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NOTICE OF APPEAL.

(Filed January 6, 1926.)

IN CHANCERY OF NEW JERSEY.

Between

SIMON GOLDBERG,

Petitioner,

and

ESTHER GOLDBERG,

Defendant

On Petition for
Divorce.
Notice of Appeal.

10

The petitioner, Simon Goldberg, hereby appeals from the final decree made in the above entitled cause on the 5th day of January, 1926, from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

Dated

JOHN H. KAFES,
Solicitor for Petitioner,
Simon Goldberg.

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

PERLMAN & LERNER,
Of Counsel with Petitioner,
Simon Goldberg.

30

ORDER SUBSTITUTING SOLICITORS.

(Filed January 29th, 1926.)

IN CHANCERY OF NEW JERSEY.

10

Between

SIMON GOLDBERG,

Petitioner,

and

ESTHER GOLDBERG,

Defendant.} Order Substituting
Solicitors.

20

It appearing to the Court that substitution of counsel is desired by the petitioner in the above stated cause, and the Court having read the consent hereto annexed,

It is on this twenty-fifth day of January, 1926, ordered, that Perlman & Lerner be substituted as solicitors for and of counsel with the petitioner, in the place and stead of John H. Kafes.

E. R. WALKER,

C.

30

Respectfully advised.

MALCOLM G. BUCHANAN,

V. C.

I hereby consent to the making and entering of the above order.

JOHN H. KAFES.

[ENDORSED]

Service of the within notice is hereby acknowledged as having been made and filed as of proper time and according to rules of court and law.

Alex. Budson,
Solr. of Def. Esther Goldberg.

10

PETITION OF APPEAL.

(Filed January 25, 1926.)

*To the Honorable, the Court of Errors and Appeals
in the Last Resort in all Causes:*

The petition of Simon Goldberg, the appellant in 20
the above entitled cause, respectfully shows that:

1. Petitioner finds himself aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey bearing date the fifth day of January, 1926, in a certain cause in said Court of Chancery wherein said Simon Goldberg was petitioner and said Esther Goldberg was defendant, in this respect to wit, that the said decree ordered, adjudged and 30
decreed that petitioner's petition be dismissed.

And the petitioner appeals from the decree of the Chancellor which decrees as aforesaid upon the ground that the same is erroneous in that:

a. Said decree was based upon the conclusion that the evidence left the Court in doubt as to whether the defendant's mental condition was such during the entire two-year period of separation or during two years of the time between the leaving and the filing of the petition as to render the defendant's absence volitional or wilful; whereas if said evidence left the Court in doubt thereof, the decree should have been for the petitioner.

10

b. Said decree was based upon the conclusion that the burden of establishing that the defendant was of a sufficient and proper mental condition or was sane during the two-year period was upon the petitioner, whereas the burden of establishing sufficiency of mental condition or sanity was not upon the petitioner, but the burden of establishing the insanity of the defendant was upon her who adduced it.

20

c. Said decree is not supported nor warranted by the evidence; by said evidence it did not appear that the defendant was insane, but on the contrary, sane, during the two-year period, and the separation wilful.

d. The petitioner has established by the proofs that the desertion was wilful, continued and obstinate for the statutory period and the decree should have dissolved the marriage between the petitioner and the defendant.

30

Petitioner therefore prays that the said decree of said Chancellor may be in the particulars aforesaid, reversed, set aside, and for nothing holden, and

Answer to Petition of Appeal 5

that petitioner may have such other relief in the premises as to this Court shall seem proper.

PERLMAN & LERNER,
*Solicitors for and of Counsel
with Appellant.*

ANSWER TO PETITION OF APPEAL. 10
(No answer filed.)

PETITION FOR DIVORCE.

(Filed February 20, 1922.)

IN CHANCERY OF NEW JERSEY. 20

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

The petition of Simon Goldberg, of the City of Trenton, in the County of Mercer and State of New Jersey respectfully shows:

1. Your petitioner was lawfully joined in the bonds of matrimony to his present wife, Esther Goldberg, the defendant in this suit, on the 8th day 30 of December, 1912, by Reverend Macht, a Jewish Rabbi.

2. Defendant deserted petitioner on the 28th day of December, 1919; ever since which time, and for more than two years last past, said defendant has

wilfully, continuedly and obstinately deserted your petitioner.

3. Petitioner and defendant have been *bona fide* residents of the State of New Jersey continuedly since their said marriage, residing at Trenton, Mercer County, New Jersey.

10 4. Two children were born of the marriage aforesaid, to wit, William, age seven years, and Martin, age four years, who are in the custody of your petitioner.

5. Your petitioner prays, that the marriage between your petitioner and the defendant may be dissolved for the cause aforesaid, according to the statute in such case made and provided; and that your petitioner may be awarded the custody of said children of the marriage and that your petitioner may have such further relief as may be just.

20 And your petitioner will ever pray, &c.

JOHN H. KAFES,
Solicitor of Petitioner.

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

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

SIMON GOLDBERG.

Sworn and subscribed to before me this 17th day of February, A. D. 1922.

A. S. BRENNAN,
M. C. C. of N. J.

ANSWER.

(Filed March 25, 1922.)

IN CHANCERY OF NEW JERSEY.

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

The defendant, Esther Goldberg, of the City of Trenton, in the County of Mercer and State of New Jersey answering says:

1. She admits the allegations contained in paragraph one of the petition.

2. She denies the allegations contained in paragraph two of the petition. 20

3. She admits the allegations contained in paragraph three of the petition.

4. She admits the allegations contained in paragraph four of the petition, excepting the allegations contained with reference to the custody of the children.

ALEXANDER BUDSON,
Attorney for Defendant. 30

AMENDED ANSWER AND CROSS PETITION.

(Filed December 19, 1922.)

IN CHANCERY OF NEW JERSEY.

The defendant, Esther Goldberg, of the City of
10 Trenton, County of Mercer and State of New Jersey, answering says:

1. The defendant admits it to be true that the petitioner and the defendant were married as alleged in said petition.

2. This defendant denies that she deserted the petitioner on the 28th day of December, 1919, and she denies that ever since that time and for more
20 than two years next preceding the commencement of this action and that she has wilfully, continuedly and obstinately deserted the petitioner; but on the contrary, defendant says that the petitioner deserted this defendant in manner particularly stated in the succeeding part of this answer, which is in the nature of a cross-petition.

3. Defendant admits the allegations contained in paragraph 3 of the petition.

30 4. Defendant admits the allegations contained in paragraph 4 of the petition.

This defendant, by way of cross-petition, exhibits against the petitioner and says:

1. The defendant was married to the petitioner in 1912 and almost from the earliest moment of their married life, the petitioner began and continued to indulge in cruel and barbarous treatment of the defendant. In 1915 defendant was compelled, because of his inhuman treatment of her, to leave the petitioner, and she instituted an action in the Court of Chancery of the State of New Jersey, which action was duly heard and dismissed without prejudice and upon the advice of Honorable Vice-Chancellor John H. Backes. The defendant returned to the petitioner on the 14th day of December, 1915. 10

2. The petitioner for a considerable time, conducted himself in a proper manner towards the defendant, but shortly thereafter he again continued a conduct which persisted throughout the years 1916, 1917, 1918, and 1919 of almost weekly beatings over the head, arms, and body, and your defendant, causing her to lead a life of misery. 20

3. Almost during each of these beatings the petitioner would tell your defendant that he would continue beating her until such time as she will leave him, and that if she had any self respect, she would have left him a long time ago.

4. In the month of December, 1919, your defendant could no longer continue living with the said petitioner, because of his said cruelty and inhuman treatment of her, and she left him, taking her two children with her. 30

5. Despite the fact that he was a man of great wealth he only gave to her support the sum of \$10.00 per week.

10 *Amended Answer and Cross Petition*

6. In 1920 the defendant, due to the continuous beatings that had persisted for a period of years, became asthmatic and was threatened with tuberculosis. She had to have continuous medical treatment and spend a great deal of her time in bed.

7. Defendant's parents, with whom he lived at the time, being of poor circumstances, were compelled to take the children to the petitioner.

10

8. Since 1920 your defendant has been almost continually ill and has spent considerable time at White Haven in a sanitarium.

9. Petitioner and defendant are both *bona fide* residents of the State of New Jersey for the periods stated in the petitioner's petition.

10. Defendant's maiden name was Esther Cantor.

20

Defendant prays that the marriage between this defendant and the petitioner may be dissolved for the cause aforesaid, according to the statute in such case made and provided, and that the petitioner may be compelled by the decree of this Honorable Court to support her and the said children of the marriage, and that she may be awarded the custody of said children, and that she may have such further relief as may be just.

30

And this defendant will ever pray, etc.

ESTHER GOLDBERG,
Defendant.

ALEXANDER BUDSON,
Solicitor of Defendant.

Answer to Amended Answer and Cross 11
Petition

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

ESTHER GOLDBERG, being duly sworn according to law, upon her oath deposes and says that she is the cross-petitioner named in the foregoing cross-petition; and that her cross petition is not made by any collusion between her and the petitioner therein but 10
in truth and good faith, for the causes set forth in said cross-petition.

MRS. E. GOLDBERG.

Sworn and subscribed to before me this day
of Dec. A. D. 1922.

FRANK I. CASEY,
Atty.-at-Law of N. J.

20

ANSWER TO AMENDED ANSWER AND
CROSS-PETITION.

(Filed January 12, 1923.)

The answer of Simon Goldberg, the above named petitioner, to so much of the answer of Esther Goldberg, the above named defendant, as in the nature of a cross-petition. 30

1. Petitioner denies "That from the earliest moment of their married life he began and continued to indulge in cruel and barbarous treatment of the defendant," but admits a portion of the paragraph which relates to the chancery suit and its disposition.

9. Petitioner admits paragraph 9.

10. Petitioner admits paragraph 10.

Petitioner prays that the said cross-petition of the defendant may be dismissed, and that the petitioner may have the relief prayed for in his said petition.

SIMON GOLDBERG,
Petitioner.

JOHN H. KAFES,
Solicitor of Petitioner.

10

MEMORANDUM.

(Filed Jan. 15, 1925.)

IN CHANCERY OF NEW JERSEY.

Between
SIMON GOLDBERG,
Petitioner,
and
ESTHER GOLDBERG,
Defendant.

20

Memorandum.

NOT TO BE PUBLISHED OFFICIALLY OR
UNOFFICIALLY.

30

ON FINAL HEARING.

BUCHANAN, V. C.:

Petitioner seeks absolute divorce on the ground of desertion; defendant counter-claims for constructive desertion. The counter-claim was not proven

and will be dismissed. As to petitioner's case, the evidence leaves me in doubt as to whether the defendant's mental condition was such, during the entire two-year period, or during two years of the time between the leaving and the filing of petition, as to render her absence volitional or wilful. The burden being on petitioner, the petition will also be dismissed.

No costs.

10

FINAL DECREE.

(Filed January 5, 1926.)

IN CHANCERY OF NEW JERSEY.

20 This cause coming on to be heard in the presence of John H. Kafes and Perlman and Lerner, of counsel with the petitioner and Alexander Budson, solicitor for the defendant, on petition, answer and counter-claim and oral proofs taken in open court, whereupon and upon duly considering the pleadings and proofs and hearing and considering the arguments of counsel, and it appearing to the Court that the defendant's counter-claim was not proven and that the evidence leaves it in doubt as to whether defendant's mental condition was such, during the entire two-year period, or during two years of the time
30 between the leaving and the filing of the petition, as to render the defendant's absence volitional or wilful; and the burden being on petitioner, and that the petitioner has therefore not sustained the truth of the allegations of his petition and is not entitled to the relief therein prayed.

Final Decree

15

It is, thereupon on this 5th day of January, 1926, ordered, adjudged and decreed, that the petitioner's petition and the defendant's counter-claim be and the same are hereby dismissed without costs to either party.

E. R. WALKER,
C.

Respectfully advised.

MALCOLM G. BUCHANAN,
V. C.

10

20

30

TESTIMONY.

IN CHANCERY OF NEW JERSEY.

10 Between
SIMON GOLDBERG,
Petitioner,
and
ESTHER GOLDBERG,
Defendant. } On Petition, &c.
Testimony.

20 Testimony taken in the above entitled cause, at
the State House, Trenton, New Jersey, on Monday,
the fifth day of January, 1925, at 10.30 A. M.

Before HON. MALCOLM G. BUCHANAN, Vice-
Chancellor.

30 APPEARANCES:
JOHN H. KAFES, ESQUIRE and SOL PHILLIPS PERL-
MAN, ESQUIRE, for petitioner.
ALEXANDER BUDSON, ESQUIRE, for defendant.

SIMON GOLDBERG, the above named petitioner, being duly sworn in his own behalf, testifies as follows:

Direct examination.

By Mr. Perlman:

Q. Mr. Goldberg, you are the petitioner in this case? 10

A. Yes, sir.

Q. Where do you live?

A. 242 Clay Street.

Q. What city?

A. Trenton.

Q. New Jersey?

A. Trenton, New Jersey.

Q. How long have you lived in Trenton?

A. Twenty-two years.

Q. Do you mean the last twenty-two years? 20

A. Yes.

Q. Have you lived anywhere else during the last twenty-two years

A. No, sir.

Q. You are the husband of the defendant, Esther Goldberg, are you not?

A. Yes, sir.

Q. Where were you married to her?

A. In this city.

Q. Where were you married? 30

A. New York City.

Q. By whom?

A. Rabbi Macht.

By the Court:

Q. When?

A. 1912, December 8th.

Q. Did you live with Esther Goldberg, the defendant, after your marriage?

A. Yes, sir.

Q. As husband and wife?

A. Yes, sir.

10 Q. Where?

A. 618 North Olden Avenue.

Q. Trenton?

A. Yes, sir.

Q. How did you get along with her after you got married?

A. Pretty good for a couple of years.

Q. What happened after that?

A. We had a quarrel about property. I was buying property 618 North Olden Avenue and she didn't
20 want to sign on the mortgage and I says, "Why, Esther, you won't sign that mortgage?" She says, "No, I want the property on my name only." You know. I said, "No, I don't think it would be right to specify the property on your name because it will hurt my credit."

Q. You were in business at the time?

A. Yes, I was in business at the time. And she says, "That don't bother me, your credit. I want the property to be on my name." Finally she says,
30 "No," she wouldn't sign the mortgage, so I went to Mr.—

Q. Did she say anything to you about what would happen to the two of you if the property was not put in her name?

A. She said she wouldn't live happy with me. For that reason I went to Mr. Alexander Budson and he said to go to my wife to convince her to sign on the mortgage. I went to Budson, so Mr. Budson come up to my house.

The Court: Are the details important? If they are, you may go ahead. You have shown what the quarrel was about.

10

Q. Did she finally sign the mortgage?

A. Yes, she signed the mortgage afterwards.

Q. What did she say?

A. She said, "No, if you don't sign the property in my name I don't think I will be a good wife to you." So she signed the mortgage afterwards and I took title to the property.

Q. Did you have any quarrels with her about anything else?

20

A. Yes.

Q. About what?

A. Bank accounts, money. I used to send over to the bank to deposit money, so she says afterwards, "Why don't you deposit the money on my name," I says, "I don't think it would be right Esther, to deposit the money in your name, because I want checks." She says, "If you can't deposit in my name, deposit in both names." I says, "No, I can't do that; I have to give out checks, and how will that look like to have both names on the check?" 30 he says, "I should worry about that." I says, "No, I can't do that. If you are in the kitchen or down town or out of town, or in the theatre, or God knows where, I can't give any checks. I can't do it."

Q. What did she say?

A. She said, "If you don't specify money in my name, you got the preference of the property and money and I won't be a wife to you."

Q. Did she swear at the time in any way?

A. I don't remember if she swore or not.

Q. Do you recall whether at the time that she said "If you don't put the bank account in my name, the hell with you?"

10 A. Well, that is what she said. She said, "The hell with you," and that's all.

Q. How long did the quarrels about the property and money matters last?

A. Well, that is forever.

Q. What do you mean?

A. For a good while.

Q. How long?

A. Well, quite often.

Q. Tell us what you mean.

20 A. Every day or every other day, or once a week, I can't recall exactly.

Q. What year was that, Mr. Goldberg?

A. It was 1914.

Q. That was the year you bought the building?

A. Yes, sir.

Q. Sometime after that, her father and mother visited you, didn't they?

A. Yes, sir.

Q. Do you recall the conversation at that time?

30 A. They come to my house; her mother and father, to visit me.

Q. Who was there?

A. Mr. Sussman was there and Mrs.——

Q. Was your wife there?

A. Yes, she was there.

Q. Tell us about it.

A. My mother-in-law she asked me "How is things?" I told her pretty good. She asked me if the building is all settled. I said, "Yes, the building is all settled and deeded," and so on, and as soon as I said that way she said, "Huh, a very fine way of doing it; you got the house in your name and you deposit in your name. If you keep on that way, I don't think you could be a husband to my daughter." My father-in-law opened the interview. He said, "Look at here, I make the thing very short. 10
You can't be his wife, and I told you to separate and the sooner you separate the better for you to get a divorce." As soon as he said it, I broke my heart. I started to cry. Her father said, he said that statement in front of my presence. I said, "You don't want to break my home up." She said, "Well, it is." I went out in the barroom and attended to business.

By the Court:

20

Q. When was this?

A. That was about 1915.

Q. What time in 1915?

A. I couldn't exactly say; about around the spring; I don't remember exactly the time.

Q. Whose money bought this building?

A. My own.

Q. Whose money was in this bank account?

A. My own.

30

Q. Did your wife put up any of the money at all?

A. No.

Q. Did her people?

A. No.

Q. What business was it you were in?

A. In the saloon business.

Q. When your father-in-law said to you, "You are not a fit man for my daughter," did you ask him why?

A. Yes, I said, "Why am I not a fit man for her?" He said, "You are not enough educated, and furthermore, she told me you bothered with different women."

Q. Did you have any quarrels with your wife about anything else?

10 A. Yes, I had quarrels.

Q. About what?

A. About women. She used to accuse me with women.

Q. What did she say?

A. One time I had a servant woman working for me—

Q. Don't tell us about any particular instance, tell us in general first.

20 A. I lived with women and had women in the cellar and lived with other women.

Q. What did you say about it?

A. I said, "Esther, you accuse me absolutely for nothing, and I don't bother with no women, you know that, I got enough to attend to with one woman as far as that's concerned."

Q. In 1915, she left you?

A. Yes.

Q. And suit was started in this court?

30 A. Yes.

Q. For support?

A. Yes, sir.

Q. What happened?

A. The Court of Chancery in front of Vice-Chancellor Backes—

By the Court:

Q. How long was it after this visit from your father- and mother-in-law, that she left you in 1915?

A. Around something like a year, or something like that.

Q. You said this visit was in the spring of 1915?

A. About six or seven months, I can't remember.

Q. Don't you remember when it was she left you?

A. She left me that time around the springtime. 10

Q. The spring of what year?

A. 1915.

Q. Then you don't mean it was a year after her father and mother were there?

A. Not quite a year.

By the Court:

Q. You said they were there in the spring of 1915? 20

A. No, they come in the wintertime, it was in the winter.

Q. You told me before it was in the spring of 1915. I am asking you?

A. It must have been January or February.

Q. All right, what happened?

A. When I came to court, the Vice-Chancellor Backes dismissed the case and told her to behave herself, and she wants to live happily and come back to me. 30

The Court: The record is the proper evidence.

Q. Did your wife come back to live with you after that?

A. Yes, sir.

Q. She did?

A. Yes.

Q. Where?

A. 618 North Olden Avenue.

Q. How did you get along?

A. I got along pretty fair.

Q. For how long?

A. A couple of years.

Q. Until 1917?

10 A. About 1917, yes, sir.

Q. Then what happened?

A. Well, again she started to be jealous about women; one time I went in a butcher shop on Fall Street, and a woman came in and she was a pretty nice looking woman, and I looked at her when she come in the door, and my wife noticed the way I looked at her and she was angry. She didn't talk to me, she went out of the butcher shop and went to her father's and mother's. I went to see my father, and visit them, and after I told them what I said to them, she said, "I will go home and go with you," I said "All right," and I went over from Fall Street and Decatur Street and went as far as my father's door. She said, "Do you mean to go to the father, you mean to go, you mean to go see that nice looking woman?" I said, "Esther, what are you talking about; I don't know the woman at all, I never met her, I don't know who she is." She said, "If you mean that way, I want to see if 30 you are going into the house, I am not going into your father's house, I'm going back." She went back. I went to my father and a few minutes we went back and went home.

By the Court:

Q. What year was that?

A. 1917, I believe.

Q. Do you recall any other incident during which she quarreled with you about women?

A. Yes.

Q. What?

A. Then it happened I had a wedding next door with my customers—

10

Q. What kind of people were they?

A. Polish people; they invited me to the wedding; I went over with my wife to the wedding, and finally we enjoyed ourselves and danced and had our supper and after the supper generally is a custom of Polish people after the supper they have to take the bride out for a first dance; they gave me the honor to go out with the bride, and I took the bride out and danced fifteen or twenty minutes and they gave the presents what I give to them and my wife said, "You enjoyed very much with her, the bride," she says, "How you like it?" I said, "What are you talking about, how I like her." I said "What are you talking about, I don't have to like her," and in that talk she tried to chew the rag with me, and we went home.

20

Q. How long did these quarrels after 1917, about women, last?

A. How long?

Q. Yes.

30

A. They kept on all the time.

Q. Until when?

A. 1919.

Q. What happened in 1919?

A. It happened she—it was Sunday morning—

Q. Tell us what she did.

A. One morning, it was December 28, 1919, on Sunday morning, I was sleeping with her and I had \$2200.00 under my pillow and her pillow is the same and finally she got up and took the \$2200.00, and she went to her father's, so I got up about ten o'clock, around ten o'clock and I got dressed and I wanted to take my \$2200.00, and I didn't find the \$2200.00 no more; I went down stairs, and I didn't find my wife there with the children; she
10 went to her father's.

Q. What did you do?

A. Went down town to see if she was there.

Q. Where?

A. Her father's house.

Q. Go on.

A. When I went into her father's house, I said, "Good morning, Esther." She wouldn't answer me. I said, "what ails you again?" She wouldn't say nothing. So I stayed there about a half an hour
20 and played with the kids and talked to them and I said, "I will go out a while and come back about five or six o'clock."

Q. Did you go out?

A. I went out and took a little walk and seen people I went to see and come back around six o'clock.

Q. What happened?

A. I said, "Esther, get dressed and let's go home before it get too late." She says, "I'm not going home any more." I said, "Why?" "Well, be-
30 cause, I'm not going home."

Q. What else?

A. When she says, "I am not going home" and her father wasn't eating supper, I went to her father and said, "Did you hear what she says?" I said, "What is the reason?" He said, "I know all about

it, she is not going home now." I said, "Why?" He said, "Because you are not a fit man to live with her," so I talked to him and talked to him. I couldn't do nothing. He says, "It's no use talking to me now. I don't care if you talk from now till tomorrow, it won't do you any good. Her father said to me "My wife is now in New York City and I write a letter to her and my daughter is in New York and my son, Isadore, in Baltimore, and we were consulting with him and we will decide whether she comes back or not, and it takes two weeks' time to let you know yes or no." So I went out of the house; I couldn't do nothing with him, so I thought I will get an officer.

Q. What did you do?

A. I got an officer.

Q. You did get an officer?

A. I got an officer, thinking it might scare her?

Q. What officer?

A. I took Officer Hort.

Q. Is he in the court room now?

A. Yes, I called Officer Hort and he come in the house. He said, "What is the trouble?" She says, "No trouble." I says, "Yes, there is trouble." He says, "I want you to go home."

Q. Who says that?

A. I said to her. She says, "No, I'm not going home, you think I'm afraid of you or the officer; I'm not going home any more. I'm done with you." So her father says to me in Jewish, "That way." He said, "Look at here, if you don't get out, I will get hold of the chair and break your neck; don't you ever come into my house any more." I went out of the house.

Q. Did you ask her for the money at any time?

A. The officer asked her for the money, and she say, "No, the money is mine as good as his."

Q. You went out——

A. Yes.

Q. When her father told you he would break your neck?

A. Yes, sir.

Q. What happened after that, or where were the children at this time?

A. They was with her.

Q. The children were with her?

10

A. Yes, sir.

Q. What happened after that?

A. Then in not quite over a week, about two weeks, you know, her father called me on the 'phone, "Why" he says to me, you know, "are you going to support the children?" I said "What do you mean?" He said, "Yes, you got to support the children." I said, "Ain't Esther coming back home any more?" He said, "No, forget it, she won't come back to you." I said, "I won't give any support to the children as long as the \$2200.00 lasts, I will not give any support."

20

Q. What?

A. As far as the \$2200.00 will last.

Q. And he dropped the receiver?

A. And he dropped the receiver on me; he wouldn't give me a chance to talk to him any more.

Q. What happened then, the children were brought over to you then, weren't they?

30 A. Yes, the next day he brought the children to my place.

Q. Where?

A. 618 North Olden Avenue. He opened the door and left them in the bar and says, "Here is your children." He went out and shut the door and went away.

Q. Did you get a chance to talk to him?

A. No, he didn't give me a chance to talk to him; he shut the door.

Q. Was that all?

A. Yes.

Q. What happened then?

A. The next following Sunday I went over to their house and asked her to come back; I went to the door——

Q. Did they let you in?

10

A. No, I knocked at the door and she come out and she said, "What do you want?" I said, "Esther I want you to come home."

Q. Don't talk so fast as I can't understand what you say. Where were you standing?

A. In the doorway.

Q. Who else was there?

A. I was there, my wife, my father-in-law and my mother-in-law.

Q. Tell us what happened.

20

A. I asked her to come home. She said, "No, I will not come back any more." I said, "Why, what I done to you?" She said, "You are not a fit man to live with you." I said, "Why, ain't I making a living for you?" She said, "You live with different women, and she didn't want to live with a whoremaster."

Q. She called you names?

A. Yes, sir. I said, "You can't prove this and you know I am not," so finally she wouldn't come back home no more, so I asked her if we have Rabbi Conwitz.

30

Q. Her father said something before you said something?

A. He said, "She won't come back any more to me and it was no use talking to her."

Q. What did you say to her father?

A. I said, "Listen, father, we have a Rabbi in Trenton here a smart man, Rabbi Conwitz, you come to him and decide what to do; he might do something for her." He said, "All right." He made an appointment to go the next Sunday, so I went over the next following Sunday afterwards, up to the house and knocked on the door. My father-in-law went out of the door and said, "What do
10 you want?" I said, "You know what I want, you make an appointment to go to the Rabbi. He said, "No, I am not going to no Rabbi, I am a Rabbi myself."

Q. What did you say?

A. I said, "What are you going to do? Ain't Esther coming back any more?"

Q. What did he say?

A. He said, "No, she is not coming back."

Q. Is her father a Rabbi?

20 A. He is a Reverend.

Q. Is he a Rabbi?

A. No, he is a Reverend.

Q. What is the difference?

A. He is only a Rabbi to kill cattle and such work. He can't take a position as Rabbi.

Q. Something was said about a piece of bread at the time, can you recall that?

A. Yes, that is right. He said that time when I asked her to come back, he said, "Look here, listen,
30 no use asking her to come back, because she is not coming." He said, "You got your loaf of bread and cut off a slice of bread you can't put it back the same as before and the same thing between you and her, she never come back to you any more. She is done."

