yes.

Q. When you and your husband got down South, he was quite ill, and later on Jack came down there, is that right? A. Yes.

Q. As a matter of fact, Mr. McDonald, your husband, died there, did he not? A. Yes.

Q. When you returned from Florida with Mr. McDonald's body, you and your son, you came back to Deal and went to your home at 70 Esplanade, did you not? A. Yes.

Q. When you got to 70 Esplanade, you found your daughter-in-law there, did you not? A. Yes.

Q. Before you returned with the body of your husband, did you and your son discuss your daughter-in-law or any of the incidents which you have related that preceded the trip down South, the troubles that you had and so forth? A. No, I know they had not talked. I was not talking about it. I was not in any frame of mind to talk about it.

Q. You hear your son's testimony here the other day, did you— A. Yes.

Q. (Continued)—concerning the fact that the supposed statement, which Mrs. McDonald made, that your husband was worried about his financial condition and that he ought to sell some of his stock or else shut up? A. Yes.

Q. You heard him say down South that when the father died that thing all came back again? A. I heard that, yes.

Q. Did you and he talk about it? A. No, we didn't talk about it.

Q. Did you observe when your son came back with you whether or not there was the same feeling on his part for his wife as before?

MR. KREMER—I object to that as calling for a conclusion.

MR. STEIN—Strike it out.

By MR. STEIN:

Q. Did you observe how your son acted toward his wife when you got home with your husband's body from the South? A. I really could not tell you, because, as

I told you before, I was in too bad a frame of mind to notice or think of anything.

Q. You did not notice anything? A. No.

Q. You did not notice whether or not they quarreled? A. No, I didn't notice them quarreling.

Q. Didn't you say yesterday that your son told you down South that he had lost the affection for his wife? A. That was South, yes, he did. I did not say he lost affection.

Q. That was just before Mr. McDonald died on that last trip South, wasn't it? A. It was while we were South.

Q. It was on the trip on which Mr. McDonald died, wasn't it? A. Yes.

Q. What did your son say to you on that occasion? A. One of the things was that he asked me whether or not I had told Gert anything about this affair with this Davis, which was the janitress, and he said, "I felt very sorry to think that you had told her when I asked you not to tell her."

I said, "Jack, I did not tell her. She thought I told her the things, but I did not tell her."

Q. He was at that time having a little difference with you because you had told that, is that right? A. Well, because she had told him, "Your mother could not hardly wait until she ran and told me."

Q. We are talking now about what Jack said to you. Jack found fault with you for having told her that, did did he? A. Yes, he apparently thought I came and told told her.

Q. Well, did you come and tell her? A. No, I did not tell her.

Q. What else did Jack say to you? A. I can't tell you what else he said.

Q. I mean before he said to you that he did not care for his wife anymore like he did before. A. He did not say it in those words at all.

Q. What words did he say? A. He said, "I haven't the affection that I would like to have for her."

Q. What was the conversation at that time between you and him that brought that on? A. I don't remember.

Q. You do remember that he did say he had not the affection for her anymore that he had before? A. Yes.

Q. As a mother, didn't that strike you as a horrible thing, that your son should make that confession?

MR. KREMER—I object to that and ask that it be stricken out.

By MR. STEIN:

Q. That your son should make that remark A. Well, I don't understand it.

MR. KREMER—I object to that. I think the question should be stricken out in its entirety on account of the fact that it characterizes "horrible thing" as a condition.

MR. STEIN—I consent that the question and answer be stricken out.

By MR. STEIN:

Q. You have already told us that whatever little feel-

ing there was over any remark had been forgotten when you asked your daughter-in-law to go down South, and now, when your son told you that he did not have the affection for his wife that he should have, what did you say to him? A. I don't remember what I said to him.

"Q. How did you feel about it?")

MR. KREMER—I object to that.

MR. STEIN—If the Court please, I think I have a right. This is the mother of the defendant.

THE COURT—I will allow the question.

(The Stenographer read the last question as follows: "Q How did you feel about it?")

A. I don't think any mother would feel happy that her son was not contented and happy.

Q. That was not what he said to you, that he was not contended and happy. He said, "I haven't the same affection for my wife that I should have." A. Don't you think—

Q. Is that what he said to you? A. He said, "I don't have the affection I would like to have for my wife."

Q. I am asking you what you said to him about that and how you felt about, that he had lost some affection for his wife. What did you say about that? A. I don't remember.

Q. How is it you remember that he did say he lost affection or did not have the same affection, but you cannot remember the other things? A. Well, I can't. I am sorry, but I can't.

Q. Can't you explain that? A. I can't remember.

Q. That statement did impress you when he told you that he did not have the same affection for his wife that he had before, did it not? A. I thought it was a very sad thing.

Q. A sad thing for your son? A. For both.

Q. Being interested in them, did you inquire any further how that came about?

MR. KREMER—I object to that.

A. It was none of my affairs. I did not think it was any of my affairs.

Q. Even though you felt badly, you were willing to let it rest at that? A. Surely, it was none of my affairs.

Q. Did you endeavor to find out what it was that caused this change of feeling and in any offer to do what you could to bring about a better feeling?

MR. KREMER—I object to that.

THE COURT—Objection sustained.

By MR. STEIN:

Q. You have said that when you came back from South with your son you did not notice any difference between them, although you knew that he had lost some of his affection. Is that right, that you did not notice any difference? A. I told you that I was not in any frame of mind to notice or care or think about anything.

Q. Then what did you mean in your affidavit, the replying affidavit filed in this case, in which you say that, "on March 24, 1929, my husband died in Florida. My

son and I brought him back to Deal and went to the house at 70 Esplanade, Deal, and my daughter-in-law was there. She and her husband were not at all on good terms."

What did you mean by that? A. Well, she was in one place, and he was in another.

Q. What did you mean by that? A. Then she said she would not come back.

Q. What did you mean by that? A. She was in 10 Whitehall.

Q. No, this is the day when you returned with the body, and you say that your daughter-in-law was there at 70 Esplanade, and on that very day you say, "she and her husband were not at all on good terms." They had left very friendly and had been calling one another on telephone for Florida, but what happened? A. I knew they were not friendly when he left there, when he left Palm Beach.

Q. When he left Palm Beach, you knew only that he had told you he had lost some of his affection for her? A. I knew he had asked her brother to telephone to his wife.

Q. What was that telephone message? A. Something about leaving her. I didn't hear him telephone, but I knew he did.

Q. You heard him give instructions to Harry McManus? A. I knew he did telephone. I didn't hear him give instructions, but I knew he telephoned, and her brother telephoned.

Q. Whose brother? A. Mrs. McDonald's brother.

Q. He telephoned to Mrs. McDonald something which was— A. I don't know the conversation at all; I knew that he telephoned.

Q. What do you know about your son in connection with that? You were starting to say that you knew he was not friendly because he telephoned. Did your son telephone? A. No, I don't know whether somebody telephoned, but I think it was her brother that telephoned.

Q. How did you know about this telephone, whoever it was? A. How did I know? Because my son told me.

Q. What did he tell you A. I don't remember what he told me.

Q. You don't remember that? A. I know that he asked the brother to telephone.

Q. That is, he asked Harry McManus, the brother of the complainant, to telephone? A. Yes.

Q. Were you there when he asked him to? A. I don't know where I was.

Q. You say— A. Because he told me.

Q. What did your son Jack tell you? A. My son told me he had telephoned or asked the brother to telephone.

Q. What did he say he wanted to telephone there? A. I don't know what he said; I didn't ask him what he said.

Q. You do say you know they were not friendly. You do say that you know that the husband and wife were not friendly while your son was with you at Palm Beach, because your son directed or had a telephone call sent to his wife. You do say that? A. Yes.

Q. Having said that you know they were not friendly, what was it that you know that he sent to her by way of word over the telephone? A. I don't know what it was.

Q. What is it that makes you say that they were not friendly while he was in Palm Beach nad she was home?

MR. KREMER—May I ask what he has reference to? A. Because I knew what the conversation was. He had told me what the conversation was.

By MR. STEIN:

Q. Tell us what he told you. A. He told me that he was going to separate.

Q. And what else? A. That is all I remember.

Q. What did the telephone have to do with that? A. I don't know what you mean by that.

Q. Did he tell you that he had told Harry McManus over the telephone that he was going to separate from his wife? A. Exactly.

Q. And so you knew that he was unfriendly to his wife, while he was alone with you in Palm Beach, because he told you he had lost affection for her because he had caused a telehpone call to be sent to her by her brother that he was going to separate from her, is that right? A. Yes.

Q. What did you mean when you said that when you came back home with the body of your husband to 70 Esplanade on March 24th, 1929, and your daughter-in-law was there, that she and her husband were not at all on good terms and had quarreled very seriously? What was that very seriou quarrel that you refer to? A. Well, I really can't remember just what it was. I know they did not seem to be very happy about it.

Q. But why did you characterize it by saying that they quarreled very seriously? If it was indeed very

serious in your estimation, why can't you remember any part of it? A. As far as I can remember, I know that she went back to 10 Whitehall.

Q. That comes afterwards. We are now at the time when you came home with your husband's body, and with your son, and you came in the house and found your daughter-in-law there. I know that she left there after and went to 10 Whitehall, but before that, you say that you found that they were not at all on good terms and had quarreled very seriously. Who told you that they had quarreled very seriously, or did you hear the quarrel? A. I can't remember. If it is in my affidavit there, why it must be so, because I can't remember. My mind is not clear enough to tell. I don't know.

Q. It is here on the twenty-third page of your affidavit. A. If it is there, it must be true.

Q. You say in there, "They were not on good terms and they quarreled very seriously." All I am asking you now is what that was. A. I can't tell you.

Q. Do you know that they had quarreled very seriously? A. I say I can't tell you. Whatever is in that affidavit must be true.

Q. So it is true that they quarreled very seriously? Do you say that now? A. I think I told you two or three times.

Q. Will you tell me once more? A. If that is in the affidavit it must be true.

Q. And you repeat it now, that they did quarrel? A. I don't remember, but if it is in that affidavit, it must be true.

Q. Will you tell me what happened to your memory, if anything did happen to it, between January 24, 1930, when you made this affidavit, and now?

MR. KREMER—I object to the question. I don't think it has been shown that there is any discrepancy between what is in the affidavit and what she says now.

MR. STEIN—Except that the answer is repeatedly "I don't remember."

THE COURT—I don't think the question has any significance. The fact that the witness is unable to remember or fails to give the further answer. I think is sufficient evidence of the conditions, and whether or not it exists from a defect or wilful desire, is a matter which I think the Court will decide.

MR. STEIN—But the question was asked to aid the Court and for no other reason.

THE COURT—I think I undersand it.

MR. STEIN—Then I will withdraw the question.

By MR. STEIN:

Q. The day before you went to Pinehurst with your son, and while you were living in the apartment at Red Bank, shortly before Thanksgiving, 1929, you knew that your son and daughter-in-law had some difference, didn't you? A. Yes, I did.

Q. You knew that you were involved in that difference? A. I believe I was. Was this the morning before we left, do you mean?

Q. This is the evening before you left? A. Yes.

Q. And you had expressed a desire to have her go

with you to Pinehurst, meaning your daughter-in-law, didn't you? A. I did.

Q. She did not want to go because her children were coming home from school, is that right? A. That is what she said.

Q. The next morning did you notice what was the physical appearance of your daughter-in-law? A. No.

MR. KREMER—I object to that.

THE COURT—What bearing has that? What is the purpose of trying at this time to show the physical appearance of the complainant?

MR. STEIN—The purpose at this time is to show that what the witness testified to yesterday, concerning that incident before they went to Pinehurst, is not correct.

MR. KREMER—Then I withdraw the objection, if you want to impeach her credibility.

THE WITNESS—No.

By MR. STEIN:

Q. What did you mean in your affidavit? A. She seemed very much disturbed.

Q. How did that manifest itself to you? A. I did not know what was the trouble.

Q. You say she seemed to be very much disturbed. How did that manifest itself to you? A. Well, I don't know exactly. I thought there must have been some trouble of some kind.

Q. What led you to think that? Was anything said? A. No.

Q. Where did you get that impression? A. They didn't have time to have anything said. It was at the breakfast table I asked my son where Gert was, and he said, "She will be down in a few minutes." When she did come down, I noticed that she looked very unhappy about something, and I said "What is the matter, Jack?"

And he said, "You better ask her."

Q. That is, they were right there together when you said to Jack, "What is the matter, Jack?" You say that his wife was right there then? A. Afterwards I did, not in front of her.

Q. Not in front of her? You did not ask anything of your son in front of his wife? A. Not to my knowledge, no.

Q. But when you got him one side, you asked him what? A. I didn't get him one side.

Q. When you were alone, you asked him what? A. I asked him what was the trouble with Gert.

Q. What did he say? A. He said, "She will tell you. You ask her."

Q. Did you ask her? A. No, I did not, as I remember, not as I remember asking her.

Q. Why not?

MR. KREMER—I object.

THE COURT—Objection sustained.

By MR. STEIN:

Q. Were you concerned about what the trouble was?

MR. KREMER—I object to that.

THE COURT—I will allow the question.

A. Why, of course, I was wondering what was the trouble.

Q. What did you do about it? A. I didn't do anything about it. She was very friendly with we and kissed me goodbye, and I said I was very sorry she was not coming with us, and that's all there was to it.

Q. You describle that situation in your affidavit, do you not, by saying that, "The next morning I saw that my daughter-in-law looked badly, and I asked my son what was the matter with her."

That is how you describe it, don't you?

MR. KREMER—I move that that be stricken out, because she has testified to that exactly as it is in the affidavit.

THE COURT—Not exactly; the affidavit would lead you to believe that she asked her son in the presence of his wife, and she said that was not done.

MR. STEIN—Not only that, but in the affidavit she said that her daughter looked badly.

(The Stenographer read the last question as follows: "Q You describe that situation in your affidavit, do you not, by saying that, 'The next morning I saw that my daughter-in-law looked badly, and I asked my son what was the matter with her.' That is how you describe it, don't you?")

MR. KREMER—I again object and move that be stricken out, because I do not think there is anything in the affidavit or her statements that shows any discrepancy.

THE COURT—I will allow the question to stand.

(The Stenographer read the last question as follows: "Q You describe that situation in your affidavit, do you not, by saying that, 'The next morning I saw that my daughter-in-law looked badly, and I asked my son what was the matter with her.' That is how you describe it, don't you?")

By MR. STEIN:

Q. Is that correct? A. Yes.

Q. That is the incident you spoke of in your affidavit? A. Yes, it could be, whether you call it ill, or she looked unhappy.

Q. Your affidavit says, "She looked badly." A. Then she did, if my affidavit says so.

Q. How did she look? What do you mean by *badly?* A. Unhappy.

Q. How could you tell that in her face? A. I don't know how you can tell it, but you can pretty near tell when a person is unhappy. I can't explain it to you.

Q. How could you tell that she was unhappy? A. She looked unhappy.

Q. She looked that way to you, did she? A. Yes.

Q. Yesterday you said that when you came back from Pinehurst you found that your daughter-in-law was not there, and that she had left her husband, is that right? A. Yes.

Q. And then, what did you do about it, if anything? Did you say anything to your son about it?

MR. KREMER——I object to that.

THE COURT—The first part of the question is allowed, "What did you do, if anything?"

By THE COURT:

Q. Did you do anything? A. No, I didn't do anything. What was it to do?

By MR. STEIN:

Q. You did not make any effort yourself to find out where she was or why she went away?

MR. KREMER—I object to that on the ground that there is no duty upon her to make such effort.

MR. STEIN—That is true, but the witness said that she was very friendly with her and kissed her when she left, and if there is no feeling between them—she is the mother-in-law and comes home very suddenly and finds her gone.

THE COURT—Objection sustained.

By MR. STEIN:

Q. On New Year's Day you were sick, were you? A. Yes.

Q. And your daughter-in-law called on you, did she? A. I asked her to come.

Q. You sent for her, and she came, did she? A. Yes.

THE COURT—Was that 1929?

MR. STEIN—That is 1930.

By MR. STEIN:

Q. And you had a talk with her, and she with you? A. I did.

Q. Did your daughter-in-law tell you who sent her word that you were sick in that conversation? A. I don't remember that.

Q. Do you remember anything at all about the conversation? A. I think we rehearsed that yesterday.

Q. Whether you did or did not, I am asking you now if you recall anything about that conversation? A. About the telephoning?

Q. About any of the conversation. A. I can repeat it over, if you wish me to.

Q. I am asking you first if you remember anything about it. A. I remember all the conversation.

Q. In that conversation, however, you have already stated that you do not remember whether she told you who told her to come there. You do not remember that, do you? A. I told you—

Q. You do not remember that?

MR. KREMER—I think she should be permitted to state what she remembers if she wants to.

By MR. STEIN:

Q. You have already stated that you do not remember. A. Don't remember what?

Q. You do not remember whether your daughter-in-law told you who conveyed the message to her that you wanted to see her? A. I told my son I wanted to see her.

Q. And I ask you now if you remember when your daughter-in-law came there whether or not she told you who told her that you wanted to see her? A. As near as I can remember, I think that she said Jack.

Q. That is all that you have to do, to give your best recollection. A. Yes, but you don't put it to me so that I can understand.

Q. I thought I spoke English. A. You do, but you are very abrupt.

Q. When she came there what did you say to her, referring to your daughter-in-law? A. Are you addressing me, Mr. Stein?

Q. When your daughter-in-law came to your home in response to your message, what did you say to her? A. I said I understood that Jack and she are going to live together again, and she said, "Who told you that, mama?"

I said, "Why, Jack told me so, and for that reason we are going down to Palm Beach, Gert, and I thought you would like to know just what time to get ready and go."

My intentions were that she was going with us, of course, which she always had, and she said, "You are entirely mistaken, because if he told you that, he is lying. I never said I was coming back with him, but coming back on certain conditions. Don't you know what those conditions are?"

I said, "No. I don't know what those conditions are."

Q. What else did you say? Did you ask the conditions? A. No, I don't remember asking about the conditions. I said I didn't know anything about the conditions.

Q. If you remember asking about them, do you remember her telling you the conditions? A. No, I don't.

Q. What else was said? A. Then she said that she was—remarked or used the word that was used was that she was going to sue him and get after him and after she was finished with him, she was going for me, and I said, "Gert, why do you want to do such a thing to Jack? I have had nothing to do with your and Jack's affairs. Why should you do such a thing as that?"

She said, "You know what alienation of affection means?"

I said, "I certainly do."

She said, "You can read?"

I said, "I can."

Then she went out in the room and got a cigarette and walked by me, and before then, I told her, "If you put me on the stand or sue me, I am afraid I will have to say things that will be very unpleasant, and you will be ashamed."

She said, "I have never done anything that I am ashamed of."

I said, "All right, you wait and see," and she walked by and blew the smoke of the cigarette in my face.

Q. You have been sued, and what was it that you were going to tell about that would make her very much ashamed?

MR. KREMER—I object to that.

MR. STEIN—I think it is highly important, because it is important to show the feeling of this particular witness in this whole litigation, particularly in this case, the gist of the case being that the woman could not live in the house under the conditions, and the husband refused to make a home for her elsewhere separate and apart. This is one of the things that I think is important to show what this witness said at that time, and what she had in mind and threatened to do, and this answer that is given does not include all that was said.

MR. KREMER—I think he is entitled to everything that was said, and as I understand this witness, she has related everything that she said, and I have no objection to her relating it. All that she said to her daughter-in-law was, "If you sue me, I will say things that you won't like in the courtroom, or will make you ashamed," but she did not say what they were. I do not think we have any right to go into her mental processes or mental reservations, but should mention only for the purposes of this case what was said in order that the Court may gather from what took place that the happenings occurred in two ways, actions and words, and not thought or intention. I charge that this is simply an attempt to anticipate what our defense might be in the alienation suit, and that is the time we will advance it.

MR. STEIN—I want to say that there was more said at that time, and if this witness now does not admit it, I want to be in a position to lay a foundation for rebuttal.

THE COURT—I will permit you to ask anything

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that was said in the conversation, but not as to the mental reservation.

THE WITNESS—I do not intend to tell that.

By MR. STEIN:

Q. Don't you intend to tell it at any time? A. I do; I certainly will if she—

MR. KREMER—I object to this.

By MR. STEIN:

Q. I will ask you whether or not at that time you did not tell Mrs. McDonald what you are going to tell about her. A. No, I did not.

MR. STEIN—If your Honor please, I should like to ask this question, and the witness need not answer it if objection is made. I want to argue it out.

By MR. STEIN:

Q. When you said to Mrs. McDonald, your daughter-in-law, "If you sue me for alienation of affection, I will tell something about you that will make you very much ashamed", was it something that had relation to the married life of her husband and your daughter-in-law?

MR. KREMER—I object for the same reason that what she had in mind—

THE COURT—I will allow her to answer that question yes or no.

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A. I have nothing to say. I won't answer that question.

By MR. STEIN:

Q. Do you mean that you refuse to answer that question? A. I refuse to answer that question.

MR. STEIN—I insist upon the witness answering, because if it had relation to the married life of this defendant and the complainant, we are entitled to have it in this proceeding.

MR. KREMER—I certainly do not want the witness to be placed in the position of refusing to answer a question. I insist that he has a right to anything that was said but not to anything that was in the mind of this witness, what she was thinking or did not say. This is simply an attempt to get indirectly what I understand the Court has ruled upon.

THE COURT—The question now is whether or not the subject matter that Mrs. McDonald has referreed to arises out of the marital relationship and is a part of the trouble that has arisen between her son and his wife. She may answer that yes or no. She says now that she refuses to answer.

MR. KREMER—My reason is that it is simply asking her again what was in her mind. Now he says, "Was the thing that you meant to say about their married life?" It is simply another attempt to get out what she meant.

MR. STEIN—Will you allow me to say this: Yesterday in these proceedings the witness said that in this conversation which was had, that when the daughter-in-law told her that after she would bring an action against her husband, she would bring a suit against her for alienation of affections, that she—you may call it a threat or whatever you want—

MR. KREMER—I move that be stricken out.

THE COURT—Yes.

MR. STEIN—She said to her, "If you sue me, I will tell things about you that will make you ashamed." That is on this record. I have a right to ask her now whether or not that statement of the things that she was going to tell, which would make her ashamed, had any relation to the suit here in hand.

THE COURT—And I have allowed the question.

By THE COURT:

Q. You may answer the question as to whether or not the matter that you have in mind relates to this suit and the trouble between your son and his wife. A. It has a little to do with the trouble, but not altogether. It has a little to do with the trouble in this case. I can't tell, and I am not going to tell. It has a little to do with—

By MR. STEIN:

Q. Well, you say now that it has a little to do with

this case, do you? A. A little, yes, in regard to affection.

Q. In regard to whose affection? A. Mr. McDonald's affection and his wife's.

Q. So you know a little something regarding your son's affection or loss thereof for his wife, do you, which you won't tell here?

MR. KREMER—I object to that because things unsaid or things undone can have no bearing and are not evidential.

THE COURT—I understand the answer is that she does know of things, and if she does, she may answer yes or no.

THE WITNESS—I am not going to answer. I can't answer that. It is too delicate.

THE COURT—It is not a question of delicacy; it is a question of whether or not you know, and you can give as responsive an answer as possible.

THE WITNESS—I have already told Judge Stein I thought it had something to do with their affections, and that is all I can say.

By MR. STEIN:

Q. Is it something that you know about personally?

MR. KREMER—I object to that for the same reason. I think it is certainly error to allow to go into the record anything that a witness may know unless it is

something that she witnessed. Anything that was said by the parties or witnesses that could bear on the suit is evidential, but an opinion of a person or something that she knows that was unsaid up to the time of this proceeding, I do not see how it could have any bearing at all.

THE COURT—I do not know that it is something that she knows that was unsaid. If she knows it, I do not know the source of the knowledge, and I presume it will be developed, but I cannot rule on a question of the knowledge of a person by saying it is simply something that she has gathered out of the air.

(Argument off the record.)

THE COURT—I will allow the question.

By MR. STEIN:

Q. It is something you know about personally or something you heard? A. Something I heard.
Q. Who told you?

MR. KREMER—I object.

THE COURT—I will allow it provided it shows that it was one of the parties in interest.

By MR. STEIN:

Q. Who told you about it? A. Do I have to answer that?

THE COURT—Yes.

THE WITNESS—My son.

By MR. STEIN:

Q. What was it?

MR. KREMER—I object to it.

THE COURT—I will allow it.

MR. KREMER—For the purpose of the record, I should like to make this statement: If you assume that she never said it and never made this statement, and it was merely an opinion or statement of some fact that she knew, which was unsaid, it could have had absolutely no bearing upon the relationship between the complainant and the defendant, and what she might have intended to say, since it was not said, could not have any materiality in this proceeding whatever.

THE COURT—I will allow it.

(The Stenographer read the last question as follows: "Q. What was it?")

A. Have I got to answer this question?

THE COURT—Yes.

THE WITNESS—Then I think the best thing is for her son to be removed.

MR. STEIN—No, we will leave him right here.

By THE COURT:

Q. You say that it is better that her son be removed? A. I say that it is better for Mrs. McDonald's son to be removed from here.

THE COURT—Is her son a witness in the case?

MR. STEIN—He is apt to be a witness in rebuttal.

THE WITNESS—I hate awfully to do it, really.

By MR. STEIN:

Q. You are asked to do it. Now, tell what it was. A. Well, before Mrs. McDonald and Mr. McDonald were married, Mrs. McDonald was sick, and my son called on her.

Q. This is what your son told you? A. Yes.

Q. You are telling now what he told you? A. Yes, and she asked him to go to bed with her.

Q. And he did, did he? A. And he said, "No, Gert, I don't want to."

Q. And he did not go to bed with her? A. I don't know what he did, whether or not he did.

Q. What did he tell you? A. And he said, "I think it is terrible what she said to me, 'let me clasp you in my arms and let me feel as though I am yours for a short time, anyway, whether this ever amounts to anything or not.' "

Q. That is what your son told you? A. Exactly.

Q. And it was that that you had in mind, which you were going to tell on Mrs. McDonald, if she sued you for alienation of affections? A. Yes, for the simple reason—

Q. Never mind the reason. When was it that your son told you this? A. After she had left him.

Q. After she had left him? A. Yes.

Q. Just when? A. About a month after she had left him, because he was very worried about things.

Q. This was before they were married? A. Exactly.

Q. And he did marry her, didn't he? A. Yes, he did marry her.

Q. And he has been married to her ever since April 13, 1926? A. Yes.

Q. And I think you have already said that he was very happy with her in their early married life? A. Apparently seemed to be.

Q. And whatever little differences there were between his wife and himself and you were always all settled? A. I knew nothing about this affair.

Q. Will you please tell me now under what circumstances your son undertook to have that sort of a conversation with his mother? A. He felt terrible about the whole thing.

Q. What were you talking about that led up to a thing of that kind? A. I asked him why it was that he had lost his affections for Gert.

Q. What did you care?

MR. KREMER—I object to that.

By MR. STEIN:

Q. Did you care? A. Certainly I cared.

MR. KREMER—Objection.

THE COURT—Objection sustained.

By MR. STEIN:

Q. Do you remember all the things he told you as to why he had lost affection for her? A. That was the main thing.

Q. I didn't ask you that. Do you remember all the things he told you as reasons why he lost affection for her? A. That was one thing.

Q. I didn't ask you that. I asked you whether you remembered all the things. A. Well, her attitude towards father, and the way she had told stories about me at different times.

Q. Stories about you? A. She certainly did.

Q. And the father? And what else? A. And this thing here that I have just spoken of now had all tended to make him feel different than what he would have liked to have felt.

Q. Do you remember how soon this conversation took place after you came back from Pinehurst? A. I can't tell you the date.

Q. Bearing in mind when you came to the apartment in Red Bank and found that your daughter-in-law had gone, how soon after that was this conversation had? A. Quite some time after that.

Q. But it was had with you before January 1st, wasn't it? A. That I can't say.

Q. You must be able to say because it was on January 1st, 1930, that you told Gertrude. A. Oh, no. You mean January? When I was talking to her? Yes, it was, I had already known that then.

Q. So you knew it before that? Just when before that did you know about it from your son? A. I told you about a month after she left. I would imagine about a month after that.

Q. These were the reasons that he gave you for the loss of affection, is that right? A. He said that helped to make him feel the way he did toward her, and he felt very unhappy about it.

Q. But after he told you this story, both you and he went down to see Mrs. McDonald, the complainant, didn't you? A. Yes.

Q. He wanted her back, didn't he? A. Yes, he did.

Q. Notwithstanding all that? A. Yes.

Q. Did he talk with you about that before you went over and tried to get his wife back? I mean about his affection having suddenly come back to him again? A. No, he said he wanted to do what was right. He said, "I feel as though I am going—we may be happy again, and I am going to try."

Q. From what he said to you, did you feel that he could do what was right?

MR. KREMER—I object to that.

MR. STEIN—Strike it out.

By MR. STEIN:

Q. Well, he wanted his wife back, didn't he?

MR. KREMER—I object to that as calling for a conclusion.

By MR. STEIN:

Q. He told you he wanted her back, didn't he? A. He went and asked her.

Q. He told you he wanted her back before he went

with you? A. I don't know that he spoke like that to me at all when I went with him.

Q. Did you know what you were going for? A. Exactly.

Q. What was it? A. To ask her to come back. I asked her to come back also.

Q. Notwithstanding the fact that you knew this story that your son had told you, and you believed him, didn't you? A. I surely did.

Q. You wanted her back, too, didn't you? A. If it was for his happiness and hers, yes.

Q. Didn't you want her back, too? A. Yes, of course.

Q. Didn't you know it was for his happiness, from what he had told you? A. I don't know anything about it.

MR. KREMER—I object to that.

MR. STEIN—Here is a mother and a son, who were discussing the question of going back and getting the wife to come back, and this witness says she wanted her to come back, if it was for his happiness .

THE COURT—It is a conclusion.

By MR. STEIN:

Q. Did your son tell you that he would not be happy unless his wife did come back and live with him? A. I don't remember of him telling me that, but I know he went and asked her to come back, and I went with him.

Q. When you say that your son did not tell you in those days after she left, "Mother, I will never be happy

unless my wife is back with me?" A. I don't remember anything like that at all.

Q. I asked you whether or not you will say he did not say that. A. I can't say that, because I don't remember.

Q. In the days after Mrs. McDonald, the complainant, had gone, you and he had a number of talks about it, did you not? A. No, it wasn't a pleasant thing to discuss.

Q. I am asking you whether or not you did not have a number of talks about it. A. No, we did not.

Q. When your son told you that before he married his wife, and while she was sick on one occasion in bed, that she asked him to come into bed with her, and whatever else you say he told you, and that that was one of the reasons why he had lost affection for his wife, did you say anything to him?

MR. KREMER—I object to that. It would not have any bearing what she said.

THE COURT—Unless it shows conclusively that she said something that might affect his attitude toward his wife, the objection would be sustained.

(The Stenographer read the last question as follows: "Q. When your son told you that before he married his wife, and while she was sick on one occasion in bed, that she asked him to come into bed with her, and to embrace her, and whatever else you say he told you, and that that was one of the reasons why he had lost affection for his wife, did you say anything to him?")

MR. KREMER—I object to it.

THE COURT—Unless you can show that it had some bearing upon the relationship between the parties, I will sustain the objection to the question.

MR. STEIN—That is the purpose of the question.

THE COURT—Yes, but I think it should be shown first before that question can be asked.

MR. STEIN—If your Honor please, you can see the situation in which I find myself. There are times when you cannot show those things first.

THE COURT—Still, I think it is too dangerous to allow a question of this kind to be simply asked.

By MR. STEIN:

Q. When you went there after to see Mrs. McDonald, your daughter-in-law, and on the occasion when she came to see you, when you were sick in the house, did you tell her what your son had said to you? A. No, I did not.

Q. But you afterwards made an endeavor to get them together, you say, by going down and asking her to come back? A. Why, certainly.

Q. Didn't you know that the best way for you to have brought them together was for you to discuss some of these things with her frankly. A. No, I didn't think so.

MR. KREMER—I object to that.

THE COURT—Objection sustained.