Q. Was she standing there then?

A. Yes.

Q. Where?

A. In the kitchen.

Q. Could she hear what was going on?

A. Yes, she can, she was alongside of him.

Q. Did you see her after that?

A. Yes.

Q. Where?

A. When he brought the children back to me, so they come around my father and my father-in-law and my wife come around to see the kids around to my house 618 North Olden Avenue. 10

Q. Who else was there?

A. Mrs. Sussman was there, no, my mother was there with the children.

Q. Tell us what happened?

A. They come around and they talked to the kids for quite a while, and so on.

Q. You treated them?

A. Yes, put a bottle of soda in there and some fruit, and they talked to the kids, and so on, and when they got through talking, they went to go home, and I said, "Esther, now listen, you know this is your home, what is the use of going back, come back and let us live happily and forget things, and let's make up right and live right." She says, "No," she says, "No, my mind is such not to, and I will not come back any more to you." I said, "Don't you know any sympathy with your own children, with your kids, that is your kids just as good as mine, why don't you stay here and take care of them?" She says, "No, I'm not coming back, I will not take care of them any more." Her father said, "She take care of the children, but you have got to support them." I said, "What do you mean?" He said, "They got to get fifteen dollars 20 30

a week and clothing and doctors." I said, "Is that the best you could do?" He said, "Yes, that's the best, if you don't do that, we won't take them."

Q. What was said about a contract?

A. Yes, he said, "If you want to pay fifteen dollars a week let's go to Mr. Budson and draw up a contract?" I said, "Look here, what is the use of going to any lawyer, if I don't pay you one week, you could bring the children back, that breaks the
10 contract." He said, "That's right, too. Well, you could bring them if you wanted to." So the next day I packed up the clothes for the kids and took them to her house.

Q. Her father's house?

A. Her father's house.

Q. Go on.

A. I knocked on the door, she came out. I said, "I got the children with me, you know." I said, "We might as well go home and live happy; let's
20 live happy." She said, "No, I'm not going home." I said, "Not going home?" She said, "No." I said, "Why?" She said, "I'm not going home." I said, "Here is the kids and here is a check for fifteen dollars," I give the children and the check and the clothing and I went home.

Q. You went home?

A. Yes.

Q. How long after that time was it that you saw her again?

30 A. Well, quite some time.

Q. About how long?

A. Three months.

Q. About three months?

A. Three months.

Q. Was it any longer or any shorter?

A. Well, I don't know exactly, but I met her on Broad Street.

Q. Well, there was a time before that that you saw her?

A. Not a time before.

Q. Not at all?

A. No.

Q. All right, just tell us where you saw her?

A. I met her near Kaufman's on Broad Street.

Q. Where was she?

A. Coming toward me and I wanted to make an attempt to talk to her and she went into Kaufman's store, and I went after her to get to her to talk to her, but there was a crowd of people and she disappeared and I couldn't see her any more. 10

Q. When did you see her again?

A. When they brought the children back to me, she come to visit the children.

By the Court:

Q. When was that?

20

A. That was in 1920, they brought the children back to me again and the same thing happened, he opened the door and let the children in and said, "Here are the kids," and after that she come to see the children.

Q. She came to see the children?

A. Yes.

Q. Where did she come to see the children?

A. 618 North Olden Avenue, and when she come to see the children, it was in the evening, you know, she come in the house and talked to the kids and give them some candy, and so on. 30

Q. Did you speak to her?

A. She talked to the kids—

Q. Did you speak to her?

A. I stood there, you know, I said, "Esther, by God, you are a good mother, anyhow you come to see the kids, why don't you have sympathy with them, your two kids, to stay here with them and let's live together?" She said, "No, if I wanted to come back, I would come back long' ago. I don't want to come back to you any more; forget it." And she went home.

Q. How long after that was it, that you saw her?

10 A. Then I moved from Olden Avenue to Mill Street, about a block away from there.

Q. You moved a block away?

A. Yes.

Q. Why?

A. To give her an opportunity for her and for her and the kids to get together, because she was close by there. To give the opportunity to come back to me and get together again, So I went to close to them on Mill Street, so that was in 1921.

20 Q. When you moved?

A. Yes.

Q. Why didn't you go to her father's house and ask her to come back?

A. Her father says it is no use, he is going to break my neck; it is no use, never I don't want to go there in the house; I was afraid of him. He told me it was not use to ask her any more.

Q. Did she see the children at the house on Mill Street?

30 A. Yes.

Q. Did you speak to her?

A. Yes.

Q. Tell us the conversation?

A. The time I moved out there, she come to see the children and also the same thing, they talked to the kids, and I asked her I asked her, I said, "Why don't you want to come to get together; we

got a nice little apartment here; let's live happy." She said, "You keep asking me to come back and I told you I am done with you, I won't live with you any more;" that's all she said at that time and she went home.

Q. When did you see her again?

A. I seen her, the oldest boy was sick, he had the measles.

Q. When?

A. I don't know.

10

Q. What year?

A. In 1922.

Q. What month, if you remember?

A. The month?

Q. Yes.

A. I believe it was in February.

Q. Had you started suit for divorce at the time, do you know?

A. I believe I did.

Q. What occurred?

20

A. She come to see the kids, the boy, you know, and the boy was sick with the measles; she asked the boy, "How are you? How are you making out?" and so on. I said to her, I said, "By God, you are a good mother, very inquisitive to find out how your son is making out." I said, "I would like to know how you are making out." She said, "I don't want you to worry about me. I didn't ask you how you making out," and that is all that was said at the time.

30

Q. That was after you started suit for divorce?

A. Yes.

By the Court:

Q. Did she only come once to the place?

A. She was twice.

Q. This time you have talked about, that was at the Mill Street house?

A. Yes, sir.

Q. She only came once to the Mill Street house before suit was started?

A. Yes.

Q. Since December 28, 1919, has your wife lived with you at all?

A. What?

10 Q. (Stenographer repeats the question.) Since that time, December 28, 1919, has your wife lived with you at all?

A. No, sir.

Q. At any time?

A. No, sir.

Q. Have you slept with your wife or had intercourse with her since she left you in 1919?

A. No, sir.

20 By the Court:

Q. Did you ever get your \$2200.00 back?

A. No.

Q. What reason did they give for bringing the children back the last time?

A. Well, I did not know what did they give me, they give me no reason whatever.

Q. Had you been paying the fifteen dollars a week right along?

A. Yes, I have the checks to prove it.

30 Q. Did you pay for the support of your children by check?

A. Yes, sir.

The Court: You need not put them in now. If it is denied, you may put them in later.

Cross-examination.

By Mr. Budson:

- Q. When were you married, Mr. Goldberg?
A. 1912.
Q. What date?
A. December 8th.
Q. Were you at that time in the saloon business?
A. Yes. 10
Q. Where?
A. In the saloon business.
Q. On Olden Avenue?
A. Yes, sir.
Q. And you took your wife into the saloon with you?
A. Yes.
Q. And she waited at the bar?
A. Very seldom, at the beginning, very seldom.
Q. In the beginning, very seldom? 20
A. Yes.
Q. After you were married a year or two she was your helpmate?
A. No.
Q. Never waited on the bar?
A. No.
Q. Sure?
A. No. She did, but very little in the beginning; after that she didn't help at all.
Q. Who did it at the beginning? 30
A. Myself.
Q. Who opened up in the morning?
A. Myself.
Q. Who closed at night?
A. Myself.
Q. What time would you close at night?
A. Twelve or one o'clock.

- Q. And you opened at what time?
A. About five or half past five or six.
Q. Did you take any naps in the afternoon?
A. No, sir.
Q. You worked continuously from four or five o'clock in the morning until one the next morning?
A. Not four or five o'clock in the morning.
Q. You said you would open around four or five o'clock?
10 A. No, I never opened my place at four o'clock.
Q. You didn't?
A. No.
Q. What time?
A. Between five and six.
Q. In the morning?
A. Yes.
Q. And you kept it open to what time?
A. Eleven, twelve and half-past, and one o'clock.
Q. And then you would go to bed?
20 A. Yes.
Q. And then open at five or six in the morning?
A. Yes.
Q. You never took a nap in the afternoon?
A. No.
Q. And your wife didn't help you in the bar at all?
A. Very little at the start.
Q. You didn't employ a bar keeper?
A. Not for a year or two.
30 Q. She would close the place every night and you would open it in the morning, wouldn't you?
A. No, sir, positively not.
Q. You would stay there all by yourself?
A. Yes, sir.
Q. You testified she took money from the till, when would she do that?

- A. She used to go to the bar and take it.
- Q. Where were you?
- A. In the bar.
- Q. And you used to see her do it?
- A. Yes.
- Q. And you would let her?
- A. Certainly.
- Q. How much did you allow her for the living expenses when you first got married?
- A. She took what she wanted. 10
- Q. Did you ever allow her anything?
- A. Yes.
- Q. What year did you begin to give her an allowance?
- A. I don't remember exactly.
- Q. When?
- A. Afterwards.
- Q. You don't know what year?
- A. No.
- Q. What year would you say? 20
- A. About fourteen or fifteen, something like it, I don't remember exactly.
- Q. Did you stop her from taking money from the till?
- A. Yes, when I took a bartender in, she used to take money from the register. I didn't know who to accuse, when I was short every day six or seven or ten dollars every day. I said, "Take so much," and I would know how my register balanced in the evening when I closed up. 30
- Q. How much would you allow her?
- A. She asked me at that time ten or fifteen dollars a week for the table only.
- Q. Which was it?
- A. Ten and I increased her to fifteen dollars; she didn't have to pay rent, coal, and electric, and no

potatoes, or vegetables, because I used to buy all that in the bushel or the bag; I buy for the bar for lunch. The only thing was extras for the table. Then I give her cash.

Q. That was mostly for spending money, this ten or fifteen dollars a week?

A. I don't know what she done with it.

Q. You never asked her to account for it?

A. No.

10 Q. Between nineteen hundred and twelve through to 1914, you lived like a pair of doves, happily?

A. Yes, sir.

Q. You lived happily up until the first child was born?

A. Yes.

Q. And her health was good?

A. Not too good, no.

Q. What was the matter with her?

A. Asthma and bronchitis.

20 Q. Did she suffer with asthma?

A. Yes, sir.

Q. Badly?

A. Not bad.

Q. And she had severe headaches continuously?

A. No.

Q. Did she have neurasthenia?

A. What?

Q. Was she nervous?

A. Nervous, no.

30 Q. Did you have any quarrels during 1912 to 1914?

A. Yes.

Q. What were the nature of the quarrels?

A. The property.

Q. You didn't buy the property until December, 1914, did you?

A. I bought it before December; I bought it in October, or something like that, I guess.

Q. And up until that time, there was no trouble at all?

A. There was little quarrels, but it wasn't far.

Q. When you were married, didn't Esther give you some money?

A. Give me some money?

Q. Yes.

A. What kind of money?

10

By the Court:

Q. Any money?

A. Before she got married.

Q. At the time you were married?

A. Yes, that time; before she got married she had five hundred dollars.

Q. She gave that to you?

A. No, she deposited it in her name in the bank. 20

Q. She never gave you anything?

A. She give some for furniture.

Q. Did she give you any money?

A. In cash money, no, sir.

Q. I don't care whether it was cash or not?

A. No, she didn't.

Q. Didn't Mr. Cantor deposit to the credit of both of you in the bank a sum which was to be a dowry?

A. No dowry at all; she deposited it in her name, 30 and afterwards I was short to buy furniture in New York.

Q. Do you recall testifying in the last case between your wife and yourself, "I said, 'My dear wife, we can't live without furniture, but if I got no money to pay for it, we have to get that money;

there is in the bank my father-in-law, her father, gives me five hundred dollars, a wedding present, and we put that five hundred dollars in the bank in both names.' ” Did you testify to that?

A. No, I don't know what she deposit in both names.

Q. You don't know?

A. No.

Q. But did you say that on the previous trial?

10 A. No.

Q. Did you say, “I said, ‘We got five hundred dollars that was in the bank. I don't see the sense to pay six per cent. to borrow money when we get only three per cent. in the bank. That it would be right to draw four hundred dollars out of the bank?’ ”

A. She did draw some money on account of furniture, she did.

Q. Did you draw this money out of the bank, or
20 did she draw it?

A. No.

Q. Did you or she draw it?

A. No, she did, not me.

Q. What bank was this money in?

A. As a matter of fact, I don't know, to tell the truth.

Q. Did you say to her, “Listen, Esther, the furniture will be just as well of you as of me, I am not buying the furniture for somebody else, buying it
30 for you as well as me.” And then, “I said, ‘I guess I have to draw that money out of the bank?’ ”

A. No, I can't draw because it was in her name; she drew herself.

Q. “She said, ‘I wouldn't do so.’ Finally, we had an argument over this; I said, ‘I won't borrow money and ask somebody a favor to loan me money

on six per cent. of I get three per cent. on my money.' ” And then you were asked the question, “Did you draw that money out of the bank?” and you answered, “I did, she signed it after.” Did you answer that?

A. No.

Q. You did not?

A. No, I asked her only to help me out and buy furniture, and she did.

Q. These answers at the previous trial were not 10 true?

A. I asked her if she done it and she done it.

Q. Then you didn't have a joint account?

A. Not as I know, no.

Q. That was really the beginning of your troubles, wasn't it, the drawing out of this five hundred dollars from the bank?

A. The beginning?

Q. The beginning of your troubles?

A. There was no trouble. 20

Q. That was the beginning, wasn't it?

A. Yes.

Q. Not the buying of the property, but the withdrawal of the five hundred dollars from the bank?

A. That wasn't trouble.

Q. It wasn't?

A. No.

Q. And didn't you testify in the other trial the question was asked, “That was the beginning of your trouble?” and the answer was, “That was the beginning of our trouble.” That was not the truth, was it? 30

A. I asked her and she done it willing, you know.

Q. That was not the beginning of your trouble then, was it?

A. No, not exactly.

Q. The whole thing was the property?

A. Well, the whole thing was the property, the beginning about.

Q. Wasn't it a fact that this was your first trouble; the five hundred dollars, and the second trouble was the trouble over dogs?

A. There wasn't trouble of dogs.

Q. Did you have any other trouble?

A. Yes.

- 10 Q. "Yes, the second argument was quite little later on; the second argument was over dogs, I am going to talk the way I have to. Mrs. Goldberg is a nervous woman; she went to go to bed; she couldn't sleep, and she couldn't let me sleep; she had an idea somebody was going to steal her or or kill her through the window, and she hollered at night. I was working twenty hours a day, from five o'clock in the morning till one at night, and I wanted to have a little rest. I said, 'What's the matter, what
20 are you getting into your head? Somebody will rob you or steal you? Nobody is going to do anything, and get that idea out.' She said, 'We have to get a dog.' I said, 'All right, I'll get a dog for you to satisfy you.' I went to work and Ed. Coughlin had a white bull terrier dog and he comes and he said, 'I got a dog for you, I heard you spoke several times in the barroom that you wanted to buy a dog.' I said, 'Yes,' I said, 'My wife is making kind of a noise at night, and I want to protect her with a dog.'
30 He said, 'All right, I'll sell the dog, because he bit my kid.' I said, 'How much do you want for the dog?' He said, 'I'll take ten dollars; I paid five dollars myself.'" That was your second trouble, wasn't it, the fact that she was nervous at night, and had hallucinations and that she was about to be killed, and somebody was after her all the time; that was your second trouble, wasn't it?

A. Well——

Q. Was it, or wasn't it?

A. I had a dog, yes.

By the Court:

Q. Answer the question.

A. She was accusing me at the time I attended to dogs and so on, yes.

Q. (Stenographer repeats the question.) Answer 10
the question, Mr. Goldberg.

A. Yes, sir.

Q. Then your wife was kind of nervous at all times, wasn't she?

A. No, not all the time.

Q. Well, she would get up at night and holler and cry and she said somebody was going to be after her?

A. No.

Q. Wasn't that your testimony in the previous 20
trial?

A. Not to get up in the morning and holler.

Q. In the middle of the night she wouldn't let you sleep, and she would holler that somebody is after her and you pleaded with her, "What is the matter, what are you getting into your head, somebody will rob you or steal you? Nobody is going to do anything, there is nobody after you." Wasn't that what she was doing?

A. She said it about the dogs, and I was to buy 30
a dog for her, yes, sir.

By the Court::

Q. Answer the questions that are asked of you; I want you to answer the questions that are being

asked on cross-examination in the same as you did on direct examination.

A. Yes, sir.

(Stenographer repeats the question.)

A. Yes, sir.

Q. She was hollering at night?

A. Not exactly hollering.

10 Q. To protect her, you bought dogs, didn't you?

A. Not exactly to protect her.

Q. Well, you just said that to protect her you had to buy a dog?

A. I bought a dog to protect the property, if anybody shall come around at night.

Q. And also to quiet her nerves?

A. No.

Q. Wasn't it your testimony in the previous trial?

A. I bought a dog to protect the property.

20 Q. As a matter of fact, you bought three dogs, didn't you?

A. I had two.

By the Court:

Q. Did you have three?

A. I had a little puppy, but I didn't have it long, just a matter of a short time.

Q. You did?

A. Yes.

30 Q. Did you testify in the previous trial, "As soon as we brought that dog in the house—we got three dogs already to protect my wife and my house—well them three dogs I had to feed them and take care of them, she wouldn't do any work and feed

them and I am supposed to take care of them myself. I took care of them and I lived with the dogs, and I like the dogs better than her.”

A. No, I didn't like the dogs better than her.

By the Court:

Q. Did you testify to that on the previous trial?

A. I said I had three dogs.

Q. Did you testify to it?

A. What?

10

Q. Did you testify to what Mr. Budson has just read to you?

A. I don't remember.

Q. Can you read that? (Exhibiting to witness a copy of the testimony.)

A. I see.

Q. Did you say that?

A. I don't remember; I don't remember I said it that I had three dogs to protect her. I had a dog and two dogs to protect the property, the business.

20

Q. Shortly after you bought that property at 618 North Olden Avenue, and you obtained the signature of your wife to the mortgage, you had some other trouble with her, didn't you?

A. More trouble, yes, about a bank account, depositing the money.

Q. She said to you, “Sol., I am entitled to have a portion of the profits, because I work with you side by side in the saloon and this property should be in my name and the bank account should be kept in our joint names, because I work as much as you?”

30

A. No, sir.

Q. She didn't?

A. No, sir.

Q. What did she say?

A. She said she wanted the money deposited in her name.

Q. As a result of these arguments over the property and over this money, did you beat her up?

A. No, sir, positively.

Q. Did you, in 1914, strike her?

A. Positively not.

Q. Were you arrested in 1914 as a result of a complaint made by her to the police department?

10 A. No, sir, I wasn't arrested.

Q. Were you brought before Judge Geraghty?

A. Yes.

Q. Then you were arrested?

A. No, I just got a notice to come to court.

Q. Well, were you summoned to court?

A. Yes.

Q. And she came there bruised?

A. No, sir.

Q. She didn't?

20 A. No.

Q. With black and blue marks over her body?

A. Not that I know.

Q. Did she exhibit them in court?

A. No, sir.

Q. In 1915, the early part of 1915, were you again summoned to appear before Judge Geraghty?

A. Judge Naar.

Q. Judge Naar?

A. Yes.

30 Q. Do you remember that incident?

A. Yes.

Q. What was that?

A. She wanted to support the children and her.

Q. That was prior to 1915, prior to the time she left you, I am talking about?

A. Yes.

Q. I am talking about before she left you?

A. No.

Q. Were you summoned to appear before Judge Naar on account of beating and abusing her?

A. I don't think so.

Q. Do you recall appearing in court and she had a broken pitcher that you hurled at her?

A. I don't know.

Q. Do you recall that pitcher being in court?

A. No, I—

10

Q. Do you recall her arms all being bruised and blackened?

A. No, sir.

Q. Do you recall any other incident when you appeared before Judge Naar or Judge Geraghty?

A. She complained only to support her, and to support the children.

Q. But never for abuse and beating?

A. No, sir.

Q. In 1915 she left you, didn't she?

20

A. Yes, sir.

Q. How long was she away?

A. About seven months, something like that, more or less.

Q. And the case was tried here?

A. Yes.

Q. And the court dismissed it without prejudice?

A. Vice-Chancellor Backes told her to go back home.

30

Mr. Budson: I would like at this time to offer this in evidence,—the decree of the court.

The Court: The record of the proceedings?

Mr. Budson: Yes, sir.

The Court: I will admit it.

(Said Chancery files being in docket 40, page 105, are designated Exhibit D-1.)

Q. Do you recall Vice Chancellor Backes telling you to go back to your wife?

A. He told her.

Q. Did he tell you?

10 A. He told her.

The Court: They both did go back.

Q. You went back to live with her?

A. Yes.

Q. And you lived approximately four years together after that?

A. Yes.

Q. To 1919?

20 A. To 1919.

Q. Did you visit her parents frequently?

A. Yes, sir.

Q. Father and mother are in court, are they?

A. Whose father and mother?

Q. Her father and mother?

A. When?

Q. Now?

A. Yes.

Q. You visited them frequently?

30 A. Yes.

Q. You would go down there with the children?

A. Yes.

Q. And you lived happily?

A. For a while, yes.

Q. What was the allowance you made your wife during those years?

A. I give her fifteen or twenty dollars a week.

Q. How much was it?

A. Fifteen and twenty, that is only to buy things necessary for the table, but no coal or rent, or electric, or potatoes. I used to buy that in big quantities.

Q. She didn't pay for that?

A. No, not clothing; I used to pay extra.

Q. Between 1916 and 1919, has the asthmatic condition become any better?

10

A. She was all right.

Q. Was she getting worse with her asthma?

A. About the same.

Q. She would have severe attacks?

A. Yes, sir, once in a while, yes, sir.

Q. How about these hallucinations and crying spells at nights and being afraid at night, did that continue?

A. No, she wasn't afraid of nothing.

Q. Did that stop?

20

A. Yes, she didn't say anything more about that.

Q. Wasn't she afraid at nights?

A. No, sir.

Q. Of people threatening to kill her?

A. No, sir.

Q. When did she stop complaining about that?

A. 1914 or 1915, when she come back she didn't complain about anything.

Q. After you got the dogs?

A. I didn't have the dogs at that time; I got rid of them.

30

Q. When did she stop complaining about being threatened to be killed?

A. I never heard of it, about killing.

Q. Was she nervous at this time?

A. When?

- Q. Between 1916 and 1919?
- A. No.
- Q. Never showed any signs of nervousness?
- A. No, sir.
- Q. Was she perfectly normal?
- A. Yes, positively normal.
- Q. Did she ever complain to you about anything?
- A. What do you mean about anything?
- Q. Anything, in general, about her health?
- 10 A. Her health?
- Q. Yes.
- A. Well, when she didn't feel very good.
- Q. What was the matter?
- A. She suffered from asthma and tonsils.
- Q. Anything else?
- A. The doctor said she had bronchitis, or—
- Q. Did she ever complain to you about her head?
- A. No.
- Q. Or getting dizzy spells?
- 20 A. No, sir.
- Q. Did you, as a matter of fact, take her to Doctor Cotton?
- A. Yes, sir.
- Q. You did?
- A. Yes.
- Q. If she didn't complain to you about her head and about those hallucinations and dreams, and nervousness, why did you take her to Cotton, why didn't you take her to an ordinary doctor?
- 30 A. Why?
- Q. Yes, why?
- A. I'll tell you the reason why. When she was a little weak at that time, and had bad teeth, and bad tonsils, so I inquired to people "Who you think the best to examine teeth and tonsils?" and so on. The tonsils was bad, so they give me advice to go to

Doctor Cotton and Doctor Cotton examined her teeth and tonsils, and he said, "Take her teeth out; she has very bad teeth, and rotten tonsils," so finally I said all right and paid him for the visit and went home.

Q. How much did you pay him?

A. I think it was ten dollars, or five dollars, or I don't know.

Q. You don't know?

A. No.

10

By the Court:

Q. When was it?

A. That was about 1917, something like that; 1917, I believe.

Q. 1918, wasn't it?

A. '17, I believe; of course, I don't remember exactly the date, see? '18 or '18 something like it. So I went over to Doctor Bird and he pulled some bad teeth out; I went to Doctor Blackwell and he took her tonsils out, and so on, and she got a lot better, and I sent her to the Catskill Mountains for her health. She went out there for several weeks. I made arrangements with my sister-in-law, at New York, the sister-in-law what took her out there; I didn't have the time; I couldn't close my business up, and she made arrangements to stay there and pay Twenty-five dollars a week, so I paid Twenty-five dollars a week, and she was there several weeks. I give her fifty dollars besides, and another check for fifty dollars afterwards, and sent her several weeks for twenty-five dollars expenses. I went to New York and met her, you know, then she was a little short, and I gave her the fifty dollars, a check. She borrowed off her sister twenty dollars, and I

20

30

paid her sister, and the other sister, seven dollars and fifty cents, and I paid all off, and she went home, and she gained about twenty-six pounds and she was as fine as could be.

Q. When she was away, what was the complaint?

A. The complaint?

Q. Yes?

A. What she go for?

Q. Yes?

10 A. She was there on account of an operation she had her teeth and tonsils took out. She was a little weak and the doctor told me to take her up to the Catskill Mountains.

Q. Was that Cotton that told you that?

A. No, sir.

Q. Didn't you go to Cotton because of the condition of her mind?

A. No.

20 Q. More than the condition of her teeth and tonsils?

A. No, I think Doctor Levine came around to me, and Doctor Levine gave me the advice to send her to Catskill, and when she comes back, she will be—

Q. Did Doctor Levine tell you to take her to Doctor Cotton?

A. Yes. Who, Doctor Cotton?

Q. Yes?

A. No.

Q. He did not?

30 A. No.

Q. Who did?

A. People outside.

Q. Who?

A. I think Mrs. Molowich, and she had the same trouble, and she went to Doctor Cotton and he—

By the Court:

Q. How did you know she had trouble with her teeth and tonsils?

A. She had toothache and Mrs. Molovich—

Q. That is why you know she had trouble with her teeth?

A. Yes.

Q. How do you know she had rotten tonsils?

A. The doctor said it.

10

Q. Who?

A. Doctor Blackwell.

By the Court:

Q. Before you went to see Doctor Cotton?

A. No, I didn't see him before; after that.

Q. How did you know her tonsils were diseased before you went to see Doctor Cotton?

A. Doctor Levine examined her and told me the tonsils were bad, so I took her to Doctor Cotton by the advice of outside people.

20

Q. In 1919, the early part, what was her mental condition then?

A. What do you mean by mental condition?

Q. Well, how was her mind, was it clear, as clear as yours?

A. Yes, positively, as clear as could be.

Q. Bright, was she?

A. Yes.

30

Q. Cheerful?

A. Yes, in 1918, to tell the truth, she was better than anything, she was fine, she was fine, better than she—

The Court: Stop, when you have answered the question and don't volunteer.