MR. KREMER—I move that the question and answer be stricken out.

MR. STEIN—I insist upon the question.

MR. KREMER—I object to it because it calls for a conclusion.

MR. STEIN—Counsel realizes that which I am showing to be proof, which goes to the very gist of this particular action. The allegations in this case are that this complainant could not live in the same home with the mother and that the husband would not make a home outside of that place. All these things go to substantiate and corroborate. Perhaps I am trying to over-prove the case, but nevertheless they go to prove the feelings and action. Also they go to contradict the witness in things that she said concerning the affection which she had for this girl, concerning things which she did to try and get them together. You must remember that in this case it is described by the defense as a feeling, and at times she was very hostile to the complainant, and they made up, and then again a feeling which was hostile on the part of this complainant for the mother and for the husband for reasons, and then made up. It is an accumulation of causes which eventually produced the effect which we have here.

THE COURT—Recognizing that, I have allowed the examination to go pretty far afield. The last question, however, I do not consider as a proper question, and I sustain the objection.

MR. STEIN—That is all.

MR. KREMER—That is all.

IDA F. DALY, a witness called on behalf of the defendant, being first duly sworn according to law, on her oath, testified as follows:

DIRECT EXAMINATION

By MR. KREMER:

Q. Mrs. Daly, where do you live? A. Gertrude Apartments, Red Bank.

Q. You are the wife of the superintendent there? A. I am.

Q. Your husband is an employee of Mr. Henry J. McDonald? A. Yes.

Q. How long have you known Mrs. McDonald, the complainant? A. Thirty-two years.

Q. You knew her, of course, before she was married? A. Yes.

Q. Have you been friendly with her during that time or not? A. Yes.

Q. How friendly? A. Well, I would say quite chummy up until the time of Mrs. McDonald's marriage with Mr. McDonald.

Q. Were you girl friends together? A. Yes, we went to school together.

Q. And you knew her when she was first married and during that marriage? A. Yes.

Q. Were you friendly with her then? A. Yes, she married my boy friend.

Q. That did not cause any rift, did it?

MR. STEIN—I object to that.

Q. I bring you down to November, 1929. Where were you living at that time? A. I was at the Gertrude Apartments.

Q. Were Mr. and Mrs. Henry J. McDonald there, also? A. Yes.

Q. And did you have occasion to go to the apartment that Mr. and Mrs. Henry J. McDonald occupied? A. Several times.

Q. Did you talk with them? A. Yes.

Q. I mean with the complainant. A. Yes.

Q. Do you recall the occasion that Mr. McDonald and his mother left for Pinehurst? A. Yes.

Q. Directing your attention to a week or so prior to that time, did you have any conversation with the complainant, Mrs. Gertrude McDonald? A. Yes.

Q. Will you relate that conversation?

MR. STEIN—I object to the question as framed, *any conversation.* We are not interested in any conversation.

MR. KREMER—I will rely upon what develops to indicate the propriety of it.

THE COURT—I will allow the question.

A. Why, several times I went up to Gertrude's apartment and asked her how things were getting along and if she wanted anything.

Q. Sometime in November what did Mrs. Gertrude McDonald say to you about the relationship at that time between herself and her husband? A. She said it had been a second honeymoon, that she was very happy with Jack, and that they were just starting all over again, and she was very happy. That is before Mr. McDonald went to Pinehurst. I imagine about a week before.

Q. Did she say anything about his mother? A. No, she did not.

Q. What did you observe her physical appearance at that time to be? A. At times she seemed all right, and at other times she seemed to be annoyed at several things.

Q. I mean on the day you were talking to her, how did she look? A. She was very happy. She said she had been very happy and that Jack had been perfectly wonderful to her during that time.

Q. Do you recall the time when she left the Red Bank apartments? A. Yes.

Q. Do you know where she went? A. She went to 10 Whitehall.

Q. During the time that she was at 10 Whtiehall, did you go to see her? A. She phoned me and asked me to come down.

Q. You were asked? A. Yes, she phoned me.

Q. Under what circumstances did you go and see her? A. Mrs. McDonald was ill, and asked me to come down, and I went.

Q. Did you go? A. Yes, I went.

Q. When was that? A. That was shortly after she left Red Bank.

Q. When you got there did you see her? A. Yes.

Q. Where did you see her? A. In her bedroom.

Q. She was in bed? A. She was at the time, yes.

Q. What happaned when you were first there with her. A. We were in conversation when the butler came upstairs and said Mr. McDonald was on the phone and wanted to speak to Mrs. McDonald.

Q. What did Mrs. McDonald say to the butler in your presence? A. She said, "I don't care to talk to him. There is nothing to be said. Give him that message."

The butler went downstairs to give the message to Mr. McDonald, and Mrs. McDonald got out of bed and took up the phone that was in the little sun room off the bedroom to listen to what Mr. McDonald had to say, and I also went in the room, and the butler gave the message to Mr. McDonald, and Mr. McDonald, as she said, his reply was, "All right," and that was all.

Q. Did you have some further conversations with her after that? A. Mrs. McDonald was in quite a rage after that, quite worked up. She walked to the bureau and picked up Jack's picture and threw it on the floor and stamped her two feet in it.

Q. What did she say? A. She said, "I knew that he would come to me," and she said, "I will fix him before I am through with him."

I said, "Gert, you don't mean that? Why did you do that?"

I went to pick the picture up, and she kicked it under the bed, and Jennie came in then, and said, "Now, you are getting yourself terribly worked up."

Q. Who is that? A. Jennie, the elderly lady that she has had with her for years. I think her last name is Cox. So she told Jennie to shut up and go downstairs and mind her own business.

Q. Did she say anything else? A. Shortly after that.

Q. You mean the same time? A. Yes, this is all this evening. Shortly after that Gert got in bed and took the small picture that she had of Jack, when he was a boy, and put it to her breast and tried to go to sleep, and after that Jennie came upstairs and served highballs. She had one, and I had the other. I stayed there until twelve-thirty that night, when she fell asleep, and we had given her a sedative at that time that made her rather dopey, and I said, "I am going on." She did not answer me, and I went home.

Q. Before you went down, did you have any conversation with Mrs. McDonald, Senior, about her daughter-in-law's illness? A. Yes, I had spoken to Mrs. McDonald and told her that I was very much alarmed as to Gert's condition, and that we should ask her opinion as to whether or not she would like to phone and find out, and she said, "Yes, I think we should, but I don't think that I would get a very agreeable answer over the phone. You better do it."

So I telephoned from Mrs. McDonald, Senior's, apartment and asked Mrs. McDonald's condition. This was before I had gone down. I was told on the phone that she was in a very bad condition and did not care to see anyone at all; in fact, it was the doctor's orders. So I said, "All right, I was speaking for Mrs. McDonald, and she wanted to inquire how she was, and if there was anything she could do. Mrs. McDonald said she would like to send some flowers to Gert, but did not know whether or not they would be accepted."

Then, on another occasion, I called up Mrs. McDonald, and Mrs. Burke answered the phone—no, I am wrong.

Mrs. Burke answered the phone the first time, and the second time Lou Reed answered the phone, and she was in a very excited condition.

Q. Who was? A. Lou Reed, a friend of Mrs. McDonald's.

Q. Just tell what Mrs. McDonald said. A. I have completed that.

Q. Do you recall New Year's Day, 1930? A. I do.

Q. Did you overhear a conversation between Mrs. McDonald, the complainant, and her mother-in-law? A. Yes.

Q. Were you in the apartment at the time? A. I was part of the time.

Q. Just say yes or no. A. Yes.

Q. Will you state how you happened to be there? A. Mrs. McDonald had been ill for a week or ten days.

Q. You mean Mrs. McDonald, Senior? A. Yes. I was in the habit of always going up and asking her what I could do for her and inquiring as to her welfare.

Q. Did you have a key to the apartment? A. I have access to every apartment in the house. Jean, the butler, was not always there when I wanted to go in, and Mrs. McDonald, of course, does not hear, so Mrs. McDonald gave me full permission to use the key whenever I cared to go in.

Q. Where were you when those conversations took place? A. I was in the foyer.

Q. Will you state what was said? A. As near to my knowledge, Gertrude said—Mrs. McDonald said, "Gertrude, I understand you and Jack are going to be reconciled. I have asked you to come here and talk over things."

Mrs. McDonald, Junior, Gertrude, said, "It is not so.

I told Jack at my hearing in Judge Stein's office the other day that we would come to some agreement," and what that was she did not tell.

Q. What was said next? What else was said? A. She said, "This thing has gone too far for personal discussion, and I don't propose to say any more. I have been brought here under false pretenses, and I don't care to talk any more about it, and I am through with Jack's case. If you know what alienation of affection means, I am going to sue you."

Q. What did Mrs. McDonald, Senior, say? A. She said she did not see any reason why she should. She said, "Do you think I have had anything to do with your affection and Jack's and your troubles?"

And Gertrude said, "I certainly do."

Q. And then what was said? A. With that there was quite a little commotion in the bedroom, and I went out.

By THE COURT:

Q. Do I understand that this conversation took place in the foyer or in the bedroom? A. Mrs. McDonald and her daughter were in the bedroom, and I was in the foyer.

By MR. KREMER:

Q. At the time that you talked to Mrs. McDonald, Junior, down there at 10 Whitehall, did she say anything about her mother-in-law? A. Yes, certain conversations, nothing that would amount to anything other than before the house was opened for rental. We were both

in the kitchen. This was before Mrs. McDonald had left Mr. McDonald. This was just before the summer of 1929. No, of course, I knew that there were several little things going on in regard to disagreements that she had told me.

Q. Who had told you? A. Mrs. McDonald, Junior. So she said, "They have plenty of money." Then she told me about the discussion of having to sign property over to her, that there was a discussion about it.

Q. When you said "to her," whom do you mean? A. This is between Gertrude and I.

Q. Whom do you mean by "to her?" You said something about signing the property over to her. A. Over to Gertrude. There was some discussion that Gertrude wanted the property signed over to her from Mrs. McDonald, as I understand it, and she made the remark that before she was through with that baby, she would make her jump through that (indicating).

MR. KREMER—Cross-examine.

MR. STEIN—No questions—I will ask this one question of Mrs. Daley.

CROSS-EXAMINATION

By MR. STEIN:

Q. I understood you to say that Mrs. McDonald took a picture of Jack and pressed it to her breast and went to sleep with it. A. Yes.

Q. That is, a picture of her husband? A. Yes, a small picture that was up over the bed.

Q. Taken when he was a little boy? A. Yes.

Q. But before that, she had taken one of his pictures and threw it on the floor and jumped on it? A. A large picture from the bureau.

Q. And she said he was a dirty liar? A. I didn't make that remark.

Q. Didn't you say she said, "I knew he would come to me, the dirty liar?" A. No, I did not.

Q. What did she say? A. Gertrude threw the picture on the floor and stamped her feet on it, and she said, "I knew that he would come back to me."

Q. That other part was not said? A. No, I didn't say that.

RE-DIRECT EXAMINATION

By MR. KREMER:

Q. Was there something else you said about what somebody else had said? A. I said that Mrs. McDonald said that if Jack—it was in regard to the New Year's conversation—that Mrs. McDonald said that if Jack said that Gertrude was coming back to him, that he lied.

MR. KREMER—That is all.

WILLIAM D. DOWNS, a witness called on behalf of the defendant, being first duly sworn according to law, on his oath, testified as follows:

DIRECT EXAMINATION

By MR. KREMER:

Q. Mr. Downs, where do you live? A. Brooklyn.

Q. You are employed by the J. W. McDonald Lumber Company? A. Yes.

Q. Is that the correct name of the Corporation? A. No, J. W. McDonald Lumber Corporation.

Q. How long have you been connected with the business? A. Nine years.

Q. When you were first connected with it, was it a corporation? A. No.

Q. What was it then? A. Partnership.

Q. Who were the partners? A. John W. McDonald and Henry J. McDonald, as far as I know.

Q. John W. McDonald is the Mr. McDonald, Senior, that we referred to? A. Yes, the father.

Q. When did the incorporation take place? A. There was an incorporation, I should figure about eight years ago.

MR. STEIN—Are the papers here?

MR. KREMER—Yes, we have them all here.

THE WITNESS—To the best of my recollection that corporation only existed for a year.

THE COURT—If you have those records, why not let us have them?

By MR. KREMER:

Q. Will you produce the most recent certificate of incorporation? A. Yes.

Q. Will you produce the certificate? Just tell us the date on it, please. A. The 20th day of July, 1929.

MR. KREMER—I would like to offer the certificate in evidence.

MR. STEIN—No objection.

(The paper referred to was received in evidence and marked "Defendant's Exhibit 1.")

By MR. KREMER:

Q. Does the certificate disclose how the stock was subscribed for? A. It does not.

Q. Have you a record showing the issuance of stock at the time of the incorporation? A. Yes.

Q. Will you refer to that record and tell us how many shares, if any, were issued to Mrs. Adelaide McDonald, and how many shares to Henry J. McDonald? A. 450 to Mrs. A. J. McDonald, and 550 to Henry J. McDonald.

Q. How many shares did you say were issued? A. One thousand.

Q. And four hundred and fifty to Mrs. A. J. McDonald? A. Yes.

Q. Have you the stock record book, which would show that? A. Yes.

Q. Please produce that. At what page does it disclose the issuance of stock? A. That is in alphabetical order there.

MR. STEIN—If your Honor please, I might save time if the minutes of the corporation are here, if counsel would allow me to examine them. I should like to see them now unless counsel needs it for his examination.

MR. KREMER—I will probably make some reference to them.

By MR. KREMER:

Q. You say that prior to July, 1929, the business was conducted as a partnership? A. Yes.

Q. Where did it have its principal office in 1929? A. 15 Whitehall Street, New York City.

Q. Do you have that office now? A. No.

Q. What is your position in the business at the present time? A. General Maager.

Q. Do you have complete control of the yard? A. Yes, I direct the operation of it.

Q. Where is the yard located? A. 474 Columbia Street, Brooklyn. That is the office there on the premises.

Q. Are you familiar with the condition of the business? A. Fairly well.

Q. Are you familiar with the condition of the business in 1929 and 1928? A. Yes.

Q. Will you describe the condition of the business and the character of this company as it did business throughout the year 1928 and 1929? A. Well, we did a very nice business in the early part of 1929.

Q. How many people did you employ at that time? A. At New York there was myself, the bookkeeper and stenographer.

By THE COURT:

Q. What was the character of the business? A. Dealing in lumber.

Q. What character of lumber? A. Mostly steamship requirements.

Q. What is it now? A. The same business exactly.

By MR. KREMER:

Q. You say you had yourself and a bookkeeper and a stenographer? A. At New York.

Q. And how many employees did you have at Brooklyn? A. Well, there was a superintendent and assistant, and an average of six lumber handlers a day, and four chauffeurs and two teamsters and the watchman.

Q. That was in 1929? A. Yes.

Q. Throughout the year? A. Up until about October, when we moved and closed our New York Office and moved to Brooklyn.

Q. Why did you close the New York Office? A. Because business got bad and we had to reduce expenses.

Q. You closed the Whitehall office entirely? A. Yes.

Q. Throughout 1930, did you maintain any New York office? A. No.

Q. Do you still employ the stenographer and bookkeeper at Brooklyn? A. No, we disposed of the bookkeeper, and we have the stenographer doing what work he did.

Q. How many chauffeurs do you employ now? A. Three.

Q. And you did employ how many? A. Four.

Q. How many lumber handlers do you employ now? A. Two.

Q. And you did employ how many? A. Six, sometimes eight.

Q. Can you tell us what is the volume of business for 1930, up to the present time as compared with a like period in 1929?

MR. STEIN—If there are any books of this concern, they are the best evidence. I object to his telling.

THE COURT—If there are books, he may testify from those, but I would like to have the records, if there are such records. He may answer it conditional upon the books being produced, so that his recollection of it will not be evidential of the business that is done. Let him answer the question, and we will rule on it.

(The Stenographer read the last question as follows: "Q. Can you tell us what is the volume of business for 1930, up to the present time as compared with a like period in 1929?")

A. I did not make a comparison, but I do know that the net profits are very much decreased.

Q. Do you know how much the net profits of the business are for the period ending June 1st, 1930? A. For the first quarter they were approximately $5,300.

Q. Do you know what the drawing account or salary was paid to Mr. Henry J. McDonald? A. $500 per month.

Q. And when you speak of these net profits, are they to be divided between the shareholders over and above the drawing account? A. Yes.

Q. Do I understand that the drawing account is charged off as an operating expense of the business? A. Yes.

Q. And then the net profits are paid to the shareholders afterwards? A. Yes.

Q. What salary do you have in the business?

MR. STEIN—I object to that.

MR. KREMER—I will withdraw the question.

By MR. KREMER:

Q. Do you have any interest in the profits? A. Yes.

MR. STEIN—I understood this to be a corporation, and I object to this witness being asked if he has any interest in the profits, unless he is shown to be a stockholder.

MR. KREMER—This has a direct bearing upon what the defendant's income is. I asked him how much the net profits were. If he is paid some amount out of this, of course, that is a deduction.

THE COURT—If it is a salary, yes, or a bonus, yes, but if it is just a gratuity, no, so there is only one way to get it clearly at this time, and that is the records of the company.

MR. KREMER—I have those, but even if the rec-

ords did not disclose this, that what the company has been paying him would be a charge.

THE COURT—Whether or not it is a legitimate charge that can be charged against the interest of a party is another question, but I do not know how I can determine it if it is just the evidence of an employee telling about the manner in which the assets of the company are being distributed.

MR. KREMER—I think it would be for the Court to pass upon the reasonableness of it. That is why I asked him what his salary was, to show that his salary consists of a salary and commission.

THE COURT—I am not going to be bound by this testimony if there are records of this corporation.

MR. STEIN—This corporation can only speak by its minutes, and if this man is getting a commission, it must be in the minutes, and it must be in their books.

(Argument.)

THE COURT—You may go on and examine the witness along the lines that you are pursuing, and if there are records of this corporation, and there must be, I will require them to be produced.

THE WITNESS—I think you will find that my contract, insofar as the bonus goes, is embodied in the minutes there.

By MR. KREMER:

Q. Will you please refer to the books and tell us on what page your contract is?

THE COURT—Memorandum of agreement dated 25th day of July, 1929, inserted in the back of the minute book of the J. W. McDonald Lumber Company.

MR. KREMER—I wanted to get a brief statement of what his contract is, but if counsel objects, I will ask him to read the contract.

THE COURT—Let counsel read the contract, and then he will know what is in it, and it will save time.

(Mr. Kremer handed a paper to Mr. Stein.)

By MR. KREMER:

Q. What salary do you receive? A. $75 per week.

MR. STEIN—That is provided for in this contract, that salary at $75 per week.

I think we can agree that this contract sets forth that he gets a salary of $75 per week, plus ten percent of the net earnings of the party of the first part after deducting all amounts properly incurred and expended during such quarter period in carrying on the company's business, to be computed quarterly, covering the proceeds of the quarterly period commencing the first day of October, 1929, as determined by the auditors of accounts.

Evidently, for the purpose of arriving at his ten percent, the contract further provides that the salary

of the President and Vice-President, for purposes of this computation, shall each not exceed the sum of $500 to be paid each per month.

MR. KREMER—I think that should be stricken out. I offer the contract in evidence.

(The paper referred to was received in evidence and marked "Defendant's Exhibit 2.")

By MR. KREMER:

Q. I understood you to say that the net profits for the first six months of 1930 were $5,300? A. Yes.

Q. Are these net profits before the deduction of your commission or afterwards? A. Before the deduction of my commission.

Q. Of that net profit of $5,300, you are entitled to how much? A. Ten percent.

Q. That is $530? A. Yes.

Q. And the balance is divided— A. No, let me see. I am not quite clear on that, when that deduction was made. That is the net profit after my commission is paid.

Q. That amount to be paid to the shareholders is dividends? A. Yes.

Q. And over and above any salary that Mr. McDonald may have had? A. That is arrived at after his salary and Mrs. McDonald's salary has been deducted.

Q. And your own commission? A. And my own commission? No, my commission is taken out after they draw their salary, and that goes in as an expense to the company, the $500 a month.

Q. Can you tell us whether or not you know, and can you give us an opinion, what the profits of the business will be for the second six months of 1930?

MR. STEIN—I object to that unless the witness first shows how he can base an opinion on any such calculation or estimate.

MR. KREMER—I asked the question because when you get to the point—if you do—of awarding an allowance against Mr. McDonald, it will be based and predicated upon what his income is, and, of course, we cannot tell what the income of this business will be for the last three months of 1930, because it has not transpired, but I thought your Honor would be interested in knowing approximately what it is going to be, whether or not business will be worse or better.

THE COURT—The only dispute is as to the competency of this man without showing his knowledge and the character of his knowledge.

MR. KREMER—I will endeavor to develop that. He is the manager in active charge of the business.

THE COURT—The manager himself would not be competent to pass upon the question of income of a corporation.

By MR. KREMER:

Q. Are you in active charge of the business now? A. Yes.

Q. How is your business done? Is it in the form of

contracts or orders over the counter? A. We take nothing over the counter, but telephone orders.

Who receives them? A. The girl in the office, and sometimes myself or the superintendent.

Q. There is no bookkeeper? A. Well, the young lady takes care of the books after a fashion; she is not a regular bookkeeper.

Q. Does every order that comes in come under your supervision? Do you have knowledge of all the orders that come into the office? A. I look over the orders from time to time and look at the order book.

Q. In the course of the business, is it necessary that those orders go through you before the shipments are made? A. No.

Q. Are you in a position to be in constant contact or not with the amount of business done every day? A. Yes.

Q. As compared with the first six months of 1930, can you tell us whether or not the second six months, based upon your knowledge of what has transpired from June 1st up to date, and your knowledge of the present volume of business and any anticipated contracts for future delivery that are within your knowledge,—can you tell us whether or not the volume of business for the second six months will be smaller or greater than the first six months? A. I can't tell; I can't see the future, no.

Q. How about the three months from June 1st to October 1st? A. What about it?

Q. Were those three months proportionately larger than the three months between April and June or were they smaller? A. Smaller.

Q. What was the net profit for the three months ending October 1st? A. $2,390, I think, slightly under $2,400 for the three months ending September 30th.

Q. You say that the net profits for the first six months were $5,300? A. Yes.

Q. And for the third quarter were $2,300? A. You might make it $2,400; it was $2,390.

Q. So that that shows $7,000 for the first nine months of the year? A. Yes.

Q. But you would not like to say what the business will be for the last three months? A. No, not after my experience with the second quarter.

Q. Or with the first quarter? A. The first was good.

Q. Why do you say, "not after my experience with the second quarter?" A. Because we lost money in the second quarter.

Q. Do you mean by that the period from April 1st to June 1st? A. Yes.

Q. Did you lose money in the third quarter? A. No.

Q. Then, this $5,300, that you spoke of, was all made in the first quarter of the year? A. No, in the first half.

Q. But you said you lost money in the second quarter. A. Yes.

Q. So you must have made it all in the first quarter? A. No—yes, we made it all in the first quarter.

Q. That $7,700 is simply divided on the basis of the shares held by the stockholders?

MR. STEIN—I object to that. The minutes of the corporation will show how that is to be divided.

This is a New York corporation. There is no way in which we can compel them to bring the books in here. That is conceded. If they attempt to show what the earnings of that business are, they must show them

by their books, and if they are unwilling to bring them here, then I am entitled to rely upon proofs that are already in this case on the question of what the alimony shall be. If those things are true that they are now attempting to show, then they must show their good faith by producing them in Court, and I should have an opportunity to have them examined by a competent person to do that.

By MR. KREMER:

Q. Have you an audit or record which shows the incomes that you have just given us? A. I am quite sure I have a copy.

Q. Have you it here? A. No.

Q. Where does it appear of record? A. The profits?

Q. Yes. A. On the books and from memorandums that were made.

Q. Have you those books here? A. No.

Q. Will you produce those books so that the Master may examine them, that is, any record or books which will show that the net profits for the first six months are $5,700? A. Yes.

Q. And that for the third quarter they were $2,400? A. Yes.

Q. That does appear of record, does it? A. Yes.

CROSS-EXAMINATION

By MR. STEIN:

Q. You do not keep the books yourself? A. No.

Q. Have you the minutes of the corporation with you? A. There are the minutes (indicating).

Q. These are all the minutes the corporation has? A. Yes.

Q. Do you keep those minutes? A. I kept them for just that one meeting, that's all.

Q. Was there ever more than one meeting? A. No.

Q. Of this corporation? A. Of that corporation.

Q. Since it has been reorganized? A. No.

Q. The incorporators of the company are Louis J. Feder, William A. Stevens, and Michael A. Costaldo.

MR. KREMER—I object to that. The certificate speaks for itself.

THE WITNESS—They were the original incorporators.

By MR. STEIN:

Q. Have you the stock book here with you? A. No.

Q. Have you anything here to show who the present stockholders of the corporation are? A. Stock record book.

Q. Where is it? A. It is submitted there.

Q. Have you the stock book with you? A. No.

Q. Is this what you call the stock record book (indicating)? A. Yes.

MR. KREMER—The witness is shown a book marked "J. W. McDonald Lumber Corporation, B. G. combination book account."

THE WITNESS—Yes.

By MR. STEIN:

Q. You say that this is the stock record book? A. That's what I call it.

Q. That is the only stock record book the company has, is it? A. No.

Q. Where is the other stock record book? A. In the office.

Q. How does it compare with this book that you call the stock record book? A. It is a regular certificate book.

Q. In which the certificates of stock are contained and from which they are issued? A. In which blanks are contained and certificates issued.

Q. Are there any other books showing the stockholders of the company at the present time? A. No.

Q. Does this book show what became of the stock held by the original incorporators? A. Yes.

Q. This book (indicating)? A. Yes.

Q. Show it to me. A. Henry J. McDonald, 70 Esplanade, got number one certificate; Mrs. Adelaide J. McDonald, number two and number three certificates.

Q. That is the index? A. No, that is not the index; that is the number of the certificates held by Mrs. Adelaide J. McDonald.

Q. Does it say that it is a certificate? A. No.

Q. Or does it say just what you read, Henry J. McDonald, 70 Esplanade, Deal, New Jersey, number one?

A. Yes, that is what it says there; that is the number of the certificate.

Q. So far as I would be concerned, looking at that book, I would have to guess what it meant. It does not say what it means, does it? A. No, it does not say that, but I will show you further.

Q. The minute book here of the corporation, which you referred me to, simply contains the certificate of incorporation, is that right? A. Yes.

Q. And the constitution and by-laws of the corporation? A. Yes.

Q. The minutes of the first meeting of the incorporators? A. Yes.

Q. Held on the 24th day of July, 1929? A. Yes.

Q. Transfer of the subscription of stock of Louis J. Feder to Henry J. McDonald? A. Yes.

Q. Transfer of the stock subscription held by William M. Stevens to Henry J. McDonald, and the same with reference to Michael A. Costaldo? A. Yes.

Q. Waiver of notice of first meeting of board of directors? A. Yes.

Q. First meeting of board of directors, July 24th, 1929? A. Yes.

Q. And your contract? A. Yes.

Q. And that is all it contains? A. Yes.

Q. And you say there has not been a meeting of the directors since then? A. No.

Q. Will you show me where, in the minutes of the board of directors, there was any resolution passed to authorize the President, Henry J. McDonald, to enter into any such contract with you, as you have testified to here? A. I understand the by-laws—

Q. Will you show me anywhere in the minutes any

resolution which authorizes the entering into and the making of that contract? A. I don't know whether I can show you that or not.

Q. You say you do not know, because it is not there, or because you do not know whether it is there? A. I don't recall offhand whether or not that is in there.

Q. Look through the minutes. A. I don't recall offhand whether or not that is in the minutes. I didn't think it was necessary.

THE COURT—It is not there because Henry J. McDonald was not an incorporator, and there could be none in the minutes of the board of directors as then composed, because Henry J. McDonald was not a holder of a certificate of stock in the corporation at the time.

(Argument.)

By MR. STEIN:

Q. You have been employed in this family of McDonald for how long? A. Nine years.

Q. Prior to the incorporation, it was a partnership, wasn't it? A. Yes.

Q. And you were then employed there? A. Yes.

Q. Who were the partners? A. John W. McDonald and Henry J. McDoneld, as far as I know.

Q. Well, you do know, don't you? A. No, I don't.

Q. Do you mean that? A. I mean that.

Q. Do you not know by whom you were employed? A. I know by whom I was employed, yes, but I don't know who actually owned the business.

Q. What was the name of the business? A. John W. McDonald and Son.

Q. And it was a partnership? A. Yes.

Q. When the corporation was formed, do you know whether or not they took over the assets of that co-partnership? A. Yes.

Q. Does it show anywhere in the minutes there that they did so take over those assets? By the way, who is the secretary of this corporation? A. I am.

Q. And you keep the minutes? A. Yes.

Q. Is there a minute there showing that the assets of this co-partnership were taken over by the corporation? A. This corporation took over the stock of the original incorporators, according to the records there, I believe.

THE COURT—That is not the question.

(The Stenographer read the last question as follows: "Q. Is there a minute there showing that the assets of this co-partnership were taken over by the corporation?")

By MR. STEIN:

Q. Will you please point it out to me?

MR. KREMER—We are willing to admit that the corporation owns the assets. Of course, I do not see how the complainant could be injured in any way unless the corporation did not own the assets. If we were attempting to show that the lumber corporation did not acquire the assets of the partnership, and therefore, its assets were less, there might be some purpose in showing that we actually took them over. If we did take

them over, then I don't think that Judge Stein means to indicate that the corporation would be any richer than the partnership was. It would be simply a matter of whether or not this transaction was done properly. I am willing to admit that we stand in the shoes of the partnership, and that any assets they have, we have got.

MR. STEIN—I am trying to show that there are assets here which are either intentionally or unintentionally hidden, and if the assets of this co-partnership did not go into this corporation properly, they still belong to the surviving partner, who was the husband of this complainant, if I am not in error as to the law, and that, even though the corporation may be using them, they do not belong to it.

THE WITNESS—This is what I had reference to, transfer of stock. The incorporation was attended to by the lawyers.

By MR. STEIN:

Q. It is not in there, is it? A. I don't see it. This is what I had reference to, the stock transfer, and dummy stockholders.

Q. But there no minute anywhere in those minutes showing that the corporation acquired the holdings of J. W. McDonald & Son Corporation, is there? A. No.

Q. You do say that the president and vice-president, that is, the defendant here, Henry J. McDonald, and Mrs. Adelaide McDonald, draw $500 a month each? A. Yes.

Q. So that in the first six months of this business, they drew $6,000 together? A. Yes.

Q. And you drew approximately $1,800, at the rate of $75 a week? A. Yes.

Q. Plus ten per cent? A. Yes.

Q. Quarterly? A. Yes.

Q. Is that right, quarterly? A. Yes.

Q. Your contract calls for you to get your ten percent quarterly? A. Well, it calls for that, yes.

Q. Your contract also calls for ten percent of the net earnings after deducting all amounts properly incurred and expended during said quarter period in carrying on the company's business, is that right? A. Yes.

Q. Of course, that means what it says, all amounts, and therefore, it includes salaries? A. Yes.

Q. Paid to the president and vice-president and everybody else? A. Yes.

Q. All overhead of every description? A. Yes.

Q. Including your own $75 a week? A. Yes.

Q. Are you now able to say to the Court what you drew in dollars and cents under your ten percent clause for the first six months of 1930? A. In addition to this, Mr. McDonald allows me a commission for special accounts that I bring in, which would be in the nature of salesman's commission like. I am not quite clear on the exact amount drawn as a bonus for my share in the net profits of the business, but I can say that for the first quarter I drew—I think it was $850.

Q. What about the second quarter? A. The second quarter my commissions were for a special business that I brought in, but I think I got $202.

Q. That is for the second quarter? A. For the second quarter.

Q. Under your contract you are to conduct this business entirely, aren't you? A. Well, not entirely, no; under the direction of Mr. McDonald.

Q. You are to devote your entire time to it? A. Yes.

Q. And you are employed as secretary of the company? A. Yes.

Q. And you are to act under such instructions in carrying on the business which the party of the first part may issue from time to time in connection with your employment? A. Yes.