Q. But in 1919 she was worse?

A. No, sir.

Q. You said she was better in 1918 than before?

A. Well she improved a little when she come back.

Q. In what way?

A. Everything.

Q. For instance?

A. She gained about twenty-six pounds.

10 Q. She got stout?

A. Yes.

Q. Did she eat well?

A. Yes.

Q. And sleep well at night?

A. At that time.

Q. In 1919, didn't she get thinner?

A. No, sir.

Q. How was her asthmatic condition?

A. About the same.

20 Q. That didn't improve at all?

A. Well, no, she had that.

Q. She left you, you said, in the early part of 1919, or December, 1919?

A. December 28, 1919.

Q. She left you on December 28, 1919?

A. Yes.

Q. A couple of days before Christmas?

A. No, before New Year's.

30 Q. And you woke up one morning and found her gone?

A. Yes.

Q. You woke up and found her gone out of bed?

A. What?

Q. You woke up one morning and found her gone out of bed?

A. Yes.

Q. And with her went \$2200.00?

A. Yes.

Q. What was that in, bills?

A. One thousand dollars Liberty bonds, and fifteen thousand dollars cash.

Q. How much cash?

A. Twelve hundred dollars cash bills.

Q. Where was that money kept?

A. Under the pillow.

Q. Did she know where it was kept?

10

A. Yes.

Q. Did you tell her?

A. She knew I put it there.

Q. How long did you keep it there?

A. That night.

Q. Where did you keep that before?

A. Down stairs.

Q. Where down stairs?

A. I kept it in the drawer.

Q. In the drawer?

20

A. Yes.

Q. What made you take it out that night?

A. I didn't want to leave \$2200.00 in the bar, and somebody rob me.

Q. How long had you had that money at home?

A. The Liberty bonds I had since the war.

Q. The war was just over?

A. War time, I bought some Liberty Bonds.

Q. How long had you had that twelve hundred dollars?

30

A. I saved that before Christmas to pay my license and my bills, and so forth.

Q. Didn't you have a bank account?

A. Sure.

Q. What bank did you deposit it in?

A. The Mercer Trust.

Q. Didn't you make daily deposits?

A. No.

Q. Weekly?

A. Sometimes weekly, and sometimes, two weeks, and sometimes twice a week.

Q. You saved up twelve hundred dollars and then made the deposit?

A. Yes, I didn't have time before Christmas to go to the bank.

10 Q. You kept it in the drawer?

A. Yes, in my possession.

Q. She knew where you kept the money?

A. Yes.

Q. And also the Liberty Bonds?

A. Yes.

Q. Didn't you have a safe deposit box?

A. No, sir.

Q. Never had one?

A. No, sir.

20 Q. The bar-tender was around there?

A. Yes.

Q. And you kept it in an open drawer?

A. Yes.

Q. Did anybody else come to the house and have access to your rooms?

A. No, only my wife.

Q. Did customers ever go into your dining room?

A. No, sir.

Q. Or into the room where the drawer was?

30 A. No, sir.

Q. What makes you think your wife took the Liberty Bonds and the money?

A. Nobody else didn't take it, because I went over there with Officer Hort, and she admitted herself she took it.

Q. To whom?

A. To Officer Hort.

Q. Didn't you have two or three quarrels just before she left you?

A. About what?

Q. I don't know; did you have two or three quarrels?

A. The only thing she was chewing the rag about was women.

Q. All the time?

A. Yes.

10

Q. 1919?

A. Yes, sir.

Q. 1918?

A. Yes.

Q. 1917?

A. Yes, sir.

Q. 1916?

A. Not much.

Q. 1915?

A. 1915, she wasn't with me 1915.

20

Q. Part of the year she was; was she chewing the rag about women then?

A. No, sir, not much.

Q. That was her chief complaint?

A. Yes.

Q. When she would complain about women, you would naturally beat her up, wouldn't you?

A. No, sir, positively not.

Q. Did you beat her up in 1919 before she left you?

30

A. No, sir, positively not.

Q. After she left you in 1919, and you took the children with you, did you contribute to her support?

A. Yes.

Q. When?

A. When she left.

Q. Yes?

A. About three or four weeks when she left.

Q. Beginning about three weeks after she left?

A. Yes.

Q. How much?

A. Fifteen dollars a week and clothing and doctor and medicine.

By the Court:

10

Q. That was for the children?

A. Yes.

Q. Not for her? Didn't you testify before that you said you would support her until the \$2200. was gone?

A. Yes, I wanted her to come back.

Q. How long was that after that?

A. About four weeks or something like that.

20 Q. What was the conversation held between you and her father at that time?

A. When?

Q. When he called you up on the 'phone?

A. He asked me to give support for the children and her; he didn't care anything about her, but the children, that's the main point.

Q. What did you say?

A. I said, "I won't give support so far as the \$2200 will last."

30 Q. Did you ask him at that time why your wife left you?

A. Yes, sir.

Q. And what reason did he give you?

A. He gave me a reason because I am not a fit man for her and no good.

Q. Is that the only reason?

A. Yes.

Q. Did he also tell you the facts that you continuously abused and ill-treated her?

A. No, sir, he said I am not a fit man for her and I am not enough educated, and she told him I lived with different women, and looked from the window and admired all sorts of women.

Q. After she left you, did you notice her physical condition?

A. Yes.

Q. What did you find her condition to be after she left you in 1919? 10

A. All right.

Q. All right?

A. Yes, sir.

Q. You saw her on the street?

A. Yes.

Q. Throughout the year?

A. Several times I saw her and she talked sensibly.

Q. How about 1920? 20

A. The same.

Q. Was she away any part of that time that you know of?

A. I don't know.

Q. According to the testimony you gave, you almost continuously went to see her and come back to her?

Mr. Perlman: He didn't say that.

A. Yes,—but— 30

Q. Do you know she was at White Haven?

A. No, sir, I didn't know.

Q. You did not?

A. No.

Q. Did you know she was there between five and six months in 1919?

A. No, sir. 1919 I saw her in 1919, all the time pretty near.

Q. Then she wasn't in White Haven, to the best of your knowledge?

A. To the best of my knowledge, no. 1919 she was at my house; she lived with me.

Q. Do you know in 1920 she was in White Haven?

A. I don't know.

Q. Did you see her then?

A. Yes, I saw her in 1920.

10 Q. Did you know she was at White Haven for almost eight months?

A. I don't know.

Q. Suffering from an attack of tuberculosis?

A. I don't know.

Q. And her asthma?

A. I don't know.

Q. You testified that you frequently called upon her and her parents and asked her to come back to you and in each instance she wouldn't come, and her parents?

20

A. I didn't talk to the parents no more in 1920.

Q. To her?

A. I spoke to her.

Q. You spoke to her?

A. Yes.

Q. What months did you talk to her?

The Court: Aren't we wasting time?

30 Q. Do you ever remember talking to young Mr. Cantor, her brother, about her?

A. Yes, sir.

Q. Do you recall the conversation?

A. Yes, it was over at my house, April 15, 1922.

The Court: If there is anything that you want to ask this witness specifically, ask him.

Q. Did you say to her brother that you would not take her back and have nothing to do with her?

A. When I spoke to her——

Q. Did you say that?

A. Yes, I said, "Let my wife come around and talk to me."

Q. You wouldn't take her back?

A. Yes.

10

Re-direct examination.

By Mr. Perlman:

Q. When was that conversation?

A. That was April 15, 1922.

Q. After you started suit for divorce?

A. Yes.

Q. What was the whole conversation?

A. He come out to my house——

20

The Court: Is that worth while, it was after the suit?

Q. What did you say to her brother when he asked you if you would take your wife back?

A. I said, "Isidore, let my wife come around to me and talk to me. I will talk to her." But she never come around.

30

Q. What else did you say to him?

A. I said, "What have you got to do with this now?" I said, "My divorce is filed in the Vice Chancellor's court."

Q. What business are you in now?

A. The real estate business.

Q. How long have you been in that business?

A. Four or five years, over five years.

Q. Whenever your wife complained of ailments between the time you were married in 1912 until the time she left you in 1919, what did you do about it?

A. I called the doctor.

10 The Court: He has testified to that effect.

Q. Who paid the doctor's bill?

A. Myself.

Re-cross-examination.

By Mr. Budson:

Q. Do you know where she is now?

20 A. Yes.

Q. Where?

A. At the State Hospital.

Q. How long has she been there?

A. About a year and a half.

Q. Did you contribute to her support from the time she left you until today?

A. No.

Q. Did you pay any of the hospital bills?

A. Yes.

30 Q. Which ones?

A. The State Hospital?

Q. Yes.

A. Yes, sir.

Q. When did you pay them?

A. Just before Christmas.

Q. How much?

A. A hundred dollars.

Q. Before this Christmas?

A. Yes.

Q. For her?

A. Yes, sir.

Q. Why did you pay it?

A. Because I owed it; she was there—they asked
med and I paid it.

By the Court: 10

Q. The State Hospital insisted upon your paying
it, and you paid it?

A. Yes.

Q. Then you are contributing to her support?

A. I gave one hundred dollars to the hospital.

Q. Did they render you a bill for any greater
amount than that?

A. Render a bill?

Q. Yes. 20

A. Yes.

Q. How much?

A. I don't remember exactly.

Q. That is all the money you paid out for her—
one hundred dollars—since December 28, 1919?

A. Except I gave her the fifteen dollars a week.

Q. Did she take the children?

A. Yes.

Q. And that was for the children?

A. Yes. 30

Q. The reason she brought the children back was
because she was unable to take care of them on ac-
count of her asthmatic condition?

A. No, sir.

Q. On account of her tubercular condition and on
account of her nervous and dizzy condition?

A. No, sir.

Q. Wasn't that the reason?

A. No, sir.

Q. What was the reason?

The Court: That has been gone into.

Re-direct examination.

10

By Mr. Perlman:

Q. You were subpoenaed by the attorney general's office, representing the State of New Jersey, in the matter of compelling you, as your wife's husband, to pay for her support in the State hospital?

A. Yes, sir.

20

GEORGE H. HORT, a witness produced on behalf of the petitioner, being duly sworn, testifies as follows:

Direct examination.

By Mr. Perlman:

30 Q. You are a member of the Trenton Police Department?

A. Yes.

Q. And have been a member for a number of years?

A. Yes.

Q. Do you recall the 28th day of February, 1919?

A. Yes.

Q. Do you know Mr. Goldberg?

A. By sight.

The Court: February, 1919?

Q. I mean December 28, 1919?

A. Yes.

Q. Do you recall him taking you to a house on Union Street? 10

A. Yes.

Q. Where?

A. 82 Union Street.

Q. Whom did you find there?

A. A lady he said was his wife.

Q. Did she say she was his wife?

A. No.

Q. Did she say she was not his wife?

A. No.

Q. Who else? 20

A. Another man and lady was there, I think.

Q. An old lady and gentleman?

A. I just don't recall now.

Q. Do you recall what happened?

A. Yes.

Q. What?

A. I asked what was the matter, well, the lady said, "Nothing," and Mr. Goldberg there had previously reported some money missing, some money and bonds, and he asked her to come home with the 30 children, and I asked her about the money.

Q. What did she say when he asked her to come home?

A. I don't just recall what she said. I asked her then about the money. He also reported a revolver missing at the time. She denied taking the revol-

ver, but as far as money and bonds, she said she had as much right to them as he had.

Q. How long did you stay there?

A. Only a few minutes. I seen it was only a family quarrel.

Q. Did you go out with Mr. Goldberg?

A. He came out right in back of me.

Q. Did his wife remain there?

A. Yes.

10

Cross-examination.

By Mr. Budson:

Q. You have known the Goldbergs for a number of years?

A. No.

Q. They were on your beat?

A. No, sir.

20 Q. How long before this did you know Mr. Goldberg?

A. Not at all that I know of until that night I was sent there.

Q. Didn't you know her?

A. No, I wouldn't know her now if I saw her.

Q. Did she say anything about his beating her up?

A. No.

Q. Try to refresh your memory.

30 A. I don't recall whether she did.

Q. She might have?

A. She might have; I don't recall.

Q. She didn't admit taking the money?

A. No, she didn't deny or admit it; she said she had as much right to the bonds and money as he had.

Q. Didn't she say, "If I had taken the money I would have just as much right to it?"

A. I don't remember her saying that.

Q. This is five years ago, as you remember?

A. Only the report I made that night.

Re-direct examination.

By Mr. Perlman: 10

Q. Did she show you any bruises or black and blue marks on any part of her body?

A. Well, not that I remember, anyway.

Q. Do you think you would remember that if she showed it to you?

A. I should think I would, yes, sir.

20
PATRICK KERWICK, a witness produced on behalf of the petitioner, being duly sworn, testifies as follows:

Direct examination.

By Mr. Perlman:

Q. Mr. Kerwick, you are also a member of the Trenton Police Department? 30

A. Yes.

Q. And have been for a number of years?

A. Yes.

Q. And had your beat in the vicinity of 618 Olden Avenue for some years?

A. Yes, sir.

Q. Do you know Mr. Goldberg?

A. I do.

Q. And Mrs. Goldberg?

A. Yes.

Q. Do you know her pretty well?

A. Yes.

Q. Had you spoken to her at any time prior to 1918?

A. Yes, sir, many a time.

10 Q. She complained to you one time, did she not, that her husband was not supporting her?

A. Yes, she did.

Q. What did you do about it?

A. At that time she walked in the house and a closet was open in the kitchen and there was flour there, and sugar, and different kinds of eatables.

Q. You found plenty of food there?

A. Yes, sir.

20 Q. And one time she complained about being locked in a room, did she not?

A. She complained one time her and her sister come up to my house and she told me he had locked the door and she couldn't get in. I come down to the house and I found the door open. I think Mr. Goldberg was there at the time. She said then that he must have opened the door while she was gone out.

Q. Did she ever say anything to you about her leaving her husband?

30 A. About her leaving?

Q. Yes.

A. Yes, she told me one time she was going away, she wouldn't live with him any more.

Q. Wouldn't live with him any more?

A. Yes, she said she couldn't get along with him.

Q. Did she say why?

A. She claimed he wouldn't give her enough to get along with, the way I understand it.

Q. How long ago do you think this conversation took place?

A. It might be eight or nine years ago. I couldn't say exactly; I know it has been quite a while.

Q. It might have been five or six, too, might it not?

A. Well, it might have been; I don't know really, 10
I know it has been a long while ago.

Q. Did she ever complain to you about Mr. Goldberg beating her?

A. Beating her?

Q. Yes.

A. I don't really recall whether she did or not.

Q. Did she ever show you any bruises or marks on her body?

A. I was one morning in the police court and I seen her in there and she was showing some marks 20
of some kind.

Q. Did she ever show you any marks?

A. Not in her house.

Q. Or anywhere else?

A. No.

Cross-examination.

By Mr. Budson:

30

Q. Officer Kerwick, when you say nine years ago, you really refer to the first case between those two people?

A. There was a good many of them.

Q. I mean in the Court of Chancery, the first case in the Court of Chancery?

A. I don't know when the case was in the Court of Chancery.

Q. Were you a witness in that case?

A. No.

Q. You knew considerable about them?

A. I did.

Q. They were in court several times?

A. Yes.

Q. And you were sent with a summons usually?

10 A. I don't recall whether I did or not. I know I seen them in court, him and his wife.

Q. Do you recall that morning when you saw her all bruised up in the police court?

A. Yes, I know she had a pitcher there and she said he hit her with it.

Q. Do you remember that pitcher?

A. I seen the pitcher.

Q. And a cut on her arm?

20 A. I don't really know whether she was cut; I know there was a pitcher there; I remember her saying it was used on her.

Q. They were in court very frequently?

The Court: That is admitted.

A. I think about twice I seen them there.

Re-direct examination.

30 By Mr. Perlman:

Q. You don't know anything personally about the use of that pitcher?

A. Not a thing.

(ABRAHAM S. LEWIS, is duly sworn as interpreter.)

SAMUEL SUSSMAN, a witness produced on behalf of the petitioner, being duly sworn, through interpretation, testifies as follows:

Direct examination.

10

By Mr. Perlman:

Q. Where do you live, Mr. Sussman?

A. Second and Cass, 501 Second.

Q. (By the interpreter.) You are related to Mr. Goldberg?

A. Yes.

Q. (By the interpreter.) You are his brother-in-law?

A. Yes.

20

Q. (By the interpreter.) Do you know whether they lived together as husband and wife after 1912?

A. Yes, sir.

Q. Where did they live?

A. 618 Olden Avenue.

Q. How long has Mr. Goldberg lived in Trenton, if you know?

A. Since I came here about sixteen years.

Q. During the last sixteen years?

A. Yes.

30

Q. Do you know whether he has lived anywhere else during the last sixteen years?

A. No, sir.

Q. Trenton, New Jersey?

A. Yes, sir.

Q. Were you a frequent visitor in their house after they got married?

A. Yes, very often.

Q. You understand what I am asking you?

A. Yes.

Q. You are sure you understand?

A. Yes.

Q. How often would you go into the house?

A. About a couple of times a week.

Q. Do you know how they got along from the time they got married?

10 A. That is, they was all right.

Q. For how long?

A. Well, after that first boy was born.

Q. Do you remember when you were present at a conversation when Mr. Cantor and Mrs. Cantor, Mrs. Goldberg's father and mother were present?

A. Yes.

Q. Where was that?

A. They was going to his house.

Q. That was at Mr. Goldberg's house?

20 A. Yes, sir.

Q. Tell us what the conversation was, if you can recall it?

A. I heard them had an argument, they couldn't

The Court: I think we had better use the interpreter on that answer.

30 A. (Through interpreter.) I was present and I saw that there was no unison and Mr. Cantor said that they should separate since it was impossible for them to get along.

The Court: That isn't just what he said, is it? What was it he said about divorce? Repeat that question.

The Interpreter: Instead of "separate" it was "divorce."

Q. What was the argument about?

A. The house and money.

Q. What house?

A. The property that they was going to build.

Q. What did Mrs. Goldberg want?

A. That she wants in both names the property and money, and the check account, she says he has 10 that the same like he.

Q. Well, Mr. Goldberg said, "No?"

A. He said, "No," because he said he can't do that, because he had to write checks and he have to buy stuff and sell them, so he can't do that for both names.

Q. When Mr. Cantor said, "The best thing to do was to get a divorce because they couldn't get along," what did Mr. Goldberg say?

A. Mr. Goldberg said, "We can do it, only you 20 are in the way. If she wouldn't listen to any arguments you tell us we could live all right."

Q. What did Mr. Cantor say?

A. He said, "I don't do that. I always try to make right."

Q. (Through interpreter.) How long did the conversation last?

A. Lots of times, I can't exactly say?

Q. How long?

A. About a couple of hours they was there. 30

Q. Do you remember Mr. Goldberg saying to his father-in-law, "Father, don't give me that kind of advice and don't break up my home?"

A. Yes, sir.

Q. Did he say that?

A. Yes.

Q. What did Mr. Cantor say?

A. Mr. Cantor says, "You don't treat right mine daughter."

Q. Did you hear them quarreling very often about money matters?

A. Yes.

Q. Do you know what "quarrel" means?

A. I don't understand.

Q. Do you know what the word "quarrel" means?

10 A. I don't know.

Q. (The question is repeated through the interpreter as follows): Did you hear them quarrelling very often about money matters?

A. Very often.

Q. Did you ever hear Mrs. Goldberg accuse Mr. Goldberg of running around with women?

A. Yes.

Q. Can you recall any particular time?

20 A. Yes, she was always said he got to do business with women and the women come around to buy kettles of beer. She says, "This is the women I always see."

Q. Did you ever hear her say anything during the year 1919 about her leaving her husband?

A. Yes, she was always said, "I can't live with him, he is not good educated; he is not fit for me."

Q. And that she was going to leave him?

A. Yes, sir.

Q. She said that?

30 A. Yes, sir.

Q. Do you remember when Mrs. Goldberg went away?

A. Yes, sir.

Q. When?

A. It was in 1919, I think, five years ago.

Q. Have you visited Mr. Goldberg since then?

A. Yes.

Q. How often?

A. Oh, lots of times.

Q. Did you ever see Mrs. Goldberg in his house?

A. No.

Q. Do you know whether she has lived with him since 1919, the time she left?

A. Never seen her live together with him.

Q. Did you ever see Mrs. Goldberg after she left Mr. Goldberg?

A. Yes, the first year about several times. I see her after she leave him in summer time. 10

Q. In the summer time, where?

A. Union Street.

Q. Did you speak to her, Mr. Sussman?

A. Yes, I speak to her a little.

Q. What did you say to her?

A. I said, "It don't look good, you go and he go, you better go live together. You will good learn when you get a little older and you get used to it and live all right after." She said, "No, I wouldn't come to him, he is no good to me." 20

Q. What?

A. "I can't live with the man, he is not educated enough."

Q. Did you meet her again?

A. After around the holiday times.

Q. What holidays?

A. The holidays.

By Mr. Budson: 30

Q. What year?

A. 1919.

Q. Do you mean 1920?

A. When she left him the first year.

- Q. Where did you meet her?
A. The same place.
Q. Where?
A. Not far from her house.
Q. Did you speak to her then?
A. Yes.
Q. What was the conversation?
A. I talked to her the same question, so she said,
“No use talking,” she said, “I don’t want to talk
10 to you.”
Q. Don’t want to talk about it any more?
A. Yes.
Q. Did you have any other conversation with her?
A. Yes, around Christmas time I see her again.
Q. What year?
A. The same year.
Q. The same year?
A. Yes, sir.
Q. What was the conversation?
20 A. I try to make them together and she said,
“No, I wouldn’t go for no money.”
Q. Did you ever hear her complain of any beat-
ings or cruelty?
A. No, sir.
Q. Did you ever see any bruises or any marks on
her, that she showed to you?
A. No, sir, she never showed me.
Q. Do you know whether Mr. Goldberg did beat
his wife or not?
30 A. No, sir.
Q. Do you know?
A. I never seen and she never told me of it.

Cross-examination.

By Mr. Budson:

Q. You lived at North Clinton and Olden?

A. Yes, sir.

Q. And they only lived about a half a block away from you at the time they were married?

A. Yes.

Q. In 1915, when they first separated, when she left him, do you remember Esther coming to your home? 10

A. To my home?

Q. Yes?

A. No, I don't remember; she was coming before she had left him. She was often come.

Q. And do you recall having any conversation with her?

A. No, sir.

Q. Do you recall her complaining to you about his treatment of her? 20

A. No, sir.

Q. Never complained about it?

A. Oh, she?

Q. Yes.

A. Well, she was complaining the same thing, I can't live with him, that is what she always said, he is not educated.

Q. Did she give you a reason why?

A. She said he was not giving her enough money.

Q. She said he was not giving her enough money; what else? 30

A. And he don't want to have on my name the business—on both names, the business.

Q. What else?

A. So I told her that is not the way to have it; let him have the business, because "if he treats you right, you will be all right."

Q. Did she give you any other reason why she can't live with him in 1915?

A. That's all.

Q. Didn't she tell you she couldn't live with him because he was not educated?

A. Not educated enough.

10 Q. He didn't read?

A. He didn't read.

Q. He wasn't a student?

A. Yes, sir.

Q. Did you ask her what she meant by that, that he wasn't educated enough?

A. She did before—

Q. Did you ask her what she meant by it?

A. Yes, I asked her what she mean.

Q. What did she tell you?

20 A. She said he is a grober yung.

Mr. Perlman: A thick youth.

Q. You are a tailor, aren't you?

A. Yes.

Q. You have had a good education?

A. No, sir.

Q. You have had about the same as Mr. Goldberg had?

30 A. Yes.

Q. She herself was not very intelligent, was she?

A. She said she is educated a lot; she knows Jewish a lot.

Q. When she spoke of education to you, what she meant was character, didn't she, she didn't mean book knowledge, did she?

A. She mean something higher than like a Rabbi.

Q. She meant his character wasn't right?

A. And he was much—he don't know so much, because he don't like the father, or some other good learned Jew that is educated.

Q. She was friendly with your wife?

A. Sometimes.

Q. And sometimes they were not?

A. Sometimes she was mad and she didn't want to talk to anybody.

10

Q. Is your wife in court?

A. No.

Q. Why?

A. Because she couldn't go.

Q. Why?

A. She had a baby and I am in business.

Q. Didn't she want to help her brother out?

Mr. Perlman: That is objected to.

20

The Court: Objection sustained.

Q. As a matter of fact, you know she has been in your house many times and showed your wife and yourself lots of bruises about her body?

A. No, sir.

Q. You don't know?

A. No.

Q. In 1913, '14 and '15?

A. No, sir.

30

Q. In 1918 and 1919?

A. No, sir, I never heard that.

Q. You never heard that?

A. No.

Q. Did you talk to her in 1919?

A. When she left him?

- Q. Before she left him?
A. Yes, I was there, I come around the kitchen.
Q. What was her physical condition?
A. She was normal and good.
Q. What?
A. Normal, she talked with me, she said, "I will leave him, I won't stay with him."
Q. What do you mean, "she was normal," did you suspect she was crazy?
10 A. No, maybe she was mad after I said, "keep quiet, don't be excited, and tell me what is going on."
Q. You would go there very often to her home?
A. Yes.
Q. Did you observe her physical condition every time you came there?
A. Sometimes she laughed with me, sometimes she say, "He is right," and sometimes she never talked about him right.
20 Q. She was nervous and excitable?
A. No, sir.
Q. Did she ever complain to you of suffering from headaches?
A. No, sir.
Q. Or bad teeth?
A. Yes.
Q. Always bad teeth?
A. Yes, sir.
Q. Did she ever complain of her asthma?
30 A. Sometimes she was coughing.
Q. Did she tell you anything about her tubercular condition?
A. No, sir.
Q. Nothing about that?
A. No.
Q. She never complained to you about her health?
A. No.

Q. And she never complained to you about her husband?

A. No.

Q. She never said he ill-treated her?

A. She said he didn't treat her right.

Q. Did you ask her what she meant?

A. I said, "What do you mean, don't you get enough money?" She said, "I get enough money, I don't need it; he don't treat me right."

Q. Did you ask her?

10

A. Didn't treat her like a husband have to keep a wife. I said, "What you mean?" She said, "Don't let me go to the register; don't let me stay in the business."

Q. You just said she said it was not a question of money?

A. Well, sometimes she says she have enough money.

Q. Did you talk to her in 1920?

A. Yes, sir.

20

Q. What month?

A. The beginning of the summer.

Q. The beginning of the summer?

A. Yes.

Q. Would you say May?

A. I don't know.

Q. June?

A. May, the beginning of the summer.

Q. May or June, wasn't it?

A. I don't know; like that.

30

Q. What was the conversation on then?

A. I say: "Esther, can't you come again to Simon?" She said, "No, I wouldn't come to him."

Q. Who sent you to her?

A. I seen her myself.

Q. You felt that your duty as a brother-in-law?

- A. Yes.
- Q. That was in, May or June, 1920?
- A. Yes.
- Q. Did you see her after that?
- A. I see her around the holiday time.
- Q. That was in October?
- A. September.
- Q. September or October?
- A. September or October.
- 10 Q. Did you talk to her then?
- A. The same way. She said, "It is no use, I don't know."
- Q. Don't you know she was the greater part of 1920 at White Haven for tuberculosis?
- A. I don't remember.
- Q. How could you have talked to her in May or June, or September or October if she was away?
- A. I see her on the porch of the house and she was walking around.
- 20 Q. Don't you know she was away at the sanitarium?
- A. Yes, I heard of it; when I went to see her she was away.
- Q. The time you are saying you had these conversations with her, she was in White Haven?
- A. She was in Trenton; I see her.
- Q. You are sure it was not in 1922?
- A. It was the first year after she left him, 1921, the first year. It was six or seven months before a
- 30 year all three times.
- Q. Six or seven months after she left?
- A. Yes.
- Q. She left in December, 1919?
- A. Yes, sir.
- Q. Therefore, it was in July, you talked to her?
- A. It was around May.

Q. You couldn't talk to her because she wasn't in Trenton; she was in White Haven?

A. I don't remember the time; I know I see her the first year about three times.

Q. And each time you asked her to come back to her husband?

A. Yes.

Q. Did you notice her mental condition?

Mr. Perlman: I don't believe the witness knows what counsel means. Do you know what "physical" and "mental" is? 10

The Court: You will have an opportunity to examine him in rebuttal afterwards. Proceed.

Q. Do you understand my question?

A. If she was normal, you mean.

Q. Yes, was she normal when you talked with her in 1919? 20

A. Yes.

Q. She understood every thing you said?

A. Yes.

Q. Did you ask her how her health was?

A. She didn't feel well; she was weak.

Q. Did you ask her how she felt and what was the matter with her?

A. She didn't even want to talk too much with me.

Q. Why? 30

A. I don't know why.

Q. Didn't she want you to talk with her? Did she strike you as being—

A. I said, "Are you mad at me?" She said, "No."

Q. Would you say she wasn't clear in her head?

A. She was clear; she talked all right.

Q. She talked sensibly?

A. Yes.

Q. Rationally?

A. Yes.

Q. You wouldn't think she was crazy, would you?

A. No, I don't think she was crazy.

-
- 10 FRANK A. AHLBACH, a witness produced on behalf of the petitioner, being duly sworn, testifies as follows:

Direct examination.

By Mr. Perlman:

Q. Where do you live and what is your business?

A. 616 North Olden Avenue.

20 Q. What is your business?

A. The barber business.

Q. Do you know Simon Goldberg and Esther Goldberg?

A. Yes.

Q. The parties in this suit?

A. I do.

Q. Very well?

A. Pretty well.

30 Q. Between 1915 and 1919, were you in their house or in their place at all?

A. Well, occasionally, around 1915 or '16, I used to go there three or four times a week, maybe, and play a few games of cards, and be there a couple of hours, maybe.

Q. About 1917, '18 and '19?

A. About the same way, maybe.

Q. How long a time would you spend in that place when you would go there?

A. As I stated, sometimes there would be a game of cards and maybe I would stay there an hour or two.

Q. Did you see Mrs. Goldberg at any time when you were there?

A. Yes, occasionally.

Q. Did you speak to her?

A. Yes, sir.

10

Q. Did she ever complain that her husband was beating her?

A. No, sir.

Q. Did she ever show you any bruises?

A. No, she did not.

Q. Did you ever see her husband beat her?

A. No, I didn't.

Q. Do you know of any beatings that her husband ever administered to her during the time you were there?

20

A. No, sir, I don't.

Cross-examination.

By Mr. Budson:

Q. Where did you live in 1916?

A. 602 North Olden Avenue, North Olden and Saint Joe's.

Q. North Olden and Saint Joe's? Were you a 30 tenant of Mr. Goldberg's?

A. Not then.

Q. Did you ever live with him in his home?

A. I have these last two or three years.

Q. You are living with Mr. Goldberg?

A. No, living in his house.

- Q. Where?
A. 616 North Olden Avenue.
- Q. Did you ever live with him before that?
A. No, I didn't.
- Q. Did you ever live at his home?
A. No, I didn't.
- Q. Sure about that?
A. Yes, sir.
- 10 Q. What is your name?
A. Frank A. Ahlback.
- Q. Did you testify at the previous trial?
A. I did not.
- Q. Frank Ahlback?
A. Yes, sir.
- Q. Senior?
A. Junior.
- Q. Did your father ever live with them?
A. He did for a while; he is dead now.
- 20 Q. In what capacity did he live with them?
A. To tend bar for him.
- Q. Did you ever see Mrs. Goldberg in back of the bar?
A. When they first got married, she was helping out a little bit.
- Q. Were you very well acquainted with them?
A. Pretty well.
- Q. As a matter of fact Mr. Goldberg would sleep in the afternoon while she attended the bar?
A. I didn't take notice.
- 30 Q. Did you ever notice it?
A. No, I never did.
- Q. Did you ever see her wait on the customers?
A. Oh, yes.
- Q. How frequently would she do that?
A. Well, I have only seen her a few times; three or four times I have seen her.

Q. Where was Mr. Goldberg at those times?

A. Well, he happened to be out on business; may-be gone down town to stores and like that.

Q. You are very friendly with him?

A. Well, not so friendly; pretty friendly.

Q. You used to go in there once a day, didn't you?

A. Yes, sir.

Q. Would you say she was a good wife to him, or wouldn't you?

A. Well, it seemed that way to me. 10

Q. You never heard her quarrelling about anything?

A. No.

Q. Or complaining about anything?

A. No.

Q. You never saw her abusive to him?

A. No.

Q. She was devoted to him and the children?

A. They seemed to get along together all right, first off. 20

Q. All the time?

A. I haven't been in the saloon lately.

Q. I mean between 1915 and 1919?

A. They seemed to be devoted together first off, or all the time so far as I seen.

Q. You never knew of any trouble between them, did you?

A. I have not.

Q. You never knew they went to the police court?

A. I heard something that way; I forget all about 30 it. They had a little trouble, but I haven't heard anything about it.

Q. You don't know much about the thing, do you?

A. No, I don't.

Re-direct examination.

By Mr. Perlman:

Q. Mr. Ahlback, how did Mrs. Goldberg seem to you mentally during the time you knew her, normal or not?

A. She always seemed to be normal.

10 Q. And you spoke to her and she answered you the same as any person?

A. Yes.

Q. And you saw nothing unusual about her?

A. None whatever.

Re-cross examination.

By Mr. Budson:

Q. Did you ever know her to have any ailments?

20 A. No, sir.

Q. Did you know she had asthma?

A. No, sir.

Q. Or tuberculosis?

A. No, sir.

Q. She never complained to you about anything?

A. No, sir, that is the only time, in the bar; I spoke a couple of words and maybe met her on the street, and tipped my hat.

Q. You only had a couple of words with her altogether, all your life?

30 A. That's all.

ADAM HAYDEN, a witness produced on behalf of the petitioner, being duly sworn, testifies as follows:

Direct examination.

By Mr. Perlman:

Q. Where do you live, Mr. Hayden?

A. 404 Franklin Street.

10

Q. Where did you live in 1919 ?

A. 500 Emory Avenue.

Q. Did you ever live on Olden Avenue?

A. No, not since 1915.

Q. Between 1915 and 1919, did you go into Mr. Goldberg's saloon occasionally?

A. Yes, I went in and had a glass of beer.

Q. Did you spend any time there?

A. Not after 1915.

Q. You would stay there fifteen minutes or a half 20
an hour after that time?

A. I would have a glass or two of beer and go
away again.

Q. Did you see Mrs. Goldberg?

A. Yes.

Q. Did you know her?

A. Yes, sir.

Q. Did you speak to her?

A. Yes, sir, when she was in the bar.

Q. Were you friendly with her?

30

A. Yes.

Q. Did she tell you things about her family
troubles?

A. No.

Q. Did she ever tell you she was beaten?

A. No, sir.

Q. Did she ever show you any bruises?

A. No, sir, nothing about her family troubles.

Q. Did she say her husband wasn't treating her right?

A. No, sir.

Q. What was her mental condition at the time?

A. She seemed all right then.

Q. Did she talk sensibly to you?

A. Yes, sir.

10

(Recess until two o'clock.)

AFTER RECESS.

MARY FLOW, a witness produced on behalf of the petitioner, being duly sworn, testifies as follows:

Direct examination.

20 By Mr. Perlman:

Q. Miss Flow, where do you live?

A. 56 North Olden.

Q. You know Mr. and Mrs. Simon Goldberg?

A. Yes, sir.

Q. Were you employed by them at one time?

A. Yes, sir.

Q. Did you ever during the time you were employed by them, see Mr. Goldberg beat Mrs. Goldberg?

30

A. No, sir.

Q. Did she ever complain to you that he beat her?

A. No, sir.

Q. Or did she show you any marks or indications of beatings?

A. No, sir.

Q. Did you ever hear them quarrel?

A. No, sir.

Q. How did they get along?

A. They got along nicely when I was there.

By the Court:

Q. When were you there?

A. 1915, I judge that far back.

Q. How long were you there?

10

A. About, well, about four months.

Q. What were you doing?

A. Helping her with her housework.

Q. As a domestic servant?

A. Yes, sir.

Q. Domestic service?

A. Yes.

Q. Who paid you?

A. Mr. Goldberg.

Q. What months in 1915 were they?

20

A. I couldn't recall.

Q. The early or the latter part of the year would you say?

A. The early part.

Q. Did you know they were separated in 1915?

A. No, I didn't.

Q. For a period of seven months?

A. No, I don't.

Q. You don't know that?

A. No, sir.

30

Q. And that the case was tried in this court in December, 1915?

A. Yes.

Q. Did you know that?

A. Yes, sir.

Q. Were you there at the time that she was away from her husband?

A. No, I wasn't.

Q. When were you there, before?

A. Before, yes, sir; I was here in court, but I was never called on the trial.

Q. You were a witness in the other case?

A. Yes.

Q. But you were never called?

A. No, sir.

10 Q. You have not seen Mr. or Mrs. Goldberg since 1916 down to this date?

A. No, sir.

JOHN WALKER, a witness produced on behalf of the petitioner, being duly sworn, testifies as follows:

Direct examination.

20 By Mr. Perlman:

Q. Mr. Walker, you were employed by Mr. Goldberg as a bartender in 1918 and '19, were you not?

A. 1919; I used to help him out in 1918.

Q. You helped him out in 1918 and in 1919, you were employed there?

A. Yes.

Q. Do you know Mrs. Goldberg?

A. Yes.

Q. Did you ever speak to her?

30 A. Yes.

Q. During 1919, did you ever hear her husband or see her husband beat or strike her?

A. No.

Q. In any way?

A. No, sir.

Q. Did you ever see any wounds or bruises, or any marks on her body which seemed to be the result of a beating?

A. No, sir.

Q. Did she ever complain to you about a beating?

A. No, sir, she did not.

Q. How did she seem in her mind, at the time—1919?

A. Well, what I seen of her she would come in and get milk or such as that, and I would say, "Good morning" to the lady and she would leave. 10

Q. Did she seem normal?

A. She seemed all right; I never had much to say to her.

Cross-examination.

By Mr. Budson:

Q. She was living back of the saloon?

A. Yes. 20

Q. She didn't bother much in the front?

A. While I was there, coming in off and on for milk and butter.

Q. You never held any conversations with her?

A. No, only, "Good morning."

Q. She never discussed her private affairs with you?

A. No.

Q. Neither did Mr. Goldberg?

A. No. 30

Q. As an observer and bartender, you didn't hear anything unusual in the house?

A. I attended to my own business.

Re-direct examination.

By Mr. Perlman:

Q. If anything unusual had occurred in the dwelling part of the building—where the saloon part and the dwelling part was connected that you could hear, suppose there was a scuffle there, could you tell what was going on in the kitchen?

10 A. Yes, sir, if it was a hard scuffle, you could.

Q. You never heard anything like that?

A. No.

Re-cross examination.

By Mr. Budson:

Q. What hours were you on there?

A. Mostly evenings.

20 Q. What time?

A. Around six o'clock,; sometimes to twelve.

Q. Once or twice a week?

A. Yes, sir.

Q. Once or twice a week?

A. Yes, sir, once or twice a week.

Re-direct examination.

By Mr. Perlman:

30 Q. Do you mean once and twice a week in 1918 and '19?

A. To help Sam on and off, so he could go to sleep, or go out in the machine. I don't know what he done.

Re-cross examination.

By Mr. Budson:

Q. Were you not getting a salary?

A. Well, every day I went in there, he would pay me for it.

Q. You were not a steady employee?

A. No.

10

ANNA GOLDBERG, a witness produced on behalf of the petitioner, being duly sworn, testifies as follows:

Direct examination.

By Mr. Perlman:

Q. Do you understand English, Mrs. Goldberg?

A. Can't no talk English.

20

(Joseph Epstein is duly sworn as interpreter.)

(Examination continued through the interpreter:)

Q. You are the mother of Simon Goldberg?

A. Yes, sir.

Q. Do you remember about five years ago when Esther Goldberg left home?

A. Yes, sir.

30

Q. Do you remember being present in Mr. Goldberg's house one day when Mr. and Mrs. Cantor and Mr. Goldberg's wife were present?

A. Yes, sir, I do.

Q. What was the conversation that they had, if any?

A. She says she didn't want to have nothing to do with him.

Q. What was said about the children?

A. The children was in my house and I attended to them; my house now, too, but they go sometimes to the other folks.

By the Court:

10 Q. Who was it that said she didn't want to have anything more to do with him?

A. It was Esther, Esther, his wife, didn't want to have anything to do with him. "I don't want to know you."

Q. What did they say about the children?

A. She brought them there and left them with him to keep them. I was tending to them.

Q. Did they say anything about fifteen dollars a week at that time?

20

Mr. Budson: Objected to as leading.

A. He gave her fifteen dollars a week; she asked for support, and he gave her fifteen dollars a week.

Q. Do you know whether Esther Goldberg, your son's wife, has lived with him since 1919?

A. She took the money away and went away and she didn't come back.

30 Q. Did you visit your son's house from the time he got married until five years ago?

A. Yes, sir.

Q. Did you ever speak to Esther?

A. In the start, she was very good and I always spoke to her.

Q. Did she ever complain to you that Simon beats her?

A. No, sir.

Q. Did she ever show you any bruises?

A. Never. why should he beat her; she was never short of anything.

Q. What did she say?

A. No, sir.

Q. What did she say, did she ever tell you anything about her living with your son?

A. No, sir.

Q. Did you ever hear Esther say that she was going to leave your son? 10

A. She said that every minute; there was nothing new; she used to carry on that way.

Cross-examination.

By Mr. Budson:

Q. Did Esther complain to you in 1915 about the conduct of her husband?

A. She didn't tell me nothing. 20

Q. Did you visit them in 1915?

A. Yes, I was there several times.

Q. Did you visit them through the whole year, 1915?

A. Once or twice a week.

Q. Do you know that she was away from home for seven months in 1915?

A. I do; it is nothing new.

Q. Was there any trouble between them at that time? 30

A. He was always by himself and he had to ask her to attend to the children.

Q. Was that the reason she left him?

A. I don't know; I don't know why she took out the money and went away.

JULIUS GOLDBERG, a witness produced on behalf of the petitioner, being duly sworn, testifies through the interpreter, as follows:

Direct examination.

By Mr. Perlman:

- 10 Q. You are the father of Simon Goldberg?
A. Yes, sir.
Q. You were present at his marriage in New York in 1912?
A. Yes, sir.
Q. And do you know whether they lived together as husband and wife after that?
A. Yes, sir, they were together.
Q. Did you visit them after their marriage?
A. I used to come there and bring him some food.
- 20 Q. Did Mrs. Goldberg ever complain to you that your son beat her.
A. Never said it.
Q. How often would you visit her?
A. Once or twice a week.
Q. Did she ever show you any bruises or marks on her body that he inflicted on her?
A. Never, never showed it to me and never said it to me.
Q. Did you ever hear her say anything about
- 30 leaving your son?
A. She always said that, always said, "I won't stay with him and I won't be with him."
Q. Did she say why?
A. Why, she used to call him different names, I used to talk to her and tell her "Better be good," and she always said "I will never stay with him."

Q. Did she say why?

A. I don't know why; everything was just bad for her, but she had enough of everything.

Q. Did she ever tell you why she was going to leave her husband?

A. Why, because she was a very angry woman.

Q. (Interpreter repeats the question.)

A. That is all I know. She would say, "I won't stay with him and I won't be here," that is all I know, and that is all what I am saying. 10

Q. Did you ever hear Esther Goldberg say that your son was running with women?

A. She always used to say that.

Q. Since she left him the last time in 1919, do you know whether they have lived together?

A. She didn't come to live with him; she only used to come there.

Q. Why did she come there?

Mr. Budson: That is objected to. If she knows. 20

The Court: The objection is overruled.

A. She used to come down to suck some money out of him.

Q. Did she come to see the children?

A. She never came.

Cross-examination.

30

By Mr. Budson:

Q. Did they have any quarrels in 1915, when you used to go there?

A. She used to call him names, but he never said anything to her.

Q. Were you present at many of these quarrels?

A. When a woman used to come for a pitcher of beer, she would be standing back of the door and she would say, "There's a woman waiting for you," I heard that myself.

Q. How many incidents did you see?

A. About fifty times.

Q. That was almost once or twice a week you would see that?

10 A. And sometimes three times a week.

Q. And she would abuse him in the presence of the customers, wouldn't she?

A. Yes, sir.

Q. And he would stand there and simply smile?

A. He didn't say anything.

Q. What would he do, would he go and fight with her?

A. No.

20 Q. Wasn't he and his son angry at each other for a period of 1912 and 1916?

The Court: You are asking the question of the witness.

Mr. Budson: Yes, sir.

Q. Weren't you?

A. Why should I be——

Q. Were you or weren't you?

30 A. Never.

Q. Isn't it a fact that your son didn't come to your house and you didn't go to his house for years?

A. That is a bluff, it ain't right, my child wouldn't stop coming to me.

Re-direct examination.

By Mr. Perlman:

Q. How long has your son lived in Trenton, New Jersey?

A. About twenty-four years. I am here 19 years and he came four or five years ahead of me.

Q. Has he lived anywhere else during that time? 10

A. Always in Trenton.

MARY DOBROWOLSKA, a witness produced on behalf of the petitioner, being duly sworn, testifies through the interpreter as follows:

Direct examination.

20

By Mr. Perlman:

Q. What language do you speak?

A. Polish.

Q. You work for Mr. and Mrs. Goldberg, or did work for them?

A. Yes, sir, nine or ten years ago.

Q. Did you ever see or hear them quarreling with each other?

A. No, sir. 30

Q. Do you recall any incident when he was in a barber shop or came from a barber shop?

A. Yes, I do.

Q. What happened?

A. It was one time when he went out to the barber shop, Mrs. Goldberg came in to me to the

kitchen. I was doing my work and she says, "Mary, would you go out in the alley there and see if that whoremaster and see if he ain't out with some whore there in the alley." I came back and said, "I haven't seen anybody there and it is none of my business to go out to watch them." Five minutes later, about five minutes later, I was standing talking with her. He come in the front door of the saloon. She rushed right over to him and grabbed
10 him by his shirt and with one hand she went in his face and all the finger marks were right there in his face and blood was coming out of his face.

Q. What did he do about it?

A. She said, "Where was you, you whoremaster? You were over to see the whores." He said, "Esther, dear, I was nowhere but to the barber shop. You can see I was just shaved," and he put his hand on her chest and pushed her back so she wouldn't hurt him again.

20 Q. Did you ever hear her say she was going to leave him?

A. I used to go out with her sometimes and sometimes to moving pictures and she always told me, "Mary, I would leave him and never come back to him my whole life. I wouldn't come with him."

Q. Did Mrs. Goldberg ever complain to you that her husband beat her?

A. No, sir.

30 Q. Did she ever show you any bruises or marks on her body?

A. I never seen that.

Q. Did you ever see him beat her?

A. No, never.

Q. How long did you work there?

A. Ten or eleven months.

Cross-examination.

By Mr. Budson:

Q. This barber shop incident, what year was that in?

A. Nine or ten years ago.

Q. That was before the other trial, was it not?

A. Before the other trial, the trial was after I left them.

10

Q. You were a witness in the other case?

A. Yes.

Q. You were there about eleven months?

A. Ten or eleven months.

Q. And you spoke English at that time?

A. Polish.

Q. Is that the only language you speak?

A. Yes, that's all.

Q. Do you speak any other language?

A. No, that is all, just Polish.

20

Q. What language did Mr. and Mrs. Goldberg speak to each other?

A. Sometimes in Jewish and sometimes in English.

Q. How do you know what they were talking about then if you speak only one language?

A. I can tell they were talking very nicely. They weren't fighting.

Q. How do you know of conversations that took place between them when you testified that Mrs. Goldberg said to him, "Have you been out with the whores again, you whoremaster," how do you know what she said to him if you only spoke one language?

A. She said that in Polish to him.

Q. Do you mean to tell me that Mrs. Goldberg could speak Polish, your language?

A. Yes, sir, she talks very good Polish.

Q. And when they quarreled and when he struck her he said, "Esther, dear, I was just in the barber shop and got a shave and a hair cut," he said that in Polish to her?

A. He said that in Polish.

Q. You are sure they didn't speak English or Jewish among themselves, aren't you?

A. Polish.

10 Q. That was for your particular benefit that they should converse in Polish?

A. I don't know for what purpose, but that is what they spoke.

Q. Did they often speak Polish among themselves?

A. We always used to eat and sit together and we always spoke together in Polish.

PETITIONER RESTS.

20

CARL L. PIERSON, a witness produced on behalf of the defendant, being duly sworn testifies as follows:

Direct examination.

By Mr. Budson:

30 Q. What is your full name?

A. Carl L. Pierson.

Q. Where do you live?

A. At the State Hospital in Trenton.

Q. You are on the staff of the New Jersey State Hospital?

A. I am.

- Q. How long have you been in that institution?
A. Since January 15th, 1922.
- Q. Where did you receive your education?
A. At the University of Pennsylvania.
- Q. You graduated from there?
A. I did, sir.
- Q. What year?
A. 1919.
- Q. What course did you take, or what degree did you take from there? 10
A. M. D.
- Q. Did you specialize in anything particular?
A. Psychiatry, mental diseases.
- Q. You specialized in mental defectives?
A. Yes, sir.
- Q. Since your graduation, where did you obtain your first practice?
A. Well, I went to a hospital for one year.
- Q. Which one? 20
A. Mercer Hospital.
- Q. At Trenton?
A. Yes.
- Q. After that?
A. I was in the general practice for twelve months.
- Q. Where?
A. In Netcong, New Jersey.
- Q. From there where did you go?
A. The State Hospital.
- Q. You came here in 1919? 30
A. 1922.
- Q. And you have been here ever since?
A. I have, sir.
- Q. Do you have a patient there by the name of Esther Goldberg?
A. Yes, sir.

Q. When did she first come under your attention?

A. May I look at my notes, I think it is January 29, 1923.

The Court: That is admitted.

Q. Is that the time when she was first brought there?

10 A. That is the time when she was first brought there and committed as a patient.

Q. Had she ever been there before?

A. I understand so.

Mr. Perlman: I object to that.

By the Court:

Q. You have no personal knowledge?

20 A. No, only from the history of the case.

Q. Did she tell you whether she had been there before or not?

A. No, sir.

Mr. Perlman: I object to that.

The Court: The objection is overruled.

Q. Will you tell the Court just what is her ail-
30 ment?

A. I will give you a brief summary of the case. She was admitted January 29, accompanied by her brother and her father.

Q. What year?

A. 1923. Accompanied by her brother and her father and at the time of the admission she was— she answered questions relevantly but they were not

truthful and she showed a flight of ideas. She wandered from one subject to another, acting in a silly manner, laughed and grinned and took very little interest in the form of commitment. She could tell her name, her age and said she had been to the hospital before but not as a patient, at the time of admission.

Q. She said she had been examined by Dr. Cotton before?

A. She said that.

10

Q. As a private patient?

A. As a private patient. I can't verify that.

Q. That was her statement?

A. Yes.

The Court: Don't lead.

A. The history was obtained mostly from her father and her brother who stated—

20

Mr. Perlman: That is objected to.

Q. Don't tell us what they told you, but tell us what you found or her condition?

A. Well, we had to go somewhat by the history, of course, later on, I was going to tell you what we found when we examined her.

Q. As a result of these conversations you had with these people giving the history of her case, what did you find?

30

A. Examining her from a mental standpoint we found she was suffering from a condition known as a psychopathic state with episodes.

Q. What does that mean?

A. She has a mental disease in which she is incompetent and which has existed, no doubt, for a number of years.

Q. It didn't come out of a clear sky?

A. No, it is congenital in character, dating back, maybe, to childhood.

Q. It is congenital in character?

A. Congenital or constitutional.

By the Court:

10 Q. Well, it means, then, that it has been there from birth?

A. Yes.

Q. Is that what you mean? Do you draw a distinction between congenital and constitutional?

A. No. I draw a distinction between them. A constitutional condition might arise before the teens.

Q. This condition you found, you believed to be constitutional, but are not sure that it was congenital?

20 A. No, I have no method of determining it.

Q. Having found the condition was constitutional, what was this disease she was afflicted with? Or would you say that this disease that she was afflicted with came on suddenly?

A. It was a gradual condition.

Q. It took a number of years to come to a head?

Mr. Perlman: That is objected to as leading.

30 A. I would not say that, I would say the condition might have existed to some certain period and some precipitating factor might bring it out more pronounced.

Q. What precipitating factor?

A. A severe attack of sickness or some fright or shock, a psychogenic factor such as worry, death, marital disharmony.

Q. Any of these causes?

A. Any of these causes might precipitate a break.

Q. And since her confinement, what?

A. No change in her mental condition since she has been confined. She has failed physically. She is suffering from asthma.

Q. How is her mind today compared with 1923?

A. It is deteriorating.

Q. Worse, if any?

A. It is.

Q. Is there any hope for her?

10

A. The prognosis is very guarded.

Cross-examination.

By Mr. Perlman:

Q. You did not, of course, examine her in 1920 or 1921, did you?

A. No, sir.

Q. If I told you that Dr. Cotton told me that in the case of Esther Goldberg, a physician or alienist, or psychiatrist, who had not examined her in '20 or '21, could not tell from her condition since she was committed to the hospital or from her history whether she was normal or abnormal, what would you say, would you say that was right?

20

A. No, sir.

Q. Would you say Dr. Cotton was wrong?

A. I would say I would not consider it. I wouldn't say he is wrong.

30

Q. You would differ with him?

A. I certainly would differ with him, yes, sir.

Q. You assert now that you, who have not seen her since '20 or '21, can tell what the probability of her condition was in '20 or '21 as to her mind since '23?

A. I hardly follow the question. From my observation the past two years I would say that, if I understand your question.

Q. Isn't it true that a person—isn't it true that a medical man could not tell no matter what form of insanity a person has at the time, what the condition of that person mentally was before that time—a year before?

A. That is not true, sir.

10 Q. Isn't it possible, for instance, for a patient to have paresis and to have syphilis in a latent form without it breaking out and resulting in a deterioration of the mind before—

A. Well, that is an entirely different condition. Syphilitic conditions, they don't all develop paresis, mental conditions. All syphilis cases are not mental cases.

20 Q. But my question is directed to this proposition, that a person may have a mental disease at present and you can't be sure as to what the condition was before the present time unless you saw the condition, isn't that true?

A. I just don't understand the question.

Q. Assuming a person was insane today, could you tell what the state of that person's mind was two years ago without seeing her?

30 A. Yes, according to the diagnosis. There are different forms of insanity, some are of long duration and others come on gradually and others are of short duration with episodes in which they have normal lucid intervals and comes on suddenly. It entirely depends upon your mental diagnosis.

Q. Do you think it is possible or wasn't it possible for this woman's mental condition to have commenced some time subsequent to March or April, 1922?

A. I would not, of course, but the symptoms might have become more pronounced at that time.

By the Court:

Q. You say that her condition was a psychopathic condition with episodes, now that means simply that she has a disease mentally?