Q. So you are to conduct this business entirely under instructions from time to time from whom? A. From Mr. McDonald and his mother.

Q. Does Mr. Henry J. McDonald spend any time over there in the business? A. Yes.

Q. What does he do for his $500 a month? A. He buys and sells lumber.

Q. The same as you do? A. The same as I do, help along.

Q. What does Mrs. Adelaide McDonald, Senior, do as vice-president, for her $500? A. I can't say, but I presume that she holds—she holds some business which we enjoy.

Q. She holds it how? A. Through friendship that some of our customers had for her husband.

Q. Would that be true also of the son? A. Maybe, but I happen to know this.

Q. Mrs. McDonald does not appear over there doing anything for her $500 a month on the premises? A. Physically?

Q. Yes. A. No.

Q. And neither does she go out and get any business actively? A. Not new business.

Q. So this business paid $6,000, $1,800, $850, and $202, plus the other salaries for the first six months, is that right? A. What do you mean *paid?*

Q. This business paid to the president and vice-president $500 each and every month, did it not? A. Yes—well, no, don't misunderstand me. They did not draw $500 a month; that is what they were to draw as salaries, but they did not draw it in that way.

Q. Did I misunderstand your testimony given to counsel here to the effect that Mr. McDonald and Mrs. McDonald were drawing $500 a month? A. They were to draw a salary of $500 a month.

Q. Did I understand you to say that they did draw it? A. They probably did, and maybe more; yes, they have drawn that.

Q. You say maybe more? A. Yes.

Q. How much more? A. I can't say offhand.

Q. Will the books show how much they drew? A. Yes.

Q. However, in addition to whatever they drew, the business also paid you approximately $1,800, at $75 a week, the first six months? A. Yes.

Q. And also paid you $850 on the first quarter? A. Yes.

Q. And $202 on the second quarter? A. Yes.

Q. Plus whatever the McDonalds drew? A. Right.

Q. And in addition to that, it showed a net profit of $5,300 for the first six months? A. Yes.

Q. Have you any idea what gross business that would represent? A. No.

Q. The books would show? A. Yes, the books would show.

Q. Do you know, if Mr. Henry J. McDonald undertook to give figures as to the income of his business in an affidavit in this case, where he got those figures from? A. No.

MR. KREMER—I object to that. I will withdraw the objection.

By MR. STEIN:

Q. And you say that the net profits of the business for the year 1930—of course, by that you understand this meant net after all— A. After paying Mrs. McDonald's salary and Mr. McDonald's salary.

Q. (Continued)—after all salaries and that sort of thing are paid? A. Yes.

Q. Have you any idea what the net profits of that business would be for the year 1930 after all those things were paid? A. I might estimate it for you from the past three quarters.

Q. May I ask you this, unless counsel objects: Did you have a conference with Mr. Henry J. McDonald, or were you consulted about January of this year as to the probable profits for 1930, net ?

MR. KREMER—I object to it.

(The Stenographer read the last question as follows: "Q. May I ask you this, unless counsel objects: Did you have a conference with Mr. Henry J. McDonald, or were you consulted about January of this year as to the probable profits for 1930, net?")

A. I don't recall.

By MR. STEIN:

Q. If Mr. Henry J. McDonald undertook to give his opinion, based upon the business and so forth of net

profits for the year 1930, it was not after any consultation with you, was it? A. No.

THE COURT—We will recess at this time until twenty minutes of two this afternoon.

(A recess was had until 1.40 o'clock p. m.)

AFTERNOON SESSION

WILLIAM D. DOWNS, resumed the stand, and testified further, as follows:

By MR. STEIN:

Q. Mr. Henry J. McDonald is thoroughly conversant with the income of this corporation and with his own withdrawal account and salaries, and so forth, is he not? A. I could not answer that; he should be.

Q. You say you have checks and vouchers to show what he withdrew from the company during the year 1929 and 1930? A. Checks and vouchers? I have a set of books.

Q. You paid his salary by check? A. No.

Q. By cash? A. Cash, some of it.

Q. Did you pay any of it by check? A. We paid some bills for him and charged it to his salary account.

Q. You say he did have a salary account? A. Yes, that is what we call it.

Q. And you say he did draw a salary from the corporation after it was formed? A. Yes.

Q. If I was to tell you that he swears that he did not draw a salary, what would you say to that? A. I would say he was mistaken.

Q. You would say that he was mistaken? A. Yes.

Q. And that you were right and he is wrong? A. Absolutely.

Q. You say that his mother participated in the profits? A. Yes.

Q. And that she drew a salary? A. Yes.

Q. Was that by check? A. No, other than how I explained.

Q. Was the $500 a month salary by check? A. No.

Q. What was that in? A. Cash.

Q. Then the books will show the entry of the cash paid to her each month? A. Yes.

Q. Will the books show $500 paid to each of them, and will it say cash, if it was cash, or will it say check? A. The item of $500 a month? No.

Q. It won't show that? A. No.

Q. What will it show with reference to the salary? A. Well, on the payrolls every week we put down Mr. McDonald for $25 a week.

Q. What will the books show about this $500 that you say his mother and he drew every month? A. It won't show anything as the item of $500 goes.

Q. If I was to tell you that Mr. Henry J. McDonald swore in these proceedings that after the corporation was formed—and to show you that he did swear in an affidavit on January 25, 1930, that ninety percent of the income from this business—using his language—"ninety percent of this income will be mine," what would you say about that, as against your testimony?

MR. KREMER—I object to that as an attempt to

characterize someone else's testimony. It is for the Court to infer where the truth lies, and I do not think the question is proper.

MR. STEIN—I will withdraw the question.

By MR. STEIN:

Q. You say that the president of the company, who is the defendant here, withdrew $500 a month as his salary, and his mother did the same, and that the company was formed on July 23, 1929. I call your attention now to an affidavit filed by the president of the company, the defendant in this case, on January 25, 1930, practically six months after the corporation was formed, in which Mr. McDonald swears, "I do not draw a salary, but I have been drawing $200 a week from this business throughout 1929." How do you reconcile his sworn affidavit with your present tesitmony?

MR. KREMER—If the Court please, I object to that. I do not think that it is a proper mode of cross-examination. I think he has a right to ask this witness facts as he knows them, and to ask Mr. McDonald the facts, but not to ask this witness to characterize what someone else said. If Mr. McDonald has falsified, that will be held against him, but to reconcile someone else's statements to his own is improper.

MR. STEIN—I am asking him how he can reconcile his testimony, which is directed for the purpose of impeaching his testimony, if I may be able to do it by his answer, and to affect his credibility in the testimony which he now gives.

(The Stenographer read the last question as follows: "Q. You say that the president of the company, who is the defendant here, withdrew $500 a month as his salary, and his mother did the same, and that the company was formed on July 23, 1929. I call your attention now to an affidavit filed by the president of the company, the defendant in this case, on January 25, 1930, practically six months after the corporation was formed, in which Mr. McDonald swears, "I do not draw a salary, but I have been drawing $200 a week from this business throughout 1929." How do you reconcile his sworn affidavit with your present testimony?")

A. I did not say that he drew $500 as an item.

By MR .STEIN:

Q. Is that your best answer? A. Yes.

MR. KREMER—If the Court please, I should like to move that the question and answer be stricken out as an endeavor to read into the record part of the affidavits that are moving papers. I think your Honor will readily see the mischief that might happen if counsel might allude to what someone else said in an affidavit and get that into the record, and then ask how that is reconciled with a different version of the story.

MR. STEIN—My answer is that we are in a Court of equity.

THE COURT—I do not think it is necessary for us to quibble over this question of the method of

developing them. Let us develop them along legal lines. I will allow latitude where there is a variance between the statement of the witness and the affidavits. The question may be answered.

MR. KREMER—Do I understand that will have to do with statements of the affiant or where there is a variance between—

THE COURT—I am not going to generalize. I will confine it to this particular instance where the defendant's testimony and his sworn affidavit and the testimony of the present witness are involved.

MR. KREMER—In other words, your Honor will rule on the questions as asked?

THE COURT—Yes.

By MR. STEIN:

Q. From what you know of the business, and having in mind the testimony which you gave here this morning concerning the probable net income of the business for 1930, if the president of the company said further in his affidavit in this cause "that the net income from the business for the year 1930 will, in my opinion, be between $15,000 and $18,000," do you agree or disagree with his opinion, as expressed in that affidavit? A. Do you mean the net income to Mr. McDonald or to the business of the corporation?

Q. May I ask you whether or not you know what is meant by the words *net income?* A. Yes.

Q. What is meant by it? A. The amount that is left after all expenditures are taken out.

Q. Including salaries? A. Including salaries, every legitimate expense.

Q. Would it include a drawing account of $200 a week, if it was paid as a salary? A. Yes, if it was paid as a salary.

Q. If the defendant, who is the president of this company, says in his affidavit, "the net income from the business for the year 1930 will, in my opinion, be between $15,000 and $18,000 under present conditions," do you now, from what you know of the business, change your testimony that you gave here this morning?

MR. KREMER—I think the evil of this method of—

MR. STEIN—The question is withdrawn. I consent that it be stricken out.

THE COURT—Let me say now, gentlemen, that I am dependent upon this witness and counsel to produce all the records of this corporation, so that they may be checked against the testimony of both parties.

MR. KREMER—I have here the audit. I recall that at one of the hearings before I was directed to produce certain documents, the stock book and bills having to do with the operation of the building at Red Bank, the minutes, certification of incorporation, and the audit. I have here the audit for the last six months of 1929, and the first six months of 1930, which I think clear up these matters. It is made by Matthews, Brown & Company, 82 Beaver Street, New York.

THE COURT—If that is acceptable to counsel, it is satisfactory to me, but if it is not, I will require the books of the original entry to show—

MR. STEIN—It is not acceptable for the reason that I feel the Court should have a right to inspect the books in order to determine whether, from the testimony heretofore given in the affidavit and the present testimony given, there has been any change in the books themselves, also for the purpose—

THE COURT—I would require an inspection of the books.

(Discussion off the record.)

By MR. STEIN:

Q. The books of the company, which would show the business done by the company, and the profits derived therefrom, are how many in number? A. I couldn't tell you offhand. There are a number of books.

Q. What is the system of bookkeeping that you keep? A. I don't keep any.

Q. Well, I mean the system that is kept in your plant. I understand that you are the secretary. Who is your bookkeeper? A. Miss Pollard.

Q. Anyone else? A. The auditor comes in and instructs her now and again.

Q. The bookkeeper is still employed? A. Yes, bookkeeper and stenographer she is. She is not a regular bookkeeper.

Q. Did I undestand you to say that the bookkeeper had been discharged because of lack of business? A.

The original bookkeeper, yes. We employed a regular bookkeeper up until a year ago.

Q. The regular bookkeeper up until a year ago was whom? A. A man named William Catlik.

Q. Where does he live? A. In Canada at present.

Q. Is he the man that is referred to in the affidavit that had defaulted in the company in the sum of $25,000 in 1929 A. I don't know of anybody that defaulted.

Q. In the affidavit of the president, to which I call your attention, he says, "we suffered considerable loss in business, however, due to a defalcation of an employee who got away with about $25,000." Do you know anything about that? A. I don't know the name of that employee.

Q. Do you know about the $25,000 defalcation? A. I believe there was a loss, yes.

Q. Did you know the amount? A. No, definite amount, no.

Q. You say that this bookkeeper is now in Canada? A. No, not that bookkeeper.

Q. I understood you to say that the bookkeeper who kept books until when? A. From October last year back to July, 1928.

Q. From 1928? A. From 1928 to October of last year, a man named Catlik kept our books.

Q. From October, 1928, to July, 1929, he kept your books? A. Yes.

Q. And he was the bookkeeper whom you say is now in Canada? A. Yes.

Q. And whose name you have mentioned? A. Catlik, yes.

Q. What is the name of the present bookkeeper, the one who took his place in July, 1929? A. Miss Pollard

Q. Where does she live? A. She did not take his place in July, 1929.

Q. When did she take the place of the bookkeeper? A. October, 1929.

Q. Where does she live? A. Some place in the Bronx, New York. I don't know her street address.

Q. Who was the bookkeeper in the interim between the time that the bookkeeper left in 1929 in July, and the time that Miss Pollard came on? A. She stepped right in with the assistance of an auditor.

Q. She has been the bookkeeper since the other bookkeeper went away in July, 1929? A. Not since July, 1929. Our previous bookkeeper, a man, was regularly employed as bookkeeper, and we let him go in October, 1929, and Miss Pollard succeeded him.

Q. What was his name? A. Catlik.

Q. Then I must have misunderstood you. I understood you to say that Catlik went to Canada in July, 1929. A. No.

Q. He was the bookkeeper until October, 1929? A. Yes.

Q. What set of books are kept by this corporation? Name them. A. There are three or four different ledgers, purchase ledger and the sales ledger, and a cash book, check book; I don't know what other books you would call them, but I know there are three or four ledgers, and there is a cash book.

Q. How far back do these books go to show the business of the company? A. July, I believe, July, 1928.

Q. That was the time it was a partnership? A. Yes, it was a partnership then.

Q. Do these books show the business of the partnership from July, 1928, to the time of the formation of the

corporation in July, 1929? A. To the best of my knowledge, they do, yes.

Q. You have already said that you are conversant with the books? A. Yes.

Q. Do the books also show what was paid to the partnership of J. W. McDonald & Son at the time the corporation was formed for their interest in the business.

MR. KREMER—I object.

MR. STEIN——I am asking this for your enlightenment when the books are produced in order to determine—

THE COURT—He has testified to the books, but I don't think he has the knowledge to answer a question of that kind.

MR. STEIN—I will ask him.

By MR. STEIN:

Q. Do you know whether or not the books show what was paid to the co-partnership by the corporation? A. No.

Q. Do the books show how the corporation took over the assets of the co-partnership? A. No.

Q. So that the minutes of the corporation, which we have already gone into, do not show it and neither do the books? A. No.

Q. Do the books show what was the value of the assets of the corporation at the time of the incorporation? A. Yes.

Q. They do show that? A. Yes.

Q. Do they show that those assets were taken over by the corporation? A. Yes.

Q. And do they show how they were paid off? A. I can't answer that.

Q. I mean by that, whether in stock or cash? A. I would not like to answer; I presume in stock, but I don't know. I would not like to answer.

Q. The co-partnership was Mr. J. W. McDonald, the father of the defendant, and the son, Henry J., is that right? A. Yes.

Q. When the corporation was formed, do the books show what Mrs. Adelaide McDonald paid for her stock?

MR. KREMER—I object to this. The books are the best evidence of any entries in them.

MR. STEIN—I am not asking what entries are in the books, but just for the purpose of describing the books, we are going to get in advance of the time of their production.

THE COURT—The trouble is that he is not the bookkeeper. He has assumed to testify to a lot of things that he is not competent to testify. So far as the evidence is concerned, I can't see where it is going to be binding on any of the parties outside of the knowledge that he actually has as mangaer of the concern and the amount of money that he knows has been disbursed by the corporation to the different parties.

MR. STEIN—This witness is secretary of the corporation and an afficer thereof.

THE COURT—And it shows that there has been no meeting of the corporation. He does not keep the books. He simply is the manager in so far as his position is concerned, and that is the extent of his knowledge.

MR. STEIN—If your Honor does not feel it is of any value, I won't press it.

By MR. KREMER:

Q. You said just before recess that in the first quarter you drew in between a salary of $850? A. Yes, approximately, as nearly as I can recall.

Q. Will you tell us whether or not that was your percentage of net profits? A. No; included in that was some special commission.

Q. How much of that was your percentage of net profits, if you know? A. I can't answer that offhand.

Q. As I understand it, you say that your remuneration from the business arises in three ways, salary, percentage of net profits, and special bonus on special sales? A. Yes.

Q. With reference to either of these figures that you gave us this morning, $850 for the first quarter and $202 for the second quarter, do either of these items represent percentage on the net profits? A. I don't think so, no.

Q. They do not? A. No.

Q. I believe that you said that the net profits for the first six months were $5,300? A. Approximately $5-000.

Q. And for the last three months they were how much? A. About $2,400, that is from a rough audit.

Q. Can you tell us approximately what the net profits for the entire year will be? A. I could not tell you what they will be. I might make an estimate.

Q. Will you give us an estimate? A. I would say $25,000 or $26,000. That includes—pardon me, no.

Q. I want the net profits, the same figure that represents $5,300 for the first six months, and $2,400 for the last three months up to October 1st. Can you tell us what those net profits will amount to for the entire year, estimated? A. About $9,000, but I am only estimating now.

MR. KREMER—That is all.

If the Court please, I should like to offer in evidence the report of audit dated June 30th, 1930, showing the report of Matthew Brown & Company, certified public accountants, 82 Beaver Street, New York, showing the condition of the business on June 30, 1930, and showing the business for the first six months of 1930 and the last six months of 1929.

MR. STEIN—I objcet to that as not being the best evidence and primary evidence of the condition of the business and profits therefrom, but only an expression of opinion of figures made by auditors.

MR. KREMER—One of the things that was requested by counsel and which we were ordered by the Court to produce was the audit of the company's books, and now we have that.

It may not be conclusive, and your Honor may wish to go further and examine the actual books themselves,

but I cannot help but feel that this audit will be helpful, and I think it is also evidential.

THE COURT—It may be helpful, but I don't consider that it is evidential.

(Argument off the record)

JAMES F. ACKERMAN. a witness called on behalf of the defendant, being first duly sworn according to law, on his oath, testified as follow:

DIRECT EXAMINATION

By MR. KREMER:

Q. Doctor, where do you live? A. Asbury Park, New Jersey.

Q. You are a practising physician in the State of New Jersey? A. I am.

Q. For how long? A. Forty years.

MR. KREMER—Do you admit the doctor's qualifications, Mr. Stein?

MR. STEIN—Oh, yes.

By MR. KREMER:

Q. Do you know Mrs. Gertrude T. McDonald, the complainant in this case? A. I do.

Q. Do you know Mr. Henry J. McDonald, the defendant? A. I do.

Q. Have you had occasion since 1927 and up until the present time to attend Mrs. Gertrude T. McDonald?

MR. STEIN—I object to that part of the question which includes 1927.

By MR. KREMER:

Q. Well, in 1928, did you attend her in March or spring of 1929? A. I did.

Q. Where did you see her? A. At her home.

Q. You mean her home at Whitehall Street or her mother-in-law's home? A. I think that was at Whitehall.

Q. How many times did you see her and in what month was it? A. March 26th, 27th, and 30th.

Q. Tell the Court from what she was suffering. A. Mental agitation and nerve excitation.

Q. How did you know that? A. Well, I could tell by the anxious expression on her face and by what she said.

Q. Were there any objective symptoms? A. Except the rapid pulse.

Q. And the remaining symptoms were subjective? A. They were subjective.

Q. By that you mean explanations made and history given you by the patient? A. Yes.

Q. What did you administer? A. Sedatives.

Q. And you saw her just three times? A. Three times in March.

Q. Did you see her in April? A. I saw her in April.

Q. How many times? A. Nine times.

Q. What was she suffering from in April? A. Pyolitis.

Q. What is that? A. Inflammation of the kidney, a virulent inflammation of the kidney.

Q. When you saw her in April, will you tell us whether or not that nervous condition, which you previously described, had subsided? A. No, she was still nervous then, and all during that period of April she developed this pyolitis early in the month. It lasted until the last of the month.

Q. Before you saw her in March of that year, had you ever seen her prior to that? A. Yes.

Q. When? A. I don't remember. I didn't have any data in 1928 or 1927.

Q. Can you tell us whether or not she was suffering from nervous condition in 1928 and 1927?

MR. STEIN—Of course, that is the same question over again concerning which we offer nothing.

THE COURT—I will allow the question.

MR. STEIN—Objection.

By MR. KREMER:

Q. In 1928, what was she suffering from? A. I don't remember.

Q. And in 1927? A. I don't remember; nothing serious, or I think I would remember.

Q. When you saw her in 1929, and when you say nothing serious previous to that, was the nervous condition serious? A. No.

Q. Did you see her any more during the summer? A. I saw her in October.

Q. Where did you see her then? A. At her home in Whitehall.

Q. How many times did you see her in October? A. Once.

Q. What was the matter with her then? A. The same trouble; I mean not pyolitis; I mean nerve trouble and mental disturbance.

Q. What leads you to say that she had mental disturbance then? A. What she told me.

Q. And that alone? A. Yes, it did not require but one visit.

Q. Between the time that you saw her in March and treated her for the nervous excitation that you have described, and the time that you saw her in October for the same thing, did you treat her at all for nervous excitation during that time? A. No, I did for the pyolitis in April, but that is all, according to my records.

Q. Can you state whether or not, from your knowledge of her condition as you observed her in March and in October, and having in mind the fact that she lost weight, thirty-five to forty pounds,—could you tell us with a reasonable degree of certainty, whether or not, in your opinion as an expert, you would attribute that loss of weight to the nervous excitation? A. Yes, people lose weight fro mmental anxiety and nerve excitation.

Q. Could you state whether or not this patient lost weight fro mthat? A. I don't know what Mrs. McDonald lost because I didn't see her in the face and did not weigh her.

MR. STEIN—I submit that the first question be stricken out and also the second question. Counsel

undertook to put a hypothetical question to the witness which embraced one of the facts on the complainant's state of the case, namely, that she had lost weight and ho wmuch, and having done that and received the answer, he is not permitted to ask him a second question to contradict his own witness.

MR. KREMER—I will consent that the hypothetical question and answer be stricken out.

MR. STEIN—No, that the second question be stricken out.

THE COURT—I will allow both questions.

By MR. KREMER:

Q. Could you state whether or not there was anything in her condition, as you observed it, to lead you to infer that she would lose thirty-five to forty pounds from her condition, as you observed it? A. No, I didn't see her during the summer.

MR. STEIN—I move that that be stricken out, inasmuch as there is no evidence that she lost thirty-five to forty pounds.

THE COURT—I do not think the basis is laid to permit the doctor to answer that question. I will sustain the objection to the question.

MR. KREMER—The complainant has alleged and contended that as a result of the nervous excitation that she suffered from, which she says was caused in her

household, she was seriously ill and lost weight. I think we have the right to attack the probability of that result. No medical testimony has been produced by the complainant to substantiate it, and I think we have a right to show that it might have arisen from other causes, or that it did not arise from this cause.

By THE COURT:

Q. I understand from the doctor's testimony that he says that a mental disturbance of the mind and nervous excitation might produce loss of weight. Is that correct, doctor? A. Yes, sir.

MR. STEIN—If you Honor please, if counsel desires to elicit from the doctor testimony which would refute the testimony of the petitioner and those who testified to her condition, both on the side of the complainant and the side of the defendant, the last one being the witness Mrs. Daly—

THE COURT—The doctor does not refute it, as I understand his testimony.

MR. STEIN—(Continued)—he must frame a hypothetical question assuming the facts in evidence in this case, and then ask the doctor whether or not, in his opinion, that would cause the loss of weight of which she complained, in a person suffering from or claiming these conditions.

MR. KREMER—I am not asking this as a hypothetical question, but I am asking it as a question that he would know of his own personal knowledge.

By MR. KREMER:

Q. I understand you to say that you treated her in March for nervous excitation and that you saw her three times? A. Yes.

Q. And that you treated her for pyolitis? A. Yes.

Q. Nine times in April? A. Yes.

Q. And no times for nervous excitation? A. No, not in April.

Q. Can you tell us whether or not the pyolitis for which you treated her is the result or was the result, if you know, of nervous excitation? A. I don't think so. Pyolitis is not usually produced in any other way except by an infection.

Q. Was there anything in her condition, as you observed it when you treated her for nervous excitation, which would cause her to lose an appreciable amount of weight in the course of the next four or five months from her condition as you observed it when you treated her? A. I saw her none during the summer. I don't know when she lost the weight. When I saw her in October 25th, I did not know that she had lost weight.

Q. When you saw her in October, what was her condition as to weight, as you observed it, as compared with the previous March, if you can tell us? A. Will you repeat the question, please?

(The Stenographer read the last question as follows: "Q. When you saw her in October, what was her condition as to weight, as you observed it, as compared with the previous March, if you can tell us?")

A. In other words, if she was still in the mental and nervous state that I saw her in April and that continued

during the summer, would she lose an appreciable amount of weight during that summer up to October?

Q. That is not what I meant to ask you, doctor.

By THE COURT:

Q. Doctor, you said that you had treated her in March and April? A. Yes.

Q. In March you said you treated her for nervous excitation? A. Yes.

Q. The question is, doctor, as follows: From your observation of Mrs. McDonald and what you know of the case, do you consider that an appreciable loss of weight, as is claimed to have taken place, could have been caused by the illness for which you treated her in March? A. When? At any time?

By MR. KREMER:

Q. At any time? A. That is a hypothetical question, isn't it?

THE COURT—Perhaps this can be made clear off the record.

(Discussion off the record)

By MR. KREMER:

Q. Could you state with reasonable degree of certainty that the loss of weight she sustained over a period of five or six months after March was attributable to the nervous excitation that you treated her for in March or to some other cause? A. Yes, she was sick in March

and April with pyolitis, a disturbance of the nervous system. Certainly a loss of weight could have been produced by the illness in March and April.

Q. By the pyolitis or the nervousness? A. Both. Pyolitis usually runs with mental anxiety.

Q. Is it as reasonable to attribute the loss of weight to the pyolitis as it is to the nervousness? A. Yes, you would lose weight in both cases. I don't know how much she lost or what she attributed it to.

Q. You treated her three times in March for nervous excitation and no times in April? A. No, pyolitis in April.

Q. Her condition in April did not necessitate treatment for the nervousness? A. My record shows that she had pyolitis, but my recollection is that she was nervous in April.

Q. When you saw her in October, you say you saw her just once? A. In October, once.

Q. Was her condition serious then? A. It was not.

CROSS EXAMINATION

By MR. STEIN:

Q. Doctor, in addition to the times that counsel asked you about, you also treated Mrs. McDonald November 19th and 20th and 29th, didn't you? A. If I told I did, I did.

Q. Well, I have a memorandum from you signed by you, which you sent me at my request, did you not? A. Yes.

Q. In which I asked you how often you had treated her? A. That is correct; that tallies with mine.

Q. You treated her on the 19th, 20th, and 29th of November? A. Yes.

Q. Doctor, do you recall saying to Mrs. McDonald in October that unless the condition stopped, which was producing her nerve excitation, and unless she got a good grip on herself, you would not answer for her in six months next to come? A. I don't recall that. I may have advised a change. I don't think I would depress a person. I don't usually depress a person to that extent.

Q. Do you remember having said anything of like import to her, that she must get a grip on herself? A. I might have said that.

Q. Assuming doctor, that Mrs. McDonald was living with her husband during the times of March 26th, 27th, 29th, and from thence on to November 29th, the last time you saw here, 1929, at different places, one of them 70 Esplanade, Deal, where the mother of her husband lived, and where the husband and Mrs. McDonald were living; and assume that while so living in the home, differences arose between the mother of the defendant, Henry J. McDonald, and Mrs. Gertrude T. McDonald, the complainant here, your patient, which caused the complainant mental anguish and worry, and which troubles were brought to the attention of her husband; and assume that the mother of the husband had said things to the complainant in the day time or evening in the absence of her husband, which prevoked quarrels and troubles, and that these things were then brought to the attention of the complainant's husband by the complainant and by his mother, and that these differences and troubles in the household culminated at different times by the complainant leaving the home of her mother-in-law and going back to her home at 10 Whitehall, and then back again to her mother-in-law at the solicitation of her husband and

her mother-in-law; and that about March 24th, 1929, or a few days previous thereto, the complainant had received information over the telephone that her father-in-law had died, that she was not to kiss the body of her father-in-law when it was brought to the home, that the brother of the complainant had been requested by her husband to telephone to her and say to her that her husband, Jack, was through with her, and that he would live with her no longer; and assume that on March 25th, 1929, or thereabouts, the body of the father-in-law was brought home, and that the complainant's husband met her and refused to speak to her, and that on the next day she had received the information that her husband had also told another brother, Ambrose McManus, that he was through with her and would live with her no longer, and that she had been told that this was because she had made some statements to her father-in-law to the effect that he ought to stop worrying about his finances and sell some of his securities or shut up; and assume that before the father-in-law went South, where he died, this statement was supposed to have been made or said to have been made, and that when they departed, they departed friendly, and that the later information came to her that this was the underlying or one of the underlying causes for her husband's apparent loss of affection and treatment of her—this is in March, 1929, around the 26 th or 27th— and that subsequently this difficulty was overcome, and the complainant to live again with her husband and her mother-in-law in an apartment at Red Bank where further difficulties and differences between the mother-in-law and the husband and the complainant took place, and that these differences continued off and on for various periods, and that about Thanksgiving, 1929, after one of these differences, the defendant told the complainant that she might go on

with her former plan, meaning thereby that she may separate from him, and that he had telephoned to her brother, Ambrose McManus, and told the brother that he was on his way to Pinehurst, and that the brother should take care of his sister, that he was through with her, which information was imparted by the brother to the complainant, and the complainant thereupon left and went back to her home at 10 Whitehall; assuming those facts, together with the condition in which you say you found her on the dates March 26th, 27th, and 30th, April 1st, 2nd, 16th, 17th, 18th, 19th, 20th, 22nd, 25th, October 26th, November 19th, 20th, 29th, in visits you found her suffering from nerve excitation and pyolitis; and assuming that the complainant says that due to the things which I have assumed in this question, she had lost between thirty-five and forty pounds in weight, can you, with reasonable certainty, reasonable probability, say whether or not the loss of weight, which she claims to have suffered, was due to the nerve excitation, which you found her to be suffering from together with pyolitis on your visits?

MR. KREMER—I object to the question on several grounds. In the first place, it is not proper cross-examination. I asked no question embodying these facts on direct examination. If counsel wants to make the doctor his own witness, it may be that such a question would be competent.

THE COURT—You do not object to the question so far as it is propounded as covering the facts? It is not a recital of the exact language, but it is a substantial recital.

MR. KREMER—I do not mean that the facts are

that way, but I object that the facts cited by counsel are substantially the facts cited by counsel, except that the reference to her having been treated on certain days in April is not in accordance with the facts, because she was not treated for nervous excitation on those dates.

THE COURT—Are you willing to make the doctor your witness, Mr. Stein?

MR. STEIN—Yes, I am willing to make him my witness for the purpose of the answer.

THE COURT—The question is allowed.

THE WITNESS—Have I not already answered it.

THE COURT—That is for you to say.

THE WITNESS—I thought I had answered it. I said yes in a previous question.

REDIRECT EXAMINATION

By MR. KREMER:

Q. When you say yes, you men that such condition might have been produced of nervous or pyolitis or both? A. The loss of weight you refer to?

Q. Yes. A. Yes.

Q. And with regard to the condition about which Judge Stein asked you, whether or not such a condition, as you observed it, and such a loss of weight, would reasonably be attributed to pyolitis or to nervousness or to both, your answer is what? A. My answer is yes.

Q. Could you state with any reasonable certainty that it was attributable to either one of the causes to the exclusion of the other? A. I could not.

RE-CROSS EXAMINATION

By MR. STEIN:

Q. Can you say with any degree of reasonable certainty that the nerve excitation, which you found in the patient, was attributable to the things which were embraced in the hypothetical question that I just put to you, together with the mental condition which you have testified you found there? A. Yes.

By MR. KREMER:

Q. When you speak of nerve excitation, what do you mean? A. Agitation, a disturbance of the nervous system, which is brought about by mental shock, by mental disturbance of some kind.

Q. How do you determine that a patient is suffering from such a condition? A. I don't determine it always in the same way. Some people manifest it by hysteria, but Mrs. McDonald did not manifest it by hysteria at all.

Q. When a patient maifests such a condition by hysteria, is that a more flagrant condition than when the hysteria is not present? A. Not necessarily. Many people suffer by repression more than those who manifest it.

Q. How did Mrs. McDonald manifest the nervous condition? A. Only by a tremor of the body.

Q. A serious tremor? A. No, no.

Q. If that nervous excitation existed, as you found it, can you tell us whether or not, in medical science, you would attribute that to the mental attitude of the patient or to extraneous influences?