A. Yes, sir.

Q. What you mean by the episodes, does that mean that the condition is not constant? 10

A. It is not constant.

Q. She has what you have termed lucid intervals?

A. I would not say completely lucid intervals, but by episodes I mean she is excited at times, impulsive and that she attacks other patients and nurses and at other times she is more quiet.

Q. At the time she was admitted to the hospital in January, 1923, what was the condition of the mental disease that she had? That is to say, was it such as to prevent her from knowing what she was doing? 20

A. Yes, sir.

Q. And is that condition constant?

A. It has been constant since her admission.

Q. So that, notwithstanding these episodes, these periods of greater or less excitation, at no time, in your opinion, has she been aware of what she was doing?

A. At no time has she been mentally competent to carry on her— 30

Q. That is not what I am asking you. Does she know what she is doing?

A. I believe at times she does know what she is doing, but I don't believe she is competent to realize right from wrong all the time, is that what you mean?

Q. No, I want to know whether she appreciates or comprehends the acts which she does and the effects which flow from them?

A. She does not, sir. Could I give an illustration?

Q. Yes.

A. Some time during the last year we had one of the wards on which she is a patient painted and a week or two afterwards she mutilated the wall by drawing figures of flowers and various plants on the wall and when the physician, myself, made rounds the next day, she denied it that she had done it and two or three days following I caught her in the act of mutilating the walls.

Q. Well, she knew, did she not, what she was doing when she drew these pictures on the wall? She knew she was drawing these pictures on the wall?

A. I guess she did.

Q. Otherwise she would not have been able to complete the pictures. They would have been merely scrolls, but you think she didn't realize that she should not have drawn pictures there?

A. No, she didn't.

Q. When you say she denied having done this afterwards, do you think she had forgotten and didn't remember having done it or that she was knowingly falsifying?

A. She probably didn't realize that she was doing it.

Q. In 1923, in January, 1923, when she was admitted, in your opinion, was her mental condition of such a kind as to permit her to exercise volition intelligently?

A. Along what lines do you mean?

Q. Well, to take the particular instance that is material to the present case as to whether or not

she was able intelligently to determine for herself whether or not she would or not live with her husband?

A. I don't think she was able at that time to determine that, due to her mental condition.

Q. But you are not sure about it?

A. I said I don't believe.

Q. And you imply by that—

A. It is my opinion she was not.

Q. Now, if you know distinctly whether she knew 10
whether it was wrong or right to desert her husband in 1923, surely you would not know distinctly whether she knew whether it was wrong or right to desert her husband in 1922, would you?

A. I couldn't say that, no.

Q. You couldn't say that?

A. No.

20

NATHANIEL KOPLIN, a witness produced on behalf of the defendant, being duly sworn, testifies as follows:

Direct examination.

By Mr. Budson:

Q. Dr. Koplin, where do you live?

A. 142 West State.

Q. How long have you lived in Trenton?

A. Fifteen years.

Q. You are a graduate of what?

A. Jefferson Medical.

Q. What year did you graduate?

A. 1909.

30

- Q. And after that, where did you do your interne work?
- A. St. Francis Hospital.
- Q. Trenton?
- A. Yes, sir.
- Q. Did you practice medicine in Trenton?
- A. Yes, sir.
- Q. Do you know Mr. and Mrs. Goldberg?
- A. I do.
- 10 Q. Have you been their family physician?
- A. Off and on, yes, sir.
- Q. Do you know Esther Goldberg?
- A. I do.
- Q. How long have you known her?
- A. Since I have been in Trenton.
- Q. About fifteen years?
- A. About fifteen years.
- Q. Do you know her physical condition?
- A. I do.
- 20 Q. And have you treated her at any time during those fifteen years?
- A. Very often.
- Q. How frequently?
- A. Oh, I should judge once a week or twice a week and maybe for two or three months I would not treat her at all and then treat her again a few times.
- Q. Did you treat her while she lived—or immediately after her marriage to Mr. Goldberg and
- 30 they resided on North Olden Avenue?
- A. Yes, sir.
- Q. Did you call there occasionally?
- A. Yes.
- Q. For what purpose?

A. To treat her for various ailments. Several times I was called, I think, if I remember correctly, because of some quarrels they had between themselves.

Q. What did you have to do with that?

A. When she called me she was highly nervous at that time and also complained of being hurt by her husband.

Q. Physically?

A. Physically.

10

Q. Did you make an examination of her body?

A. I remember her showing me her arms where she had some bruises.

Q. Did you find bruises on her?

A. I did.

Q. What did you do?

A. I prescribed something for her nerves and something to put on the bruises, a little olive oil, I think.

Q. How frequent is that?

20

A. Two or three times, I can't recall.

Q. Do you recall the years that was in?

A. I should judge it was eleven or twelve years ago or more.

Q. Probably about '14 or '15?

A. At least ten or eleven years.

Q. After that were you called?

A. Occasional; very often.

Q. What were the maladies those days?

A. It was usually a nerve condition. Usually there was some little excitement, after some excitement between her husband or herself or some other troubles.

Q. Did she have chronic ailments?

A. She had asthma.

Q. And what else?

A. That's all I know of that she suffered from.

Q. Were you called to treat her during 1919 or '18 or '20?

A. Oh, I was probably treating her every year, every year.

Q. Do you recall treating her in 1919?

A. I do recall it, yes, sir.

Q. Where did you treat her then?

A. Then, if I recall, on Union Street.

10 Q. At whose home?

A. At Mr. Cantor's home.

Q. Her father's home?

A. Yes.

Q. Did you have any conversation with her at that time?

A. The usual conversation about sickness.

Q. You don't know anything about her marital affairs?

A. She would attempt to tell me all about them.

20 Q. What did you find her condition to be in 1919?

A. She was then in a much worse physical condition than when I seen her a year or two before.

Q. What do you mean?

A. Her asthma was worse. She apparently lost a lot of weight and she was more nervous than before.

Q. Did you have any occasion to diagnose her nervousness or the causes for it?

A. Simply from a practitioner's point of view.

30 Q. What did you diagnose it as?

A. I diagnosed it as a melancholy condition.

Q. What do you mean?

A. She was depressed and she didn't answer questions coherently and at times she was a little silly and wouldn't respond to questions at all. You would ask her questions and she would look in the opposite direction.

Q. And during 1920, did it continue or lessen?

A. It continued, if I remember right, it was aggravated, worse.

Q. Did you treat her for this condition?

A. No, I told her father to take her to a nerve specialist, I think I referred her to Dr. Cotton.

Q. Do you know whether he took her there?

A. Later on the father told me he took her there.

Q. Did you treat her in 1922?

A. I did.

10

Q. What condition?

A. The same condition, asthma and nervousness.

Q. How was her nervousness or melancholy progressing?

A. In my opinion it was much worse.

Q. Still progressing?

A. Still progressing.

Q. In 1923, the first part of the year, the first part of January, did you commit her to the insane asylum?

20

A. I don't remember the exact month, but I probably committed her with another doctor, I am not sure.

Q. Did you examine her before you committed her?

A. Yes, sir.

Q. What did you find?

A. The same condition, only she was silly and seemed incoherent in speech and rather depressed at times and other times she would get a little excited.

30

Q. In other words, she was practically in the same condition as in 1920 or 1921?

A. Yes, only worse.

Q. You have had nothing to do with the case since her committment?

A. No, sir.

Cross-examination.

By Mr. Perlman:

Q. Doctor, you treated her fifteen years ago?

A. Yes, sir, about then.

Q. Well, that was probably 1910 or 1911, is that right?

A. Yes, I guess 1911. I treated her first when
10 she was on North Olden Avenue.

Q. What did you treat her for?

A. I treated her for asthma and nervousness and when she called me about showing me the bruises on her arms.

Q. Was Mr. Goldberg married in 1910?

A. He was married when they lived on North Olden Avenue, I don't remember the year.

Q. Well, he was married in 1912, was it fifteen years ago that you treated her?

20 A. I treated her when she was a girl on Union Street.

Q. What for?

A. A cold.

Q. Asthma?

A. No, sir, I never treated her for asthma.

Q. Doctor, you examined Mrs. Goldberg six days before January 30, 1923, for her mental condition?

A. If that is the date I examined her before having her committed.

30 Q. And you made out a certificate with Dr. Schildkraut?

A. Yes.

Q. In which you stated the number of previous attacks "None," is that true?

A. I don't remember.

Q. You don't remember whether you stated that?

A. I do not.

Q. And in which you also stated, "The patient is depressed," is that true?

A. Yes.

Q. And the question of "What is the supposed cause of insanity—state both predisposing and exciting causes," your answer was, "Continuous worryment due to an unhappy marriage," that answer was given upon hearsay. You were required to say whether it was on hearsay or upon personally knowledge, do you recall that? 10

A. I do.

Q. You also stated, "The following facts as to the insanity upon which my opinion is founded; she sat on chair depressed, did not speak at all unless questioned and then hesitated to answer. Answered questions with smile on the face and incorrectly; when asked her age she said she was sixteen." Now, were there, at the time you made this certificate, any other facts present in your mind, showing she was insane? 20

A. Only those facts that I knew.

Q. Then there weren't any facts showing she was insane prior to the time you examined her?

A. Not directly.

Q. What do you mean?

A. I would say I wouldn't commit her in 1919 or '20. I wouldn't commit her as an insane person, that is to say, she was a highly nervous person.

Q. But she knew what she was doing in 1919?

A. I am not qualified on mental diseases. 30

Q. In your opinion as a layman, did she know what she was doing in 1920 or '21?

A. I don't believe she did. She often did things.

Q. What did she do?

A. She often said about the question of her husband going out with other women. That was when she was on Olden Avenue.

- Q. What was unusual about that?
A. It was unusual that Mr. Goldberg denied it at all times.
Q. You mean you thought it was not true?
A. I thought possibly it was not true.
Q. Did she seem to answer your questions in 1920 or '21 in a normal manner whenever you treated her?
A. Yes, more so than later.
10 Q. Her general condition was good?
A. She was always nervous——
Q. I am not speaking of her mental condition.
A. Mental nervousness.
Q. But her general appearances were not in those years that of a mental defective, were they?
A. In 1920 and '21 she was bad. Her general appearance was not her physical——
Q. I don't mean physical?
A. Her general mental appearance, too, there was
20 some worriment.
Q. Did she seem to know whether it was wrong or right at that time to desert her husband?
A. I didn't question her about that, I don't know.
Q. You also stated in your certificate, "The following facts indicating insanity were communicated to me by others, her father states that she several times struck her mother and claimed her mother was not maternal enough"?
A. That are the facts.
30 Q. Before 1919, who called you to treat her?
A. Well, I always got the message on the phone, I don't know.
Q. Who paid you?
A. In 1919?
Q. Before 1919?
A. Before 1919?

Q. Yes?

A. Well, sometimes Mr. Goldberg would pay and sometimes Mrs. Goldberg would pay herself.

Q. Frequently Mr. Goldberg would pay?

A. Frequently Mr. Goldberg.

Q. Can't you recall at any time when he called you to treat her?

A. I don't remember, either to treat her or the baby, I think so.

Q. You think he did?

10

A. Yes, I think he did.

Q. Did he seem to be treating her nicely when you were there?

A. Yes, sir.

JACOB M. FUCHS, a witness produced on behalf of the petitioner, (being allowed to take the stand out of order), being duly sworn, testifies as follows: 20

Direct examination.

By Mr. Perlman:

Q. You are a practicing physician, duly licensed to practice medicine in the State of New Jersey?

A. Yes, sir.

Q. How long have you been that?

A. Since 1908.

Q. How long have you practiced medicine in Trenton?

30

A. Since 1908.

Q. Do you know Mr. Goldberg?

A. Yes, sir.

Q. Do you know Mrs. Esther Goldberg?

A. Yes.

Q. Did you treat her at any time before she was married to him?

A. Yes, sir.

Q. For what?

A. Asthma.

Q. Bronchial asthma?

A. Bronchial asthma.

Q. She had that condition before she was married?

A. Yes.

Q. Did you treat her after she was married?

A. Yes.

Q. Where?

A. North Olden Avenue.

Q. Who called you?

A. Mr. Goldberg.

Q. Who paid you?

A. Mr. Goldberg.

20 Q. Did he seem to be treating her well while you were there?

A. Yes.

Q. And attempting to take care of her?

A. Yes, sir.

Q. How long did that bronchial asthmatic condition in her last so far as you know?

A. It was chronic, it persisted.

Q. When was the last time you saw her?

A. Oh, about four or five years ago, maybe six.

30 Q. If a person has bronchial asthma and lives her life as most persons live without anything unusual happening in that person's life, is the condition apt to get better or worse or——

A. Without any complications?

Q. Yes?

A. Without any complications?

Q. Yes, or would it remain stationary?

A. It would remain stationary or get slightly worse.

Q. You didn't see her during 1921?

A. No, sir.

Mr. Budson: No questions.

10

BARNEY LAVINE, a witness produced on behalf of the petitioner (being allowed to testify out of order), being duly sworn, testifies as follows:

Direct examination.

By Mr. Perlman:

Q. Doctor, you are a practicing physician practicing medicine in the City of Trenton?

20

A. Yes, sir.

Q. How long have you been doing that?

A. Ten years.

Q. Do you know Esther and Simon Goldberg?

A. I do.

Q. Did you see Esther Goldberg at all during 1920 or '21?

A. I did.

Q. Where?

A. I treated her at her residence on North Olden Avenue and also on Union Street at her parents' home, I think it was.

30

Q. What did you treat her for, Doctor?

A. I treated her originally for cough, chronic bronchitis with bronchial asthma, which also was chronic.

Q. During 1920 and '21, when you saw her, did you speak to her when you treated her?

A. Yes, sir.

Q. Did she seem to speak normally?

A. She did.

Q. Did she impress you in any way as being mentally abnormal?

A. She did not.

Q. Did she answer your questions all right?

10 A. Every one.

Q. Did she seem to know the difference between doing wrong and doing a right act—between doing a wrong act and the doing of a right act, would you say?

A. Yes, sir, I would say she did.

Q. Do you know whether she followed your advice?

A. That I don't know. I wasn't there to see her carry it out.

20 Q. Now, did you treat her before 1920?

A. I treated her first I think, it was in 19—that is after the war, I think it was in 1919.

Q. Did you treat her in 1918?

A. No, I was away during the war.

Q. Did you treat her before the war?

A. Yes, sir, I think I did treat her before the war.

Q. Who called you during the time you treated her before 1920?

A. Mr. Goldberg.

30 Q. And who paid you?

A. He did.

Q. And did you make any examination of her mind or mentally during '20 or '21?

A. No, sir.

Q. It didn't seem necessary to you to make any such examination, did it?

A. No, sir.

Cross-examination.

By Mr. Budson:

Q. When did you first treat her, Doctor?

A. I first treated her before the war.

Q. Before America joined the war.

10

A. 1916, before America joined the war. I treated the family on and off between 1916 and '19, that is exclusive of the American period of the war.

Q. You treated her?

A. I treated her and her family.

Q. How often did you treat her?

A. I can't say that offhand. Every now and then. If I was called in to see the child and she complained of her cough or a little asthma, naturally I wrote out a prescription for her asthma.

20

Q. But you were not called in to be consulted about her other ailments outside of her bronchial condition and her asthma?

A. Yes, I was. She was run down in 1919, due to her asthma and bronchitis and I know I suggested her going away at that time to Mr. Goldberg.

Q. She was more or less of a neuresthenic?

A. Well, she had an organic condition.

Q. Of what?

30

A. Asthma.

Q. Did it induce neuresthenia?

A. No.

Q. What do you think caused the neuresthenia?

A. I don't know that she was neuresthenic.

Q. She was excited?

A. Yes, sir, naturally, you would be too if you had asthma that way. She wasn't nervous, she was quiet. She wasn't a bit nervous to any great extent.

Q. Where did you treat her in 1919?

A. I think Mr. Goldberg brought her to my office.

Q. The latter part of 1919 or the first part?

10 A. The latter part.

Q. How about 1920, did he bring her to your office or not?

A. I can't say, but I did see her, whether it was at the office or at her home.

Q. Did you call at her home in 1920?

A. Yes, sir.

Q. Frequently?

A. No.

Q. How often, would you say?

20 A. Perhaps twice.

Q. Where was it?

A. On Union Street.

Q. On Union Street?

A. Yes.

Q. Did he pay you for those visits?

A. He did not.

Q. She would pay for them herself?

A. I don't recollect whether he paid me for those visits, I don't know exactly whether he come back
30 and paid me or whether she paid me at that time.

Q. In 1920, you treated her twice?

A. About twice.

Q. And in each instance for her bronchial condition?

A. Yes, sir.

Q. And in 1921 did you treat her?

- A. I don't think so.
Q. 1922?
A. No.
Q. 1923?
A. No.
Q. You did not?
A. No.
Q. Do you know where she is now?
A. I heard, yes, sir.
Q. You have not seen her since 1920, as a matter 10
of fact?
A. That is right.
Q. You don't know about her mental condition?
A. I do not.
Q. You are not an expert on mental defectives?
A. I am not.
Q. You have never taken that course?
A. No.
Q. Nor specialized in it?
A. No, sir. 20

SOLOMON CANTOR, a witness produced on behalf of the defendant, being duly sworn, testifies through interpretation as follows:

Direct examination.

By Mr. Budson: 30

- Q. You are the father of Esther Goldberg?
A. Yes, sir.
Q. And do you know of her family affairs with her husband?
A. Yes, sir.

Q. Will you tell the Court in as few words as you possibly can what the trouble was between Simon and Esther?

A. Right after they got married she used to come down telling me he beats her and she can't live with him.

Q. What did you do about that?

A. I used to come down and talk to them before the child was born, they shall live peaceable, but it
10 was impossible.

Q. What happened in 1915?

A. She used to come down a couple of times a week to the house crying that he beats her. She cannot stay with him. She showed me the marks that he has made and I seen it.

Q. What happened after that?

A. Then they had the trial and after that he used to pay her \$15 a week, up to the trial. Up to the trial he paid her \$15 a week and after the trial the
20 Judge wanted them to go together and they did.

Q. They lived together until 1919, did they?

A. They lived together but they have had lots of trouble. He used to beat her these times and she used to come down and show the marks.

Q. In December, 1919, she used to come down to your house?

A. Yes, sir.

Q. What was her condition when she came?

A. The trouble used to arise from that she al-
30 ways used to claim, he didn't give her enough money to live and he said he did, and that is the way the trouble used to arise. The last time she came to the house she was awfully nervous and said she can't stay with him any longer because he threatened to kill her and he always had a gun under the pillow and he bought a machine and used

to go out riding all the time with the machine and used to leave her alone in the bar to tend the bar and she got nervous and she couldn't stand it.

Q. When she came to you, how was her health, in 1919?

A. She was nervous, she didn't have her sound mind.

Q. In 1920, what did you do with her, two or three months later?

A. She was in New York in a hospital.

10

Q. And then where did she go, in the same year, 1920?

A. Two or three months she was in the New York hospital.

Q. When was she in White Haven, how long was she in White Haven?

A. Six months she was in White Haven.

Q. As a matter of fact, wasn't it eight months she was in White Haven?

A. It might be.

20

Q. When she came back from White Haven, how was her condition?

A. The asthma got quite some better but she was awfully nervous.

Q. What was the reason that they sent her back from White Haven, if you know?

Mr. Perlman: That is objected to, ask him if he knows the reason.

30

A. It was too much expense. I thought she would be better with her mental condition, with her brain, but it was no better and I took her back.

Q. Who paid for her at White Haven?

A. I paid it.

Q. Who else?

A. All myself.

Q. After she came back from White Haven, how did she act around the house?

A. About six months later I gave her to the State Hospital.

Q. How did she act around the house from the time she came back until the time she went away?

A. Not very good.

10 Q. What do you mean by "Not very good," tell us what she did?

A. She used to throw things off the table and start to beat somebody all the time.

Q. Whom would she beat?

A. Myself, too.

Q. Who else?

A. Her mother.

Q. Would that happen very often?

A. Yes, sir.

20 Q. Did she have any periods when she was quiet in the house any time during this six months? Was there ever a time after the time she came back from White Haven that she was quiet and peaceful?

A. They used to be sometimes she would be quiet. She always used to say, she can't get well unless she is together with her husband and children. She went once to see the children, it was a very cold evening, and she walked over there and he wouldn't let her in the house.

30 By the Court:

Q. How do you know it?

A. I was present, I was with her.

Q. How long were the children with you?

A. A year and a half they were with me after my wife broke her arm and she couldn't attend to them.

Q. Who took the children back to him?

A. I took them back.

Q. Did you tell him why you brought them?

A. I told him my wife broke her arm and I got nobody to look after them.

Q. Couldn't Esther attend to them?

A. I seen she wasn't fit or able to attend to them.

Cross-examination.

10

By Mr. Perlman:

Q. Mr. Cantor, did you see the bruises and marks on your daughter's body?

A. Yes.

Q. Positive?

A. Positive.

Q. How many times?

A. Five or ten times.

Q. Do ever remember taking an affidavit in which you said, "My daughter, Esther, on many occasions has come to my home and complained of ill treatment and beating by her husband and exhibited her bruised arms. I refused to examine the rest of her body as it is not permissible under the Mosaic Law for me to look at a female's body other than my wife's."

A. I did, after I was told here by the Judge in this Court he says that a father can look at it so after that I looked at it.

30

Q. When did you see it, what year?

A. Between 7, 8 or 9 years.

Q. What bruises did she show you?

A. It was blue marks.

Q. Where?

A. On her arm.

Q. Anywhere else?

A. I seen on her arm and also on her shoulder.

Q. Did you see bruises or did you see veins?

A. No, there wasn't, there was bruises.

Q. You didn't see Mr. Goldberg beat her, did you?

A. I didn't only what she told me.

Q. You don't know how those marks got on her arms, do you?

10 A. That is all I know. She used to come down and cry and show marks and said, "I will not go back to him. You can kill me right here. I won't go no more to him, I can't stand his conduct in the house and he beats me besides."

Q. Did you take her to the doctors for those bruises?

A. I think, if I am not mistaken, Dr. Koplín has seen it.

Q. You are not sure, are you?

A. I am, almost sure.

20 Q. Do you recall the time when your son-in-law bought the property on Olden Avenue?

A. I do.

Q. Was there any argument at that time between your daughter and him?

A. No.

Q. Wasn't there some argument between them about the titles to that property?

A. She never told me that nor never complained about it.

30 Q. Don't you remember when you were present in Mr. Goldberg's house with your wife and Mr. Sussman and Mr. Goldberg and Mrs. Goldberg, when they discussed the question in whom the title to that property should be?

A. No.

Q. You were not?

A. No.

Q. That was not mentioned?

A. No.

Q. Not at all?

A. No. My son-in-law invited me to come down to see if he can't make some peaceful life between us, and when I come down there after he told me his complaint and what she told me, she told me the reason they can't live peaceful was because he beats her and what he told me I seen he wasn't telling me the truth. I thought I just propose that to them. 10
I said if you can't get along, why don't you divorce her? Mr. Goldberg said, "I will not divorce her for life."

Q. Did you consider you were doing a nice thing as a father and father-in-law to propose a divorce between your daughter and son-in-law?

A. I have not meant for him to divorce her, I only wanted to see how strong his love was for her.

Q. Is that the way—is that the best way to test out a man's love for his wife? 20

A. If I seen that he would say he was want to divorce her, I would see that he would divorce her.

Q. He started to cry, didn't he?

A. He got to be an enemy of mine because I said that to him. He told everyone "My father-in-law has advise me to divorce her," but I didn't mean it.

Q. But he started to cry a little bit, didn't he?

A. No.

Q. Not at all?

A. No. 30

Q. Wasn't something mentioned by your wife about the bank account at that time?

A. No, sir.

Q. Then, what was the conversation about with reference to their married life?

A. She said that he beats her and don't give her enough to live on, and he said the opposite way. He said he gives her enough to live on.

Q. And did he say it was true he beats her?

A. He didn't say anything. He kept quiet.

Q. Didn't he say it was not true?

A. No.

Q. Do you remember the Sunday that your daughter came to you with the money?

10 A. I do not.

Q. Do you remember when the officer was in the house that Sunday night?

A. Yes, sir.

Q. What did the policeman say?

A. I didn't really understand what he said to her, but I believe he said to her, "Why don't you come home?" He spoke in English.

Q. Why didn't you send your daughter home?

20 A. She didn't want to go. Shall I put her outside so she would freeze?

Q. Did you say to Mr. Goldberg at that time in Yiddish that, "If you don't go out I will take a chair and break your neck?"

A. No, sir, no, sir, I never said that.

Q. Do you remember Mr. Goldberg ever coming to your house after that?

A. I forget, I don't know.

Q. How is it you can't remember that?

A. Maybe he was there but I don't remember.

30 Q. You can't remember eight or nine years ago what happened, can you?

A. Some things I remember, some things I don't remember.

Q. Well, you know, as a matter of fact, that he asked her to return to him, don't you?

A. I can not say, maybe he did and maybe he didn't.

Q. Well, you know he did, don't you, Mr. Cantor?

A. If I know, I would say so.

Q. And he said to her, let us go home and we will live happily?

A. No, sir.

Q. Do you remember ever saying to Mr. Goldberg that he would have to wait two weeks until you could consult with your wife who was in New York and your son in Baltimore and your daughter as to whether or not she should return to him?

10

A. I don't remember.

Q. Don't you remember writing to your wife about this in 1919 or the early part of 1920?

A. No, sir, I don't remember.

Q. Do you remember calling him up on the telephone?

A. I believe not.

Q. Didn't you ask him whether he would support the children, didn't you ask him that over the telephone?

20

A. I don't remember.

Q. Did you personally want your daughter and your son-in-law to live together?

A. I would be well satisfied if she would only want to stay with him.

Q. Why didn't you go to him and ask him to treat her right and try to stay with her?

A. She didn't want to go because he beat her. She was all nervous.

30

Mr. Perlman: I ask to strike that out.

The Court: Strike it out.

Q. Why didn't you go to him and ask him to stop his beatings, if he would offer to go back why didn't

you ask him to stop his beating if she was afraid to go back because he beat her?

A. She was sick and she didn't want to go any more to him.

Q. Why?

A. She was sick.

Q. Why didn't you go to him and ask him to take care of her if she was sick?

A. What was the use of going and asking him?

10 It happened once or twice before and it was no use of going and asking him to take care of her.

Q. After the first hearing in this court, how did they get along for a while?

A. For a short time it was all right and then she came again and complained about him beating her.

Q. How long was it all right?

A. Maybe three or four months and maybe half a year.

Q. And maybe a couple of years too, eh?

20 A. A couple of years, no.

Q. Did you ever hear your daughter accuse Mr. Goldberg of running around with women?

A. I didn't hear.

Q. You never heard that either?

A. She didn't tell me that.

Q. Did she ever tell him that while you were there?

A. No, sir.

30 Q. Didn't she say that he runs around with women?

A. I said that she didn't.

Q. Mr. Goldberg used to support his wife and children, didn't he?

The Court: That is not helpful, is it?

Q. Did you ever make an appointment with him, Mr. Goldberg, to go to Rabbi Conwitz?

A. Never; to Rabbi Prael.

Q. You didn't go, did you?

A. I was there. He didn't go, I think so.

Q. Where did you go?

A. His father has went to Rabbi Prael.

Q. Whose father?

10

A. Mr. Goldberg's, and asked for to send for them and see if they can make some peaceful conditions there and I came, but I believe Mr. Goldberg didn't go.