MR. STEIN—It certainly does not apply to the complainant. It does not apply to her case, and I object to it.

MR. KREMER—I will withdraw the question.

By MR. KREMER:

Q. Can you tell us whether or not the excitation, from which you found Mrs. McDonald suffering, was due to her own mental attitude or to extraneous influences, which had worked upon it? A. I could not tell, of course, except what she told me.

Q. And isn't it as reasonable to assume that it is due to the mental attitude of the patient as it is to the extraneous influences? A. Yes.

Q. In other words, a given individual may be of such a type that he or she may work himself or herself up into a nervous state upon occurrences which on another individual would have no effect whatever? A. Surely. A person can be thoroughly mad over a matter and still be repressed and have a nervous eexcitation. There may be remorse, and they will have the same condition of the nervous system. There may be deep sorrow or loss of property, or friend, or relative, which would produce the same condition of the nervous system, or it may be something entirely extraneous.

Q. So it might happen due to temperament or anger of an individual? A. Well, a person of nervous temperament, of course, would suffer; grief, disputes, anger, all those things are in the same class as far as the effects upon the nervous system are concerned.

Q. Were those effects upon the nervous system of any permanent character? A. The permanency in character, if there is any,—they are not often permanent—is the effect that it has upon the mind.

Q. And aside from that, if there is no effect upon the mind, there is no other effect? A. No.

Q. You mean it progresses to a neurosis? A. Yes.

Q. But you found nothing of that sort here? A. No.

Q. You say that the symptoms were largely subjective, that they were what the patient told you? A. They always are.

By MR. STEIN:

Q. I think you did say, did you not, that you observed her distressed mental condition? A. From what she said.

Q. If I am wrong, you may correct me, but I thought you said you saw something in her expression? A. Yes, she appeared to be distressed mentally, from the expression of her face.

MR. STEIN—That is all.

ANNA BURROWS, a witness called on behalf of the defendant, being first duly sworn on her oath, according to law, testified as follows:

DIRECT EXAMINATION

By MR. KREMER:

Q. Where do you work, Ann? A. Red Bank.

Q. You work in Mrs. McDonald, Senior's house? A. Yes, sir.

Q. How long have you worked there? A. Fifteen years.

Q. What is your job? A. Laundress.

Q. Do you know Mrs. Gertrude T. McDonald, the complainant in this suit? A. I do.

Q. You were living in the household of Mrs. McDonald, Senior, when her son married Mrs. Gertrude T. McDonald? A. I was.

Q. Do you recall when Mr. Henry J. McDonald and his wife lived in the house with you at 70 Esplanade, Deal? A. Yes.

Q. Did Mrs. McDonald, Senior, ever give you any instructions about her daughter-in-law? A. She told me to wash and iron her clothes and put them up on her bed.

Q. When did she give you those instructions? A. After she came there.

Q. Did she ever give you any other instructions with relation to her? A. Nothing at all.

Q. Did you ever hear Mrs. McDonald, Senior, talk about her daughter-in-law? A. Only in the kindest way.

Q. What did she say to you about her daughter-in-law? A. Well, anything she would get she would show me sometimes, and she would buy them for her daughter-in-law or her little girl.

Q. When you say her *little girl,* whom do you mean? A. Mrs. H. J. McDonald, Junior.

Q. You mean that she referred to her daughter-in-law as her little girl? A. Yes.

Q. How many times did you hear her do that? A. Many times.

Q. Up until when? A. All the time. I never heard any different.

Q. Did you go to Palm Beach with the family? A. I went every year for five years.

Q. Did she talk to you about her daughter-in-law down there? A. Hoping they would come.

Q. What did she say to you about them coming? A. She bought things, oranges and strawberries and things, and I made jam, to have everything nice for them.

Q. Do you recall the winter down there when Mr. McDonald died? A. I was there when he died.

Q. During those few months before he died and before Mr. McDonald, Junior, came down, did you hear Mrs. McDonald say anything about her daughter-in-law coming down? A. We was all prepared for Mrs. McDonald.

Q. What did Mrs. McDonald, Senior, say? A. She says she was hoping little Patrica would get better so they could all come down.

Q. And Patricia lived in the house at 70 Esplanade? A. Yes, we left her there.

Q. Did you ever talk to Mrs. Gertrude T. McDonald,

Junior? Did she ever talk to you about her mother-in-law? A. Only once.

Q. When was that? A. In the apartment at Red Bank.

Q. When? A. Last fall.

Q. After they moved to Red Bank? A. Yes.

Q. What happened then and what was said? A. Mrs. McDonald sent me up to Mr. McDonald for medicine. He had a sick spell.

Q. Who had a sick spell? A. Mr. McDonald, Junior, and she told me that Mrs. McDonald had killed her husband, and she would kill her son.

Q. Who said that? A. Mrs. McDonald, Junior.

Q. What did you say? A. I didn't say anything.

Q. Did you ever hear her making any other remarks concerning her mother-in-law? A. I did not.

Q. Do you remember the night that she was fired? A. I do.

Q. Did you know a chauffeur there named Joseph Schlesser. A. Yes.

Q. Did you ever observe Sadie and Joseph Schlesser together? A. I did.

Q. Will you tell the Court when and where that was? A. Mrs. McDonald sent me to call her.

MR. STEIN—I object on the ground that the thing was originally sought to be introduced for the purpose of discrediting the testimony of Sadie Williams on the ground that she was testifying because she was discharged. Now, the testimony of Mrs. McDonald, Senior, the other defendant, was that she knew of this episode or incident that counsel is now questioning her about before, but that she did not discharge her until

the day when the complainant and Mrs. McDonald and her husband were confronting Sadie Williams because of something she told the complainant, and then she discharged her, and for that reason, so that the materiality of this testimony as to Sadie Williams and whatever she did with the chauffeur can have no bearing on her credibility in this case. It was introduced only for the purpose of discrediting her in the event that she was discharged, because of that thing.

THE COURT—I will allow the question.

(The Stenographer read the last question as follows: "Q Will you tell the Court when and where that was?")

A. At Palm Beach, March 24th Mr. McDonald died. Mrs. McDonald sent me up at half past one to call Joe and Sadie. We packed the trunks and had orders to leave there the next morning. At half past one at night I had gone to my room, and I went and I called him, and both was in his room.

Q. What did you do? A. I saw them, and I called them, and he came out. He looked as if he had a pail of water thrown on him, and I went on back to the Mrs.

Q. What time of the morning was that? A. Half past one or a quarter of two.

Q. In his bedroom? A. In his bedroom, over in the garage.

Q. Where was her bedroom? A. In the front there somewheres.

Q. In the same building? A. In the same building.

Q. Did you see her coming out of his bedroom? A. Surely.

Q. Do you recall when Mr. McDonald and his mother went to Pinehurst? A. Yes.

Q. Before they left, did you talk with Mrs. McDonald, Junior, about her going? A. Yes, I was getting everybody's clothes ready. I asked her why wasn't she going.

Q. What did she say? A. She had to be home with the children.

Q. After Mr. McDonald and his mother went to Pinehurst, did Mrs. McDonald, Senior, communicate with you by telephone? A. She called up Mrs. McDonald.

Q. You stayed in Red Bank? A. I was in Red Bank.

Q. What happened? A. She called up Mrs. McDonald.

Q. Who called up? A. Mrs. McDonald.

Q. Which one? A. Mrs. J. W. McDonald, and she wanted to speak to Mrs McDonald, Junior, and I answered the telephone, and I told her that Mrs. McDonald was in New York, and in the meantime, as soon as I hung up receiver, Mrs. McDonald came in, and I told her about it.

Q. What did you tell her? A. I told her that Mrs. McDonald had just called and wanted her to call her up.

Q. From Pinehurst? A. Yes.

Q. What did Mrs. McDonald, Junior, say? A. She didn't say anything.

Q. Did she call? A. I don't know that.

CROSS-EXAMINATION

By MR. STEIN:

Q. You are still employed as a cook in Mrs. Adelaide McDonald's home? A. As laundress.

Q. You are still employed there? A. Yes.

Q. Will you tell the Court just what it was that prompted this statement by Mrs. McDonald, Junior, in which she told you that Mrs. McDonald, Senior, had killed her husband and that she would kill her son? A. I don't know why she told me.

Q. What was said just before that? A. Nothing. I went up with the medicine for Mr. McDonald. He had one of his sick spells, and that is what Mrs. McDonald told me.

Q. When you say "Mr. McDonald", you mean the defendant? A. Yes.

Q. Do you mean to give the Court the impression that you walked into the room— A. I did.

Q. (Continued)—and that as soon as you came in, Mrs. McDonald said this to you? A. I asked her for the medicine, and that is what she said to me.

Q. Right straight off? A. Yes, sir.

Q. Nothing else was said? A. Not a thing. That is true as your and my hands is different colors.

Q. You are not cross at me at all for having asked you that question, are you? A. It is funny that you should ask me such a question.

Q. I am asking you now if you can tell me what it was that would prompt her to make such a remark to you without anything else having been said. A. I don't know.

Q. That is all she did say. A. That is all she said to me.

Q. I suppose you resented that, didn't you? You found fault with her for that statement? A. I didn't find any fault with her; I didn't say one word to her. There she is, and she can tell you (indicating).

Q. And then you went out? A. I went downstairs with her, down to the—my madam's apartment, where Mr. McDonald was sick.

Q. You went downstairs with her? A. She came down with me.

Q. Where did she go with you? A. Down where Mr. McDonald's mother was.

Q. You walked in? A. Came down in her apartment and I went into my room.

Q. But Mrs. McDonald went into where her husband was? A. Sure.

Q. What hour of the day was that? A. I don't know. I was sitting there reading; I don't know what time it was, ten or half past ten.

Q. At night? A. Yes.

Q. Wasn't it five o'clock in the morning when Mr. McDonald was sick? A. I didn't say it was five o'clock in the morning.

Q. Wasn't it five o'clock in the morning? A. I don't know. He never stayed up to five o'clock.

Q. Do I understand you to say that it was ten o'clock in the morning? A. No.

Q. Ten o'clock at night? A. At night, after dinner.

Q. And it was not at five o'clock in the morning? A. I don't know. It was ten o'clock when I went out, and

I was sitting in my room reading when Mrs. McDonald came to the door and across the hall.

Q. When Mrs. McDonald, Senior, came to your door? A. Yes, she called me to go upstairs to Mr. McDonald.

Q. And you did, and this talk took place? A. Yes.

Q. How soon after Mrs. McDonald, Junior, said this to you, that her mother-in-law had killed her husband and would kill her son, was it that you told Mrs. Adelaide McDonald about that? A. I don't know how soon it was.

Q. Was it a week afterwards? A. I can't tell you that.

Q. Was it a month afterwards? A. I couldn't tell you that.

Q. Was it a year later? A. I guess not.

Q. Was it when this case started? A. I told her before we left the apartment.

Q. Was it when this case started? A. I think before.

Q. How long before? A. I can't tell you that

Q. Did you tell that to Mrs. McDonald, Senior, while Mrs. Donald, Junior, was living there? A. No, I did not.

Q. Why not? A. It was none of my affairs at all because I didn't carry tales back and forth to make trouble with my madam.

Q. But you did tell her eventually? A. Yes, I told.

Q. And how did you come to tell her what her daughter-in-law had said? A. I told her, but I don't know how I come to tell her.

Q. How did you come to do it? A. I don't know that.

Q. Were you asked about what had been said? A. No, I didn't ask any questions. She didn't ask me any questions.

Q. Were you asked by the mother-in-law of the complainant to tell what the complainant had said to you? A. No.

Q. Under what conditions was it that you came to tell her about this, if you remember? Do you remember them? A. No.

Q. You don't remember when you told her? A. I told her after they left the house, after they came from Pinehurst some time.

Q. Do you remember whether or not you told her before you went back to 70 Esplanade? A. We didn't go back to 70 Esplanade until April 2nd.

Q. Did you tell her before that? A. I did.

MR. STEIN—That is all.

DAN KANE, a witness called on behalf of the defendant, being first duly sworn according to law, on his oath, testified as follows:

DIRECT EXAMINATION

By MR. KREMER:

Q. Where do you live? A. I live now at Deal, 70 Esplanade, in the estate of Mrs. J. W. McDonald.

Q. You are a chauffeur employed in the McDonald family? A. Yes.

Q. How long have you been so employed? A. Well, on my second time with Mr. McDonald, I have been there now just two months.

Q. Were you ever employed there before? A. In the year 1926.

Q. And after that? A. Why, yes, have here in August 17th I came back to them.

Q. This year? A. Yes, this year, 1930.

Q. Where were you in 1927? A. I left on July 5th.

Q. Did you know Sadie Williams? A. I did.

Q. Did you ever have any conversation with Sadie Williams about Mr. Henry J. McDonald? A. I did.

Q. Did she ever make any statement concerning Henry J. McDonald? A. Yes.

Q. What did she say to you about Henry? A. Well, the second day that I was there on the estate, I was quite busy. I came in and said to her, "I am very sorry, but will you let me have lunch?"

She says, "Yes," so she said, "I suppose you are awful busy out there."

Q. Who is this? A. Sadie Williams.

MR. STEIN—I object to any conversation with Sadie Williams.

MR. KREMER—The purpose is this: I asked Sadie Williams if she was not prejudiced against Mr. McDonald, and she said no, and I asked her if she did not make statements derogatory to Mr. McDonald to Mr. Kane, and she said no.

THE WITNESS—(Continuing): She said to me, "You will be more busy."

So I said, "How is that?"

She said, "If they chase you around like they did Thomas Watson after Mr. McDonald. His mother sends you to the golf club with the car when it is not necessary, and he is an awful pain."

Q. Who is an *awful pain?* A. Mr. Henry J. McDonald, and she said, "I personally dislike him, and I can't see why everybody is crazy about him around here."

So I didn't say nothing more, and about six months after, I repeated the story to Mrs. J. W. McDonald what was said.

Q. Did you ever go on any trip with Sadie Williams to the South? A. Yes, I did.

Q. And on that trip did she make any statements concerning Mrs. McDonald? A. Yes, and previous to that, too.

Q. What did she say on the trip about her? A. We made Baltimore the first day.

Q. What did she say? A. She said she hoped that the boat sunk with him.

CROSS-EXAMINATION

By MR. STEIN:

Q. How long have you been a chauffeur for Mrs. McDonald now? A. Now, two months.

Q. How long were you out of her employ? A. About a little over three years.

Q. So that you were not in her employ since when? A. Since July 5, 1927.

Q. And so, when this conversation was going on be-

tween you and Sadie Williams, you were not in the employ of the McDonald's? A. Oh, yes.

Q. I thought you were there in 1927 and then re-employed here only lately. A. This happened in 1926 and 1927.

Q. Way back there? A. Oh, yes.

Q. And none of ths conversation was after 1927? A. No, I didn't know anything about the family, that Mr. J. W. had passed away.

Q. None of this conversation between you and Sadie Williams took place since 1927? It was all prior thereto? A. It was prior to that, yes, that is, prior to July 5, 1927.

Q. In other words, better than three years ago? A. Yes, a little better than three years ago.

Q. And you are giving us the accurate conversation just as it was taken? A. Yes.

Q. You are not cross with me, are you? A. No.

Q. I am asking you whether or not that conversation is exactly what took place, and whether or not you have remembered during this whole period of three years the things you related that she said? A. That is not exactly, but that is some of the things what she had said.

Q. That is, some of the things which you have told, are the words which she used? A. Yes.

Q. And you have remembered them from three years back to this time? A. Yes.

Q. Can you give any good reason why you should remember that?

MR. KREMER—I object to that.

By MR. STEIN:

Q. You were discharged by Mrs. McDonald for impudence to her, weren't you? A. No.

Q. How did you come to get out of her employ? Did you leave? A. Yes, sir, on the impulse of the moment.

Q. What was the impulse? A. I was washing the 314 Cadillac Sedan when the carpenter came into the yard and said to me, that Yuma, the butler, wants some locks on the door. I said, "You go back and tell Mrs. McDonald that I am going upstairs and pack my things, that I am through, and if she wants the locks to come down and take them off the Rolls-Royce."

When I came over there to Sadie, she said, "Mrs. McDonald said she wants to see you."

I said, "Mrs. McDonald does not want to see me, because I am through."

Q. You were sore for the moment? You left in a huff? A. Yes.

Q. Having left in a huff, you were not altoghter too friendly to the McDonald household? A. Oh, yes, positively.

Q. So much so that you discussed this thing with this colored girl, this conversation that you have related here? A. Discussed it when?

Q. With her? A. No, she discussed it with me

Q. You did not say anything? A. No.

Q. Not a word? A. Not a word.

Q. A one-sided conversation? How did this start? A. I would like to explain to the Court.

Q. The Court would like you to answer my question. A. I will, if you will let me explain in my own way in regard to what happened.

Q. What started the conversation? A. I was sitting at the lunch table, and she said to me—

Q. Where? A. In Mrs. J. W. McDonald's kitchen.

Q. You were not employed there, were you? A. Oh, yes, in 1926.

Q. All right. A. And she said to me, "You are quite busy?"

I said, "Yes, I am very sorry for being late for lunch."

She said to me, "You haven't been busy yet. If they chase you around like they did Thomas Watson to golf clubs and these places with the car, when Mr. McDonald didn't order it. His folks worry over him, and you will get sick and tired of it, too."

Q. You didn't think much of that at the time, did you? That is the sort of conversation that goes on among the help about the employers? A. I never had no conversation about the help. I never heard one boost or knock the other. I never made that practice.

Q. You heard that sort of discussion among the help about the employers, haven't you? A. No.

MR. STEIN—That is all.

MR. KREMER—With the exception of the inspection of the books and the audit, we rest.

(THE DEFENDANT RESTED)

MR. STEIN—I offer in evidence as rebuttal testimony and read into the record for the purpose of contradicting some of the testimony offered both by the defendant and his mother, the letters marked "—-3, 4, and 5 for indentification".

P-3 is the letter contained in the envelope marked by that exhibit number, postmarked "Palm Beach, March 8th, 1929, Florida. Thursday."

"Dearest :-

As you already know, I arrived safely and found the folks in far better condition than I had hoped but terribly lonesome, and as you can imagine, awfully happy to see yours truly. Your letter reached me yesterday p. m., and I am awfully happy to hear Pat is coming along so nicely and hope most sincerely that she is all through her suffering by now, for the poor little kid sure has had her share and then some. Give her my love together with a great big kiss and tell her I am sending a cocoanut tomorrow. I, too, dear, am very lonesome and am thinking of you morning, noon and night. The evenings and nights are the worst of all, and I sure do miss you to beat Hell. I have not left the house since I arrived, so have not seen any of the crowd, and what is more, I don't care to.

Harry called up and wanted me to go on a fishing trip, but I declined, explaining that I intended to take a complete rest and to spend the most of my time with the folks. I sincerely hope the occasion will never arise again to necessitate our being separated, and also that we will soon all be together and bring about that feeling of affection and confidence that once existed.

Good-night and God bless you and love you as I.

Jack.

The folks send their love to both you and Pat."

Exhibit P-4 for indentification postmarked, "5:30 P. M. Palm Beach, March 12th, 1929, Florida, Tuesday.

"Dearest:

Absolutely no news, as I haven't been anywhere as yet. Had my first swim day before yesterday, but the weather has been so cold and windy ever since my arrival, I haven't felt much like bathing. Your wire received, and I am awful glad to hear Pat is doing so nicely. Give her my love and tell her I miss her terribly. Love from all.

Jack."

P-5 is a letter dated "March 23d, 5:30 P. M., 1929, Palm Beach, Florida, Friday night."

"Dearest:-

Just returned from the beach after a good two hours in the sun and water, the latter being absolutely marvelous. It is one of the few days suitable for bathing since I arrived, and believe me, I made the best of it. Received report from the hospital on Pop's examination, and while there is a slight irregularity in the heart action, they don't seem to think it serious, probably due to his nervous condition, and is their dope to say he must take it easy and not exert himself or worry anymore than possible.

Awful glad to hear you had such an enjoyable time with Rita and Alice, also the Snyders, and hope you didn't neglect or forget to give Rowena my love. From your letters and wire I take it Pat is coming along very nicely and hope that by my return she will be a long way on the road to recovery. Give her my love and

heaps of kisses, and tell her I have missed her very much.

Well dear, as I have given you about all the dirt which amounts to practically nothing, I will have to fall back on the same old sob stuff how much I miss you and all that, but strange as it may seem, somehow or other I really do, and I suppose it must be because I am very fond of you. Any way, that is the only logical conclusion I can come to, so will let it go at that. The folks all send their love and are coming up with me. Arriving Friday about 10:00 a. m., 29th. Luncheon is now ready, so will have to say good-bye.

Love.
Jack."

As to the affidavits of this proceeding, which I offered in evidence in the case, I do not find in the rules of the Court of Chancery any pronouncement as to how the case should be printed upon appeal. Of course, there is always the likelihood of one side or the other appealing. If you remember, I offered the affidavits in evidence, my offer being predicated upon the legal right, which I thought I had, to offer them to rebut any present testimony given by those who made the affidavits, which was in conflict with the affidavits filed in the very cause and in answer to the very subject matter of this suit. I do not find in the rules how the printed case shall be prepared, but I do know from practice that in each appeal that I have taken in the last three years—I have taken six to the Court of Errors and Appeals from Chancery—the pleadings are not a part of

the record. The testimony is sent up together with the notice of appeal which contains in substance the things from which the appellant desires to appeal, whether or not it is something in the decree, the entire decree or portions thereof, and unless therefore, the printed case contains the affidavits as filed, in the event of an appeal, we would not have the benefit of any contradictions which are contained therein from the present testimony.

THE COURT—Suppose we allow the question of the admission of the affidavits to stand temporarily.

MR. STEIN—To rest until the argument of the case.

THE COURT—I presume you gentlemen want to argue the matter, and I will then rule on it.

MR. STEIN—With the reservation of that question, I think we are prepared to rest.

MR. KREMER—Have you rested?

MR. STEIN—Except for the financial condition.

(Argument)

(THE DEFENDANT RESTED.)

(THE COMPLAINANT RESTED.)

THE COURT—We will adjourn at this time until whatever date you gentlemen decide to argue this case.

IN CHANCERY OF NEW JERSEY

Between GERTRUDE T. McDONALD, *Complainant,* and HENRY J. McDONALD, *Defendant.*	ON BILL, &c. BILL FOR MAINTENANCE.

Transcript of stenographer's notes taken in the above entitled cause before HON. ROBERT H. McADAMS, an Advisory Master in Chancery of New Jersey, at his office, No. 120 Broad Street, Elizabeth, New Jersey, on the Thirteenth day of November, 1930, at two o'clock P. M.

APPEARANCES:

AMBROSE McMANUS, ESQUIRE,
representing Alfred A., Alfred A., Jr., and Richard V. Stein, Solicitors for the complainant, by agreement.

HAYDEN PROCTOR, ESQUIRE,
representing Ward Kremer, Solicitor for the defendant,, by agreement.

WILLIAM D. DOWNES, a witness produced on behalf of the defendant, being first duly sworn on his oath according to law, and examined by Mr. McManus, deposes and says:

Q. What is your position, Mr. Downes? A. I am Manager of the co-partnership.

Q. What is the item of $155,000.00? A. This loan of $155,000.00 was taken from the bank during the partnership of John W. McDonald & Son; was borrowed on the notes of the co-partnership; loaned by the partnership to Mrs. Adelaide McDonald, and after the partnership was turned over to the corporation, the corporation continued the same arrangement.

MR. McADAMS:

Q. How was that indebtedness secured, and what, if anything given for it? A. Nothing for it. The loan was secured at the bank by stocks and bonds owned by Mrs. Adelaide J. McDonald; the loan was fully secured by stocks of Mrs. Adelaide J. McDonald and bonds and by real estate. The Bank of America requested that be made; said that John W. McDonald borrowed from time to time small amounts and always paid them back and carried a satisfactory balance, but no report was made as regarding this loan. It is in the firm's name. It may be that they did not mention this big loan on account of it being secured.

ELMER S. JEPSEN, a witness produced on behalf of the defendant, being first duly sworn on his oath according to law, examined by Mr. McManus, deposes and says:

I am the accountant for the said corporation.

Q. Mr. McDonald died without making a Will; the changing of the partnership to the corporation, and the issuing of stock and the dividing of the assets of that stock; was the ratio according to Hoyle or was the ratio arbitrarily? A. It might have beene that. That is a matter we would have to take up with the Surrogate's office.

Q. What do the minutes of the first meeting of the corporation show as to the payments for the issuing of the capital stock of the corporation; have you those minutes here? A. Yes, sir. The first six months of 1929, under the co-partnership showed a net profit of $36,000.00.

Q. And what were the charges against that? A. There were no salaries, nothing but office expenses; the assumption is, that the entire net income was divided between the parties by mutual agreement.

Q. For the first six months of 1930, the corporation salaries are set up at the rate of $16,000.00 per year; the rent of the yard $5,000.00 per year, and the net profits $5,671.75. At this point, will somebody show me if there are any resolutions in the minutes of the corporation fixing salaries? A. There are no resolutions fixing salaries; there was an agreement entered into by the corporation with Mr. Downes stating an up set amount, after which he was to receive a certain salary and percentage on net income.

Q. Have you the profit and loss account of the partnership in 1928? A. Yes, sir. When we came in in 1928, what we found of the records for that part of 1928 preceding our coming in, were not in good shape; nothing but vouchers and check books to go by. We had to write that up on new sheets, the totals of which we incorporated in the books at that time.

Q. Your net profit for that year shows $76,000.00? A. About that I would like to say just a word. The previous book-keeper, whose whereabouts we don't know, had the inventory at the beginning of said year listed as $17,240.54; then, by actual taking of the inventory by the new book-keeper, it was found to be $27,086.13, and what I want to point out is, that in all probabilities, inasmuch as they carried at that time a petty consistent inventory from one time to another, it is quite possible that that was under stated January 1st, and that may be a part of the reason for this rather large profit here. The difference beween the inventories is about $10,000.00. In 1930, I know the sales dropped, and I suppose the profits dropped.

Q. What profits were quoted for the first six months of 1930? A. $5,700; it is $5,100.00.

Q. How much in salaries outside of Mr. Downes? A. One-half year at $16,000.00 or $8,000.00; income of the corporation for the first six months of the year 1930, assuming Adelaide J. McDonald is survivor of the partnership was $8,000.00 plus $5,000.00 or $13,000.00 for the first six months of 1930.

Q. What does it show for the balance of 1930, as far as we have gone? A. The net profits up to September 30th, $7,569.07; there would be $12,000.00 for office salaries or $19,000.00 about three-fourths.

Q. Then in your opinion would the profits for the

year exceed the $18,000.00 figure that was estimated? A. It would now.

The sales for the year 1928 are $314,000.00
The sales for the first six months of 1929 are 142,000.00
That as far as the partnership goes the sales for the six months ending December 31st, 1929, are 146,000.00
The sales for nine months ending September 30th, 1930, are 166,000.00

About $288,000.00 for the year 1929.

Q. If we assume on the nine months of 1930, one-half of the next quarter would be about $208,000.00 for the year 1930? A. If you compare 1930 with the 1928, sales had dropped off about one-third.

Q. Assuming then, there was a gross profit of $60,000.00 in 1928, a profit of $60,000.00 in 1929, is there anything to show whether or not the same ratio of profit was obtained in 1930? A. I can only quote the general theory; your over-head is harder to cut down in proportion to the sales.

Q. Is there anything, in your examination of prices and profits aside of your overhead? A. I have percentages worked out if you will let me quote them:

The ratio of profits to sales 25% for the six months ending—six months of 1929;

17% for those three months ending September 3rd,

14% for the six months ending December 31st, 1929.

In 1930, I believe that drops more drastically. Those percentages which I have quoted you, are without deduction of office salaries and rent of the offices.

Q. It is safe to assume that if the net profits for the year 1930 are between $19,000.00 and $20,000.00 for the first nine months, that the profits for the entire year

of 1930 would be somewhere between $30,000.00 and $35,000.00? A. Well, yes, as far as the last month goes it won't be that. That those profits are before the United States Income Tax for calculation at the rate of 11%.

Q. Can you tell me whether the 1929 books show any payment of any kind to Mrs. Adelaide J. McDonald? A. $5,000.00 a year.

Q. Here is Mrs. McDonald's drawing account. Ledger, page 29;

July 8th, 1929 ..... $100.00 cash
July 31st, 1929 ..... 2689.84

A. That is made up of items; bills which the corporation paid and charged to her account. Personal bills and cash.

Q. August 31st ..... $1640.80? A. That consists of cash and personal bills.

Q. April 30th, 1929 ..... $20,205.05? A. The largest item of $17,000.00 was for funeral expenses of her husband—was paid to Ferguson & Company.

Q. There is another item of $2,500.00 on June 20th? A. Those are all personal bills.

Q. June 20th, there is $2,210.00? A. That's all cash.

Q. Then on June 30th, $2,630.00? A. That is cash and personal bills.

Q. So from April 30th, 1929, until June 30th, 1929, there was disbursed to Mrs. McDonald $27,918.73? A. Apparently she paid back that funeral bill of $17,000.00. The date of 30th is used, because it is the end of the month and represents a recapitulation of the whole month. The funeral bill is dated March 30th, and the actual payment—I would have to turn to another ledger to determine.

Q. What I would like to know, why there is a double entry of this $17,498.76; you say you thought it was the repayment by Mrs. McDonald to the corporation? A. Paid by Mrs. A. J. McDonald.

Q. How was it paid? A. No, I would not be able to tell that.

Q. Where did you get the facts to set down that? A. These are the entries of the book-keeper, Mr. Ketley by name.

Q. Where are those books? A. Where he got his information from, I cannot tell, but he must have gotten the check, because the bank's statements have been reconciled by myself.

Q. Did the bank's statement reconcile with your ledger account? A. Yes, plus and minus whatever outstanding checks there are.

Q. There is no reconciliation of that item by your bank statement? A. In this way; every quarter when I go over I see that the bank balance, as per statement equals the cash balance both in the cash book and in the general ledger.

Q. What about the item of $10,419.97? A. That is transferred to John W. McDonald's drawing account; it is charged to John W. McDonald's drawing account. After Mr. John W. McDonald died, the amounts drawn by Mrs. Adelaide J. McDonald were charged to her; then on June 30th, 1929, the close of the partnership, the net drawings of Mrs. A. J. McDonald were transferred to the drawing account of John W. McDonald.

By MR. McMANUS:

Then the books show that in 1928, the net profits of the co-partnership were $76,000.00; that in 1929 the net profits of the co-partnership, and the net profits of the

corporation, six months in co-partnership and six months as a corporation, taking into consideration the earnings of the corporation for its first six months of its existence, on the same basis as though it were a co-partnership, shows earnings of approximately $55,000.00; and then that the profits of the corporation for the first nine months in 1930, figuring the profits on the same basis as when the company operated as a co-partnership, shows earnings of $19,000.00.

In all these figures, an amount of approximately $10,000.00 was paid Mrs. Adelaide J. McDonald from the profits that would have accrued to John W. McDonald had he lived; further advances were paid in 1929 amounting to $3,745.00 over and above the $8,000.00 which was paid to Mrs. Adelaide J. McDonald, Mr. Henry H. McDonald and Mr. Downes as salaries. Further in 1930, in addition to the $12,000.00 drawn as salaries by Mrs. A. J. McDonald and Henry J. McDonald, an additional amount of overdraft to an amount of approximately $4,100.00. Therefore, approximately $150,000.00 represent the earnings of the J. W. McDonald & Son partnership, plus the earnings of H. J. McDonald & Co., Inc., and John W. McDonald Lumber Corporation for the period of 1928 and 1929, and nine months of 1930.

Further, during this period $7,800.00 was arbitrarily drawn over and above any earnings or stipulated salary.

As I see it, the entire $157,800.00 as referred to above, represents the earnings of Henry J. McDonald, as his share of the survivor of the co-partnership. It is understood that these earnings, as represented, are before Federal Income Tax.

I hereby certify that the foregoing is a true and accurate transcript of the evidence given.

MARGARET R. COLGAN.