Q. How long has it been since Rabbi Prael has been in Trenton?

Mr. Budson: That is objected to.

The Court: The objection is overruled.

20

A. About five years.

Q. How long has it been since Rabbi Conwitz has been around?

A. Rabbi Conwitz was here three years and a half or four years. That is about four years and a half ago, or four years and a half altogether because it was half a year between Rabbi Prael and Rabbi Conwitz.

Q. Wasn't Rabbi Conwitz here for six years?

30

A. No, not even four years.

Q. Didn't you say to your son-in-law that you were a judge yourself and you didn't have to go to a Rabbi that Sunday when he came to meet the appointment?

A. No, sir.

Q. Didn't you say that?

A. No, sir, I didn't.

Q. Didn't you ever bring the children to your son-in-law?

A. Yes.

Q. Did you speak to him when you brought the children there?

A. No.

Q. Why not?

10 A. Why shall I speak to him? He treated my daughter very bad.

Q. How long after your daughter left her husband was it that you brought the children to him?

A. About a year and a half, not quite two years.

Q. Now, didn't you think it was possible for Mr. Goldberg to change his attitude or his mind about the manner in which he was going to treat your daughter during the year and a half?

A. I don't know, how can I tell?

20 Q. Then why didn't you go to see him, whether or not he didn't change his mind or his manner of treating her?

A. That didn't belong to me. It belonged to my daughter.

Q. You were interested in your daughter's welfare?

A. Why, I couldn't command her to go there or make her go there unless she wanted to.

Q. Did you ever ask her to go there and see how he was then?

30 A. Yes, sure I did.

Q. Did you request her to go?

A. Yes.

Q. What did she say?

A. She told me if he treated her good, "If he treat me good, I would go to him."

Q. Did he speak to her about a year and a half after she left him after that?

A. Not in my house.

Q. Any place?

A. I don't know, I don't believe.

Q. Didn't your daughter tell you that Mr. Goldberg asked her to go home after the children were brought there by you?

A. No, sir, she didn't tell me that. She was sick then.

Q. Did your daughter go to see William, the oldest child, when he had the measles?

10

A. He was in the hospital.

Q. Did she go to see the child in Mill Street?

A. Yes.

Q. She went alone?

A. He wouldn't let her in the house.

Q. She went alone, didn't she?

A. I went with her but he didn't let her in the house.

Q. What did he say?

A. He didn't say anything. He was inside. He wouldn't let her in. 20

Q. When was it that the child had the measles, if you know, what year?

A. I think it was about three years ago.

Q. It was in the spring of 1922, wasn't it?

A. I can't remember, it may be.

The Court: Aren't you wasting time?

Q. Why did your daughter go along to see the child? 30

A. She wanted to see it.

Q. She knew what she was doing, didn't she?

A. Even now, in the hospital, I was there Sunday, she always wants to see the children.

Q. Did you talk to your daughter during 1921 about her returning to her husband?

Mr. Budson: That is objected to as having been asked and answered.

The Court: It may be answered.

A. I don't know.

Q. Don't you know whether you spoke to your daughter about whether she would live with her husband in 1921?

A. I don't remember.

10 Q. Well, do you remember talking to her during 1920 about that?

A. I don't remember.

Q. You don't remember whether you spoke to your daughter in 1920 about returning to her husband?

A. I don't remember, she was sick.

Q. She knew whether it was right or wrong to stay away from him then, didn't she?

20 A. Who knows whether she did or not?

Q. Well, didn't she say she wasn't going back because he beat her?

A. She did say that.

Q. Then she did know whether it was right or wrong to leave her husband?

A. A sick person like that, when they are sick in their head you can't tell what they are saying. You can't believe what they are saying.

Q. How did you know she was sick in her head?

30 A. Why, she wanted to lick me, would anybody do it when they were well?

Q. When?

A. Three times or maybe five times a week.

Q. As a matter of fact, you told Dr. Koplin that it was in 1922 that she tried to beat you, didn't you?

A. That was the second time, when she came back to me.

Q. (The interpreter repeats the question) and before?

A. What?

Q. Did you tell Dr. Koplín that it was before, also?

A. I don't remember whether I told him that or not.

Q. Was she very sick before 1922 in her mind?

A. When she came to me in 1920 she was already not sound minded.

Q. Was she very sick then?

A. She was sick, she was sick in her mind, in her brain. She wouldn't answer right. 10

Q. Well then, why did you wait for thirty-seven months to go by after she left before you had her committed to the insane asylum?

A. I wanted to try and see at home first. I didn't care to send her to the asylum.

Q. Why did it take you thirty-seven months to try?

A. I thought she might be better; he might come down. They might go back together; she might change her mind and go to him. 20

Q. You told Dr. Koplín also that she had no previous attacks, previous to the time he examined her in January, 1923, did you not?

A. I didn't tell him.

Q. Did you tell Dr. Koplín she did have previous attacks?

A. Yes, sure, when I did tell him Dr. Koplín said, "It is no wonder then she had the trouble she had, that she had to stand for." 30

Q. And didn't you tell Dr. Koplín also there was no insanity in her family?

A. I don't know.

Q. About supporting the children while you had them, who supported them while you have them?

A. Mr. Goldberg.

Q. He was a pretty good father, wasn't he?

A. It was his children, so he was a good father to them.

Q. He wasn't a very bad man, was he?

A. I don't know whether he was good or bad, what can I know.

10

ISADOR M. CANTOR, a witness produced on behalf of the defendant, being duly sworn testifies as follows:

Direct examination.

By Mr. Budson:

Q. Mr. Cantor, you live in Baltimore?

20 A. Yes.

Q. And you are a brother of Esther Goldberg?

A. Yes.

Q. Do you know Simon Goldberg, her husband?

A. Yes.

Q. And have known them since their marriage?

A. Yes, sir.

Q. I won't go into the troubles they had prior to 1919, you knew all about those?

A. Yes.

30 Q. Around December, 1919, do you know what happened between your sister and her husband?

A. Yes.

Q. What?

A. Well, I am coming down here occasionally especially most of the time when I come through to business to New York. I stopped off at my father's

going to see how they are and most of the time I came over night and one time I found my sister, she is back home to my father.

Q. When was that?

A. When?

Q. Yes?

A. Probably around 1919, around that time, it was the second time she left.

Q. The early part of 1920?

A. The early part of 1920, and when I came around they told me the trouble, what she had brought there, that he beat her, she cried for me. I seen that time she is very sick mentally and physically. Of course, we tried for her for to do different if possible, then the physician come and we sent her to New York and she was there in some hospital. We had private physicians for her and after someone recommended that we should take her to White Haven where there is a Dr. Armstrong that used to be in Trenton and he was a very good man, after they examined her. I come from Baltimore to take her for that purpose. I took her over there. She stayed over there about eight months. I used to pay the checks for her and all the correspondence being that my father doesn't speak English I made arrangements they should correspond with me and let me know how she is. I was getting letters most every week or at least any time they sent the bill. That was every two months. That was at a private sanitarium and they used to send letters—

The Court: What has all this got to do with it?

Mr. Budson: I didn't want to stop him.

Q. Never mind that.

A. Well, I was over there to visit her myself and they wanted I should take her back because she is mentally unfit not to be there. It is for consumption or asthma and that sort, but her mental condition they wouldn't keep her over there on account of her mental condition.

Q. Well, what did you do?

A. Then we took her back.

10 Q. When she came back from White Haven, did you see Mr. Goldberg?

A. Yes.

Q. Where?

A. I talked to him he should take her home because she always, as a matter of fact, even today, my honest belief is she would have a home and have a family—

Mr. Perlman: I object to the testimony as to
20 what his belief is.

Q. Tell us what you know.

A. I spoke to him he should take her back, and they should live peaceful and he said that could never be, he would rather kill her before he would live with her in his house.

Q. When was that?

A. When?

Q. Yes?

30 A. That was one time he took us out for a ride to Princeton.

Q. What year was that?

A. I believe that was in 1920.

Q. 1920?

A. I believe that was in 1920, after the second time.

Q. Where were the children then?

A. The children, if I ain't mistaken, the children was here over at my father's house.

Q. Did you see him after that?

A. I seen him there after that again; I met him right across the street from my father's house, right opposite Mr. Rosenthal, right opposite my father's house. I talked to him there, he should take her back. He said he wouldn't do it, he would kill her before he would take her back. 10

Q. That's what was said?

A. Yes, sir.

Q. When was that?

A. Right after she left him. I couldn't tell the date.

Q. You don't know the exact date?

A. No.

Q. Did you visit her frequently?

A. I come here to Trenton most every month. I stop off at Trenton. 20

Q. What did you observe about her physical and mental condition?

A. After she come over here?

Q. Yes?

A. She wasn't dependable upon anything. I seen that and tried to do all I could do for her.

Q. What do you mean, she wasn't dependable?

A. My mother started to cry for me, oh, many times.

Q. Just tell us about her, don't tell us what your mother told you, what you would see her do? 30

A. We couldn't talk to her. We couldn't depend nothing upon her. She wouldn't give the right answers many times. She was all right sometimes and sometimes she wasn't giving the right answers. She wouldn't do things right. She would lie down on the couch and she wouldn't eat for three days.

Q. That was when?

A. Nineteen twenty and '21, after the second time she comes, she was very bad. Mentally she was very bad and so was she physically. I believe she don't weigh today more than 75 or 80 pounds.

Q. Did you ever sit down and talk to her?

A. Oh, yes.

Q. About going back to her husband?

A. Yes, sir, she would be willing to go back. Many times I spoke to her. She was afraid. She
10 left him because he made her nervous and she was afraid to stay with him in the house because he told her he was going to kill her.

Mr. Perlman: That is objected to.

Q. How do you know that?

Mr. Perlman: I object to that as hearsay.

20 The Court: It is competent to show what her attitude of mind was.

Q. Go on.

A. Well, she was so nervous she was afraid for her because he told her he was going to kill her. I don't believe he would but he told her and he used to sleep with a pistol behind his pillow and she was afraid to be in the house herself and that got her nervous and all the beatings she used to get in my
30 honest belief—

Mr. Perlman: Objected to.

Q. Did you go to visit her in 1921?

A. Yes, every month, about every month, very frequently.

Q. Was there any improvement in her in 1921?

A. Oh, no.

Q. What was her condition?

A. Worse and worse; you must consider that we tried to do all we could for her and we had to send her to the State Hospital. You see why we would give her to the State Hospital. That was the last resort. We would have done all we could. As a matter of fact we took her to the State Hospital because my people were afraid to stay with her over night. 10

Q. Did you personally take her there?

A. Yes.

Q. You made the arrangement?

A. Yes, my father telephoned for me.

Cross-examination.

By Mr. Perlman:

20

Q. Mr. Cantor, when you rode in the machine with your brother-in-law—

A. Yes.

Q. That was April 15, 1922, wasn't it?

A. No, that was before that.

Q. You are sure about it?

A. Well, I couldn't tell you the exact date. I couldn't tell you the exact date, but I am most positive that it was before that.

Q. But you don't know? 30

A. Not exactly the date.

Q. Was it in 1922?

A. That was before she went to the State Hospital.

Q. She was in the State Hospital January 29, 1923?

A. Oh, that was before that.

Q. I am asking you whether the ride in the machine you spoke of was not in 1922, about a year before?

A. No. It was about 1920 or '21, I think about 1920.

Q. How often do you say you came to Trenton?

A. Very frequently. Sometimes I could come twice a month and sometimes once a month and
10 sometimes I pass by a couple of months and don't get here.

Q. Up to the end of 1921, how often did you come?

A. About the same thing. I passed through Trenton and I stopped over all night to see my people.

Q. Did you ever see any of these beatings you are talking about?

A. Oh, yes.

Q. The beatings?

20 A. No, the marks, not the beatings.

Q. How do you know they were——

A. That is what she told me, otherwise she don't go away from home for pleasure.

Q. She was in White Haven in 1922?

A. In White Haven she was in 1922.

Q. That was over two years after she left him?

A. That was about two years after she left him. I couldn't tell you exactly the dates. I went down there myself to take her.

30 Q. You said you took her?

A. I did.

Q. She was a little bit nervous then?

A. A good bit nervous.

Q. Did you consult a brain specialist about her?

A. In New York.

Q. What did they say?

A. We should build her up. Her physical condition might help her for the mental condition. They said she is run down and nervous and probably building up her physical condition will help her mental condition. That is the reason we took her to White Haven.

Q. She was run down and nervous?

A. She was run down and nervous, and her physical condition was bad, too.

Q. They didn't tell you to take her to an insane asylum, did they? 10

A. He tried—

Q. Answer, please, did they tell you to take her to an insane asylum?

A. They told her to consult some more doctors.

Q. When you came to Trenton, during 1920 and '21, did you talk to your sister?

A. Yes.

Q. Did you talk to her all right?

A. What do you mean? 20

Q. Did you talk to her about her affairs with her husband?

A. Oh, yes.

Q. Did you ask her why she wouldn't get along?

A. She told me, she told me to make arrangements that she should go together.

Q. She said he used to beat her?

A. Yes.

Q. And that is the reason she wouldn't go back?

A. She was afraid to. If he would promise not to beat her and treat her better, the children and herself, even today she would rather— 30

By the Court:

Q. Did you go to see the husband when she asked you to go see the husband?

A. Yes.

Q. When?

A. I couldn't tell you exactly, but that was after she left him, about 1920 or '21. I spoke to him several occasions, any time I had a chance to meet him. I wouldn't have offered myself to go, but any time I met him on the street I stopped and spoke to him. The last time I met him he wouldn't answer me because I wanted to start a conversation.

10 Q. When was the first time?

A. 1920, when I spoke to him. He was in the machine and he stopped across the street from my father's home and I spoke to him and begged him they should live together. He said no, he would better kill her before he took her home, and I begged him on account of the children's sake, "And probably when you get a little older and get settled," and so and so. I did all I could and he didn't consent to it.

20 Q. You had quite a nice conversation with her some time during 1920 and 1921?

A. Yes, I did. I went up that—

Q. She seemed to understand what you said?

A. Oh, she understands even today.

DEFENDANT RESTS.

SIMON GOLDBERG, being recalled, testifies in rebuttal, as follows:

Direct examination.

By Mr. Perlman:

Q. Do you recall any conversation with Mr. Cantor, from Baltimore? 10

A. Yes.

Q. When did it take place?

A. I marked it down, the time he was up at my house and expressly because I know them people are liars and I expected trouble and so I marked it down in his presence and he said, "Why mark it down," he said, "It is all right." That was April 15, 1922.

Q. It was after you started suit?

A. Yes. 20

Q. Did you talk to him before?

A. No, sir, positively not. I never seen him before 1918 or 1919. I seen him on his father's house. He came purposely for a holiday, home, and his wife and children and I was there for the holiday too.

Q. Did he ever ask you to take your wife back?

A. No, sir.

Q. In 1922, in the machine, did he ask you to take your wife back?

A. In 1922 when I was talking to him he said to me, "How about taking Esther back." I said, "Yes, I will take her back." He says, "Let's go into his father's house." I said, "Why," I said, "No, I don't have to go to your father's house." He said, "Will you take her back." I said, "Yes, I will take her back, if she comes round to talk to me." 30

Q. Even after you started suit?

A. Yes, in front of her father's house, in the machine.

Q. During the time in 1920 and '21 that you saw your wife, that you have testified to before, did she seem to be normal?

A. Positively, she was just as normal as myself, and I am sure I am normal.

10 Q. Did she answer questions that you put to her in a normal and rational manner?

A. Yes, sir, and furthermore, she was up to my house—I marked that down too—that was February 26, 1922, and my boy, William, was sick on measles and she rung the bell. She said, "Can I see the boy?" I said, "Yes," and she come in and she asked my boy William, "How are you, how are you making out—"

20 Q. Well, you have testified to that, I think. At any time during 1920 or '21, did she seem mentally unsound to you—from her mental appearance?

A. She was just as good as ever.

Q. What do you mean?

A. She was all right, that's all.

Cross-examination.

By Mr. Budson:

Q. How do you know?

30 A. I talked to her nicely and she answered me everything sensible.

Q. Did you notice her condition as far as weight is concerned?

A. No.

Q. Did she grow stouter in 1920 and '21?

A. No, I think she was about the same.

- Q. How long did you talk to her those times?
A. 15 or 20 minutes.
Q. What were you talking about?
A. Talking to her about going back and so on.
Q. What did you say to her?
A. I said, "Esther, why don't you come back and let's live happy and forget it?"
Q. What did she say?
A. She said, "No, forget about me. I don't want to come back again." 10
Q. Didn't that convince you that it was an unsound mind if she refused you?
A. No, if she answered me sensible that way and she give me the reason why she didn't want to come back.
Q. Did you tell her you were a man of means?
A. What do you mean?
Q. That you were wealthy?
A. No, I didn't tell her I am wealthy.
Q. And whether you were or not, you told her 20 that, didn't you?
A. What use telling her I am wealthy, because I am not wealthy.
Q. Didn't you tell her you have ample means to provide for her?
A. What do you mean?
Q. Plenty of everything for her?
A. Yes, she had everything plentiful.
Q. Did you tell it to her?
A. She knows I had enough. She never was short 30 of anything.
Q. Did you put down all these conversations with your wife too, on paper? And have notes of them?
A. No, sir.
Q. Why not?
A. What is the use. I wanted her to come back.

Q. Why didn't you take notes of the dates you went to see her? You took particular note of this date?

A. I took because you talked to me serious, that way and talked serious, that's the reason I took it.

Q. Her father didn't come to you?

A. Never did since she left.

Mr. Perlman: That is objected to as not cross-
10 examination.

BERNARD SELDEN, a witness produced on behalf of the petitioner, being duly sworn, testifies in rebuttal as follows:

Direct examination.

20 By Mr. Perlman:

Q. Mr. Selden, where do you live?

A. 178 Walnut Avenue.

Q. Trenton?

A. Yes, sir.

Q. Mr. Goldberg lived in your house some time recently?

A. Yes.

Q. When?

30 A. October, 1922, until December, 1923.

Q. Do you know his wife?

A. I seen her a couple of times.

Q. Around October, 1922?

A. The latter part of November.

Q. Where did you see her?

A. To my house.

Q. At your house?

A. Yes.

Q. What was she doing there?

A. She came in, somebody rang the bell. I didn't know who she was and she said she came to see Mr. Goldberg. I called her inside, not knowing who she was.

Q. What was said?

A. I said, "Mr. Goldberg, somebody wants to see you," so the children ran down first and they said, "Mamma," and I knew who she was.

10

Q. You didn't know her at first?

A. No.

Q. Did she speak to you?

A. Yes.

Q. She did speak to you?

A. Yes, sir.

Q. How did she seem?

A. As any other person to me.

Q. Normal?

A. Normal.

20

Q. Did she answer questions and talk intelligently?

A. Yes.

By the Court:

Q. When was this?

A. The latter part of November, 1922.

Q. How many times did she come there?

A. I seen her about two or three times.

30

Q. Did you notice anything unusual?

A. Nothing unusual.

Cross-examination.

By Mr. Budson:

Q. Did you suspect she was not of normal mind?

A. I didn't know anything.

Q. You just looked at her?

A. Yes, and spoke to her.

Q. And from her appearance she looked normal?

10 A. By appearances and by her conversation she seemed so.

Q. She might have been stark crazy for all you know?

A. I couldn't tell you.

Mr. Perlman: If your Honor please, I would like to get Dr. Cotton here as a witness?

The Court: All right, we will continue this case
20 until tomorrow at two o'clock.

IN CHANCERY OF NEW JERSEY.

Between
SIMON GOLDBERG,
Petitioner, } On Petition, &c.
and } Testimony.
ESTHER GOLDBERG,
Defendant. } 10

TESTIMONY.

Testimony taken in the above entitled cause, at the State House, Trenton, New Jersey, on Tuesday, the sixth day of January, 1925, at 2:15 P. M. Before HON. MALCOLM G. BUCHANAN, Vice Chancellor. 20

Appearances, as heretofore noted.

HENRY A. COTTON, a witness produced on behalf of the petitioner, being duly sworn, testifies as follows:

30

Direct examination.

By Mr. Perlman:

Q. Your name is Dr. Henry A. Cotton?

A. Yes, sir.

Q. You are the medical director of the New Jersey State Hospital, are you not?

A. I am.

Q. Doctor, have you had any experience with mental or brain diseases?

A. For the last twenty-five years I have been connected with mental work. It has been my specialty.

Q. You are a graduate physician?

10 A. Yes.

Q. From what college?

A. The University of Maryland in Baltimore.

Q. And you studied mental diseases in Europe?

A. Yes, in Munich, Germany.

Q. You are a member of the British Medical Society?

A. Yes.

Q. And how many members are there of that society in this country?

20 A. Two or three of them.

Q. Have you lectured anywhere on mental diseases?

A. I lectured at Princeton in the psychological department, Princeton University.

By the Court:

Q. Your study and work have been directed expressly if not exclusively for a number of years
30 past toward mental diseases?

A. Yes, sir.

Q. Doctor, would you say that a mental expert, who examines a patient in 1923 for the first time, would be in a position to tell anything of the mental condition of that person in 1920 or 1921?

A. I wouldn't be able to tell on the examination alone.

By the Court:

Q. Would that be true as to all kinds of mental affliction or affection?

A. Well, it would be most mental conditions. You would have to know something about the history of the patient, an examination by itself with softening of the brain or paresis you might be able to tell, although I have seen cases that were cases of paresis or brain syphilis very much demented which apparently hadn't been sick but a few months, although we would probably consider from seeing the patient for the first time that they had been that way for a long time. Certain types of cases you might surmise they had been sick a long time, but I don't see how it is possible to say positively in a given case that the mental disease had been of such a long duration.

Q. Have you seen or examined Esther Goldberg, a patient at your institution? 20

A. I have.

Q. Are you familiar at all with her case?

A. Somewhat.

Q. You have her record before you?

A. I have.

Q. From the examination of her and her case and her record, would you say that a mental expert could tell—one who examined her in 1923—what her condition was in 1920 or 1921? 30

Mr. Budson: That is objected to. The record he holds in his hands is not established.

The Court: I presume you are entitled to have it established.

Q. What record do you have in your hand?

A. The regular history and record and examination of Esther Goldberg at the State Hospital at Trenton.

By the Court:

Q. The official record?

A. Yes.

10 Q. And that is the one made under the supervision of Dr. Pierson?

A. Dr. Pierson made the initial examination in 1923.

Q. Has this record been under his supervision?

A. Yes, sir, been in the hospital files, added to by other doctors.

Q. It is the only record kept there?

A. It is the only record kept there, yes, sir.

20 Q. And it is the one to which he would refer in his work in connection with this patient?

A. Yes.

Q. What was the answer to the question?

A. I don't remember the question.

Q. (Stenographer repeats the question) and by the record, the record is the one of which you have just spoken?

30 A. I don't see how one could make a diagnosis of mental trouble in 1923, make a diagnosis from an examination made in 1923 of the patient's condition in 1920 or '21.

Q. Would you say then, that a mental expert, who examined such a patient in 1923, could tell whether or not that patient knew the difference between right and wrong in 1920 or '21 as for example an act of desertion as concerns an act of desertion of a wife by the husband?

A. I don't quite get the question.

Q. (Stenographer repeats the question.)

A. I personally would not be able to make such a distinction.

Q. Do you think any other mental expert could make such a distinction?

A. Well, I could only say for myself that I would not want to make a distinction, that is, give an opinion as to her mental condition at that time.

Q. Because you think your opinion in such a case would be unreliable? 10

A. Yes.

Q. It would be?

A. Yes, it would be problematical and conjectural.

Q. Did you see Esther Goldberg or examine her in 1917, '18 or '19?

A. There is a record of her husband bringing her to me some time in 1918, if I recollect correctly and at that time I advised having her teeth extracted and tonsils out. She had very bad teeth. 20

Q. It was for her teeth and tonsils?

A. Yes.

Q. Was she insane at that time?

A. She was not insane at that time. She was brought in consultation because she was nervous.

Q. It was nervousness?

A. Yes, sir.

Q. And nervousness is not insanity?

A. No. 30

Q. If she was certified by physicians to be insane in 1923, would you say it was possible for her to be sane in 1922?

A. Perfectly possible.

Q. Even as late as October or November, 1922?

A. Yes.

Cross-examination.

By Mr. Budson:

Q. What is the affliction that Esther is suffering from, Doctor?

A. Well, I think it is a question as to diagnosis. The diagnosis made in the record here is constitutional, psychopathic state with episodes, episodes
10 of excitement.

By the Court:

Q. That is not very apprising?

A. No, it is not.

Q. That means simply mental affliction?

A. Yes, a nervous psychopathic individual more or less queer, perhaps, not necessarily insane but nervous, neuresthenic or things of that type. That
20 is based largely upon the history, perhaps given by the parents. I didn't make that diagnosis myself, and I don't know today what one would call her, really. That is the mental diagnosis. She is now more or less deteriorated and well disoriented. I talked to her today. She said it was June. I asked her to look out of the window and asked her if she ever saw snow in June and she said, "Well, it must be July." She has had several attacks of asthma and kept in bed most of the time. She talks in this
30 rambling way, irrelevant, flighty way. She wanted to know if she could go home right away and didn't seem to appreciate her condition at all.

Q. Was this examination made today?

A. Yes, I saw her today.

Q. What would you call her disease after your examination today?

A. As I say it would be very hard to place her. It is a peculiar type of case. She has had these more or less periodic episodes. I would say she was more or less deteriorated mentally. Whether you would call that dementia praecox—that is the name it would come under probably—a chronic progressive condition.

Q. How many times have you examined her since she has been there?

A. I don't know.

10

Q. Approximately?

A. I don't know. I am in the Dix Building, where she was for a long time.

Q. Doesn't your records show personal attention?

A. No, it don't show personal examination. I might see her every day for a while and might not see her for a week.

Q. Does it show examinations made by others than you?

A. Yes.

20

Q. Who?

A. Dr. Pierson.

Q. Any others?

A. Dr. Stone.

Q. He is a physician there?

A. Yes.

Q. But it doesn't show yourself?

A. No.

Q. And these doctors are more in contact with her than you are?

30

A. Yes.

Q. And they have a greater chance to observe and study her than you have?

A. Well, possibly. I see all cases. I am in the wards every day practically when I am there and see these people and talk to them and anything

special that comes up, and if there is anything particular, and if they come in a routine way I don't examine them personally.

Q. These men, while not in your class as mental experts, Dr. Pierson and Dr. Stone, they are capable men?

A. Very capable men, they are.

Q. And you place reliance in them?

A. Yes.

10 Q. And in meetings of your staff, when they report to you a case or a certain condition as constitutional psychopathic state with episodes, you place reliance upon them?

A. Well, no two people agree on diagnosis. I disagree with that diagnosis.

Q. Did you mark in this history that you disagreed with the diagnosis?

A. No.

Q. You did not?

20 A. No.

Q. Why not?

A. It is not important. The question I am interested in is the treatment.

Q. Did you suggest a different course of treatment?

A. No.

Q. Why not?

A. She has had quite a lot of treatment.

30 in? Q. When did you think this dementia praecox set in?