CERTIFICATE OF INCORPORATION

OF

JOHN W. McDONALD LUMBER CORPORATION

(Pursuant to Article II of the Stock Corporation Law.)
(Dated July 18th, 1929).

CERTIFICATE OF INCORPORATION

OF

JOHN W. McDONALD LUMBER CORPORATION

(Pursuant to Article II of the Stock Corporation Law.)

We, the undersigned, desiring to form a business corporation pursuant to Article II of the Stock Corporation Law of the State of New York, do hereby make, subscribe and acknowledge this certificate for that purpose as follows:

FIRST: The name of the proposed corporation is JOHN W. McDONALD LUMBER CORPORATION.

SECOND: The purposes for which it is to be formed are as follows:

To own, lease or otherwise acquire, equip, maintain and operate timber and lumber yards; to purchase, prepare for

market, buy, sell, import, export, market and otherwise trade and deal in timber and lumber, rough and dressed, and the products thereof in timber and lumber rough and dressed, dunnage and dunnage boards, and all other classes and kinds of lumber, timber wood and wood products, including white pine, yellow pine, spruce, hemlock, poplar, cedar, elm, ash, beech, birch, maple, cypress, basswood, chestnut, oak, walnut, hickory, redwood, cherry, rosewood, mahogany, lignum-vitae, cocobolo, ebony, teakwood and all other kinds of timber and lumber standing and cut in any part of the world; also to buy, sell, rent and exchange real property improved and unimproved, the building, construction and alteration of houses thereon, and the management and development of real property generally; to purchase, manufacture, acquire, hold, own, mortgage, pledge, lease, sell, assign and transfer, to invest, trade, deal in and deal with goods, wares and merchandise and property of every kind and description, and to carry on any of the above business or any other business connected therewith, wherever the same may be permitted by law, either manufacturing or otherwise, and to the same extent as the laws of this State will permit, and as fully and with all the powers that the laws of this State confer upon corporations and organizations under this act, and to do any and all of the business above mentioned and set forth to the same extent as natural persons might or could do.

To design, build, construct, remodel, alter and repair ships, sailing vessels, tug boats, motor boats, submarines, electric launches, yachts, life boats, life rafts and watercraft of every description, and their fittings, furnishings and appurtenances, also, all materials, articles, tools, implements, machinery and appliances pertaining to, suitable

and convenient for, the construction or equipment thereof; to buy, sell, lease or otherwise deal in and with and dispose of the same, and to carry on any trade or business incidental thereto or connected therewith; to manufacture, construct, install, repair, buy, sell, exchange, or otherwise deal and traffic in windlasses, anchors, winches, capstans, engines, boilers, machinery, tackle apparel and furniture and ships' supplies of every kind and description, and to engage in the business of ship chandlers; to manufacture any form of wood, iron, steel, copper and other metals and materials; to take, acquire, purchase, hold on lease, lease, sell, exchange, mortgage, improve, develop, and otherwise deal in and dispose of any and all property, real and personal, of every description incidental to or capable of being used in connection with the aforesaid businesses, or any of them; to acquire by purchase, lease or otherwise, sell or otherwise dispose of, and to operate such ships, boats and vessels as may be necessary, incidental to or useful in the conduct of the business of the corporation as herein set forth.

To carry on a general stevedoring business; to enter into contracts pertaining to the work of stevedores and do and perform such work in the loading and unloading of ships, barges, lighters and other vessels, stowing of cargoes in ship holds; handling goods, wares and merchandise on wharfs, docks and piers, including the loading and unloading of railroad cars, trucks, carts, wagons, and other vehicles; handling and transferring freight from cars to boats and from boats to cars at any and all water fronts; to carry on such other business as may be necessary or incidental to the foregoing or to any part thereof.

To make and enter into contracts necessary to its business with, and to act as agent or broker or factor or other representative for, any individual firm, syndicate, association, private, public, quasi-public or municipal corporations, state, government or governmental authority; to promote and assist financially or otherwise corporations, firms, syndicates, associations, individuals or others, to enter into, assist, promote, or participate in commercial, mercantile, industrial works, contracts, undertakings, ventures, enterprises and operations; to endorse or underwrite stock, securities, or undertakings of any corporation, firm, individual, syndicate, or others; and to aid any lawful enterprise.

To aid in any manner any corporation or association, any bonds or other securities or evidences of indebtedness of which, or shares of stock in which are held by or for this company, or in which or in the welfare of which, this company shall have any interest, and to do any acts or things designed to protect, preserve, improve, or enhance the value of, any such bonds or other securities or evidences of indebtedness, or such shares of stock, or other property of this company.

To manufacture, or otherwise produce, import, export, buy, sell, and in every way deal with and in either as principal or agent or otherwise, goods, wares, and merchandise and personal property of every kind and description.

To improve, manage, develop, sell, assign, transfer, lease, mortgage, pledge, or otherwise dispose of or turn to account or deal with all or any part of the property of the company, and from time to time to vary any investment or employment or capital of the company.

To borrow money, and to make and issue notes, bonds, debentures, obligations, and evidences of indebtedness of all kinds, whether secured by mortgage, pledge, or otherwise, without limit as to amount, and to secure the same by mortgage, pledge, or otherwise; and generally to make and perform agreements and contracts of every kind which may be necessary to carry on the business of this corporation.

To purchase or otherwise acquire and to hold for investment, and to deal in any bonds or notes or loans secured by mortgage, whether by lien on real property or by pledge of personal property; and to lend money upon mortgage on real property or upon pledge or hypothecation of personal property or choses in action.

To purchase, lease, erect or otherwise acquire, exchange, sell, let or otherwise dispose of, own, maintain, develop, and improve any and all property, real or personal, plants, depots, factories, warehouses, stores, buildings, or other places useful in connection with the business of the corporation.

To acquire by purchase, subscription, or otherwise, and to hold for investment or otherwise, and to use, sell, assign, transfer, mortgage, pledge or otherwise deal with or dispose of stocks, bonds or any other obligations or securities of any corporation or corporations; to merge or consolidate with any corporation in such manner as may be permitted by law; to aid in any manner any corporation whose stock, bonds or other obligations are held or in any manner guaranteed by the company, or in which the company is in any way interested; and to do any other acts or things for the preservation, protection, improvement, or enhancement of the value of any such stock,

bonds or other obligations, or to do any acts or things designed for any such purpose; and while owner of any such stock, bonds or other obligations to exercise all the rights, powers and privileges of ownership thereof, and to exercise any and all voting powers thereon, to guarantee the payment of dividends upon any stock, or the principal or interest or both of any bonds and other obligations, and the performance of any contracts.

To carry on any business or occupation deemed advantageous, which is necessary to any of the powers or purposes hereinbefore specified; to acquire, use, undertake, manage, and dispose of contracts, properties, and rights pertaining to the foregoing business, including the assets, franchises, business, good will and liabilities of corporations, associations, firms and individuals, and to give guaranties in respect thereof; and generally to do anything that a natural person might lawfully do or cause to be done in connection with any of the said things.

THIRD: The total number of shares that may be issued by the corporation is one thousand (1,000), all of which are to be of one class and without par value.

FOURTH: The capital of the corporation shall be at least equal to the sum of the aggregate par value of all issued shares having par value plus the aggregate amount of consideration received by the corporation for the issuance of shares without par value, plus such amounts as from time to time by resolution of the board of directors may be transferred thereto.

FIFTH: The office of the corporation is to be located in the City of New York, County of New York and State of New York.

SIXTH: Its duration is to be perpetual.

SEVENTH: The number of its directors is to be three (3).

EIGHTH: The names and post office addresses of the directors of the corporation, until the First Annual Meeting of the Stockholders, are as follows:

NAMES:	POST OFFICE ADDRESSES:
Adelaide J. McDonald,	15 Whitehall Street, New York City.
Henry J. McDonald,	15 Whitehall Street, New York City.
William D. Downs,	1012 Ocean Avenue, Brooklyn, N. Y.

NINTH: The name and post office address of each of the subscribers to the certificate and a staement of the number of shares of stock which he or she agrees to take, are as follows:

NAMES:	POST OFFICE ADDRESSES:	No. OF SHARES:
Louis J. Freda,	150 Broadway, New York City	1
William M. Stevens,	150 Broadway, New York City	1
Michael A. Castaldi,	150 Broadway, New York City	1

TENTH: All of the subscribers of this certificate are of full age; at least two-thirds of them are citizens of the United States, and at least one of them is a resident of the State of New York. All of the persons named as directors are of full age and at least one of them is a citizen of the United States and a resident of the State of New York.

ELEVENTH: The corporation may issue and sell its authorized shares without par value for such consideration as, from time to time, may be fixed by the board of directors.

IN WITNESS WHEREOF, we have made, subscribed and acknowledged this certificate in duplicate.
Dated this 18th day of July, 1929.

LOUIS J. FREDA,
WILLIAM M. STEVENS.
MICHAEL A. CASTOLDI.

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss:

On this 18th day of July, 1929, before me personally came LOUIS J. FREDA, WILLIAM M. STEVENS and MICHAEL A. CASTALDI, to me known and known to me to be the persons described in and who executed the foregoing certificate and severally duly acknowledged to me that they executed the same.

ARTHUR E. SCALLAN,
Notary Public, County of Richmond,
(SEAL) New York County Clerks No. 1838.
Term Expires March 30, 1930.

JOHN W. McDONALD LUMBER CORPORATION

with

WILLIAM D. DOWNS.

AGREEMENT.

(Dated July 25, 1929).

MEMORANDUM OF AGGREEMENT made this 25th day of July, 1929, between JOHN W. McDONALD LUMBER CORPORATION, a corporation organized under the laws of the State of New York, party of the first part, and WILLIAM D. DOWNS, of No. 1012 Ocean Avenue, Brooklyn, New York, party of the second part, WITNESSETH:

In consideration of the covenants herein provided and of the sum of One ($1) Dollar each to the other in hand paid by the parties hereto, the receipt of which is hereby acknowledged, the said parties agree as follows:

FIRST: The party of the first part hereby employs the party of the second part as Secretary of the party of the first part and to act under such instructions in carrying on the business as the party of the first part may issue from time to time in connection with such employment.

SECOND: The party of the second part hereby accepts said employment and agrees to devote his entire time and attention in carrying out the instructions issued to him by the party of the first part, in and about the business of the party of the first part, to the best of his knowledge and ability.

THIRD: The salary which the first party agrees to pay the party of the second part, and which the party of the second part agrees to accept in connection with said employment, is the sum of Seventy-five ($75) Dollars per week, payable weekly at the end of each week, in addition to which weekly salary, however, the party of the first part agrees to pay the party of the second part an amount equal to ten (10%) per cent of the net earnings of the party of the first part, after deducting all amounts properly incurred and expended during such quarterly period in carrying on the company's business, to be computed quarterly covering the preceding quarterly period commencing on the first day of October, 1929, as determined by the auditor of the accounts of the party of the first part and approved of by the President of the Corporation. Said expenses of the business shall include all operating expenses which shall appear upon the company's books at the time of each auditing as above specified, including the salaries to be paid to each of the officers of the corporation, it being understood, however, that the salary of the President and Vice President, for the purpose of this computation, shall each not exceed the sum of Five hundred ($500), Dollars to be paid to each per month.

In case of a dispute between the President and said auditors as to the amount to be paid as above referred to such matter in dispute shall be left to arbitration and determined in the manner provided for by the rules of the Chamber of Commerce of the State of New York.

FOURTH: The term of this employment shall be deemed to commence as of the first day of July, 1929, and extend until the first day of January, 1930, and thereafter until

terminated by thirty (30) days' written notice shall be given by one party to the other of its or his election to terminate the same, either party reserving the privilege of giving said notice at the end of any month or at any time during any calendar month.

FIFTH: The amount of extra compensation herein provided for shall be paid under the terms hereof to the party of the second part by the party of the first part within ten (10) days after each quarterly audit is completed by said auditors and the amount thereof ascertained and approved as above mentioned.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals the day and year first above written.

JOHN W. McDONALD LUMBER CORPORATION.

(Seal) By HENRY J. McDONALD,
President.

WILLIAM D. DOWNS, (L. S.)

In the presence of:

AGNES POLLARD.

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss:

On this 25th day of July, 1929, before me came HENRY J. McDONALD, to me known, who, being by me duly sworn, did depose and say that he resides in the Borough

of Deal, State of New Jersey; that he is the President of JOHN W. MCDONALD LUMBER CORPORATION, the corporation described in and which executed the above instrument; that he knows the corporate seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Subscribed and sworn to before me this 25th day of July, 1929.

JULIUS SCHNEIDER,

(Notary Seal)

Notary Public Bronx Co.
Certificate filed in New York
N. Y. Clerk's No. 1643 Register's No. 0-1126
Bronx Clerk's No. 47, Register's No. 3033C
Commission Expires March 30th, 1930

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.

On this day of July, 1929, before me came WILLIAM D. DOWNS, to me known to be the person described in, and who executed the foregoing instrument, and acknowledged that he executed the same.

MATTHEWS BROWN & COMPANY
PUBLIC ACCOUNTANTS AND AUDITORS
82 Beaver Street
NEW YORK

October 16, 1930

Mr. H. J. McDonald, President,
John W. McDonald Lumber Corp.,
474 Columbia Street,
Brooklyn, N. Y.

Dear Sir:

In accordance with your instructions we have audited the books and other records of the John W. McDonald Lumber Corporation for the three months ended September 30, 1930, and have prepared therefrom, and submit herewith, the following statements:

Balance Sheet at September 30, 1930 ..... EXHIBIT A

Comparative Statement of Income and Profit & Loss for Nine Months Ended September 30, and Six Months Ended December 31, 1929, respectively .. EXHIBIT B

The Net Profit for the nine months ended September 30, 1930, after setting up Officers' Salaries at the rate of $16,000. per annum and Rent of Yard at the rate of $5,000. per annum, but before U. S. Income Taxes, amounted to $7,569.07 of which the third quarter's profit was $2,381 00

We submit below, for comparative purposes, a summary in percentages only, of the operations of the nine months ended September 30, 1930 and the six months ended December 31, 1929:

	Nine Months Ended Sept. 30, 1930	Six Months Ended Dec. 31, 1929
Sales	100.0%	100.0%
Material Cost	59.4%	53.7
Gross Profit	40.6%	46.3%
Overhead (Net)	36.1	38.8
Net Profit	4.5%	7.5%

Page 2

The bonus payable to Mr. Downes is calculated as follows:

Net Profit per Exhibit B		$7,569.07
Add expenses included in Exhibit B which are not to be included in bonus calculation as per agreement with Mr. Downes:		
Bonus	$1,498.50	
Officers' Salaries	12,000.00	
Rent of Yard	3,750.00	17,248.50
		24,817.57
Deduction for Officers' Salaries at rate of $1,000. per month for nine months as per agreement		9,000.00
		15,817.57
Less U. S. Income Tax @ 11% of $7,569.07		832.60
Basis of bonus		$14,984.97
W. D. Downes' bonus of 10%		1,498.50
Paid for first half of year		1,013.04
Now due Mr. Downes		$ 485.46

Yours very truly,

MATTHEWS BROWN & COMPANY

JOHN W. McDONALD LUMBER CORPORATION

EXHIBIT A

COLUMBIA, KING & PIONEER STREETS, BROOKLYN, N. Y.

BALANCE SHEET AT SEPTEMBER 30, 1930.

ASSETS

Current Assets:			
Cash in Bank and on Hand		$3,809.44	
Accounts Receivable, Trade		18,203.03	
Inventory of Lumber (at cost or market, whichever lower)		29,026.16	$51,038.63
Fixed Assets:			
Delivery Equipment	$9,369.00		
Less: Reserve for Depreciation	2,713.97	6,655.03	
Yard Office Construction	2,742.71		
Less: Reserve for Depreciation	41.14	2,701.57	
Furniture & Fixtures	821.90		
Less: Reserve for Depreciation	296.20	525.70	9,882.30
Mrs. Adelaide J. McDonald, Loan and Interest			155,987.91
Advances to Officers			7,887.46
Prepaid Insurance			1,483.93
Prepaid Taxes, City of New York			265.00
TOTAL ASSETS			$226,545.23

LIABILITIES & CAPITAL

Current Liabilities:		
Notes payable to Bank	$138,000.00	
Accounts Payable, Trade	7,414.56	
W. D. Downes	485.46	**$145,900.02**
Capital Stock:		
Authorized, 1000 shares of no par value.		
Issued, 1000 shares for		64,133.27
Surplus:		
Balance at Jan. 1, 1930	8,942.87	
Add: Net Profit for Nine Months ended September 30, 1930	7,569.07	16,511.94
TOTAL LIABILITIES & CAPITAL		$226,545.23

JOHN W. McDONALD LUMBER CORPORATION,

EXHIBIT B

COLUMBIA, KING & PIONEER STREETS, BROOKLYN, N. Y.

Comparative Statement of Income and Profit and Loss

For 9 Months ended Sept. 30, 1930 and 6 Months Ended Dec. 31, 1929, Respectively.

	Nine Months Ended Sept. 30, 1930				Six Months Ended Dec. 31, 1929			
				Per Cent To Sales				Per Cent To Sales
Sales			$166,377.91	100.0%			$146,907.61	100.0%
Cost of Sales:								
Inventory at beginning of period	$48,260.49				$39,811.21			
Purchases	61,783.45				68,186.76			
Freight on Purchases	16,921.69				18,838.46			
Trucking, Inward	719.52				303.36			
	127,685.15				127,139.79			
Deduct Inventory at end of period	29,026.16	98,658.99		59.4	48,260.49	78,879.30		53.7
Yard Payroll		13,627.30		8.1		13,354.35		9.1
Yard Rent		3,750.00		2.2		2,500.00		1.7
Yard Expenses		590,17	116,626.46	.4		665.11	95,398.76	.4
GROSS PROFIT ON SALES			49,751.45	29.9%			51,508.85	35.1%
Selling Expenses:								
Commissions		10,124.00				14,525.00		
Entertaining		2,684.12				4,221.29		
Automobile Expenses & Repairs		1,810.53				647.59		
Stable Expenses		726.61				728.40		
Advertising		99.75	15,445.01	9.3		67.50	20,189.78	13.8
SELLING PROFIT			34,306.44	20.6%			31,319.07	21.3%
General & Administrative Expenses:								
Officers' Salaries		12,000.00				8,000.00		
Office Salaries		4,485.00				3,885.00		
W. D. Downes' Contract Account		1,498.50				1,646.39		
Insurance:								
Automobile	1,502.05				1,018.81			
Compensation and Public Liability	451.92				307.69			
Teams Liability	131.65				98.73			
Stock and Sheds	171.36				102.43			
Building	25.39				79.99			
Horses	10.48	2,292.85			12.48	1,620.13		
Office Rent		360.00				540.00		
Office Expenses		1,116.65				697.40		
Telephone & Telegraph		212.26				271.95		
Dues		-0-				75.00		
Legal Expenses		-0-	21,965.26	13.2		34.80	16,770.67	11.4
PROFIT FROM OPERATIONS			12,341.18	7.4			14,548.40	9.9%

JOHN W. McDONALD LUMBER CORPORATION

EXHIBIT B

COLUMBIA, KING & PIONEER STREETS, BROOKLYN, N. Y.

Comparative Statement of Income & Profit & Loss (Cont'd)

For Nine Months Ended Sept. 30, 1930, and Six Months Ended December 31, 1929, Respectively.

	Six Months Ended Sept. 30, 1930		Per Cent To Sales	Six Months Ended Dec. 31, 1929		Per Cent To Sales
Brought forward		$12,341.18	7.4%		14,548.40	9.9%
Other Income:						
Interest on Bank Balances	$39.04			$29.70		
Discounts on Purchases	33.45	72.49	-0-	48.60	78.30	-0-
		12,413.67	7.4%		14,626.70	9.9%
Deductions from Income:						
Discounts on Sales	1,641.77			1,577.79		
Interest Paid	154.67	1,796.44	1.0	193.17	1,770.96	1.2
		10,617.23	6.4%		12,855.74	8.7%
Profit & Loss Charges:						
Depreciation of Delivery Equipment	1,505.35			998.65		
Depreciation of Furniture & Fixtures	112.54			52.49		
Depreciation of Yard Office	41.14			-0-		
Taxes, New York State Franchise	64.13			-0-		
Taxes, City of New York	795.00			532.00		
Loss on Sale of Delivery Equipment	630.00			-0-		
Bad Debts Written Off	-0-			158.58		
Moving Expenses	-0-			62.00		
Donations	**100.00**	3,048.16	1.8	-0-	1,803.72	1.2
NET PROFIT FOR PERIOD		$7,569.07	4.5%		$11,052.02	7.5%

NEW JERSEY COURT OF ERRORS
AND APPEALS

Between
GERTRUDE T. McDONALD,
Complainant-Respondent,
and
HENRY J. McDONALD,
Defendant-Appellant.

ON BILL, ETC.
ON APPEAL FROM
THE COURT OF
CHANCERY.

BRIEF ON BEHALF OF APPELLANT

This is an appeal by the defendant from a decree from the Court of Chancery advised by Advisory Master McAdams, on November 21st, 1930, amended by a decree, dated January 24th, 1931, by Advisory Master McAdams, determining that the defendant, without any justifiable cause, abandons the complainant and separates himself from her, and refuses and neglects to maintain and provide for her; and that the defendant pay the complainant the sum of One Hundred Fifty ($150.00) Dollars per week for the support of the complainant (State of Case, P. XVI-A and XV). Complainant is also occupying a house owned by the defendant at No. 10 Whitehall, Deal, New Jersey, which house has an approximate rental value of $6,000.00 per year.

I.

The complainant is not entitled to an award of any alimony against the defendant for the reason that her separation from him was not justified by his conduct.

The complainant has absented herself from the defendant and charges that his conduct justified her in so doing. In order to justify that separation the complainant must establish such conduct on the part of the defendant as would entitle her to a divorce on the ground of extreme cruelty. The case is unusual in that there is absent from the testimony any charges by the complainant of the nature which ordinarily lead a wife to separate herself from her husband. No suggestion is made by the complainant that the defendant was ever, throughout their married life, guilty of any brutal conduct or physically cruel conduct. No suggestion is made that he ever struck her. No suggestion is made that he drank. No suggestion is made that he was ever unfaithful. The contention of the complainant is that the conduct of the defendant's mother and the quarrels between complainant and defendant, which arose as a result of the manner in which the three lived, justified her in leaving.

It appeared from the testimony that the complainant and defendant were married April 13th, 1926 (P. 24 L. 31 to P. 25 L. 16), and immediately went to live in a home at No. 48 Esplanade, Deal, New Jersey, provided by the defendant (P. 26 L. 28). The complainant admits that she was very happy from the time of her marriage up until the fall of 1928, so that it is only necessary

to dwell briefly upon this period (P. 27 L. 12). However, it may be important to refer to the conduct and behavior of Mrs. Adelaide McDonald, the mother of the defendant, during this time because it bears on the weight to be given to the charges made by the complainant as to her mother-in-law's subsequent conduct.

The testimony was uncontradicted that Mrs. McDonald, Sr., in every way indicated her affection toward the complainant as her new daughter-in-law. She gave many presents for the furnishing of the new home of the complainant and defendant (P. 341 L. 4). She supervised the furnishing of it (P. 341 L. 17). She gave presents of jewelry and other gifts to the complainant (P. 343 L. 30). She did sewing for her and in every way deported herself in a manner showing clearly that she welcomed the complainant into her family (P. 344 L. 17). (Testimony of Gertrude T. McDonald P. 64 L. 15 to P. 67 L 1). Anna Burrows, a laundress in the McDonald home, testified that Mrs. McDonald, Sr., always referred to the complainant as her "little girl" (P. 494 L. 7 to 13).

In 1927, the defendant purchased a new home at No. 10 Whitehall, Deal, New Jersey. It was the intention of Mrs. McDonald, Sr., to acquire this property, but when complainant expressed herself as preferring it to another house defendant was going to buy, Mrs. McDonald, Sr., changed her plans and allowed her son to take the property at No. 10 Whitehall to please the complainant (P. 344 L. 27). The defendant's mother purchased the furniture for the new home from complainant's brother, Ambrose McManus (P. 345 L. 25). Mrs. McDonald, Sr., also gave and loaned money on many occasions to her son throughout this period (P. 358 L. 1 to L. 18). It further appeared that both the young

couple and defendant's mother and father went away on trips together and were in each other's society a great deal and apparently to the contentment and enjoyment of all concerned.

In October of 1928, complainant and defendant went to live in the home of defendant's mother and father (P. 27 L. 16). This step was taken principally for two reasons: the defendant wished to curtail expenses (P. 68 L. 15) (P. 262 L. 3); also, the defendant's father was in failing health (P. 27 L. 16). For these reasons defendant closed his home at No. 10 Whitehall, and went to live in his parents' home, which is a sumptuous residence at No. 70 Esplanade, Deal, New Jersey. Complainant had three children by a former marriage (P. 27 L. 33), and she brought these children to live at the home of the defendant's parents. This condition did not obtain all the time as two of the complainant's children were away at school part of the year and they lived at No. 70 Esplanade during the summer vacations and at holiday time. The youngest child, however, a daughter, Patricia, lived permanently at No. 70 Esplanade. It appears that the defendant's mother and father were greatly attached to this little girl and she was treated with every kindness and consideration that could have been extended to her had she actually been the child of the defendant or his parents. The complainant and Mrs. McDonald, Sr., were constant companions and took many trips together (P. 347 L. 26).

During the fall of 1928, no serious difficulties seem to have taken place in the household at No. 70 Esplanade, except that the complainant made two statements which displeased her father-in-law. It appears that when he was discussing some of his financial affairs the complainant said, either to him, or in his presence, "He ought

to sell his stocks or shut up." (P. 349 L. 22). At this point, counsel desires to stress the fact that the complainant, under cross-examination, admitted that she had said that her father-in-law ought to sell his stocks or "keep still about it." (P. 70 L. 20 to L. 35). Certainly such an attitude on the part of the complainant as was reflected in this remark might well be expected to dampen their ardor for her. They had treated her with every kindness and consideration, and the average person would, to some degree, resent such an attitude as she exhibited where affection and gratitude might well be expected.

There is another little episode concerning a cap which one of the complainant's children took out of the closet at No. 70 Esplanade, and which cap belonged to Mr. McDonald, Sr. The boy was asked to return it and the complainant said, in the presence of her father-in-law, "I think it is small loss or gain to anyone" (P. 393 L. 30), or "Never mind, it is a small matter." (P. 44 L. 22 to L. 45 L. 2). Both these remarks might be said to be trifles, but they indicate an attitude lacking in respect to an old man, who was ill at the time; and they might naturally be resented. It is difficult to examine these portions of the testimony without concluding that the complainant was in the wrong.

Any fair view of the testimony, however, will show that the elder McDonalds overlooked and forgot these unpleasant occurrences. They went to Palm Beach, Florida, the early part of January 1929 (P. 36 L. 17). The defendant and his wife remained at Deal (P. 36 L. 24). Complainant could not go south because her little girl, Patricia, was ill, and defendant stayed with her (P. 36 L. 24) (P. 264 L. 21). Complainant had insisted that defendant go south, but defendant said his

duty was with her (P. 36 L. 27). Every night, the defendant's mother telephoned from Florida to talk with her son and to inquire about her daughter-in-law and Patricia (P. 265 L. 7) (P. 348 L. 21). This testimony was given by the complainant (P. 37 L. 1) (P 71 L. 13).

The defendant went to Florida the early part of February and his wife stayed in Deal because of the condition of her daughter (P. 36 L. 30). It appeared that the defendant proceeded to call up on the telephone and talk with his wife (P. 39 L. 5) (P. 73 L. 18) (P. 266 L. 8). He also wrote her letters, which her counsel offered in evidence, and which clearly showed that he felt affection for her (P 507 to P. 509). All these circumsances, that is, the attitude of defendant's parents and the conduct of the defendant himself, as shown by his telephone calls and his letters, indicate that there hao been no serious breach between them. However, defendant stated that he learned from his father while in Florida that the complainant had displeased the elder Mr. McDonald and had wounded him by the remarks she had made, which have been referred to above (P. 266 L. 14). Defendant testified that his feeling for his wife changed at this time and his resentment became more marked when his father died in Florida (P. 266 L. 29). He telephoned complainant's brother, Harry McManus, and stated that he did not wish his wife, that is, the complainant, to kiss the body of Mr. McDonald, Sr., when it was brought north. (P. 266 L. 34) (P. 42 L. 1 to L. 18). There was undoubtedly a rift between the parties at this time, and Harry McManus, complainant's brother, testified that the defendant told him he could not live with complainant again after the way she had treated his father. (P. 16 L. 20) (P. 17 L. 34).

Assuming that the defendant made the statement attributed to him, certainly some allowance should be made for the fact that he said it under the stress of grief at his father's death, and also that the subsequent events clearly showed that he did not mean it.

The body of Mr. McDonald, Sr., was brought north in March 1929, and the defendant and complainant were temporarily estranged. However, when defendant returned from Florida he and his wife kissed each other (P. 73 L. 22). Complainant left the house at No. 70 Esplanade and went over to No. 10 Whitehall where she established herself. (P. 45 L. 23). The next day, however, defendant sought her out and asked her to return to him, (P. 46 L. 10 to L. 25) (P. 77 L 13). He said he wanted her back and told her that he was sorry for what had happened, (P. 77 L. 18) (P. 268 L. 17). Defendant's mother also communicated with complainant at this time. Complainant did return (P. 46 L. 25) (P. 77 L. 26), and it appears that from that time, throughout the spring and summer, the married life of the complainant and defendant went on as normally as it had before the occurrences in the fall of 1928, (P. 269 L. 34). In other words, it is apparent that whatever quarrel complainant and defendant had had was entirely composed, and both complainant and defendant proceeded to live together as though that quarrel was entirely forgotten and forgiven on both sides. The complainant and Mrs. McDonald, Sr., went about together a great deal that spring (P. 353 L. 1). They accompanied each other to New York at least once a week (P. 353 L. 24).

Throughout the spring and summer of 1929 complainant's children came to the house at No. 70 Esplanade and stayed. Complainant continued to go about with Mrs.

McDonald, Sr., and although there may have been an occasional slight difference there was nothing of any serious nature and nothing which would justify the complainant in leaving her husband. (P. 347 L. 26).

Complainant and her witnesses stressed the fact that during this time Mrs. McDonald, Sr., discussed the complainant and made disparaging remarks concerning her to some of the servants. There was a witness, Sadie Williams, a colored maid, called in behalf of the complainant, who testified that Mrs. McDonald, Sr., said to her that she would rather the defendant had married some other young woman than the complainant, and that she thought her son's marriage to the complainant was a mistake. These statements were emphatically denied by Mrs. McDonald, Sr. (P. 368 L. 11).

Viewed in the light most favorable to the complainant these remarks might have tended to disturb the pleasant relationship which existed between the complainant and her mother-in-law. However, if ever there was a witness whose credibility is to be doubted it was the witness, Sadie Williams. It was clearly shown that her relationship with a white chauffeur, Joe Schlesser, in the employ of the McDonald's was highly improper; that she was found in a compromising situation with him on more than one occasion and that this conduct on her part contributed to her dismissal. (P. 370 L. 1 to P. 371 L. 2) (Testimony of Anna Burrows P. 495 L. 18 to P. 496 L. 35). Moreover, she was asked on cross-examination whether she was not, in fact, prejudiced against the defendant, Henry J. McDonald, and she denied emphatically any such prejudice and denied that she had ever made any statements derogatory to him. (P. 145 L. 6 to P. 146 L. 10). She was easily contradicted in this by the witness, Dan Kane, a chauffeur in the employ of

the McDonalds, later called by the defendant, who testified that Sadie Williams had often referred to the defendant most disparagingly and had called him " a pain." (P. 503 L. 6). She had criticised to Kane the way the defendant behaved toward her and the help, and had in other ways shown her hostility toward him. At one time when the defendant went South she told Kane that she hoped the boat sank with him. (P. 503 L. 20). The testimony of such a witness could hardly be accepted at full value.