A. The cases often begin as she began, nervous episodes and periods of normal condition and then getting succeeding attacks more severe. I would say her condition today was that of deterioration. When deterioration started in, I don't know.

Q. Let me ask you this question, assuming you had not had this history of the case before you of Esther Goldberg, and assuming you made your first examination today for the first time of the patient, would you have been able to tell this Court as to whether or not her troubles began in 1923?

A. Whether her troubles began?

Q. Yes, whether her insanity began in 1923 or whether it just came today?

A. No, I would say she was deteriorated. It is 10
much more of a deterioration than when she was committed to the hospital.

Q. Assuming you didn't have this history of the case before you and assuming the patient was brought before you the first time today, would you have been able to tell from her mental condition today as to when the process of deterioration commenced?

A. No, not without a history.

Q. You would not?

20

A. No.

Q. You understand what I mean?

A. I think I do.

Q. You couldn't tell whether it commenced in 1923?

A. No.

Q. Or 1922?

A. No.

Q. Or 1921?

A. No.

30

Q. And the same thing is true of the patient in 1923, which was brought to you, you couldn't tell if the condition had begun at any certain period?

A. No.

Q. But it was there?

A. Yes.

Q. And it had begun some time before?

A. Yes.

Q. Because it didn't grow out of a clear sky?

A. No.

Q. That is true?

A. Yes, it might have been a day before.

Q. And it might have been five years before?

A. It might have been ten years ago.

Q. It might have been any time?

A. Yes.

10 Q. When Dr. Pierson speaks of a constitutional psychopathic condition, what does he mean by constitutional?

A. Constitutional is supposed to be a defective type, a person who is born with more or less nervous instability which predisposes to mental trouble.

Q. If he were correct in his diagnosis, then this state of insanity might have been there since she was two years old or five years or ten?

20 A. It might have been there from birth, yes, but I doubt it.

Q. It might have been?

A. I doubt it.

Q. Patients that are affected with this kind of disease have lucid intervals, have they not?

A. Yes.

Q. Did she have any today?

A. No, I wouldn't say she was lucid today.

Q. You would not?

30 A. No.

Q. None at all?

A. No.

By the Court:

Q. Does she, at the present time, have lucid intervals?

A. She may be clearer at times than at others, but there has been practical no improvement since she came in the hospital. She has been about the same all the time, according to the records.

Q. You mean she has had no lucid intervals since she has been at the hospital?

A. I have not seen her personally in any, so I couldn't say. Some days she might be clearer than others, but certainly she was not clear today.

Q. She may be clear tomorrow for all you know? 10

A. Well, I doubt very much in her present condition that she has many days in which she is very clear.

Q. The first time you examined her was in 1918?

A. Yes.

Q. Where was it?

A. Where?

Q. Yes.

A. I don't recall whether it was the State Hospital or Mercer. 20

Q. At one of them?

A. Or at my office.

Q. Her husband brought her to you?

A. Yes.

Q. Do you recall the conversation between her husband and yourself at that time?

A. I don't recall.

Q. You don't remember?

A. No.

Q. For what purpose did he bring her? 30

A. Because she was nervous and she had a lot of bad teeth and tonsils.

Q. And you advised her?

A. Which I thought was the cause of her nervousness.

Q. And that is what you explained to him?

A. Yes.

Q. But he didn't know?

A. No.

Q. He brought her to you because he told you she wasn't right in her head?

A. No, I don't remember that.

Q. What was her conversation?

A. I can't remember, seeing a dozen people a day.

10 Q. You didn't treat the tonsils?

A. No, but I diagnosed the case.

Q. You don't treat tonsils?

A. No, but I diagnose conditions of that kind. He brought her because she was nervous.

Q. Because she was nervous?

A. Yes.

Q. He told you, however, that she wasn't right?

20 A. Not that I know of, because if there was a question of her being insane, I wouldn't have sent her off to have her teeth and tonsils attended to, outside. I would have her put in the hospital. I don't treat them on the outside.

Q. Do you keep a record of them?

A. I do.

Q. Why didn't you bring your record in court today?

A. I haven't had time to do it. I was in the operating room all morning.

Q. You were not subpoenaed in this case?

30 A. Yes.

Q. And you ought to bring all the books you had. Didn't you think it would be material to show your diagnosis of her in 1918?

A. I think that is self-evidential. I sent her to a doctor to have her teeth out and her tonsils. If she was insane I would not have done that, cer-

tainly. That is not my method of procedure. If there is any mental trouble I have them put in the hospital.

Q. If there is mental trouble?

A. Yes.

Q. Immediately?

A. Immediately, either Mercer or the State Hospital.

Q. You can't say whether there was an examination of her mental condition or not?

A. I probably did.

10

Q. And probably didn't?

A. I probably did.

Q. But you are not certain?

A. Well, I make an examination of every case that comes for consultation. I go over them and satisfy myself.

Q. Every case?

A. Yes.

Q. Would you say her mentality was perfect at that time? 20

A. I don't recall that, but from the procedure taken I would say I considered her sane at that time.

Q. From the procedure taken?

A. Yes.

Q. The reason you state you disagreed with this diagnosis of Esther Goldberg, was because it is more or less conjectural, is that right?

A. How do you mean?

Q. That was your testimony, that in your opinion— 30

A. When I used that word as to whether she was insane in 1920 or '21, I said it would be a matter of supposition.

Q. Isn't all medical opinion conjectural and problematical?

A. Yes, largely.

Q. And Dr. Pierson's conjectural suppositional and problematical opinion may be right?

A. Yes.

Q. Is that true?

A. Yes.

Q. And yours may be wrong?

A. Mine may be wrong, I am not infallible.

10 By the Court:

Q. What is the distinction you draw between the constitutional psychopathic condition with episodes and dementia praecox?

A. The distinction between them?

Q. Yes.

A. Well, at the beginning of trouble of this kind the whole mental trouble does not apparently—

Q. Which kind?

20 A. Dementia praecox. She had episodes of severe mental disturbances and the doctor examining her thought this was based on constitutional condition which predisposes to this mental condition. At that time it hadn't unfolded, so to speak. It was just beginning, apparently, and now I would say she was very much more deteriorated. It has become very progressive.

Q. The distinction is that in the constitutional psychopathic state it is as you state, congenital, 30 whereas dementia praecox has its inception at a certain definite period in the lifetime?

A. Not necessarily, it might be predisposed or might not in some cases. In some cases there is the constitutional element because here again the physician does not see the patient during the early life. We consider the unstable type like girls in

reform schools, that is a constitutional psychopathic condition. Some people may get more incorrigible and may land in State prison or get into more difficulties, but unless they are sent to us for treatment, they don't get into the State Hospital. They are not the type that comes later on. None of our patients, who come into the State Hospital, give a history of five or ten years of being in the girl's home. They do not seem to be of that type. That is my conception of what I consider a constitutional psychopathic state—moral delinquency neuresthenic, etc. 10

Q. The question is merely a difference in terminology?

A. Yes, you see a case on first examination where the psychosis would not develop to the point where you could make a very definite prediction of what was going to be done. The prognosis of this case was put down as "guardedly favorable." The outcome was considered to be good and the cause focal infection, that is, chronic sepsis but the prognosis has not been verified, that is, she has got worse instead of better. 20

Q. How does that case of focal infection fit in with the diagnosis of constitutional psychopathic condition?

A. I think a great many of them are mentally unstable and a toxic factor like alcohol—these people are mostly unstable and with the addition of alcohol will show a distinct mental trouble, the same with these cases. If we add to the instability chronic infection of the teeth, the tonsils, the stomach, etc., then you would produce a more distinct psychosis. 30

Q. It would be the immediate and exciting cause?

A. Yes.

Q. That is what you mean?

A. Yes, and some of the psychopathic states which we call constitutional may be directly and largely the result of infection plus your constitutional previous condition. Put it that way.

Q. Is there a sharp and clear distinction, a sharp and clear and distinct dividing line between neurosis and psychosis?

10 A. No, sir, they merge into one thing and many years ago we diagnosed as neurotic certain cases which are found later to be mental cases. Periodic attacks, in many cases the first attacks, are nervous states. They recover from that and go on ten years or they may only stay well a year and each succeeding attack becomes more severe until they finally wind up in an institution, and have psychosis. You can make a first diagnosis of constitutional psychopathic state and you can say probably, "This patient will get well," but she has gone on to a distinct mental trouble and is getting worse.

20 Q. Mrs. Goldberg?

A. Yes.

Q. Then, is it possible that the condition of neurosis, which you found in 1918 was the commencement of the condition which has now progressed to the point which you have described?

A. I should think that was undoubtedly the beginning of her trouble, but not continuous. She was apparently well after that for a long period of time. After the clearing up of her tonsils and teeth.

30 Q. What knowledge have you of that?

A. The statement of her husband.

Q. Statements from others?

A. Yes, sir.

Q. You say the husband made those statements to you?

A. Yes.

Q. Doctor Cotton, when did the husband make those statements to you?

A. When?

Q. Yes.

A. I think it was when they visited me, sometime ago, at the State Hospital.

Q. That was all in preparation for this case, is that what you mean?

A. Yes.

Q. In preparation for this present case?

A. Yes, sir.

10

Re-direct examination.

By Mr. Perlman:

Q. Doctor, a person may be neurotic or suffer from neurosis and know the difference between wrong and right?

A. Oh, yes.

Q. That is true, isn't it?

20

A. Yes, it doesn't mean they are legally insane at all.

Q. When you say neurosis gradually goes into psychosis you mean physically speaking, not perhaps legally speaking, with the distinction of right and wrong, in your mind?

A. No, if I understand you; I was considering the question of whether there was a sharp dividing line between neurosis and psychosis.

Q. Medically speaking?

30

A. Yes, sir.

BOTH SIDES REST.

BUCHANAN, V. C. (After argument:)

The petition is by the husband for divorce from his wife on the ground of desertion. There is a counter-claim, by the wife for divorce on the ground of constructive desertion.

10 The proofs fail to show any evidence to substantiate the claims of the wife set up in the counter-claim, and as Counsel acknowledges that that cause of action is abandoned, the counter-claim will be dismissed.

On the husband's petition the situation is considerably more difficult. The burden of proof, however, is upon the husband to show that the wife was guilty of desertion of the statutory character namely, a desertion which was wilful in its inception, continued wilful during its entirety and continued
20 for a period of two years and that it was as well, during that time, obstinate.

The particular difficulty that arises in the present case is as to the proof of the wilful character of that desertion. I find myself unable to conclude that the husband has borne that burden of establishing the wilful character of that absence by the wife during that entire two years. The wife, it appears, left in December of 1919 and the petition for divorce was filed, if I recall correctly, in February, 1922; so that
30 the cause of action sued on was for a desertion commencing or alleged to have commenced in December, 1919, (I think, December 28,) and which matured or became complete on December 28 or 29 of 1921. There is a period of a month of a month and a half between the alleged maturing of this cause of action and the commencement of this suit. I am not satis-

fied from the testimony as to the mental condition of this wife that the husband has shown that she was, during the time that she was absent from him, prior to the commencement of this suit, of a mental condition capable of rendering her absence from him a wilful desertion. I do not mean by that her then condition was such constantly during this two years period that she was unable to determine for herself the legal nature and effect of her act, to determine the moral guilt of her conduct, but the burden of proof is upon the petitioner and it is for him to establish that during all of that time her mental condition was such as to make her absence a volitional act, a lawful desertion as the statute requires. 10

Now it appears by the evidence that she is now insane, that she is now suffering from a psychopathic condition of one kind or another which, according to the testimony, is practically constant from and since approximately the first of January, 1923, and there is other testimony which makes it evident or makes it at least doubtful upon a balancing of the testimony as to whether or not there were not periods prior to February, 1922, and prior to December 28 or 29, 1921, when a mental condition of that kind existed in her and if so, and if those periods occupied a total of only a few weeks, it is evident that there had not elapsed between the time of the commencement of the separation and the time of the commencement of this suit a total period of two years, during which the absence or separation was a volitional one on the part of this defendant. For that reason I will advise a decree dismissing both the petition and the counter claim. It is not a case where counsel fees or costs should be imposed. Each side will have to stand its own share of the expenses. 20 30

EXHIBIT D1—1.

BILL FOR MAINTENANCE

(Filed June 23, 1915.)

IN CHANCERY OF NEW JERSEY

TO HIS HONOR, EDWIN ROBERT WALKER,
Chancellor of the State of New Jersey.

10 Humbly complaining shows unto your Honor, your oratrix, Esther Goldberg, of the City of Trenton, in the County of Mercer and State of New Jersey:

1. On the eighth day of December, in the year nineteen hundred and twelve, she was lawfully married to her present husband, Sol Goldberg, in the City of New York, in the State of New York, by Reverend Macht, a Jewish Rabbi.

20 2. After her said marriage, your oratrix and the defendant, her said husband, went to reside at No. 618 North Olden Avenue, in the City of Trenton, County of Mercer and State of New Jersey, and there lived together until the fifteenth day of June, nineteen hundred and fifteen, a period of about two and one-half years, where they cohabited until your oratrix was compelled to leave said home as hereafter complained of.

30 3. There has been born to your oratrix and her said husband, as the fruit of their marriage, one child, William, who is but nine months of age and is in the custody of your oratrix.

4. Your oratrix and the defendant cohabited at the aforementioned address without interruptions until the said fifteenth day of June, nineteen hundred and fifteen, when she was compelled to separate herself from him because of his extreme cruelty

to her, as hereinafter set forth. Almost from the beginning of her married life, your oratrix has suffered from the violent and ill-governed temper of her husband. That these attacks first verbal, and then physical continued incessantly and uninterruptedly throughout their conjugal relations, until they culminated in the instances now particularly described. On or about the first day of October, nineteen hundred and fourteen, immediately following the birth of the aforesaid child, the defendant fell into an unprovoked fit of rage and struck your oratrix with his fists in and about her face causing blood to flow from her mouth. Shortly thereafter, on or about the fourth day of November, nineteen hundred and fourteen, the defendant grabbed your oratrix about the throat with his hands and proceeded to choke your oratrix causing her to fall to the floor after which the defendant kicked her into insensibility. Within a few days thereafter, the defendant in another fit of rage threw your oratrix down the stairs of her home and then kicked her on and about her head and body causing her to faint from the extreme pain. On this occasion your oratrix was compelled to go to the home of her father in another part of the same city, fearing to stay in the same house with the defendant, but returned with her mother later in the evening, being persuaded to do so by her parents, and entered the house and locked herself in her room. On or about the fourth day of May, of the year nineteen hundred and fifteen the defendant threw a large piece of salt meat at your oratrix with great force, striking her in the face and then threw the cutting board on which the meat had been, at her striking her about the head. Then striking her on the head with his fists until a neighbor hearing your oratrix's cries and screams

came in and demanded him to desist, but upon her departure, again struck her on the top of her head felling your oratrix to the floor and causing her to become unconscious. Your oratrix then reported this assault to the Police, and the defendant was summoned to the police court, and there warned that a recurrence of the assaults would be punished by imprisonment. On or about the ninth day of June, nineteen hundred and fifteen, the defendant said to
10 your oratrix, "I will kill you, I don't care what they will do to me." This remark and the continued assaults of the defendant, who is of powerful physique and gorilla strength,—having formerly been a blacksmith—, has put your oratrix in fear of her life at the hands of the defendant, and fearing that the defendant would use a revolver of high caliber which he kept in his room, your oratrix locked herself in a room of the house. On numerous occasions the defendant has stated to your oratrix that he would not
20 tell her to get out, but would make it so damned hot for her that she would have to leave him. On one occasion he spat in the plate of your oratrix, while she was eating and then urinated on the floor of the kitchen while she was scrubbing. On several occasions he would eat the food prepared for him by your oratrix and throw the remainder into the sink. In the numerous fits of high temper indulged in by the defendant he called your oratrix a whore and other vile names. Finally on the fourteenth day of June,
30 nineteen hundred and fifteen, in the presence of a woman engaged in washing the clothes, without provocation, the defendant beat your oratrix with his fists on and about her body, causing severe hurts, and pulled her hair, the said injuries causing her to go to bed and summon a physician, who is now treating your oratrix for the injuries resulting from the

defendant's inhuman treatment. Your oratrix states that her back and arms are covered with severe bruises and black and blue marks. Your oratrix fearing further harm from the defendant, and being nervous, ill and being unfit to perform the duties as a wife and being unable to reclaim him to a sense of duty by kindness, and it appearing that further cohabitation with the defendant must be attended with grave danger to her life, and being in great fear, anguish and discomfort, your oratrix left the defendant's house, and fled to the home of her parents at No. 78 Union Street, Trenton, New Jersey. Your oratrix says that from the defendant's past extreme cruelty and abusive treatment of her and his personal hatred for her, it would be unsafe and improper for her to return to the defendant, and live with him as his wife. 10

5. Your oratrix shows that she is now dependent for the support of herself and child on her aged parents, who are not financially able to support her. 20

6. Your oratrix charges that the defendant is possessed of a retail saloon business at No. 618 North Olden Avenue, Trenton, New Jersey, and that defendant's profits from said business average about one hundred dollars per week, that he is the owner of a large amount of real and personal property; that he is the owner of three houses and lots, 616, 618 and 620 North Olden Avenue, Trenton, New Jersey, one of which is a valuable saloon property in which he conducts his business, and that he has a bank account in the Mercer Trust Company and The Trenton Banking Company, in the City of Trenton, the amount of said deposits, your oratrix has been unable to ascertain. That your oratrix placed the sum of five hundred dollars in the joint names of the oratrix and defendant at the solicitation and command 30

of the defendant, over which sum the defendant has assumed control, by forcing the oratrix to sign checks before filling in the amount thereof; that the defendant is about twenty-six years of age and is of good health and of great strength; that he is, by his personal attention to his business, capable of earning the aforesaid weekly sum, and that defendant is abundantly able to maintain and support her and her child in a manner suitable to their position.

10 In consideration whereof and forasmuch as your oratrix can only be relieved in this court; to the end, therefore, that the said Sol Goldberg may answer the premises, but without oath, and that he may be ordered and decreed to provide such suitable support and maintenance, to be paid by and provided by him, or made out of his property for your oratrix and the infant child of the said marriage, 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; and that the said defendant may be
20 compelled to give reasonable security for such maintenance and allowance, and to pay the same from time to time under the compulsory orders of this honorable court, as provided by the statute; and that he may be required to pay to her a reasonable weekly allowance and a proper amount for counsel fees during this suit; and that she may have such other or further relief in the premises as your Honor shall deem meet.

30 May it please your Honor, the premises considered to grant unto your oratrix a writ of subpoena, to be directed to the said Sol Goldberg, therein and thereby requiring him, on a certain day and under a certain penalty therein to be expressed, to be and appear before your Honor in this honorable court, then and there to answer the premises, and to stand

to and abide and perform such order and decree therein as to your Honor may seem meet.

J. Albert Homan
Solicitor for Complainant.
James and Malcolm G. Buchanan,
Of Counsel.

40/105

IN CHANCERY OF NEW JERSEY.

10

[Endorsed]

BETWEEN

Esther Goldberg
Complainant,
and
Sol Goldberg
Defendant.

BILL OF COMPLAINT.

20

J. Albert Homan, Sol'r.,
#26 West State St.,
Trenton, N. J.

Filed
June 23, 1915
Robert H. McAdams
Clerk

30

EXHIBIT D1-2.

IN CHANCERY OF NEW JERSEY.

Between,
Esther Goldberg,
Complainant }
10 and Sol Goldberg, } On Bill, &c.
Defendant. } Petition for Alimony.

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

The petition of Esther Goldberg, the above named petitioner, respectfully shows:

1. She has recently filed her bill of complaint in this cause, against her husband, Sol Goldberg, alleging therein that because of the extreme cruelty of her husband, the defendant, she was compelled to leave the home of the defendant on the fifteenth day of June, 1915, as hereinafter set forth.
2. Process of citation is about to be served on the said defendant.
3. The charge made in her said bill is true, and she is ready to maintain and prove, as your honor shall direct.
- 30 4. One child has been born of said marriage, to-wit, William Goldberg, age nine months, now in the custody of your petitioner.
5. Petitioner and defendant cohabited at 618 North Olden Ave., in the City of Trenton, County of Mercer, and State of New Jersey, without interruption from the date of their marriage until the fifteenth day of June, nineteen hundred and fifteen, when she

was compelled to separate from him, because of his extreme cruelty to her, as hereinafter set forth. Almost from the beginning of her married life, your petitioner has suffered from the violent and ill-governed temper of her husband. That these attacks first verbal, and then physical continued incessantly and uninterruptedly throughout their conjugal relations, until they culminated in the instances now particularly described. On or about the first day of October, nineteen hundred and fourteen, immediately following the birth of her child, the defendant fell into an unprovoked fit of rage and struck your petitioner with his fists in and about her face causing blood to flow from her mouth. Shortly thereafter, on or about the fourth day of November, nineteen hundred and fourteen, the defendant grabbed your petitioner about the throat with his hands and proceeded to choke your petitioner, caused her to fall to the floor, after which the defendant kicked her into insensibility. Within a few days thereafter, the defendant in another fit of rage threw your petitioner down the stairs of her home and then kicked her on and about her head and body causing her to faint from the extreme pain. On this occasion your petitioner was compelled to go to the home of her father in another part of the same city, fearing to stay in the same house with the defendant, but returned later in the evening, being persuaded to do so by her father, and entered the house and locked herself in her room. On or about the fourth day of May, of the year nineteen hundred and fifteen, the defendant threw a large piece of salt meat at your petitioner with great force, striking her in the face and then threw the cutting board on which the meat had been, at her striking her about the head. Then striking her on the head with his fists until a neighbor, hear-

ing your petitioners cries and screams, came in and demanded him to desist; but upon the departure of the neighbor, again struck her on the top of her head felling your petitioner to the floor and causing her to become unconscious. Your petitioner then reported this assault to the police, and the defendant was summoned to the police court and there warned that a recurrence of the assaults would be punished by imprisonment. On or about the ninth day of June, nineteen hundred and fifteen, the defendant said to your petitioner, "I will kill you, I don't care what they will do to me." This remark and the continued assaults of the defendant, who is of powerful physis and gorilla strength,—having formerly been a blacksmith—, has put your petitioner in fear of her life at the hands of the defendant, and fearing that the defendant would use a revolver of high caliber which he kept in his room, your petitioner locked herself in a room of the house, until the following morning. On numerous occasions the defendant has stated to your petitioner that he would not tell her to get out, but would make it so damned hot for her that she would have to leave him. On one occasion he spat in the plate of your petitioner, while she was eating and also urinated on the floor of the kitchen while she was scrubbing. On several occasions he would eat the food prepared for him by your petitioner and throw the remainder in the sink. In the numerous fits of high temper indulged in by the defendant he called your petitioner a whore and other vile names. Finally on the fourteenth day of June, nineteen hundred and fifteen, in the presence of a woman engaged in washing the clothes, without provocation, the defendant beat your petitioner with his fists on and about her body, causing severe hurts, and pulled her hair, the said in-

juries causing her to go to her bed and summon a physician, who is now treating your petitioner for the injuries resulting from the defendant's inhuman treatment. Your petitioner states that her back and arms are covered with severe bruises and black and blue marks. Your petitioner fearing further harm from the defendant and being nervous, ill and being unfit to perform the duties of a wife and being unable to reclaim him to a sense of duty by kindness, and it appearing that further cohabitation with the defendant must be attended with grave danger to her life, and being in great fear, anguish and discomfort, your petitioner left the defendant's house, and fled to the home of her parents at No. 78 Union Street, Trenton, New Jersey. Your petitioner says that from the defendant's past extreme cruelty and abusive treatment of her and his personal hatred for her, it would be unsafe and improper for her to return to the defendant, and live with him as his wife.

6. Your petitioner shows that she is now dependent for the support of herself and child on her aged parents, who are not financially able to do so.

7. Your petitioner charges that the defendant is possessed of a retail saloon business at No. 618 North Olden Avenue, Trenton, New Jersey, and that the defendant's profits from said business average about one hundred dollars per week, that he is possessed of a large amount of real and personal property; that he is the owner of three houses and lots 616, 618, 620 North Olden Avenue, Trenton, New Jersey, one of which is a valuable saloon property in which he conducts his business, and that he has a bank account in The Mercer Trust Company and The Trenton Banking Company, in the City of Trenton, the amount of said deposits, your petitioner has been

unable to ascertain. That your petitioner placed the sum of five hundred dollars in the joint names of the petitioner and defendant at the solicitation and command of the defendant, over which sum the defendant has assumed control, by forcing the petitioner to sign checks before filling in the amount thereof; that the defendant is about twenty-six years of age and is of good health and of great strength; that he by his personal attention to his business, is capable of earning the aforesaid weekly sum, and that defendant is abundantly able to maintain and support her and her child in a manner suitable to their position.

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8. She prays that an order may be made requiring the defendant to pay her a proper allowance for her support and maintenance, and that of the child of the marriage, in her custody, until the termination of this suit; and also to pay forthwith a reasonable sum for the fees of counsel in prosecution of this cause for her; and for such other relief as the circumstances of the case may require and render fit, reasonable and proper.

And petitioner will ever pray, &c.

J. Albert Homan,
Solicitor for Petitioner.

State of New Jersey }
County of Mercer }ss.

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Esther Goldberg, the above named petitioner, being duly sworn according to law, upon her oath, deposes and says:

1. On the eighth day of December, in the year nineteen hundred and twelve, she was lawfully married to her present husband, Sol Goldberg, in the City of New York, in the State of New York, by Reverend Macht, a Jewish Rabbi.

2. After her said marriage, your deponent and the defendant, her said husband, went to reside at No. 618 North Olden Avenue, in the City of Trenton, County of Mercer and State of New Jersey, and there lived together until the fifteenth day of June, nineteen hundred and fifteen, a period of about two and one-half years, where they cohabited until deponent was compelled to leave said home as hereafter set forth.