There were some other former employees called by complainant. Theresa James, a former cook of Mrs. McDonald, Sr., testified that after dinner in the evening the defendant and his mother would walk in the garden and complainant would not be with them. (P. 153 L. 24). This fact certainly reflects no discredit upon the defendant. It should be borne in mind as it was shown by the testimony that his mother grieved a great deal because of the loss of her husband and after supper at night the defendant would walk on the grounds with her and try to comfort her. Assuredly no inference derogatory to the defendant can be drawn from this fact.

The former butler, the Japanese, Mimura, called in behalf of complainant, testified to statements made by Mrs. McDonald, Sr., which were derogatory to her daughter-in-law. (P. 158 L. 22) (P. 163 L. 7). These statements attributed to Mrs McDonald, Sr., were all denied by her. (P. 271 L. 10). It was shown that Mimura obtained the position which he now occupies through the direct intercession of the complainant and that he is now employed by the sister of the complainant. (P. 164 L. 5 to P. 167 L. 8). This position was secured for him a few months before the hearing, and points clearly to the fact that he was a prejudiced witness

anxious to serve so far as he might the people who had favored him. Furthermore, it was shown that Mimura had been discharged by Mrs. McDonald, Sr. (P. 163 L. 27) (P. 371 L. 12). The whole circumstance of Mimura's dismissal from the McDonald home and his subsequent employment tends to show his bias and prejudice in the matter

However, putting all the testimony of these witnesses together and making such allowances as seem reasonable for whatever partiality one or more of the witnesses may have had, two facts are apparent: the statements attributed to Mrs. McDonald, Sr., if she made them, may have been a bit unpleasant but they were not endorsed by the defendant and not one of these witnesses even suggests that the defendant ever made any statements or said anything derogatory to his wife. The mere fact, if it is to be accepted as a fact, that Mrs. McDonald, Sr., criticised the complainant on occasion to one or more of the servants would certainly not justify the complainant in leaving her husband. This is the first proposition.

The second is that whatever these occurrences may have amounted to, they were overlooked and forgotten by both complainant and defendant as is shown by their conduct at that time and subsequent times. In other words, although the McDonald household may not have run with perfect smoothness during this period, there was nothing taking place which within the view of the courts of our State or statutory enactments of our Legislature would justify one spouse in separating from the other, and placing upon the latter the onus of the separation.

The above is conclusively proven by the fact that in October, 1929, complainant and defendant with defendant's mother decided upon a new arrangement as to their respective places of abode. (P. 49 L. 6). It was de-

cided that defendant would move to the apartment house which he had lately constructed in Red Bank. (P. 49 L. 15). This was talked over between complainant and defendant and they consulted his mother about it. Complainant readily agreed to the taking of the apartment. (P. 49 L. 25). She did not make any issue of what the servants had been doing or saying or what Mrs. McDonald, Sr., had been doing or saying. It is clear that there was no serious rift between complainant and defendant or complainant and defendant's mother at this time. It was decided that for reasons of economy and reasons having to do with the management of defendant's building, that complainant and defendant would move into an apartment in the apartment house known as "Les Gertrudes" at Red Bank. (P. 49 L. 26) (P. 272 L. 5). This building had been named by the defendant after complainant. (P. 83 L. 6). There were forty apartments in the building. (P. 320 L. 7.) Complainant and defendant had an apartment of their own on the second floor and Mrs. McDonald, Sr., had an apartment on the first floor. (P. 49 L. 20). In order that the complainant might have an extra room in the apartment it was decided that complainant and defendant would take their meals with the defendant's mother. (P. 358 L. 28) (P. 49 L. 25). This was to eliminate the duplication of kitchen held and complainant was perfectly agreeable to it. (P. 82 L. 34) (P. 354 L. 32). The complainant admitted that insofar as the plan to take meals with Mrs. McDonald, Sr., was concerned it did not cause any friction. There was no trouble at dinner time and this was about the only time all three people were together. (P. 274 L. 1). In the morning the defendant would go to the city to his business, and complainant and her mother-in-law spent considerable time together. The

complainant herself testified that everything was 'running smoothly." (P. 89 L. 7). There are two uncontradicted facts about this period which tend to establish that there was nothing in the matter of a breach existing between the complainant and defendant.

First, Mrs. McDonald, Sr., wanted to go on an extended trip to South America and the arrangements which she made included taking her daughter-in-law and her son with her. (P. 53 L. 1) (P. 84 L. 28 to P. 85 L. 23). This trip was abandoned, however, because the complainant did not wish to be away at holiday-time when her children would be home from school. (P. 84 L. 31) (P. 360 L. 29).

The second fact is that about a week before Thanksgiving 1929, complainant was visited by the witness, Mrs. Ida F. Daley. Mrs. Daley testified that she talked with the complainant in her apartment at Red Bank, New Jersey, and the complainant expressed herself as being very happy. Mrs. Daley testified complainant said, "it had been a second honeymoon and that she was very happy with Jack and they were just starting all over again and she was very happy." (P. 434 L. 1). Complainant also said that "Jack had been perfectly wonderful to her." (P. 434 L. 15). It is respectfully urged that the Court will note that the testimony of Mrs. Daley was not challenged in the slightest degree. No attempt was made to cross-examine her as to this point. Moreover Mrs. Daley had been a lifelong friend of the complainant. (P. 432 L. 23). They had been school girls together (P. 432 L. 27). If Mrs. Daley is to be believed, certainly the complainant was not holding any grievance against her husband or her mother-in-law in the latter part of November, 1929. Whatever difficulties there had been over the course of their married existence had

been entirely forgotten. It stands to reason that if the complainant had been in a different frame of mind she would have opened her mind to her close friend, but she did not do so, and on the contrary, spoke in the highest terms of her husband and expressed her contentment and happiness.

The South American trip being abandoned, the defendant and his mother decided to go to Pinehurst, North Carolina, for Thanksgiving, 1929. This was done with the consent of the complainant and without objection on her part. She was invited to go by both Mrs. McDonald, Sr. and the defendant; but elected to stay home to be with her children over the holiday. (P. 58 L. 15) (P. 275 L. 26) (P. 362 L. 1). She told defendant that his duty was with his mother and that her duty was to stay with her children and he and she agreed completely that the Pinehurst trip would be made by himself and his mother. (P 275 L. 32).

The night before defendant went away a quarrel broke out of a clear sky. Defendant returned from his business in New York and found complainant in his mother's apartment for dinner. After dinner defendant looked over some accounts and attended to a few details of business for his mother (P. 90 L. 6). Complainant said she would go upstairs and read and defendant said he would join her in a little while. He stayed downstairs in his mother's apartment for a half hour and then went to his own apartment (P. 363 L. 10). When he entered the complainant said, "How long is this business going to go on, that you have to stay downstairs holding your mother's hand." (P. 90 L. 4) (P. 276 L. 23). Defendant was angered and he and the complainant had a quarrel in their apartment. The complainant admitted that it was she who provoked this quarrel (P. 92 L. 25).

In the course of the heated conversation defendant said to her, "If you are going to continue that sort of attitude, you had better go ahead with your original plans" (P. 59 L. 33). This made some allusion to a discussion they had the previous Christmas when, during a controversy, complainant had said she was going to leave, but which had been forgotten (P. 276 L. 33).

The next morning complainant and defendant were still angry, and he left with his mother to go away as they had planned. However, defendant kissed the complainant goodbye (P. 93 L. 12). (P. 277 L. 19), and Mrs. McDonald, Sr., kissed her daughter-in-law goodbye (P 411 L. 8). At New York, however, the defendant telephoned complainant's brother, Ambrose McManus, and told him what had happened the previous night. He told him that if his sister was going to continue the attitude of begrudging the time the defendant spent with his mother because of her poor condition, he had better look after his sister's interests. (P. 277 L. 24). Defendant testified that Ambrose McManus answered, "I am very sorry, but I can't blame you; but there is no reason why you and I should be bad friends." (P. 278 L. 3).

That the defendant's anger subsided quickly is shown by the fact that on the day before Thanksgiving he and his mother sent a telegram from Pinehurst to the complainant (P. 320 L. 17) (P. 363 L. 30). It was of a pleasant nature and wished her the greetings of the day (P. 320 L. 22). It is respectfully submitted that when complainant received this telegram it should have conveyed to her the knowledge that this quarrel was not of any more permanent nature than some of the previous quarrels she and her husband had had, which, like many marital quarrels, were composed as quickly as they took

place. Moreover, Mrs. McDonald, Sr., telephoned the complainant from Pinehurst, but failed to reach her as she was in New York at the time. The maid, Anna Burrows, informed the complainant of this call (Testimony of Anna Burrows(P. 497 L. 19 to L. 28). Instead of waiting developments, however, complainant took a course which indicated that she had no intention whatever of making up with defendant or listening to any proposals for a reconciliation. She admitted that on the Tuesday following defendant's departure to Pinehurst, which was on Saturday, she consulted her attorney (P. 96 L. 21). She evidently intended to make this quarrel the basis for a permanent separation.

II.

The defendant has made repeated and bona fide overtures to the complainant to return to him.

When the defendant and his mother returned from Pinehurst (they were away one week), the complainant had left the apartment (P. 62 L. 31). She had taken the furnishings and established herself at No. 10 Whitehall, in spite of the message that Mr. McDonald had sent from Pinehurst (P. 278 L. 15). The defendant went to her at No. 10 Whitehall and asked her to return to him (P. 96 L. 7) (P. 278 L. 18). Mrs. McDonald, Sr., also asked her to come back. (P. 98 L. 32) (P. 279 L. 3) (P. 364 L. 27). The complainant refused and she remained at No. 10 Whitehall despite defendant's efforts. (P. 279 L. 10).

The testimony of Mrs. Ida F. Daley is important. She went to call on the complainant as a result of a telephone call from the latter (P. 434 L. 25). While she was there the defendant called on the telephone in an endeavor to talk to his wife. The butler was instructed by the complainant to tell Mr. McDonald that she did not care to talk with him. Complainant then took up the extension phone to listen to what defendant had to say in response to the message given him by the butler and she told Mrs. Daley he merely said "All right." The complainant then took a picture of her husband and in a fit of anger smashed it on the floor and trampled on it. The complainant exclaimed "I knew that he would come to me; I will fix him before I am through with him." (P. 435 L. 6 to L. 27). Mrs. Daley related this whole occurrence and again she was unchallenged by complainant's counsel. It is respectifully urged that this circumstance is one of the most important in the case. It shows clearly that the defendant was making overtures to his wife which she should have listened to; that she was avoiding him; that she was giving him no chance to communicate with her whatever. Furthermore, it shows, as many of the occurrences in the case have shown, that the complainant was very hot-tempered and that many of their quarrels were caused by her uncontrollable temper as much as by anything else.

There is nothing unusual or unreasonable in the fact that the defendant gave his wife only two hundred dollars from the time she left until the order of the Court. He was endeavoring to get her to return to him and he thought that she had no right to leave. The fact that he did not give her money, aside from his legal rights in the matter, tends to indicate that he was trying in every way to get her to come back to him.

Eventually, the parties agreed to meet at the office of complainant's counsel on December 31, 1929 (P. 99 L. 32) (P. 279 L. 32). Defendant had visited complainant's counsel a few days prior to this. On December 31, 1929, complainant and defendant spent the entire day in the office of complainant's counsel. Defendant again repeated his request to the complainant to return to him. He asked her many times that day to come back and told her he was sorry for everything and that that whole thing was a mistake; that he wanted to forget the whole thing and start over again (P. 280 L. 11). Complainant urged as a condition precedent to her returning that the defendant convey to her title to the property at No. 10 Whitehall at Deal (P. 100 L. 11) (P. 280 L. 30).

The next morning, it being New Year's Day, complainant went to visit the mother of the defendant (P. 102 L. 26) (P. 281 L. 17). This meeting and the conversations that took place were testified to by defendant's mother and also by Ida Daley who was present in the apartment, and the complainant did not take the stand to deny what either of them said about the meeting. It appeared that the defendant had agreed to deed the property to the complainant, according to her desire, and went to the office of his solicitor to arrange about it. (P. 281 L. 26).

The complainant came to the apartment of Mrs. McDonald, Sr. and the latter said to her "Gert, I have sent for you because I know and have heard that you and Jack are going to live together again." Complainant said "Who said that?" Mrs. McDonald answered "Jack told me that." Complainant said "He is a liar. Did he tell you what the conditions were that I would come back * * * * * * I am not coming back and I am going to start action against him and when I get through with

him I am going to start on you." Mrs. McDonald, Sr. said "Gert, why do you want to sue me? I have never done anything. Why do you want to do that?" And her daughter-in-law replied "You know what alienation of affections means. (P. 366 L. 22 to P. 377 L. 6). Then Mrs. McDonald, Sr., said "All right, Gert, if you feel that way about it, don't put me on the stand in this alienation case because if you do you are going to be very sorry because you will be awfully ashamed and I am going to say something that will certainly make you feel ashamed." Thereupon, the complainant, without saying anything further, blew her cigarette smoke in her mother-in-law's face and left the apartment (P. 367 L. 8 to L. 16).

This episode as related by Mrs. McDonald, Sr., was fully corroborated by Mrs. Daley (P. 437 L. 29 to L. 438 L. 11), and the complainant herself admitted it on cross-examination (P. 102 L. 20 to L. 30).

Later on the same morning, while defendant was at his solicitor's office arranging to deed the property to his wife, he received a telephone call from the complainant in which she told him that she absolutely refused to come back under any conditions. (P. 281 L. 29).

It is respectfully urged that this advance on the part of the defendant represented that robust effort which our courts have said a husband should make to get his wife to return. The defendant showed himself willing to accede to every request of the complainant. It was clearly the complainant's duty at that time to accede to the defendant's request and return to him, and when she failed and refused to do so she disentitled herself to relief.

Defendant made other overtures during that spring. The complainant herself testified that defendant had sought to see her (P. 103 L. 29), and asked her to come

back in the apartment at Red Bank (P. 104 L. 8), but the complainant refused (P. 105 L. 3). Defendant finally succeeded in making an appointment with her. He telephoned her and made an appointment to meet her in a restaurant in New York (P. 282 L. 33). While at the restaurant he received a telephone call from his wife and she told him that after thinking it over that it would be better if they met in the office of her attorney. When he met with her there, he asked her again to return to him, but she told him that she would be governed entirely by what her counsel wished in the matter, and again defendant's efforts to prevail upon her to return were fruitless. (P. 283 L. 20).

Again, at the final hearing defendant tendered himself ready and willing to receive his wife back and requested her to return to him (P. 283 L. 34). He agreed to provide accommodations for himself and his wife under such an arrangement that they would not even take their meals with his mother. (P. 287 L. 20). Further, when the defendant was in the company of his wife pending the trial of the case, he questioned her about her conduct during the pendency of the suit and she said she would not live with him under any circumstances (P. 330 L. 27). Complainant did not take the stand to deny this statement.

All these occurrences and all these efforts on the part of the defendant to prevail upon his wife to return indicate an unbending and an unreasonable attitude on her part, which was in no way justified by the defendant's conduct. Under the cases in our State, some of which are hereinafter referred to, there is a duty upon the defendant to make an effort to prevail upon his wife to return after she has left him. If those efforts on the husband's part are sincere and well-meant, it is the duty

of the wife to give ear to them and return to him unless his conduct has been such as would endanger her safety, and unless she has reason to believe that there would be no correction on the part of the husband of the course of conduct of which he had previously been guilty.

Applying this rule to the present state of facts, it is clearly the duty of the complainant to return. Her husband, as heretofore stated, had been guilty of no misconduct such as would place the complainant in fear for her bodily health and safety. There was, therefore, nothing for her to fear from him in a resumption of their marital relationship. It is respectfully urged that on the facts, as presented, the defendant was entitled to have his overtures received and acceded to. When the complainant flatly refused to return to him, it is respectfully submitted she deprived herself of any right to separate maintenance.

One other circumstance which should be referred to is the claim by the complainant that her health was undermined because of the conduct of the defendant. It appeared that in March, 1929, she was attended by Dr. James F. Ackerman of Asbury Park, New Jersey (P. 478 L. 12). In April, 1929, Dr. Ackerman treated her for pyolitis, which, he testified, was not caused by any nervous excitation (P. 483 L. 6). She was attended by him once again the following October.

Complainant did not venture to produce at the trial either of the physicians, Dr. Harry Slocum and Dr. James F. Ackerman, who attended her, but the defendant called Dr. Ackerman (P. 477 L. 11). The doctor refused to give it as his opinion that any illness suffered by the complainant, or any loss of weight could be definitely attributed to the experience she underwent when living with the defendant (P. 485 L. 6) (P. 489 L.

26 to P. 490 L. 4). In other words, there might have been many causes which contributed to her loss of weight if she actually did lose weight Moreover, it is only fair to state that the nervousness from which she suffered was only temporary in character.

It appears that throughout the summer of 1929 the complainant was without the services of any physician and seemed to have enjoyed perfectly good health. She went about as usual and there is nothing to show that she suffered any illness. In November, after she left her husband, she again became ill. Whatever nervous condition she sustained after the separation certainly could not be attributed to the conduct of her husband.

For the above reasons, the defendant respectfully urges that the decree of the Court of Chancery be reversed and the bill of complaint dismissed.

III.

The award of one hundred fifty dollars weekly alimony is excessive in view of the present financial ability of the defendant.

Under the final decree the complainant is obtaining the sum of One Hundred Fifty ($150.00) Dollars per week from the defendant (P. XIV-A). In addition to this, she is enjoying possession of the house at No. 10 Whitehall, Deal, New Jersey, owned by the defendant which, if rented, would bring in a net rental of $5,500.00. She is, therefore, receiving the equivalent of $13,350.00 per annum. It is respectfully submitted that the facts and figures concerning the defendant's income do not justify this allowance.

New Jersey State Library

The defendant is an officer in a lumber business known as the J. W. McDonald Lumber Company, of Brooklyn, New York, and owns 55% of the stock in the corporation (P. 190 L. 24). The audit offered in evidence, and prepared by a certified public accountant, shows that the business of this company for the first nine months of 1930 resulted in a net profit of $7,569.07 (Testimony of Elmer S. Jepson, P. 514 L. 31) (Exhibits A and B, P. 533 to 535). Assuming that the company made a similar profit for the remaining three months of the year, the net profit would amount to $10,092.08. Of this amount 10 % must be paid to the general manager, William D. Downs, under his contract with the company (P. 527). This would amount to $1,009.20, leaving $9,082.88 to be divided among the shareholders of the company. The defendant would receive 55% of this amount, or $4,995.59. He receives as an officer of the company a salary of $8,000.00 per year (P. 200 L. 29), and with the additional dividends his income from the lumber business apparently would be $12,995.59 for the year 1930. Against this, the defendant is carrying many obligations in connection with his real estate holdings. The financial statement of the various buildings owned by the defendant follows:

1. Les Gertrudes Apartments, Red Bank, N. J. (P. 219 to P. 221):

Cost of land and building		$400,000.00
First mortgage		245,000.00
Carrying charges:		
Interest on mortgage	$14,700.00	
Amortization	7,350.00	
Taxes, 1930	4,960.00	
Fuel	3,000.00	
Superintendent	1,800.00	

Insurance	1,200.00	
Light, Power and Water	3,500.00	
Repairs	4,600.00	
		$41,110.00
Income:		
Total rentals per month	$ 3,400.00	
Annual gross income		40,800.00
Total carrying charges	$41,110.00	
Total income	40,800.00	
Deficit	$ 310.00	

It should be noted that the income is estimated on the basis of all the apartments being occupied throughout the year, and no allowances made fore the loss of rents.

Furthermore, there is an additional indebtedness in connection with the construction costs of the apartment (P. 223 L. 1 to L 30):

Schultz & Eberly, dceorators	$ 2,000.00
H. M. Stillman, contractor	14,500.00
Floyd J. Eger, plumber	4,400.00
Asbury Park & Ocean Grove Bank.	5,000.00

The indebtedness to the Asbury Park & Ocean Grove Bank was $24,000.00, but the defendant has been compelled to reduce it. He borrowed money from his mother, Mrs. Adelaide McDonald, who executed Building and Loan mortgages on property of her own in amounts totaling $30,000.00, in order to enable defendant to pay the bank and his other obligations (P. 224 L. 27).

The Schultz & Eberly account is being reduced at $500.00 a month (P. 223 L. 25). The H. M. Stillman amount is also reduced at $500.00 a month (P. 223 L. 15). Defendant also is paying the Asbury Park & Ocean Grove Bank $1,000.00 a month in reduction of his note (P. 223 L. 33).

2. Adelaide Court, Red Bank, N. J. (P. 226 L. 24 to P. 228 L. 5).

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This property consists of six individual houses built as a unit.

Carrying charges:		
Interest on $60,000.00—		
Taxes	$1,500.00	
mortgage at 6%	3,600.00	
Fuel	500.00	
Janitor	1,200.00	
Insurance	500.00	
20 Repairs	1,000.00	
Agents' Commissions	450.00	
		$8,750.00
Gross Income		9,000.00
Profit		$ 250.00

3. No. 10 Whitehall, Deal, New Jersey. (P. 228 L. 7 to P. 229 L. 1).

Carrying charges:		
30 Interest on $29,500.00		
mortgage at 6%	$1,770.00	
Taxes	1,367.00	
Insurance	200.00	
		$3,337.00

There was no income from this property in 1930, and there has been none as yet for the reason that the complainant occupied, and continues to occupy the house as a residence. This property, if rented, would bring at least $6,000.00 a year. It was rented for that amount in 1929 (P. 228 L. 27). If the agent's commission of $450.00 were deducted, it would leave an income of $5,500.00.

4. No. 48 Esplanade, Deal, New Jersey. (P. 229 L. 2 to L. 34).

Carrying charges:		
First mortgage in Building and Loan, annual dues	$3,000.00	
Taxes	549.06	
Insurance	150.00	
Repairs	350,00	
		$4,049.06
Rental, 1930, less agent's commission of 5%	$3,800.00	3,800.00
Deficit		$ 249.06

5. Silverwhite Gardens, Red Bank, New Jersey, (P. 230, L. 1 to P. 231 L. 10).

Carrying charges:		
Interest on $10,000.00 mortgage at 6%	$1,200.00	
Taxes	159.00	

Insurance	100.00	
Repairs	125,00	
		$1,584.00
Gross income		$1,800.00
Net profit		$ 216.00

The mortgage on this property was to be reduced $5,000.00 in May, 1930, but defendant was unable to make the reduction and the mortgagee extended the payment until November 1930 (P. 230 L. 9 to L. 27).

RECAPITULATION

Salary as officer of the J. W. McDonald Lumber Company..	$8,000.00	
Estimated yearly dividend from 55% stock in J. W. McDonald Co.		$ 4,995.59
Les Gertrudes Apartments.....	$ 310.00	
Adelaide Court		$ 250.00
No. 10 Whitehall, Deal, N. J.....	3,337.00	
No. 48 Esplanade, Deal, N. J.....	249.06	
Silverwhite Gardens		216.00
	$3,896.06	$13,461.59
		3,896.06
Total yearly income		$ 9,565.53

It is obvious that the real estate owned by the defendant is being carried on at a loss at the present time. Defendant has no other source of income except from the lumber business (P. 231 L. 13). The complainant is

receiving from the defendant at the present time an allowance greater than his total income. She is also enjoying the use of an elaborate home, the rental of which would materially aid the defendant in carrying the various properties which he owns. In the present real estate market it is impossible for the defendant to dispose of any of these properties. He has obligations to creditors to whom he still owes moneys in connection with the construction of his apartment house. It is apparent that the defendant is in financial difficulties. It is respectfully urged, therefore, that the complainant should bear her share of these financial difficulties. It is respectfully submitted that the complainant should be required to relinquish possession of the house at No. 10 Whitehall, Deal, in order that defendant may use the rental of it to help maintain his properties and that defendant should not be required to pay a sum to the complainant exceeding $5,000.00 a year.

IV.

THE LAW

Section 26 of our Divorce Act (Comp. Stat. p. 2038) declares that:

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

> that marriage, or to be made out of his property, and for such time as the nature of the case and the circumstances of the parties render suitable and proper in the opinion of the court."

Therefore, for a wife to prevail in a suit for alimony, it is necessary for her to show, first, that her husband has abandoned her, or separated himself from her without justification, that he has refused or neglected to maintain and provide for her. *Anschutz v. Anshutz* (Ch. 1863) 16 N. J. Eq. 162; *Pinkinson v. Pinkinson* (E. & A. 1921) 92 N. J. Eq. 669.

The above statute was construed by Vice-Chancellor Leaming in *Taylor v. Taylor,* whose opinion was adopted by the Court of Errors and Appeals (1907), 73 N. J. Eq. 745. The learned Vice-Chancellor held that a wife, to justify her desertion of her husband, so as to bring her within the statute quoted above, must prove such extreme cruelty on the part of the husband as would entitle her to a divorce from bed and board on the ground of extreme cruelty, if she were suing therefor, and that a failure to so justify her desertion precluded recovery for separate maintenance under the statute. He said at p. 746:

> "The conditions, other than adultery, which will justify the wife in separating herself from her husband are those which our statute has provided as sufficient cause to entitle the court to grant to the wife a divorce from bed and board, namely, extreme cruelty on the part of the husband. This is necessarily so, for a wife cannot be justified in assuming the right to live separate from her husband for causes which will not justify this court in granting

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

See also, *O'Brien v. O'Brien* (Ch. 1928) 103 N. J. Eq. 214 (opinion by Vice-Chancellor Fallon), affirmed by the Court of Errors and Appeals (1929), 105 N. J. Eq. 250.

"Extreme cruelty" as defined by our court is laid down by Mr. Justice VanSyckel, speaking for a unanimous court, in *Close v. Close* (E. & A. 1874) 25 N. J. Eq. 526 at 529:

> "Without attempting to give a definition of legal cruelty applicable to all cases, I think it may be safely said that, where the husband has been guilty, or there is reasonable ground to apprehend that he will be guilty, of any actual violence which will endanger the safety or health of the wife, or where he has inflicted upon her any physical injury accompanied by such persistent exhibition of ill-feeling and opprobrious epithets as will endanger her health, or render her life one of such extreme discomfort and wretchedness as to incapacitate her to discharge the duties of a wife, the decree of separation should be pronounced."

In *English v. English,* reported in 27 N. J. Eq. 579,

Mr. Justice Scudder, in delivering the opinion of the court, said at p. 585:

> "The court must be satisfied that the wife is in danger of bodily harm if she goes back to him, or, to use the language in *Close v. Close,* 25 N. J. Eq. (C. E. Gr.) 529, that he has done and will continue to do such acts as will endanger her health or render her life one of such extreme discomfort and wretchedness as to incapacitate her to discharge the duties of a wife. It is not the question whether she will live more comfortably at her father's house with a liberal allowance of alimony, but whether she is released from her duty as a wife by the extreme cruelty of her husband, and the reasonable apprehension that it will continue. The principle which must decide this case does not affect these parties alone; it is of the utmost importance to all that these bonds should not be lightly severed."

And in *Black v. Black* (Ch. 1878) 30 N. J. Eq. 215, Vice-Chancellor VanFleet, at page 221, uses the following language:

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

> *mensa et thoro,* actual physical violence need not be proved, but such conduct by the husband must be shown as will justify the court in believing that if he is allowed to retain his power over his wife, and she is compelled to remain subject to him, her life or health will be endangered, or that he will render her life one of such extreme discomfort and wretchedness as to incapacitate her to discharge the duties of a wife." (The italics are ours).

It is submitted that the above rules should guide in the disposition of the instant case. The complainant has not shown that the defendant has abandoned her within the meaning of the statute thus construed. He committed no matrimonial offense at or before the time she left his house which would entitle her to a decree of divorce from him. The complainant left her husband. It is the duty of the wife to live with her husband at his home and to give him her services and society. She can only be relieved from these obligations if she can show that the conduct of her husband has been such that her life or health was in danger or her life rendered one of such extreme discomfort and wretchedness as to incapacitate her to discharge the duties of a wife. *Black v. Black, supra.*

It is unquestionably the law that a bona fide offer by a husband to receive his wife in his home and resume marital relations with her and provide for her according to his means and station in life, is a complete defense to the wife's action for separate maintenance. See note 6 A. L. R. p. 46, and cases cited therein.

In *Howey v. Howey,* (E. & A. 1910) 77 N. J. E. 591, it is said:

> "The husband is entitled to a home of his own and to the society of his wife in that home. If he provides that home and in good faith invites his wife to come to it, she must come, and alimony must cease from the time the court is apprised of the fact that he has in good faith offered to provide with the home."

The Court's attention is most respectfully directed to the case of *Dummer v. Dummer* (E. &. A. 1898) 41 Atl. 149 (not officially reported) wherein the court held, in dismissing a bill for separate maintenance, that cruelty could not be imputed to a husband nor was the wife warranted in deserting him because her control of the household was intruded upon by his daughters, by a former marriage, and his spinster sister who lived with him, where the wife, was not without fault in the matter and the husband did not treat her with anything resembling cruelty. Judge Hendrickson, speaking for the court at page 153, said:

> "The conclusion I have reached also finds encouragement in a recognized principle of public policy that separation between the parties to the marriage contract is not to be tolerated for light causes. Mr. Bishop says of it: 'The entire spirit of our marriage law pronounces that the parties should dwell in practical matrimony in distinction from a mere theoretical sustaining of the legal relation without cohabitation.' I Bish. Mar., Div. & Sep. sec. 1751. See, also, section 1753, Id., and Grove's Appeal, 37 Pa. St. 443-447. A desertion is not justified because of infirmities and defects of temper or conduct merely in either of the parties to the marriage con-

tract. These they undertake to put up with when they agree to take each other for better or for worse. *Boyce v. Boyce,* 23 N. J. Eq. 337.

Under the circumstances of this case, the only legal course left open to the complainant was to accept defendant's offer of his home without condition, and if permitted to do so, to re-enter there upon the performance of her marital duties. Then, if the defendant had declined to receive her, or if, upon her return, he had acted in such disregard of her rights as to entitle her to a judicial separation, there would have been no bar to her success in a suit of this character.'

For the above reasons the defendant respectfully urges that the decree of the court of chancery be reversed and the bill of complaint dismissed.

Respectfully submitted,

WARD KREMER,

Solicitor for and of Counsel with Appellant-Defendant.

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New Jersey Court of Errors and Appeals

GERTRUDE T. McDONALD, Complainant-Appellee, *vs.* HENRY J. McDONALD, Defendant-Appellant.	On Bill for Maintenance. Appeal from Court of Chancery.

BRIEF FOR COMPLAINANT-APPELLEE.

This is an appeal from a final decree in the Court of Chancery advised by Advisory Master Robert H. McAdams allowing the complainant separate maintenance in the sum of One Hundred Fifty ($150.00) Dollars per week and Fifteen Hundred ($1,500.00) Dollars counsel fee to her solicitors.

The testimony shows that the complainant separated herself from her husband in the latter part of November, 1929, because his conduct, and that of his mother, was such *that her health was in danger and in fact became greatly impaired, and her life was rendered one of such extreme discomfort and wretchedness that she suffered from nervousness and pyolitis, and finally had a nervous breakdown,* as a result of which she was *reduced in weight from 138 to 98 pounds.* (Italics are ours.)

It will appear that the mother of defendant never approved the marriage; that the defendant is an only child, and that upon the death of his father at his winter home in Palm Beach, Florida,

his mother succeeded in persuading her son, over her husband's dead body, to solemnly promise her to leave complainant and separate himself from her, and that she completely alienated all the love and affection which he bore for complainant prior thereto. Other testimony prior to that time will show what was in the mind of defendant's mother and the campaign which she commenced, which culminated in the separation.

I.

The decree for separate maintenance should be affirmed.

The parties were married April 13, 1926, in St. Patrick's Cathedral, New York, by the Reverend Robert S. Keegan (p. 24, ll. 30-35; p. 25, ll. 1-10), and after their marriage went to live at 48 Esplanade, then to 10 Whitehall, in the Borough of Deal, New Jersey, which premises are owned by the defendant, and at which place the complainant resides at the present time. They also lived temporarily with the parents of the defendant at 70 Esplanade, Deal, and later at an apartment house owned by the defendant during the winter of 1929 at Red Bank (p. 26, ll. 26-35; p. 27, ll. 1-25; p. 40, ll. 1-35; p. 41, ll. 1-5). Complainant was compelled to leave her husband while they were living at Red Bank in November, 1929, because of the treatment she received from her husband and his mother, and since her separation has lived in their home at 10 Whitehall, Deal, where she now resides (p. 27, ll. 1-6).

Prior to her marriage with defendant she was the wife of Harry N. Moore, and by that marriage three children were born to her, whose ages are seventeen, sixteen and twelve, respectively. Dur-

ing the first two and one-half years of her present marriage she was very happy (p. 27, ll. 10-35). The trouble between the parties arose from the time when they temporarily went to live with the defendant's parents at 70 Esplanade, Deal, to which place the complainant went because of the desire of her husband to be near his father who was then stricken with what proved to be his last illness. Her testimony bearing on this was:

> "Q. Under what circumstances did you leave your home to live with the mother and father of the defendant at 70 Esplanade? A. Mr. McDonald, Senior, was beginning to have this illness that he eventually died from, and he was very lonesome and melancholy. Mr. McDonald had intimated that he was, and I knew that my husband worried about him, and that his father derived a great pleasure in his company. My children were at school, and the suggestion was made that we go and live there" (p. 27, ll. 15-25).

In October, 1928, the complainant, together with her husband, then went temporarily to live with his parents, their home at 10 Whitehall in the meanwhile remaining fully furnished. The couple previously had been very happy, but now things changed. A slight dispute arose over a theatre trip to New York, which will be found at p. 28, ll. 10-25; p. 29, ll. 1-35; p. 30, ll. 1-35; p. 31, ll. 1-30, in which the mother-in-law figured prominently, and this caused the pleasant atmosphere theretofore existing to change, and the defendant and his mother and his father would go upstairs and leave the complainant alone. Her husband became neglectful.

The defendant's parents retained in their home a number of domestics—a cook, Mary Carter; an upstairs maid, Sadie Williams; Mura, a butler, and Joe Schlesser, a chauffeur. The mother of

defendant gave vent to her bitterness of feeling against complainant by discussing her daughter-in-law with these various domestics (p. 32, ll. 1-35). The mother-in-law told complainant that her husband had gained nothing by his marriage to her and that the gain was entirely on her part (p. 34, ll. 10-25). The mother-in-law commenced a campaign, as will be shown later, which had for its ultimate purpose the separation of the couple. On one occasion shortly after she had told complainant that the son had gained nothing by marrying her and that she had gained everything, which was some time in the month of December, 1928, she came into the room with her son where complainant was seated, and walking over to complainant shook her finger in her face and said, "That woman! She said she hates me, and she is insanely jealous of me because you love me" (p. 35, ll. 12-20). This the complainant resented, and in her resentment insisted with her husband that they go back to their own home, but the matter was patched up and she remained (p. 36, ll. 7-15).

The elder McDonalds went South on January 7th or 10th, 1929, and the son followed them later (p. 37, l. 10). Harry McManus, a brother of complainant, was wintering in Miami, Florida, in January, 1929, and in the latter part of February, 1929, met the defendant there in the home of his parents (p. 9, ll. 1-25; p. 10, ll. 9-25). Defendant's father died in March, 1929, at Palm Beach, and Harry McManus was there and assisted in making arrangements for the funeral, and after his death he overheard what was said by defendant's mother concerning the witness' sister, and at the time these statements were made there were present in the room the defendant, the witness and his wife.

> "Q. What was it that was said concerning this complainant by the mother of the defend-

ant? A. Well, Mrs. McDonald, Senior, said that Mr. McDonald, Senior, before he died, said that he hoped he died before he laid eyes on Mrs. McDonald, Junior, again'' (p. 14, ll. 1-35).

The witness telephoned the complainant on the night of the father-in-law's death and also the next morning, at the request of the defendant, and gave her a message for him (p. 15, ll. 10-30).

''Q. What was this message? A. That she was not to kiss the body.

Q. What body? A. Mr. McDonald, Senior.

Q. At the time that the defendant requested you to communicate this to the complainant, what else did he say to you with reference to his future life with the complainant? A. That he did not love my sister as he should any more, and that they were going to break up.

Q. Did he say why he did not love your sister any more as he should, and why he was going to break up? A. Yes, because of the way she had treated his father'' (p. 16, ll. 11-23).

The next morning, complainant's brother, Harry McManus, while assisting defendant in the removal of his father's body to the railroad station in order to ship it to Deal, New Jersey, spoke to the defendant about his change of feeling toward complainant and requested him to ''pull himself together'', but he again repeated his statement that he was going to separate from her (p. 17, ll. 5-32), and the defendant again said, ''That he did not love my sister as he should and as he had, that he had decided to break up with her because of the way that she had treated his father'' (p. 17, l. 35; p. 18, ll. 1-2). This witness, on his return from Palm Beach, noticed a very decided difference in the physical appearance of

his sister. "She had lost weight. She had, to me, grown older. Her face I would describe as a little haggard. She was worn" (p. 20, ll. 27-30), and he says that he told her everything that the defendant had said to him (p. 22, ll. 6-10).

Another brother, Ambrose McManus (p. 110, ll. 18-35), says that prior to January, 1929, when the elder McDonalds went South that "there was nothing except the friendliest relations existing between all of us". He knew that defendant left for Florida about the end of February, 1929, to join his parents, and that at that time his sister, the complainant, was temporarily living in the home 70 Esplanade, Deal, of the elder McDonalds, and that his niece, Patricia Moore, was quite ill in that home when the defendant went South, and that the defendant was undecided whether or not to go under the circumstances, but that he advised him to go (p. 111, ll. 1-35). He learned then of the death of the elder McDonald and when the body arrived from the South he was present at the station at Elberon between two and three in the morning (p. 112, ll. 1-35). He rode in the automobile with the defendant on the way from the station to the home.

> "Q. On the way over to the house in the car, to the funeral house, did the defendant say anything? A. Yes, sir.
>
> Q. What did he say? A. We said very little, conversation that I don't recall at all until the defendant, or Jack, burst out and said, 'Ambrose, I am going to leave Gert.' I didn't say anything for a minute or two" (p. 113, ll. 28-35).
>
> "I said, well these are pretty serious times just at present, and at least, regardless of what apparent conclusion you have come to, wait until this thing is all over with. By this thing, I meant the funeral arrangements, and so on.

Q. On the morning of the funeral, did your sister have a talk with you concerning her husband? A. Yes, sir.

Q. What did she say? Up to that time had you told her what he told you? A. I didn't tell her that night. I am not sure that I told her the first thing in the morning, but some time during the next day, I think certain other circumstances came up that I don't recall exactly what they were, which prompted me to tell her what Jack said. I wasn't anxious to precipitate that thing any faster than possible" (p. 114, ll. 10-25).

"Q. You know how it affected your sister? A. Yes, she broke down completely" (p. 115, ll. 1-2).

"Q. After this time in March, 1929, when you communicated to your sister what the defendant had said to you, and at the time when the complainant left the defendant in November, 1929, can you say whether or not there was a difference in her physical appearance as to weight and so forth? Please answer yes or no. A. Yes" (p. 117, ll. 29-35).

"Q. And what was that difference? A. Well, over that period from that time I told her what Jack told me, as I have just testified, from that time until the time she left the apartment in Red Bank, her health, her looks, the appearance of her was unquestionably changed very much for the worse, and she was very much lighter in weight and looked very badly" (p. 118, ll. 1-7).

The defendant when he arrived home with his father's body treated his wife indifferently and coolly. At that time she had not yet been told of what he had said to both of her brothers, namely that he no longer loved her and that he was going to leave her, but because of his actions she asked him for an explanation (p. 42, ll. 1-35), and he told her, "I don't care for you the way I did" (p. 43, l. 1). The next evening after the funeral when complainant knew of what defendant had

said to her two brothers she asked him for an explanation as to why he told her brothers that he intended to leave her (p. 43, ll. 20-35), and what he said by way of explanation appears at p. 44, ll. 10-35; p. 45, ll. 1-35; p. 46, ll. 1-35; p. 47, ll. 1-15:

"Q. What did he say by way of explanation of what he told you and what he told your brother Ambrose? A. He said when he arrived at Palm Beach *that he had heard from his mother and father things that made him feel I had lied to him, and that I had also hurt his father's feelings very badly,* and for that *reason,* his *attitude had changed toward me, and it had culminated into great bitterness at the time of his father's death,* so much so that it caused this attitude. I demanded an explanation of where I had lied and also in what manner I had offended his father, because it was the *first I knew of it.*

Q. Did you get the explanation? A. Yes, I did.

Q. What did he say? Just what you repeated here or anything more? A. Yes, his explanation in regard to father was that on coming downstairs and going to the movies with my two boys, it being a rainy day outside, I told them to get caps to wear, and John, the oldest boy, had come out with Mr. McDonald's cap on. He asked me if he might wear it, and Mrs. McDonald was there, and so was Mr. McDonald, Senior, so I told him to ask Pop, as it is his cap, and Mr. McDonald said, 'No, you may not. I have told you not to wear my things before'" (italics are ours).

"I was surprised, because it seemed a small matter, and without realizing or intending any hurt to Mr. McDonald, as I was thinking more of the child's feelings in the matter, I said, 'Never mind, it is a small matter. I will buy you a new hat'. That was the insult to Mr. McDonald.

Q. At that time, when you confronted your husband with what he had said to your

brother, was there anything further said as to whether you would live with the mother-in-law or go back to your own place or anything about that? A. When Mr. McDonald was explaining his remark? Yes, he went on to say that he had said those things, but he wanted me to come there and live.

Q. Where? A. At 70 Esplanade. He said that under no circumstances would he leave his mother, so I said, 'What about me?' He said, 'I want you to come here, too, and Patricia'. I said, 'What about the boys? After all, Jack, I had those children when you married me, and you knew it, and where I go, they go'. His remark was, 'Well, of course, mother is not used to children. They may come home at Christmas and Easter, but at other times I would expect them to be away'. I objected.

Q. What did you say? A. I said, 'I could not go under those circumstances, because my children are entitled to a home and a feeling that they are at home'.

Q. What did you do? A. I said I would go back and stay at 10 Whitehall Street in my own home, and if he wanted to join me there at any time, all right, and that even if he could not come to me, but would tell me that he had not changed toward me and that he loved me and needed me, I would go to him at 70.

Q. Did you go to No. 10 Whitehall, then? A. I did.

Q. The next day, Friday, did anything happen? A. Yes, my husband called me up, or at least, he asked me when I was leaving Thursday night to come in and see his mother the next day, which I did. Mrs. McDonald and I discussed the matter about my coming there, and I told her I could not come under the conditions and attitude my husband was showing toward me, and if he did not care for me, I did not want to live with him, and until he could tell me that and mean it, I did not intend to. I told her what I had told him and what I have told you. That night around

dinner time the phone rang, and it was my husband. He said to me then, 'Are you coming down this evening? I promised to run in for a few minutes. Will you come?' I said, 'No, you know what the understanding was, and if you love me and need me I would come there'. He said, 'I do all those things. I want you to come'. Of course, I was rather taken back because it was such a drastic change from the attitude of a few days before, but I realized that through the excitement a lot of unpleasant things occur, and also, I was in love with my husband. I did not want any wider breach than had already been made, so I thought, 'Let's not make it go any further. All right, I will go back'.

Q. And did you go back? A. Yes, I went back.

Q. When you went back, did matters improve any? A. *No; my husband seemed to change.* One moment he seemed the same way toward me and at other times he just appeared totally indifferent to me.

Q. You will have to specify in what way he appeared to be indifferent to you so that the Court can judge what it was. A. The night I returned, for instance, I was taken very ill. I became paralyzed from my waist down. My husband sent for the doctor, Doctor Ackerman. I was delirious and thought I had been run over by a fire truck. That was the impression I had. Doctor Ackerman came and said it was a nerve condition brought on by strain. Some nerve was being pressed upon, which was temporary. This happened through the night. In the meantime, Mrs. McDonald, Senior, having heard some excitement, came to our room and asked what was the matter? At that time I was normal and told her I had been ill, and I said, 'It is just nerves' " (italics are ours).

"She turned to Jack and said, 'Put on your bathrobe, dear, and come in my room and have breakfast with me'. He did, which I thought was certainly indifference and lacking consideration for me, when I was as sick

as I had been and knowing the things and mood I had returned in, because I wanted to be assured of affection and not slighted. There were many instances like that."

Complainant then learned that her mother-in-law was discussing her with the servants in the home and confronted her with the servants (p. 47, ll. 15-35). Sadie Williams (p. 136, ll. 13-25). She brought this fact to the attention of her husband in the presence of her mother-in-law (p. 48, ll. 3-8). At the time that this took place, the mother-in-law said that when Jack (meaning her son, the defendant), came down to Palm Beach, that his feeling had already changed toward complainant, and that he had told her so, and when complainant asked him if that was true he said it was, and this caused complainant a great shock and she said in reply, "This is all I have stood and all I can stand. It is one thing to come and try to live here and pick up our lives after it had been upset like this, but in the meantime, this talk has been going on behind my back when I have been trying to do everything to make a success of our life, but I can't counteract that sort of thing" (p. 48, ll. 8-26). Then, for the second time, complainant threatened to go from the mother-in-law's home to her own at 10 Whitehall, but upon her husband's pleading to try it over again she remained (p. 48, ll. 28-35).

It clearly appears defendant's mother never approved complainant's marriage with defendant. The defendant's mother, while complainant was living at 70 Esplanade, referring to a young lady who had been a guest at the home (p. 130, ll. 14-22), said to the witness Sadie Williams that "She would rather Mr. McDonald married this young lady, that his marriage with Mrs. H. J. McDonald had been a mistake." The witness later told

this to complainant. This maid went South with the senior McDonalds. Defendant's mother displayed her bitterness and hatred for the complainant at the bedside of defendant's dead father when she said to this servant, "She has killed my husband, and *I am going to have my revenge* over my dead husband's body. Q. Did you know whom she was talking about? A. Yes, Mrs. H. J." (p. 136, ll. 20-25). Defendant's mother proceeded, as will be seen by what follows, to carry out her threat of revenge, and she chose a time when the son's heart was filled with sorrow for his dead father and his widowed mother to carry out her purpose to separate the couple. "Q. At that time did she say anything to you about her son or about this complainant? A. Yes, Judge Stein. Q. What did she say? A. Mr. McDonald and Mrs. McDonald had gone to the undertaker's parlor, and the body had been removed from the house, and Mrs. McDonald says—she was in Mr. McDonald's room at the time, and she says, 'Well, Sadie, I have lost my husband, *but I have gained my son.* I have made him *promise me that he is going to leave Mrs. H. J. when he gets home'* " (p. 136, ll. 31-35; p. 137, ll. 1-5). When the witness Sadie Williams after the death of the defendant's father returned with the family to Deal, she noticed that the defendant spent more time with his mother than he did with his wife (p. 137, ll. 29-35). On one occasion when the defendant kissed his wife the defendant's mother said to this witness that she could have killed her because of that (p. 139, ll. 10-11). The witness told the complainant all that defendant's mother had said to her concerning the complainant, namely, she had killed her husband, and that while she had lost her husband she had gained her son, and that she had made her son promise that he would leave complainant (p. 140,

ll. 1-35; p. 141, ll. 1-5). And later she confronted defendant's mother with the complainant at the request of the complainant and repeated these things all over again (p. 141, ll. 22-35). (Italics are ours.)

Another maid, Mary Carter, testified that when she came to work for the mother of the defendant that she was brought through the house, and a day or so after that, in order to let the mother of the defendant know that she had been through the house, the witness said to her that she had a lovely home and that she ought to be very happy, but that defendant's mother replied, "Well, I am not. I want my boy with me." "Well, you have your boy and his wife, and they seem to be happy, and I don't see why you should not be happy to know that they were happy." To which the defendant's mother replied, "*I want him all to myself.*" And the witness then said, "You did not expect to keep him with you always, did you? He is like the majority of young men who wanted a wife to himself" (p. 152, ll. 4-18). (Italics ours.)

Theresa B. James says that when the defendant returned with his mother from Palm Beach after the death of his father that the complainant was very much alone while the defendant and his mother were always together in and around the lawn (p. 153, ll. 23-35). From this it will be seen that when the mother-in-law had her son alone in the South she commenced a campaign to alienate his affection for his wife and to separate the couple. He was fond of complainant before then, as will be seen from the testimony of Luke S. Mimura, who accompanied him to the South to join his parents. He was very quiet and appeared to be lonesome and was looking out of the train window, and the defendant said to this witness (p. 160, ll. 22-28): "Do you know, Mura, I miss Mrs. H. J. a great deal." I said, "I imagine you

do, Mr. McDonald." And the defendant continued and said, "I hate to leave her alone with the sick child, but you see, I have a mother and father down South, and they are worrying over me, so I have to go and join with them." All through the testimony it will be seen that prior to this when the young folks lived alone and before he went South they were happy. This same witness, at p. 163, ll. 1-12, says that after the death of the father the defendant was different in and around the house. This witness on cross-examination, at p. 167, ll. 25-34, tells of a conversation about Christmas time with the defendant's mother and he says the senior Mrs. McDonald said to him, "I am sorry Mr. H. J. married Mrs. H. J.," to which he replied, "Didn't you know they were going to get married?" and that the reply was, "Yes, I know, only Mr. H. J. is the only son, and I don't want to object."

The complainant asked Sadie Williams to repeat all the things that she had told her that the mother-in-law had said, in the presence of her husband and her mother-in-law, and she testified that Sadie Williams did so (p. 177, ll. 30-35; p. 178, ll. 1-20).

About the first week in October, 1929, the complainant and defendant moved to an apartment which the defendant owns at Red Bank, which apartment was on the second floor, and the mother of defendant moved into the apartment on the first floor. No arrangements were made for meals in complainant's apartment, but it was agreed that the complainant and her husband take their meals in the mother-in-law's apartment. They moved there because defendant's mother's home was large and because complainant thought that she would have more companionship with her husband in one apartment than living in the house together with her mother-in-law (p. 49, ll. 7-35),

but she found this was a mistake. The defendant's conduct toward her did not change. He spent his evenings in his mother's apartment and when he returned from his business in New York he always went to his mother's apartment first. She could not go out with him alone, his mother always being with them, to all of which she objected to her husband (p. 50, ll. 1-35). She protested to her husband that she wanted some of his companionship, but he told her, "that under the conditions of his mother, while she was this way, he would have to do it, *and if necessary, for the rest of his life.*" (Italics are ours.) Prior to this the complainant weighed 138 pounds, and on November 28, 1929, she weighed 98 pounds, because, as she says, of "worry and grief" (p. 51, ll. 20-35). The defendant and his mother left the Red Bank apartment for Pinehurst shortly before Thanksgiving (p. 52, ll. 22-25). A week before they went to Pinehurst, the defendant's mother had gone to New York for the day, and upon her return she planned a trip to South America, and complainant had been requested to go along. They were going over Christmas and complainant decided not to go because her children were coming home over the holiday, and because she had been away on other Christmas holidays she did not want to go, but the defendant procured the tickets for himself and his mother, and in the meanwhile the mother changed her mind, but complainant persuaded her to go. Later, she went to the defendant's mother's apartment and found her crying, and the defendant was there with her, and on inquiry she found it was because he had said something about the South American trip, to the effect that the mother had already spoiled one trip for him and if she wanted tickets now she should go and get them herself. Complainant said to her husband, "Why did you say

that?'' and tried to patch matters up between them (p. 53, ll. 1-30). Complainant then describes how the defendant flew into a temper and dashed from the living-room and how she went after him into the street, found him sitting on a log and pleaded with him to come back (p. 54, ll. 1-35). Later she asked her husband to go down and see his mother to which he agreed, and the complainant and defendant went into the mother's apartment. At p. 55, ll. 10-35, her testimony is as follows:

> ''So we went down, and Mrs. McDonald called me in her bedroom, and she said, 'I want to talk to you.' She said that she had had—that she could not stand the strain. I said, 'I can't stand it, either.' It was a case of Jack choosing between us. He would have to choose his mother or choose me. Jack heard us and came in, and he said, 'I have heard every word you said.' I said, 'That is perfectly all right. There is nothing you could not hear, and it is something you would have to hear.' So he said to his mother, 'Listen, if you leave this house and go home to 70 Esplanade, you will never see me again.' Then he turned to me and said the same thing, or, 'If you leave me, I won't live with either of you in that case. Why can't we get along in peace? I love my wife, but I can't come home every night to complaints and bickerings.' That is the first time I knew that he had come home to complaints, and asked him, 'What do you mean by coming home to complaints?' He said, 'Every night mother says that you don't talk to her. You are morose and seem sullen, and she intimated that because I took some furniture in the apartment and moved it back to a different place that I was being led around by the nose. All those things don't help my condition of mind when I am trying to get along.' In other words, he spoke as if he was anxious for harmony for all of us. His mother spoke up then and said,

'That is not the way you talked to me at Palm Beach.' Then the whole thing opened up again. I said, 'What is not——'

Q. What was it? A. That that was not the way he talked, that he did not love me when I was not down there, that they were sufficient unto each other and did not need me at all. So I went upstairs, and I thought—I was very much excited and very much wrought up—that I would go upstairs before I said more than I cared to say and be sorry for, and I went upstairs. I think it was nearly midnight then. At five o'clock in the morning I was sent for by the colored laundress to come down, that Mrs. McDonald was not feeling well, and I brought some spirits of ammonia and came down. In the meantime I could hear up in my apartment some of the things that Mrs. McDonald was saying to my husband, and among them was that I did not play fair with her, that I talked about her, and also that I was a drunkard. I heard that very distinctly, so I came downstairs at five-thirty at the request of the laundress, and I gave my husband these spirits of ammonia and asked him to come upstairs to our apartment, and I asked his mother to come upstairs, but he went to bed and asleep. I went in the sitting room and asked Mrs. McDonald to be seated. She was very much wrought up and said no, that she wanted to speak to me, and she did. Then again she told me that Jack had no business to marry me, that he could have married a nice girl, and that also he never should have married any woman with three children, that it was too much responsibility, and so forth. I said at the time, 'That is up to Jack, and not up to you. He was old enough to know what he wanted when he married me.' I tried not to say too much, because I knew I was frightfully excited. That went on to eight o'clock in the morning, and one thing led to another, and about eight o'clock in the morning Mrs. McDonald made a remark that I resented, and I asked her to leave the apartment, which she did. Then I started to go to

> bed and get some rest. The 'phone rang and wakened both my husband and I, and then, when he had his coffee, which I had sent up for myself and gave to him because I felt he needed something, not having had any dinner the night before, I told him, 'I am sorry for this troubled night you have had, but I can't go on living this way. I am fit for the insane asylum now. Mentally and physically I am broken. Now, Jack, you have got to choose between your mother and me. *Either live with your mother and I will go home with the children. I love you; it is not a case of that, but simply that I can't stand it, that's all, and I don't think you can stand it.* You showed it last night that you would not be able to stand it much longer, and your mother is not benefiting.' He said, '*I love you, but in that case, I choose my mother.*' So that was all there was to that at the time." (Italics are ours.)
>
> "Q. That was how shortly before they went to Pinehurst? A. About a week" (p. 56, ll. 1-35; p. 57, ll. 1-35).

Then at p. 58, ll. 1-12, we find in her words that still she did not leave her husband.

> "A. Well, yes; I did not leave or I did not separate from my husband. I didn't have the courage to. I had told him, in fact, that I was going to make arrangements to go to my own home, and he asked me if I was going to stay at the apartment, and I said, 'No, Jack, I would not be content to live here. We would come back and forth if we were separated, and it would be just that much more agony to the situation. At least, if I haven't your love and protection, I think I am entitled to my home. I will go home with my children there'."

The night before the defendant and his mother left for Pinehurst he went to his mother's apartment to balance some check books and remained

in the apartment until very late while his wife was sitting up for him, and at p. 59, ll. 17-35, and p. 60, ll. 1-10, she testifies she said to him when he came upstairs:

> "Jack, you are going away tomorrow for two weeks, and you didn't think enough of me to come up and spend some time with me. Is this what my life is going to consist of, that I only see you and only have your company after your mother has retired?"
>
> "He did not try to pass it by me or give any explanation or say that he was sorry or anything. He jerked up from the chair and said, 'Good God!' and went into his bedroom. Later on I joined him, but he did not say good-night, so finally I did. I said, 'Jack, it is too bad when a woman thinks so much of her husband as I do that because I object to not seeing more of you when you are going to be separated from me, that you would not even say good-night.' His answer to that was, 'You had better go ahead with your original plans'—referring to the fact that a week previous I had intended to leave. I did not say anything else. The next morning he went to Church and from there I think he went to the cemetery with his mother. Anyhow, they did not leave for New York until, I think, the three o'clock train in the afternoon, and he did not make any explanation in the interval of why he had taken that attitude or that he was sorry or that he had changed his opinion about my going."

And when the defendant arrived at the Pennsylvania Railroad station in New York on his way to Pinehurst, he called the brother of the complainant, Ambrose McManus, on the telephone, and asked him if he knew anything about what was going on, to which the brother of complainant replied, "Some things, of course." And this witness testified at p. 119, ll. 30-35, that the defendant said to him, "Well, I am up against it.

This thing is worse than the old eternal triangle. I have got to make a decision. I have got to do something, *and I am going to go with my mother,* and you take care of Gert", or "you take care of Gert's interests, whatever it may be." And at p. 120, l. 10, on the next day after the telephone call, the brother Ambrose says in his testimony, "I waited until the next day because I just wanted to make sure in my own mind whether or not to tell her at all, because it was such a terrible situation that I did not want to have a part in precipitating it, but finally I came to the conclusion that I had better tell her." The complainant said (p. 61, l. 10) that she received the message from her brother the next day after her husband left, and that on the following Thursday she left the apartment at Red Bank and went back to her home at 10 Whitehall in Deal, and at p. 62, ll. 1-20, this very important testimony bearing on the attitude of the defendant toward his wife and the lack of consideration and affection which he had for her appears as follows:

> "Q. Did he get in touch with you? A. No, he did not.
>
> Q. From the following Monday would be some time in December, 1929. Did you hear indirectly from your husband from that time on until you commenced this proceeding? A. No, not until after I had started proceedings.
>
> Q. Did you receive any money from your husband toward your support from that time in the early part of December, 1929, until the commencement of this present proceeding? A. I received a check for $200.00 in December some time.
>
> Q. December, 1929? A. Yes.
>
> Q. And nothing more than that? A. No."

The Complainant's Health Was Shattered.

The treatment which the complainant received shattered her health and she had a nervous break-

down. Her health was good up until the time of the defendant's father's death, after which it was very poor (p. 176, ll. 10-22). She had a nervous breakdown and was attended by Doctors Harry Slocum of Long Branch and James Ackerman of Asbury Park, and she lost considerable weight (p. 177, ll. 3-10).

Doctor James F. Ackerman was called by the defendant and on direct examination by defendant's solicitor says he attended complainant in 1928 and 1929. That he saw her on March 26, 27 and 30, 1929, and that she was suffering with mental agitation and nerve excitation, and that he could tell this by her anxious expression and by what she said. She had a rapid pulse and he administered sedatives to her, and that he also saw her in April, 1929 (p. 478, ll. 10-35). At p. 480, ll. 10-29, Doctor Ackerman says that mental disturbance of the mind and nerve excitation will produce loss of weight. In addition to treating complainant on March 26th, 27th, and 30th, 1929, and April, 1929, he also treated her on the 19th, 20th and 29th of November (p. 485, ll. 25-30). The doctor says that he treated her for pyolitis and nervousness, and at p. 485, ll. 4-10, he says, "Pyolitis usually runs with mental anxiety." And at pp. 486-487-488-489, a hypothetical question was put to the doctor which assumed all the facts in evidence describing the treatment of the complainant by the mother-in-law and the defendant during the period when complainant lived in the defendant's mother's home at 70 Esplanade and at Les Gertrudes in Red Bank, where she finally separated herself from her husband in November, 1929, and the doctor was asked whether he could say with reasonable certainty and probability that the nerve excitation and pyolitis for which he treated her and the loss of thirty-five to forty pounds was due to this treatment, to which he re-

plied that it was, and at p. 489, l. 25, defendant's solicitor questioned Doctor Ackerman as follows:

> "When you say yes, you mean that such condition might have been produced of nervous or pyolitis or both? A. The loss of weight you refer to?
>
> Q. Yes. A. Yes.
>
> Q. And with regard to the condition about which Judge Stein asked you, whether or not such a condition, as you observed it, and such a loss of weight, would reasonably be attributed to pyolitis or to nervousness or to both, your answer is what? A. My answer is yes."

And at p. 490, l. 10, the doctor's testimony was:

> "Q. Can you say with any degree of reasonable certainty that the nerve excitation, was attributable to the things which were embraced in the hypothetical question that I just put to you, together with the mental condition which you have testified you found there? A. Yes.
>
> Q. When you speak of nerve excitation what do you mean? A. Agitation, a disturbance of the nervous system, which is brought about by mental shock, by mental disturbance of some kind."

And at p. 492, l. 22, the doctor testified:

> "Q. I think you did say, did you not, that you observed her distressed mental condition? A. From what she said.
>
> Q. If I am wrong, you may correct me, but I thought you said you saw something in her expression? A. Yes, she appeared to be distressed mentally, from the expression of her face."

How bitterly the defendant's mind was poisoned against the complainant by his mother about the time his father died in the South is best demonstrated when you contrast his affectionate letters which appear on pp. 507, 508 and 509, the last one

of which was written on March 23, 1929, which was the day before his father died, with what he said to complainant's brother, Harry McManus, after the father died, namely, that he should notify his sister, the complainant, not to kiss the body, and that he did not love the complainant any more, and had decided to break up with her because of the way she had treated his father. This last letter was written a few days before the father died.

The defendant was an only child and loved his parents. Is it not true that his mother succeeded in poisoning her son against complainant? Did she obtain vengeance? Did she whisper into the ear of her son that complainant had killed his father, and did she make the son promise that he would leave complainant when he got home? Upon what other possible theory can this sudden and most unnatural change be explained?

What Defendant Says Concerning the Charges of the Complainant.

After testifying that he and complainant lived happily together first at No. 48 Esplanade and then at their new home, No. 10 Whitehall, they went to his mother's home at 70 Esplanade, in the Borough of Deal, because of his father's ill health. He admits that some misunderstandings, as he puts it, arose, and that his mother and his wife had some altercation after they went to live with the parents at 70 Esplanade (p. 263, l. 30), and that this altercation was caused by something he had said (p. 264, l. 1). In connection with the letter P-5 at p. 508, written by the defendant to his wife, dated March 23, 1929, which was the last letter he wrote, attention is called to his testimony at p. 266, l. 4, that his father died on March

24, the next day, and on this same page where he testifies concerning the date of his father's death, he tells at l. 13 that while at Florida his attitude changed, and that it changed because she hurt his father's feelings by saying, "Why don't you sell your securities and shut up?" As a result of these occurrences (p. 266, l. 30), he sent word by the brother of complainant, Harry McManus, "that I was going to—that we were going to separate, that I was going to pull out".

Clearly, when he wrote the letter P-5, p. 508, nothing had been told him of any insult offered his father by complainant while they all lived at 70 Esplanade, Deal. Certainly if he knew of this it had not affected his love for his wife.

What then was it that caused this sudden change? He changed his attitude toward his wife and became embittered toward her when the father lay dead in the house at Palm Beach on March 24, 1929, and exactly at the time when Sadie Williams testifies that the defendant's mother said:

> "Well, Sadie, I have lost my husband, *but I have gained my son. I have made him promise me that he is going to leave Mrs. H. J. when he gets home*" (p. 136, ll. 30-35) (italics are ours).

It will be remembered that the defendant says that the conversation with Harry McManus took place after his father died in which he told him to tell his sister that he was through with her, and was not going to live with her any more, and that she was not to kiss his father's body (p. 267, l. 9). He corroborates his wife in the testimony she gave that when her husband arrived home with the dead body that she returned to her home at No. 10 Whitehall, and remained there until he complied with her demand, that, if he wanted her

to come back, and said that he missed her and loved her, she would come back. She says that he did so telephone and that she came back (p. 268, ll. 7-35). At p. 271, l. 8, the defendant says that his wife complained because he spent so much time with his mother, and that they quarreled about that when they lived at 70 Esplanade. He admits at p. 273, l. 25, that when they lived in the apartment at Red Bank he would stop at his mother's apartment first in the evening on his return from business in New York. At p. 275, l. 5, he admits that there were some quarrels while they lived at Red Bank, just before he and his mother went to Pinehurst. At p. 276, l. 20, he admits that the night before he left for Pinehurst he quarreled with his wife because he remained downstairs with his mother too long, and that he told his wife that she could go ahead with her original plans, meaning, as he says at p. 277, l. 1, *that she could get out.* And on the same page at l. 20, he says that he told his wife's brother, Ambrose McManus, before he went to Pinehurst and while he was at the Pennsylvania Station in New York, to go ahead and look out for his sister's interest, and that the complainant could go ahead with her original plans (meaning to get out of the house). When he returned home from Pinehurst she was gone.

The mother of the defendant when asked whether she had any difficulties with complainant says at p. 346, l. 18:

> "No. It wasn't until after they came to live with us."

And the mother admits at p. 369, l. 10, that after the husband's death, and when she returned to 70 Esplanade, that there was a talk between complainant, herself and her son, in which she called

upon her son to tell the complainant that he had lost affection for her and that he had so told her at Palm Beach and that it was at the time that Sadie Williams, the maid, confronted her with the things she had said about complainant, and that all of this discussion took place in the presence of defendant. She also says that

> "I noticed after we came back with Mr. McDonald's body they seemed very unhappy" (p. 372, l. 30).

The witness was shown an affidavit taken from the files in this case and which was sworn to by her in which she said, among other things, that complainant had said things to her

> "that she—meaning the complainant—was doing them with the deliberate intention of creating a breach between me and my son so that we should not all stay together" (p. 394, l. 25).

She goes on to explain that she made this statement because of something that the janitress at the apartment at Red Bank had said. This is noted because it shows that after the death of her husband the mother wanted her son, no matter at what cost to the complainant. She does admit that she and her son discussed the complainant when they were alone at Palm Beach together, and that the defendant said:

> "I haven't the affection that I would like to have for her" (p. 401, l. 6).

She also knew that the defendant had caused his brother-in-law, Harry McManus, to telephone complainant that he was going to leave complainant, and while she says she was not present when the request was made she testified she knew it because her son told her so (pp. 404-405). Likewise, her son told her that he was going to sepa-

rate from complainant (p. 406). The memory of the witness on many important subjects became suddenly very poor and many things which she swore to in a replying affidavit, on the application of complainant for temporary alimony, which really corroborated the story of the complainant, were entirely forgotten by her. And in testifying concerning the trip to Pinehurst which she made with her son and with reference to the quarrel which took place the night before she says at p. 412, l. 10:

> "The next morning I saw that my daughter-in-law looked badly, and I asked my son what was the matter with her."

The witness at p. 416 was asked what she meant when she said to the complainant:

> "If you put me on the stand or sue me, I am afraid I will have to say things that will be very unpleasant, and you will be ashamed."

At p. 424, before she would tell what she meant by this, she demanded that the son of complainant by a previous marriage be removed from the room, and she then relates, commencing at p. 424, ll. 15-35, a most outrageous and scandalous story which she says her son told her of an incident that the son claimed transpired between him and the complainant at a time when he went to see complainant and when complainant was in bed sick and prior to the time when they were married.

> "Q. You are asked to do it. Now, tell what it was. A. Well, before Mrs. McDonald and Mr. McDonald were married, Mrs. McDonald was sick, and my son called on her.
>
> Q. This is what your son told you? A. Yes.
>
> Q. You are telling now what he told you? A. Yes, and she asked him to go to bed with her.

Q. And he did, did he? A. And he said, 'No, Gert, I don't want to.'

Q. And he did not go to bed with her? A. I don't know what he did, whether or not he did.

Q. What did he tell you? A. And he said, 'I think it is terrible what she said to me, "let me clasp you in my arms and let me feel as though I am yours for a short time, anyway, whether this ever amounts to anything or not".'

Q. That is what your son told you? A. Exactly.

Q. And it was that that you had in mind, which you were going to tell on Mrs. McDonald, if she sued you for alienation of affections? A. Yes, for the simple reason——"

She says that her son told her of this happening about a month after complainant left the home (p. 425, ll. 1-15).

II.

The defendant's requests to the complainant to return to him were not honest or sincere.

This testimony is considered of great importance and points out more clearly than words can express the situation which existed so far as the complainant is concerned at and shortly before the time when defendant's counsel argues in his brief that, "*the defendant made repeated and bona fide overtures to the complainant to return to him*". Can it be said in view of the terrible things he told his mother, that he or his mother were sincere in making this visit, or that it was a bona fide effort? We think not.

It must be borne in mind that up until this hearing complainant did not know what the defendant's mother meant when she threatened to say

things about her that would put her to shame if complainant brought a suit against her. The complainant admits at page 97 that a week after she had gone back to her home at 10 Whitehall her husband came there with his mother and asked her to go back to the apartment at Red Bank and live under the same conditions, and she says at p. 98, l. 3:

> "I told him he could come there to me any time he wanted, but I would not live with his mother."

She also says that on two occasions in December she met her husband at the office of her counsel, and on one of these occasions she was there with him all day and they were alone and,

> "He asked me to come back and live with his mother. He said then as he said right along that he would not leave his mother and live with me alone."

Also there was some talk that he would convey a house to her for a birthday present (p. 100, ll. 1-35). She denies that she would not come back with him and says:

> "I agreed to come back if we lived alone."

She denies that she would not come back unless he conveyed the house to her as security in the event that things did not go smoothly (p. 100, ll. 1-35). Just what was his attitude at that very time? Here was a man who owned Rolls Royce cars, and who maintained a home at 10 Whitehall, valued by himself at $75,000, with a butler and maids for his wife as will be shown later, and who allowed her $150 a week, plus $200 a month for clothes, or $10,800 a year, and in addition, paid the expenses for the domestics in the home, and who, after she left him in the latter part of No-

vember tried to starve her into submission and gave her no money, until compelled to do so by order of the Court of Chancery in January, 1930, saving $200 which he sent her in the latter part of December, 1929, after a conference at the office of her counsel. Defense counsel argues that this starvation process indicates defendant's efforts to win his wife and have her return to him. A strange method to say the least.

Concerning the affair on New Year's Day, 1930, when complainant went to see the mother of defendant, the testimony was that the mother believed that the complainant and defendant were going to live together (p. 365, l. 30, and at p. 366, ll. 12-35, and p. 367), we read what happened. It was this. When the mother told the complainant she heard that she was coming back, she asked his mother if she knew the conditions, which were, that she would not come back and live with the mother-in-law because of what she had gone through, but that she would go and live with her husband alone. In that conversation she told the mother that she would sue her for alienation of affections, and the mother having in mind the scandalous story which her son had told her concerning what he claimed transpired before their marriage, told complainant that if she did this, "You will be awfully ashamed, and I am going to say something that will certainly make you feel ashamed" (see p. 367, l. 10). At that very moment, while this was going on the defendant was at his solicitor's office, and the complainant at p. 103, ll. 10-35, says that she 'phoned him there, but that he did not ask her to come back, and that the solicitor of the defendant also talked with her over the wire on that occasion, and said to her, that he was now getting ready to convey a piece of property to her, but that he did not know what the aftermath of this latest quarrel would be. She

says she never did hear from the defendant about the house or anything else after that, and at p. 104, l. 1, says she afterwards met the defendant at Judge Stein's office, but that he asked her to come back and live in the apartment under the same conditions, which she refused to do.

Counsel in his brief argues that this represented a "robust effort" on the part of the defendant to have his wife come back. Let us see how "robust" and sincere and bona fide the efforts were. At the final hearing the defendant said he wanted her to come bank (p. 283), and a stipulation was dictated by defense counsel, and on cross-examination on this point in the testimony at pp. 287 and 288, it will appear (see stipulation set forth at length, Supplemental State of Case, p. 109), that the stipulation was in no way complied with by the defendant. The hearing was adjourned from Friday preceding until Monday, September 22nd, when another adjournment was had until Thursday, October 16, 1930, and upon the resumption of the hearing, the following appears at p. 288, ll. 14-22:

> "Q. The stipulation which was dictated at the last session and reduced to writing has not been signed by you, has it? A. No.
>
> Q. None of the things provided for in the stipulation for you to do were done, were they? A. No.
>
> Q. So that the terms of that stipulation have not been in any way complied with, so far as you are concerned? A. No."

This is the man who wanted his wife to come and live with him, and in the meantime, a couple of days after the last hearing at which he said at p. 283, l. 33, in reply to the question whether he wanted his wife to come back:

> "A. Surely."

He testified at p. 325 that he went to see her at 10 Whitehall, and he says at p. 326 that this meeting arose out of negotiations for settlement set forth in the stipulation, and at p. 327 he says this was after negotiations had been agreed upon, but before the stipulation had been reduced to writing, although it had been dictated, and at p. 328 he says that he knew all about the matter that they discussed before the stipulation had been dictated setting forth the terms under which they would come together, but, that he had never mentioned the subject matter to his wife before. At p. 330, l. 20, he says his wife refused to live with him because of what he said to her at that time, and we add that no one can blame her for that. This is what he said:

> "I had asked her about a man by the name of Colman, whether or not he meant anything to her."

On cross-examination he was asked whether he meant by his question that he was accusing his wife, and if he was not so accusing her why did he ask her about this man, p. 335, l. 25, and he was further asked:

> "Don't you know that there was nothing wrong? A. I just merely asked her that."

Now let us see what he says to the next question and ascertain the frame of mind of this man, and what love he bore her and confidence he had in her (p. 335, l. 3):

> "Q. Do you believe that there was anything wrong between your wife and that man? A. I don't know now, of course.
>
> Q. Do you believe that there was? A. I would not say whether or not I believe it or do not believe it.
>
> Q. Do you suspect that there was? A. (No answer.)

Q. Will you answer that? A. I merely asked a question.

Q. Do you suspect that there was anything wrong between your wife and the man you spoke of? A. I can't say whether or not I suspected anything at all."

It was after this veiled accusation that the complainant told him that she would not live with him under any circumstances, and our Courts have frequently held that no greater cruelty exists than when a man questions the chastity of his wife. Such were the "robust" efforts of the defendant to become reconciled with his wife. Is she compellable in the law to live with a man who scandalized her to his mother? Who told his mother after they were separated and while he now claims he was making efforts to have her return to him, that she offered to be his mistress prior to their marriage, and who in addition to being subjected to the cruel and inhuman treatment which she received from him and his mother according to her testimony and that of the domestics in the mother's household for more than a year prior to her separation? We think not. The defendant's attitude indicates nothing except an entire absence of love and kindly regard for her, or for that matter, even respect.

In *Parker* vs. *Parker,* 57 Equity 577, the defendant wrote his wife "that people were saying some hard things about her in town" and sought to explain this language upon the theory that he was disappointed at his failure to induce the wife to return to him, and Vice-Chancellor Grey in his opinion says:

"Of what sort of a house would she be mistress should she accept his offer?

While the law regards a sincere and honest desire, upon the part of the husband to

> put an end to an unfortunate separation between himself and his wife with favor, it cannot give such effect to the simple declaration of a defendant in a suit already commenced, without any manifestations by act or effort that his proposition is sincere, or made with the expectation of having it accepted. Less weight is to be given to such declaration of a party as a witness in the trial of the suit to make him liable for separation, which has not been preceded or is not accompanied or followed by any practical manifestations of sincerity."

In *Elliott* vs. *Elliott,* 48 Equity 231, at p. 238, and in that case Vice-Chancellor Green said concerning the requests on the part of the husband to have his wife return to him: "I am not prepared to say that she was not excusable for not accepting with alacrity, without assurance of some substantial kind of her future comfort, the proposition so made", and to the same effect is the decision in *Parker* vs. *Parker,* cited above.

We contend that the case as presented by the testimony is one where the complainant because of the conduct of her husband and his mother, had suffered greatly in her health, and that her life was rendered so uncomfortable and wretched in the past, that it is most reasonable to say that she could expect no better treatment in the future in view of the fact that at the very time that the defendant was supposed to be sincerely requesting his wife to return to him he was likewise accusing her of infidelity.

III.

The award of one hundred fifty dollars alimony is not excessive.

The defendant is the president of J. W. McDonald & Company, Incorporated, dealers in lumber, and the place of business is at the Erie Basin in Brooklyn. His attention was called while he was giving his testimony as to his property and income, to the affidavits which both he and his mother made in reply to the affidavit of the complainant on an application for alimony *pendente lite* in Chancery. (Supplemental Case, p. 45 and p. 65, set these affidavits forth.) And first it is of importance to call attention to the fact (p. 235, l. 15), that prior to the separation the defendant gave complainant $150 a week, plus $200 a month clothes allowance, or $10,800 a year, in addition to which he paid the salary of the butler, who, was one of three domestics maintained in his home. He admits at p. 236, l. 1, that at the time of the final hearing he was possessed of the same amount of property then that he owned prior to the separation, excepting 36 Ocean Avenue, 24 Allen Avenue and 224 Spear Avenue, which he says he conveyed to his mother as security for a loan of $165,000 with which money he erected the Les Gertrude apartment in Red Bank. The testimony was:

> "Q. At that time" (referring to the time previous to the separation) "you owned the same amount of property that you own now? A. Well, approximately the same, except the apartment.
>
> "Q. Except the apartment which you acquired afterwards? A. That is right—well, no, I don't own the same amount of property because I didn't have—I had at that time

which I haven't now, 36 Ocean Avenue, 24 Allen Avenue and 224 Spear.

Q. I know, but in order to borrow from your mother to purchase the Les Gertrude apartment, you parted with the title, as you say, to this property, as security for her? A. That is right."

And then at p. 236 he says that his mother received the allowance for running her house at 70 Esplanade when he was living with his wife just the same as now. This is important in view of the fact that elsewhere in his testimony he endeavors to show that he is now supporting his mother.

The fact is that on the final hearing, the defendant made a desperate effort to have the *pendente lite* order of $150 a week alimony reduced by endeavoring to show that there was a changed condition of financial responsibility between the making of that order, based largely on the affidavit which he made, and his present condition, and it is proposed here to point out the inconsistencies in his testimony. He said first, at p. 189, l. 22, when asked what percentage of the lumber business he owned:

"A. None."

And when asked:

"Q. When did you sell it? A. I sold it a month or so ago, I guess.

Q. Do you know? A. About two months ago.

Q. To whom? A. To my mother.

Q. How much did you get for it? A. I turned it over to her for money I owed her, in part payment for money I owed her.

Q. Was it done for the purpose of defeating your wife's alimony?"

And on the next p. 190, l. 6, the answer is "No". Nextly he was questioned concerning what he

swore to in his affidavit on the temporary application for alimony with relation to his interest in the lumber business and his income therefrom. At p. 191, l. 10, the following appears:

> "Q. Did you say in your affidavit in these proceedings that ninety per cent. of the income from that lumber business was yours? A. I did at that time, yes.
>
> Q. Upon what was that ninety per cent. of the income at that time based? A. On the earnings of the corporation.
>
> Q. Was it based upon your interest in the business? A. Based upon my interest in the business?
>
> Q. Yes. A. No.
>
> Q. Didn't you say at that time in your affidavit that no one held any interest in this business except an old employee, William D. Downs? A. I did.
>
> Q. Did you say at that time that he was the only one that had an interest, and that his interest was only ten per cent.? A. That is right.
>
> Q. When did your mother get an interest in this business? A. She always had an interest in it.
>
> Q. Why didn't you say that in this affidavit? A. It is in the affidavit there.
>
> Q. You say that it is in the affidavit? A. Yes."

His attention was next called, at p. 193, l. 20, to the fact that he swore in his affidavit (Supplemental Case, p. 63, ll. 9-15) that his net income for 1930 would be between $15,000 and $18,000, and that he assumed that he would receive about $16,000 dividends for his share of the profits, and he insisted that that was a mistake, and at p. 194, ll. 1-30, he was questioned as to what was wrong about it, and he said that although the affidavit was read to him and he swore to it that there must be typographical errors in it. Then, at p.

196, appears his further testimony where he endeavored to show that he no longer had any interest in the lumber business, that he disposed of his interest to his mother, that all he now has is his salary. He finally admitted that he still owned the stock, but had assigned it to his mother as collateral. He testified at p. 205 that he maintains two automobiles, a La Salle and a Rolls Royce.

The Court's attention is directed to the fact that counsel in his brief called attention to certain promissory notes and bills owing by the defendant to Schultz and Berly, H. M. Stillman and others, that these are debts contracted in connection with the furnishing of the new apartment known as the "Les Gertrudes", all of which were contracted prior to the separation, and still defendant was able to pay and did pay his wife $10,800 a year, in addition to paying the expense of a butler. In addition to his income from the business, he is the owner of a large amount of property in Monmouth County, and we ask the Court to note that in defendant's counsel's brief he attempts to set up the cost of the Les Gertrudes apartment at $400,000 and refers to pp. 219-221, whereas there is no proof of any kind to be found as to the cost of this building. Neither is there proof to substantiate all of the figures given in his brief concerning the overhead for the maintenance of this or any of the other properties set forth in his brief. The value of Adelaide Court is not given, but concerning the income on this property the testimony of the defendant is that it amounts to "about $9,000 a year" (p. 227, l. 29), and it can be truthfully said that the testimony of the defendant all the way through concerning his income and his overhead on his property is estimated, or in other words his guess, and we are sure he guessed low enough. For instance, repairs, fuel and agents' commissions in every

case are his best guess, and we believe we are within the realm of truth when we say that here he guessed high enough. It is strange that this man of large business experience and possessed of much real estate shows, in counsel's brief at least, if not in the evidence in the case, a deficit in the income over expense, and where he shows a profit it is confined to $200. Also there is nothing upon which to base the deficit, when the cost of the property is not set forth and income and overhead are approximated or guessed at.

Counsel of the defendant submits that the complainant should be required to relinquish possession of the home in which she lives at 10 Whitehall in order that the defendant may rent the same. We deem it but fair to say that on petition for this very purpose to Vice Chancellor Berry for the same reasons given here (after the temporary alimony was fixed) he denied such application by his order on file, but not set forth in the supplemental case, although the notice for such motion before Vice Chancellor Berry appears at page 97, while his order denying the motion is carefully omitted.

We contend that the defendant's testimony is of a character plainly calculated to defeat complainant's right to be suitably maintained in the position and station to which he brought her, and to which she is accustomed. It seems clear that since the making of his affidavit on the application for temporary alimony he has endeavored to divest himself by conveyance and assignment of property, real and personal, to his mother. He devoted himself to defeating her just claims and to reducing her to practical poverty while he lived in luxury. The refusal of the defendant to comply with the order of the Court of Errors and Appeals directing him to pay the back alimony due of $1,950.00, and the counsel fee allowed complain-

ant of $1,500.00, while he was sojourning in Palm Beach, Florida, with his mother, during the whole of this winter, until he was held in contempt, is the best example of his attitude.

As is usual, the complainant knew little, if anything, about her husband's business affairs, and it was impossible for her to point out his exact worth. We have endeavored here to show the trickery resorted to by the defendant to cover up his real income and to change his financial situation between the time when he made his affidavit on the preliminary hearing for alimony and when the case came to final hearing. The Advisory Master evidently realized this when he advised the final decree to the Chancellor fixing the allowance at $150 a week. And now we call attention to something further to prove this contention. The son conveyed three properties to his mother as security for the loan of $165,000. At p. 512, l. 9, Mr. Downs, manager of the J. W. McDonald & Company co-partnership, which was later made a corporation after the father's death, was asked while testifying concerning the books of the corporation and its liabilities:

> "Q. What is the item of $155,000? A. This loan of $155,000 was taken from the bank during the partnership of John W. McDonald & Son; was borrowed on the notes of the co-partnership; loaned by the partnership to Mrs. Adelaide W. McDonald, and after the partnership was turned over to the corporation, the corporation continued the same arrangement."

So, we find a situation where the corporation, in making up its statement charges itself with $155,000, and the defendant in showing up his worth charges himself with $155,000, and makes an outright deed for three of these properties (in which the record shows he had, according to him-

self an equity of $75,000), to his mother as security for one and the same loan. Another item charged against the corporation is one of $17,000 for the Senior McDonald funeral bill which was paid to the mother (p. 516). The witness was not able to tell whether that was ever paid back (p. 517). The witness Jepsen, the accountant for J. W. McDonald & Company, said that the minutes of the corporation showed no resolution fixing salaries (p. 513), and that the first six months of 1929 showed a net profit of $36,000, and at p. 514, the net profit for 1928 was $76,000, and that in his opinion the profits for the year 1930 would exceed an estimated figure of $18,000, and at p. 515, l. 33, and p. 516, ll. 1-35, he says that the net profits for the year 1930 would be between $30,000 and $35,000; that this figure is arrived at after a salary of $5,000 a year to defendant's mother; that she also has a drawing account, and that some of her personal bills were paid, including her husband's funeral bill, plus $2,500 on June 20th, for personal bills and $2,210 on the same date, and $2,630 on June 30th, and she drew between April 30th and June 30th, 1929, $27,918.73 as well as cash for personal bills August 31st, $1,640.88.

The corporation certificate was executed July 18, 1929. At p. 456 it appears that the minutes of the corporation show that only one meeting was held on July 24, 1929, and that there has been no meeting since. There are no minutes authorizing payment of any of the salaries claimed by defendant and his mother, and also there was no authority to execute the contract with Downs, which is set forth at p. 527. Further, there are no minutes and no record showing that the corporation after it was formed took over the assets of the J. W. McDonald & Company co-partnership which theretofore existed between the father and the son (p. 459, ll. 20-30).

Instead of managing his own business, the defendant pays a large salary to a manager, while he goes south in the winter time and to Pinehurst. He evidently maintains his mother out of his business in a luxurious home, when she is well able to take care of herself, she being a wealthy woman. It was said by this Court in *Robbins* vs. *Robbins*, Volume 8, Number 21, New Jersey Advance Reports, concerning Doctor Robbins that:

> "Somehow he manages on his small income" (a case where he was endeavoring to avoid alimony by showing a small income) "to maintain a large household of five persons, to whom he is not obligated. His first duty, in our opinion, is to his lawful wife. The court may take into consideration, not only the husband's property and income, but also his capacity to earn money from personal attention to business. If it were otherwise, a husband, by deliberate intent or disinclination to work, might defeat or avoid his marital obligation of support."

We respectfully submit the alimony allowed is not excessive.

The Law and Argument.

Abandonment may be constructive; that is, where the husband, by reason of his conduct, has made it necessary for the wife to separate herself from him; and it is not necessary in this suit for maintenance, where constructive abandonment is relied upon, that the conduct of the husband be as cruel as where such conduct is relied upon as a ground for absolute divorce for extreme cruelty, because in maintenance cases the decree does not have the effect of terminating the matrimonial relation.

It is well settled that a wife may leave her husband and be justified because of her husband's

conduct, in which case, such separation, having been occasioned by the husband, will be treated as his abandonment of her, and when such an abandonment has been shown, and it is nextly shown that the husband refused or neglected to maintain and provide for her, the wife has made out her case.

What constitutes cruelty on the part of the husband sufficient to justify the wife in a maintenance suit for alimony after separating herself from him, has been defined by our Courts so frequently and with such accuracy that it should not be a question for dispute.

The evidence in this case shows that the complainant lived alone with her husband at 10 Whitehall, Deal, and temporarily went to live with her mother-in-law at the request of her husband so that he could be near his father who was sick, and that after the father's death she lived with her husband in Red Bank in a separate apartment from the mother-in-law, but that she was in fact a boarder with the mother-in-law, in that the meals were served at a common table for both families in the mother-in-law's apartment, and living so closely in one apartment house with the mother-in-law caused great trouble between her and her husband. Complainant stood this as long as she could. It cannot be doubted from the testimony that the mother-in-law entertained a great hatred for her.

In *Keery* vs. *Keery,* N. J. L. J. 32, p. 136, Vice Chancellor Stevenson decided:

> "Each question of what constitutes a home must be considered on its merits. There are no fixed rules." * * * "The defendant's wife objected to the presence of her mother-in-law in the house and left, construing her husband's refusal to put his mother out as abandonment of her. In that she was right."

Again in the same case he says:

> "If a man installs his mother in his home, when his mother is able to provide for herself elsewhere, it is not such a home as the wife must accept, and in the eyes of the law such conduct is abandonment of a wife."

In *Shinn* vs. *Shinn,* 51 Equity, p. 78, a case in which the facts were very much like those under consideration here and where the wife lived with the father and mother of defendant and the husband knew of his wife's unhappiness, Vice Chancellor Bird, in speaking of the testimony of the husband given at the hearing wherein he expressed a willingness to supply a home for her and live with her, says that the defendant "knew that his wife had been made so unhappy, that she was because of such unhappiness compelled to leave, and that, because of that fact, she would not return to him at that place, and that, for the same reason, he could safely send her formal invitation to return without the least probability of her doing so." "The correspondence", says the Vice Chancellor, "shows that all Mrs. Shinn desired was a home in which she could be mistress. This, every wife is entitled to, and it is the duty of the husband to furnish one corresponding to his circumstances and condition in life."

The same principle, namely, that it is the duty of a husband to provide a home for his wife where she is recognized by its inmates as the household mistress is laid down in *Fraser* vs. *Fraser,* 87 Eq., 633, at p. 635, in which the Court says:

> "and when the husband subjects his wife in the management of her household affairs to the interference of his mother who manifests enmity towards the wife, and by words and acts *assails her conduct and reputation* to such an extent that she cannot endure it, and leaves the home for that reason, her desertion may be willful but it does not become obsti-

> nate so long as the husband makes no effort to induce her to *return to a home freed from the contentious element.*'' (Italics are ours.)

In that case the wife before she left told her husband that unless he provided a home apart from his mother she would leave, which the husband replied ''that is up to you,'' and while it is true that this was a petition of the husband for desertion by the wife, we cite the case because of the principle involved. In that case the Court of Errors and Appeals in treating the evidence adduced of the efforts by the husband to procure a reconciliation at p. 636 said:

> ''*It was manifest to the husband that no permanent reconciliation could be effected if the same conditions remained and the wife required to accept a home with his mother who considered her 'a bad, wicked woman'. This was a humiliation he knew she would not submit to. In our opinion the record fails to show any such bona fide effort as the law requires.*'' (Italics are ours.)

In *Wright* vs. *Wright,* 43 Atlantic, p. 447, at p. 462, Vice Chancellor Pitney held that a wife need not live with a husband's mother and sister

> ''under circumstances which *she believed were injurious to her health,* and which did not, so far as regards her husband's pecuniary means, appear to her, and do not appear to me, to render such living necessary.'' (Italics are ours.)

So much for that portion of the case which deals with complainant's misery living under the same roof with her mother-in-law.

Aside from the mother-in-law feature, the case is replete with evidence of cruel and inhuman conduct on the part of her husband, with which the complainant put up as long as she could. He allowed his mother to poison his mind against her; allowed his mother to discuss her with the

domestics in the home without protest; told her he no longer loved her and told her brothers of his lack of affection for her and that he was going to separate from her, and the day before complainant's separation from him, he told one of her brothers that he was going to leave her and that he should take care of her, and during recess, at the final hearing, at the behest of the Advisory Master, when a written stipulation in an attempt at reconciliation was dictated, he afterwards refused to sign, and about the same time when calling on the complainant at her home at 10 Whitehall, Deal, questioned her concerning another man named Colman in such way that it carried with it an insinuation against her chastity. When questioned about this incident on the adjourned hearing as to whether he believed there was anything wrong between complainant and this man, answered that he would not say, and to further questioning on this point after hesitating to give an answer as the record shows, finally said that he could not say whether or not he did suspect his wife. Without going into all the other testimony of his cruelty to her, we point to the story he told his mother after the separation that complainant offered to be his mistress before marriage, together with his refusal to give complainant any money after the separation saving $200.00 until compelled to do so by an order of the Court of Chancery, and the fact that this Court held the defendant in contempt for refusal to comply with its order support.

The law is that the wife is relieved of the duty to live with her husband and to give him her services and society

> *"if she can show that the conduct of her husband has been such as will reasonably convince the Court that her life or health was in danger or her life rendered one of such extreme discomfort and wretchedness as to in-*

capacitate her to discharge the duties of a wife, or that the conduct of the husband, if continued, would have brought about these conditions''. (The italics are ours.)

In support of this principle we cite the following:

Close vs. *Close,* 25 N. J. Eq. Rep. 526;
English vs. *English,* 27 N. J. Eq. Rep. 579;
Black vs. *Black,* 30 N. J. Eq. Rep. 215;
Taylor vs. *Taylor,* 73 N. J. Eq. Rep. 745;
Pinkinson vs. *Pinkinson,* 92 N. J. Eq. Rep. 669.

The case of *Howey* vs. *Howey,* 78 Atlantic 696, affirmed 77 Equity 591, cited by counsel for the defendant-appellant, has no application to the present case at all, as will be seen from the facts disclosed in the Vice Chancellor's opinion. The same is true of *Dummer* vs. *Dummer,* 41 Atlantic 149, which was a case where the wife left because of the presence in the household of defendant's two daughters by his first wife and his spinster sister, and where she complained that they interfered with the control and management of the household, and where the testimony was as to ''petty annoyances from the sister and daughters of the defendant from time to time'', at p. 150.

Counsel for the defendant-appellant in his brief seems to urge, in discussing *Taylor* vs. *Taylor,* 73 Equity 745, that a wife, to justify her leaving her husband, so as to bring her within the statute allowing her to file the present bill for maintenance, must prove such extreme cruelty on the part of the husband as would entitle her to a divorce on the ground of extreme cruelty.

We submit that the opinion in *Taylor* vs. *Taylor,* written by Vice Chancellor Leaming, and concurred in by this Court, holds, at p. 746, as follows:

> "It is well settled that a husband's conduct toward his wife may be such as to justify the wife in separating herself from him; in such case the separation, having been occasioned by the husband, will be treated as his separating himself from her."

The case then goes on to say the conditions, other than adultery, which justify her in separating from her husband are those which the Statute provides, namely extreme cruelty on the part of the husband, and then goes on to say that what constitutes extreme cruelty to justify a decree *a mensa et thoro,*

> "or to justify the wife in a suit for alimony after separating herself from him, has been defined by our courts so frequently and with such accuracy that it should not be a question for dispute."

The learned Vice Chancellor then goes on to say that

> "the early cases were loath to hold that anything short of physical violence could amount to extreme cruelty, within the intention of the statute, but I think it fair to say that that idea has entirely disappeared from the view of the judges who are called upon to administer this branch of the law. One of the earlier cases upon the subject, and the first utterance, I believe, of the Court of Errors and Appeals, was *Close* vs. *Close,* 25 N. J. Eq. 526. Justice Van Syckel, in delivering the Opinion of the Court in that case (at p. 529) uses this language: 'Without attempting to give a definition of legal cruelty applicable to all cases, I think it may safely be said that, where the husband has been guilty, or there is reasonable ground to apprehend that he will be guilty of any actual violence, which will endanger the safety or health of the wife, or where he had inflicted upon her any physical injury accompanied by such persistent exhibi-

> tion of ill-feeling, or render life one of such extreme discomfort and wretchedness as to incapacitate her to discharge the duties of a wife, the decree of separation should be pronounced. Whether, in a case of extreme hardship, in the absence of any actual or apprehended physical injury, she will be remitted for the redress of her grievances to the domestic forum, must be left for adjudication when the case presents itself.' "

At p. 748 the Vice Chancellor lays down the Rule in this State as follows:

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

It is respectfully submitted that the complainant's case comes within the rule and that the evidence shows that the conduct of the husband was such that complainant's health was not only in danger, but that she actually suffered in her health, and that her life was rendered one of such extreme discomfort and wretchedness as to incapacitate her to discharge the duties of a wife.

We respectfully submit that the decree below should be affirmed.

Alfred A., Alfred A., Jr. and
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Alfred A. Stein,
Of Counsel with Complainant-Appellee.