3. There has been born to deponent and her said husband, as the fruit of their marriage, one child, William, who is but nine months of age and is in the custody of deponent. 10

4. Deponent and the defendant cohabited at the aforementioned address without interruptions until the said fifteenth day of June, nineteen hundred and fifteen, when she was compelled to separate herself from him because of his extreme cruelty to her, as hereinafter set forth. Almost from the beginning of her married life, deponent has suffered from the violent and ill-governed temper of her husband. That these attacks first verbal and then physical continued incessantly and uninterruptedly throughout their conjugal relation, until they culminated in the instances now particularly described. On or about the first day of October nineteen hundred and fourteen, immediately following the birth of the aforesaid child, the defendant fell into an unprovoked fit of rage and struck deponent with his fists in and about her face causing blood to flow from her mouth. 20
Shortly thereafter, on or about the fourth day of November, nineteen hundred and fourteen, the defendant grabbed your deponent about the throat with his hands and proceeded to choke deponent. Within a few days thereafter, the defendant in another fit of rage threw deponent down the stairs of her home 30

and then kicked her on and about her head and body causing her to faint from the extreme pain. On this occasion deponent was compelled to go to the home of her father in another part of the same city, fearing to stay in the same house with the defendant, but returned later in the evening, being persuaded to do so by her father, and entered the house and locked herself in her room. On or about the fourth day of May, of the year nineteen hundred and fifteen, the defendant threw a large piece of salt meat at deponent with great force, striking her in the face and then threw the cutting board on which the meat had been at her striking her about the head. Then striking her on the head with his fists until a neighbor hearing deponent's cries and screams came in and demanded him to desist, but upon her departure, again struck her on the top her head felling deponent to the floor and causing her to become unconscious. Deponent then reported this assault to the police court and there warned that a recurrence of the assaults would be punished by imprisonment. On or about the ninth day of June, nineteen hundred and fifteen, the defendant said to deponent, "I will kill you, I don't care what they will do to me." This remark and the continued assaults of the defendant has put deponent in fear of her life at the hands of the defendant, and fearing that the defendant would use a revolver of high caliber which he kept in his room, deponent locked herself in a room of the house. On numerous occasions the defendant has stated to deponent that he would not tell her to get out, but would make it so damned hot for her that she would have to leave him. On many occasions he spat in the plate of deponent, while she was eating and then urinated on the floor of the kitchen while she was scrubbing. On several oc-

casions he would eat the food prepared for him by deponent and throw the remainder into the sink, depriving deponent of her food. In the numerous fits of high temper indulged in by the defendant he called deponent a whore and other vile names. Finally on the fourteenth day of June, nineteen hundred and fifteen, in the presence of a woman engaged in washing the clothes, without provocation, the defendant beat deponent with his fists on and about her body, causing severe hurts, and pulled her hair, the said injuries causing her to go to bed and summon a physician, who is now treating deponent for the injuries resulting from the defendant's inhuman treatment. Deponent says that on one occasion when behind the bar assisting her husband in the retail liquor business and in the presence of several customers, her husband kicked her several times on the ankles and legs, which act was unseen by the customers present as the view of the lower portion of her body was completely obstructed by the wooden bar on the premises. Whereupon deponent pushed him back, and he immediately turned to the customers present and said, "See her hitting me. See her hitting me," and instructed them to put their names and addresses on a slip of paper, asserting that they were witnesses of the act. Deponent states that her back and arms are covered with severe bruises and black and blue marks. Deponent fearing further harm from the defendant, and being nervous, ill and being unfit to perform the duties of a wife and being unable to reclaim him to a sense of duty by kindness, and it appearing that further cohabitation with the defendant must be attended with grave danger to her life, and being in great fear, anguish and discomfort, deponent left the defendant's house, and fled to

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the home of her parents at No. 78 Union Street, Trenton, New Jersey. Deponent says that from the defendant's past extreme cruelty and abusive treatment of her and his personal hatred for her, it would be unsafe and improper for her to return to the defendant, and live with him as his wife.

Deponent says that she is now dependent for the support of herself and child on her aged parents, who are not financially able to support her.

- 10 Deponent further says the defendant is possessed of a retail saloon business at No. 618 North Olden Avenue, Trenton, New Jersey, and that defendant's profits from said business average about one hundred dollars per week, that he is the owner of a large amount of real and personal property; that he is the owner of three houses and lots, 616, 618 and 620 North Olden Avenue, Trenton, New Jersey, one of which is a valuable saloon property in which he conducts his business, and that he has a bank account in the Mercer Trust Company and the Trenton Banking Company, in the City of Trenton, the amount of said deposits, your deponent has been unable to ascertain; that deponent placed the sum of five hundred dollars in the joint names of the deponent and defendant at the solicitation and command of the defendant, over which sum the defendant has assumed control, by forcing the deponent to sign checks before filling in the amount thereof; that the defendant has about twenty-six years of
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- 30 age and is of good health and of great strength; that he is, by his personal attention to his business, capable of earning the aforesaid weekly sum, and that defendant is abundantly able to maintain and support her and her child in a manner suitable to their position.

Deponent further says that she has read the annexed petition and knows the contents thereof, and that the same is true of her own knowledge, except as to the matters that are therein stated to be on her information or belief, and as to those matters she believes them to be true.

Sworn and subscribed before me, this 19th day of June, A. D., 1915. Mrs. E. Goldberg.

David L. Kelsey
Notary Public,
N. J.

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State of New Jersey }
County of Mercer } ss.

Katie Namiesnik, of the City of Trenton, State of New Jersey, being duly sworn on her oath, deposes and says: I reside at #301 Union Street, Trenton, New Jersey. On the 14th day of June, 1915, I was called to the home of Mrs. Sol Goldberg, #618 North Olden Avenue, to do washing for the day. At about 2 o'clock in the afternoon, Mrs. Goldberg, was carrying out some boiling water for me. I saw Mr. Goldberg coming out and grabbing the kettle from her spilling the hot water over Mrs. Goldberg's feet, and at the same time punching her in the back with his closed fist. Mrs. Goldberg cried from the pain. About one hour later I heard her shrieking in the kitchen, —I was on the back porch washing—, and when I asked her what was the trouble she said that he had caught her foot in the doorjamb and held the door on it. She appeared to be suffering great pain. I finished my day's work and left.

20

30

I am not related to either of the parties and I am not interested in this cause.

Sworn and subscribed before me, on this 17th day of June, Katie Namiestnik. 1915.

David L. Kelsey
Notary Public,
N. J.

10 State of New Jersey }
County of Mercer } ss.

Solomon Cantor, being duly sworn on his oath, deposes and says:—

I am the father of Esther Goldberg, the wife of Sol Goldberg; I am a Jewish Rabbi and do not believe in a wife leaving her husband for any reason. My daughter Esther, on many occasions has come to my home and complained of ill-treatment and beatings by her husband, and exhibited her bruised
20 arms. I refused to examine the rest of her body as it is not permissible under the Mosaic Law for me to look at a female's body other than my wife's. At all times I urged, begged and persuaded my daughter to return to her husband and endeavor to win back his love. On the 15th day of June she came to my house on Union St., Trenton, N. J., and saying that she had been severely beaten again and threatened to be killed by her husband and that she could no longer stand it, refused to go back to him. I am
30 in very moderate circumstances, and advanced in age and am unable to support my daughter and her child.

Sworn and subscribed before
me, this 17th day of June, Solomon Cantor.
1915.

David L. Kelsey
Notary Public,
N. J.

State of New Jersey }
County of Mercer } ss.

Bessie Cantor, of the City of Trenton, County of
Mercer, residing at #78 Union St., being duly sworn 10
deposes and says:—

I am the mother of Esther Goldberg, wife of Sol
Goldberg. My daughter has been coming to my
house from almost a short time after her marriage.
Throughout all that time she has shown me bruises
and black marks on different parts of her body which
she told me her husband gave her by beating her. I
had always advised her to return to him and try to
win back his love which advise she always followed.
A few months ago, I do not know the exact date, my 20
daughter came to me and complained that she was
beaten by her husband and showed me bruises on
her arm and shoulders and complained of her head
aching, which she said came from her husband's
beatings. She said she was afraid to go back and I
took her back with a great deal of persuasion after
promising her I would remain with her. A little while
after we were home and without any provocation, he
jumped up in a fit of anger, because I was in the
house and called her a whore and said other dis- 30
gustingly vile things. I remained with her that night
after locking ourselves in the bedroom. On the 15th
day of June, 1915, she came home in an ill and ner-
vous state and refused to go home, exhibiting to me
her body, showing me numerous black and blue
marks and bruises.

I begged her to go back with her husband, it being a gross sin in our Jewish Faith for a wife to leave her husband, but she refused saying she could stand it no longer, and that she was afraid of her life.

Sworn and subscribed before her
me, this 17th day of June, Bessie X Cantor
1915. mark

David L. Kelsey
Notary Public,
N. J.

10

State of New Jersey }
County of Mercer } ss.

Ida Burstein, of the City of New York, of the State of New York, being duly sworn on her oath says:—

20 Mrs. Esther Goldberg is my sister. I am now visiting My parents at #78 Union Street, Trenton, N. J., and have heretofore done so at various intervals. I was informed by my parents and my sister, Esther, that the latter's husband, Sol Goldberg was beating his wife continually. I was called by telephone to the home of my sister at #618 North Olden Avenue, on Sunday June 13, 1915, and went down there at about 7.30 P. M. and remained with her until about midnight. I saw her body, arms, back and chest, all bruised and swollen. She told me they were the results of a beating her husband had just inflicted upon her. Just before I left that night her
30 husband, Sol Goldberg, came home. I asked him why he was beating her, and he told me that she was a damned dirty stinker, and that it was nobody's business what he does with his wife. I saw my sister again the next day on the 14th of June, and she showed me some new bruises which she said her husband had inflicted upon her with his fists. I knew

that Goldberg had been beating my sister for some time, for on my previous visits to Trenton, she had displayed black and blue marks on her arms and shoulders. She is complaining now of severe headaches, which she said were caused by her husband beating her on the head, and I have seen her bathing her head with medicine to stop the pain.

Ida Burstein

Sworn and subscribed before
me, this 17th day of June, 1915. Ida Burstein 10

David L. Kelsey
Notary Public,
N. J.

Dr. N. H. Koplín
507 S. Warren St.,
Trenton, N. J.

State of New Jersey }
County of Mercer } ss. 20

Dr. Nathan H. Koplín, being duly sworn on his oath, says: I was called to Mrs. Sol Goldberg of 618 N. Olden Ave., about five times to treat her for various complaints as follows: complaining to me of severe pains in her head due to injury which she stated her husband inflicted upon her by striking her head with his fist for which I prescribed, also she complained of pain in her chest and arms due to injury inflicted by her husband. On a recent visit I found discolored marks upon her right arm and back of her chest. The bruises on her back were of recent origin, three in number. 30

I am not related to either the petitioner or defendant and I am a disinterested party.

Sworn before me,
this 17th day of (Signed) N. H. Koplín, M. D.
June, 1915.

(Signed) David L. Kelsey
Notary Public,
N. J.

State of New Jersey }
County of Mercer } ss.

10 Mamie Drosderfsky, being duly sworn on her oath,
deposes and says:—

I am the wife of Walker Drosderfsky, and reside
in Sol Goldberg's house next door to his saloon, #616
North Olden Avenue. I heard screams coming from
the Goldberg house often. I heard her screaming
and my boarders heard her screaming many times.
Sometime ago I heard Mrs. Goldberg screaming and
went into her kitchen through the rear gate and
found Mr. Goldberg standing in the Kitchen, he was
20 mad. Salt meat and a board were on the floor and
Mrs. Goldberg was holding her head and said that
he had hit her. I told him he must stop, a big strong
man should not beat his wife. Mrs. Goldberg tried
to get to the telephone, but he would not let her get
near it. After I had gone out I heard her scream
again and I went back and found her lying on the
floor, she had fainted.

30 He made her cry lots of times, he was all the time
hitting her, he would lock her out of the house and
swear at her calling her bad names. I do not re-
member all the things I heard and saw, it happened
so many times.

On Sunday morning, June 13th, I saw Mrs. Gold-
berg climbing out the kitchen window. I asked her
why she was climbing out the window, she said her
husband had locked her in. Mr. Goldberg told me

that if I should take her in my house, I would have to move. I heard Mr. Goldberg say to his wife "I don't care for my life, I'm going to kill you."

I am not related to either of the parties, and am disinterested in the cause.

Sworn and subscribed before me, this 19th day of June 1915. Mamie Drosderfsky

J. Albert Homan

M. C. C. of N. J.

10

State of New Jersey }
County of Mercer } ss.

Benjamin Budson, residing at #25 Market Street, Trenton, New Jersey, being duly sworn according to law, upon his oath says:

I am 53 years of age, and have known Sol Goldberg and Esther, his wife, for a number of years, having been an intimate friend of both families. On numerous occasions within the past year Esther Goldberg had shown me bruises on her arm and requested me to go down and see her husband and persuade him to stop beating her. On or about the sixth day of April nineteen hundred and fifteen I went down to his house at #618 North Olden Avenue, in the company of his brother-in-law, Isadore Cantor, and we both urged him to stop beating his wife. He replied that he would stop beating her if she would keep her mouth shut. 20

I am not related to either of the parties to this cause, nor am I interested therein. 30

Sworn and subscribed before me this 19th day of June, 1915.

B. Budson

David L. Kelsey
Notary Public,
N. J.

State of New Jersey, }
County of Mercer } ss.

David L. Kelsey, of full age, being duly sworn on his oath, deposes and says: I speak and understand the Jewish, German and English languages, I interpreted the annexed affidavits of Katie Namienitk to her in German, and of Solomon Cantor and Bessie Cantor in Jewish, and each of them stated that
10 they thereupon executed the same affidavits before me.

Sworn and subscribed to before me, this 19th day of June, 1915. David L. Kelsey

Stella S. Applegate
Notary Public of N. J.
[Endorsed]

40/105
20 IN CHANCERY OF NEW JERSEY

BETWEEN

Esther Goldberg,
Petitioner

and
Sol Goldberg,

a Defendant.

30 On Bill, &c.
Petition for Alimony.

J. Albert Homan, Solr.,
#26 West State St.,
Trenton, N. J.

Filed
Jul 7, 1915
Robert H. McAdams
Clerk

EXHIBIT D1-3.

IN CHANCERY OF NEW JERSEY.

Between, Esther Goldberg, Complainant, and Sol Goldberg, Defendant.	}	On Bill, &c. Petition for Almony. AFFIDAVIT.	10
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State of New Jersey, }
 County of Mercer. } ss.

Sol Goldberg the above named defendant, being duly sworn according to law, upon his oath deposes and says:

1. That it is true that on the 8th day of December, 1912, he was lawfully married to his present wife, Esther Goldberg, in the City and State of New York, by the Reverend Macht, a Jewish Rabbi. 20

2. That it is true that after the said marriage, deponent and his said wife went to reside at No. 618 North Olden Avenue, in the City of Trenton, in the County of Mercer and State of New Jersey and there lived until the 15th day of June, 1915, a period of about two and one half years, where they co-habited until his said wife deserted him and went to live with her father Soloman Cantor, in the City of Trenton. 30

3. That it is true that there has been born to deponent and his said wife as the fruits of their marriage one child, William, who is now about ten months of age and is in the custody of his said wife.

4. Deponent says, that it is true that he co-habited with his said wife until the above mentioned 15th day of June, 1915, at No. 618 North Olden Avenue, Trenton, New Jersey, but denies that his wife was compelled to separate herself from him because of his cruelty to her as set forth in his said wife's petition, nor that he in any other manner caused her to separate herself from him. Deponent denies from the beginning of his married life that his said wife has suffered from his violent and ill governed temper, or that he would attack her verbally and then physically so that they culminated in the instances set forth in the petitioner's petition. Deponent denies that on or about the 1st of October, 1914, immediately following the birth of their aforesaid child, that he fell into an unprovoked rage and struck his said wife with his fist in and about her face, causing blood to flow from her mouth, or that on or about the 4th day of November, 1914, he grabbed her about the throat with his hands and proceeded to choke her, or that within a few days thereafter while in another fit of rage, he threw his said wife down the stairs of her home and then kicked her on and about her head and body, causing her to faint from the extreme pain, or that by reason of this or any other assault, she was compelled to go to the home of her father in another part of the City, through fear or any other reason due to the acts of him. Deponent denies that on or about the 4th day of May, or at any other time during the year of 1915, he threw a large piece of salt meat at his said wife striking her in the face with the same, or that he threw the cutting board on which the meat had been, at her, striking her on or about the head, or that he did on any other occasion, strike her on the head with his fist until a neighbor hearing complainant's cries and

screams, came in and ordered him to desist, or that he did on the departure of the neighbor, strike his wife on the top of the head, felling her to the floor and causing her to become unconscious. Deponent says that he does not know whether his said wife complained to Judge Naar that he had struck her or not, but when he was called upon to appear before Judge Naar, his said wife complained that he had not been giving her sufficient food and money with which to get along but made no mention of any assault ever having been committed upon her, nor did the said Justice threaten him with imprisonment if he came there again. Deponent denies that on or about the 9th day of June, 1915, he said to his wife, "I will kill you, I don't care what they will do to me," nor did she to his knowledge, through fear or any other cause, lock herself in a room of the house. Deponent denies that on any occasion did he say to his wife, that he would not tell her to get out, but would make it so damned hot for her that she would have to leave him, nor did he at any time or place, spat in her face while she was eating, nor did he ever urinate on the floor of the kitchen while she was scrubbing. Deponent denies that on many occasions he threw food prepared for him by his wife in the sink, but says that on one occasion he did throw a little burned soup into the sink. Deponent says that never while in a fit of high temper or other wise, did he call his said wife names, such as whore, etc., nor did he on the 14th day of June, 1915, or at any other time beat complainant with his fist on or about her body causing severe hurts so that because of her injuries she was caused to go to bed and summon a physician. Deponent says that never on any occasion, when his wife was behind the bar assisting him in the retail liquor business and in the presence

of several customers, kick her several times on the ankles and legs, nor did he ever say to any customer in his bar room, "See her hit me, See her hit me," and instructed them to put their names and addresses on a slip of paper asserting that they were witnesses to the act. Deponent says that he does not know whether his wifes back and arms are covered with severe bruises and black and blue marks or not, but does say that if she is nervous, ill, and
10 unfit to perform the duties of the wife, or if she is in fear, anguish and discomfort, it is entirely due to herself and not through any cruelty and abusive treatment, or because of any personal hatred for his said wife, nor would it be unsafe for her to return to the deponent and live with him as his wife.

Deponent says that he never did at any time or at any place during his married life with his said wife, kick her or beat her, but that he has from the very beginning of their married life, treated her
20 with kindness, consideration and affection, doing all that he could at all times for the general welfare and happiness of his wife and himself. That he did at all times provide her practically everything that she asked for in the way of house hold furnishings, and eatables, dresses and money; that he never denied her really anything that she asked for.

Deponent says that while it is true that he did use the five hundred dollars, which came from her father and which was deposited in the Mercer Trust
30 Company of this City in their joint names and that this money was given to him and his wife by her father, it was given them in consideration of their marriage, but as a wedding present and for the sole purpose of buying furniture for their home as it is always customary among the Jewish people, for the father of the girl to give his daughter and intended son in law, a certain amount for this purpose. That

deponent and his wife spent four hundred dollars of this money for furniture which they both bought and picked out at _____ Furniture store, New York City, New York, which purchase was made at the request of his said wife, that with the remainder of the money, other small and useful house hold articles were bought, but that not a single penny of this money was used by him for his own personal use.

Deponent says that his said wife is extremely nervous and troublesome and showed a disposition almost from the beginning of their married life to nag and tantalize him and to make life altogether miserable, that almost from the beginning of their married life, she insisted on having the key to the money drawer in the bar room and that the property owned by deponent should be put in their joint names. Deponent says that for a while he gave his wife the key to the money drawer, which gave her free access to the same, that she frequently abused her privilege, so that in the end, if he were to continue in business, it became necessary for him to take the key away from his wife, following this occasion his said wife made all the trouble for him she could and succeeded in prejudicing all her people against him, in that she said to her people that her husband was accusing her to being dishonest and that she was not to be trusted, that her father and different members of the family called upon deponent and insisted that she was not dishonest and should have the key to the drawer, that she formerly had, which deponent refused to give her. That almost day and night she would nag deponent over this matter, threatening that she would give him no peace, night or day, that she would drive his customers away and destroy his business if he did not give her back the

key and place the properties in their joint names, which deponent refused, saying to her, that if he were to transfer the properties in their joint names, that he would not have the same business standing as he had prior thereto and that his creditors would become suspicious of him and force him to pay his debts at once and refuse in the future to extend credit to him, but that whatever he had belonged as much to her as it did to him. That this did not satisfy her. Deponent says that on several occasions 10 she ordered customers off the premises and told them to never come around any more, that she did on numerous occasions come in the bar room and would argue with deponent when he was at the very busiest, which had the effect of making a laughing stock out of both. Deponent says following the time when he took the key from his wife, she seldom did any cooking. That she said Jewish laws would not permit her to cook in the same room where cooking 20 was done for Gentiles, and that if he was going to cook and prepare a lunch for his customers she would not do any more cooking for him. Deponent says that he remonstrated with her and tried to show her that her position was a foolish one, that it was necessary for him especially when every dollar he had in the world was invested in the saloon property and that in order to successfully run the saloon business in that locality, where there are numerous factories, potteries, &c., and where 30 the chief source of income was from the employees, of these concerns, to prepare lunch that she still objected against any cooking being done. Deponent says by reason thereof he was forced to do his own cooking, that on one occasion while he was cooking soup for his customers and being alone in his place of business, he was compelled to go into the bar

and wait on a couple of customers, that after remaining there a few moments, he went to the door, which led to the kitchen and his wife who was standing behind the door, opened it on a crack and peered through and said to him, "you can't go through this door, if you want to go in the kitchen you go out the front door and around back, through the shed," to which deponent said, "Esther the soup will burn, won't you let me walk through the door," to which she replied, "No, I am the boss and I am going to show you that I can make a fool of you," to which deponent replied, "No, I won't permit you to make a fool out of me, but be reasonable and hurry up or the soup will be burned, and all those working men who come here for lunch will be disappointed and I will lose their trade," to which she replied, "I don't care you don't give me the money it is of no benefit to me." Deponent then said, "I am no child, I am a man, go away from that door I must go through," and then used sufficient force to force her back. That his said wife then claimed that he had hurt her, that her arms and back were bruised. Deponent says that is a fair example of how she carried on all the time, so that life and business became a burden, but that she delighted in annoying him as much as she could. Deponent says that he would open his place at about five o'clock in the morning and close it a few minutes before one the next morning and that at the best he could only get four hours of sleep unless he would take a short nap in the afternoon. That when he would go to bed, she would nag at him for hours saying that she intended to do this as long as she lived with him, unless he would give her the key to the money drawer, deposit the business money in their joint names and transfer the properties in their joint names, which

for the reasons before given deponent says he refused to do. That during all of this time she did little or no house hold work so that her home became filthy, that she had made all sorts of complaints to him that on one occasion she was afraid to stay in the house, either day or night, and that he must get a dog, which he did and that after he got two small dogs, she claimed that he thought more of the dogs than he did of her. That on another occasion she
10 complained that she was unable to do the house hold work, that deponent then got a middle aged woman to assist her in her house hold duties, that she almost immediately began to complain that he was intimate with the house keeper, although he denies these accusations and in order to have peace, he discharged the servant; that she then forced him to get another servant, which he did, that she immediately began to make the same accusations, that he was again forced to discharge the second servant. De-
20 ponent says that on one occasion she was crying and hollering that he had struck her, that the servant said to her, "what are you hollering about, he did not touch you," and his said wife replied, "It is none of your business, I guess you like him." Deponent says that finally on the 14th day of June, 1915, at about one o'clock P. M. he started to prepare to wash the dishes, he put a tea kettle full of water on the gas stove for the purpose of heating it so that he could wash the dishes, that she immediately objected
30 and grabbed ahold of the kettle and said, "You get out of here you have no right in here." That deponent then grabbed ahold of the kettle and said "Esther you leave that alone I have to have hot water to wash the dishes," to which she replied, "I am going to put you in trouble," that she then started toward deponent jumped at him and seized him by

the hair, that he shoved her away, she then cried again you have hit me and I am going to fix you. That the following morning she left and went to her father's home. Deponent says that he did not on this occasion or on any other occasion, strike his said wife, nor did he ever say to any person at any time that he had struck her and would strike her unless she did better. Deponent says that he has always treated his wife with kindness and consideration and did not through any act of his drive his said wife from their home, and that he is willing at this time that she should return home to him if she would only do half right. Deponent says that he is possessed with the saloon property and two other properties adjoining and for which he paid the sum of nine thousand dollars, that there is a mortgage on the said houses for four thousand dollars and that there is a balance due of six hundred dollars on a one thousand dollar note, that at the present time he is indebted to his sister in the sum of seven hundred dollars, borrowed money, which he has placed in his said business. That while he has approximately between three and four hundred dollars in the Bank, he has out standing bills to meet which must be paid at once in about the equal amount. That it is not true that he is making profit of his business of about one hundred dollars a week but says that he is doing in the neighborhood of eighty to one hundred dollars worth of business a week, that his profits with him working almost day and night after all expenses are paid, are anywhere from twenty to twenty-five dollars a week and that he has no other source of income.

Sworn and subscribed before
me this sixth day of July, A. D. Sol Goldberg
Nineteen Hundred and fifteen.

A. S. Brennan,
M. C. C. of N. J.

State of New Jersey, }
 County of Mercer. } ss.

10 Frank Albach, Sr., being duly sworn according to law, upon his oath deposes and says: That he has visited the saloon kept by the defendant. That while in said saloon he has seen the petitioner lock the door leading from the bar room to the room adjoining and compel the defendant to go through the alleyway to get to the rear of his home. Deponent further says that he has known the petitioner to quarrel with the defendant without any cause or reason. Deponent further says that he has seen the defendant cook his own meals and wash the dishes. Sworn and subscribed to before me this 3 day of July Frank Albach
 A. D. 1915.

Edward Hunt
 Justice of the Peace

20

State of New Jersey, }
 County of Mercer. } ss.

30 Antony Slabowski, being duly sworn according to law, upon his oath deposes and says: That he has visited the saloon kept by the defendant and that upon one or more occasions he has seen the petitioner slam the door leading from the bar room to the room adjoining, in the face of the defendant, and lock the door so that the defendant could not go through. Sworn and subscribed to before me this 6th day of July, A. Antony Slabowski
 D. 1915.

Edward Hunt
 Justice of the Peace

State of New Jersey, }
 County of Mercer. }ss.

Thomas Bednorek, being duly sworn according to law, upon his oath deposes and says: That he is personally acquainted with the petitioner and defendant in the within entitled cause, that he visited them at their home many times. That defendant treated petitioner with great respect and provided well for her and their home. Deponent further says that the petitioner is of a quarrelsome nature and quarreled with the defendant on many occasions. Deponent further says that one day in the winter last past while he was in the bar room of the defendant's, the petitioner came in said bar room and threw open the front door, it was very cold and windy. That defendant closed the door several times, but the petitioner would open it again; when deponent asked petitioner to close it, she, petitioner, said to deponent that I, Mr. Goldberg nor any other man could make her close the front door, she then stood in the door way with it opened and where she remained for some time. 10

Sworn and subscribed to before me this 3 day of July, A. D. 1915. Thomas Bednorek

Edward Hunt
 Justice of the Peace

State of New Jersey, }
 County of Mercer. }ss.

30

Adam Hayden, being duly sworn according to law, upon his oath deposes and says: That he is well acquainted with the petitioner and defendant in the within entitled cause and has known them for at least two years last past. Deponent says that he recalls June 30, 1914, when he was in the bar room of

the defendant, when Mrs. Goldberg entered said bar room and without apparently any cause or justification walked up to Mr. Goldberg and struck him, Mr. Goldberg saying to her, go away and leave me alone. Deponent further says that he frequently visited the Goldberg saloon and at no time did he ever see Mr. Goldberg strike his wife or use any threats or vile language towards her.

Sworn and subscribed to before me this 6th day of July, A.
10 D. 1915.

Adam Hayden

Edward Hunt

Justice of the Peace

State of New Jersey, }
County of Mercer. } ss.

Mary Dobrowolska, being duly sworn according to law upon her oath deposes and says: That she is well acquainted with the petitioner and defendant
20 in the within entitled cause, having been employed by them as a domestic from June, 1914, until December of the same year. That while deponent was so employed she has seen the petitioner hit the defendant in the face, fight with him and tear his shirt and call him vile names, such whore master. Deponent further says that she has seen the petitioner lock the door between the bar room and the adjoining room in the house so that defendant would have to go through the alleyway to get in the rear of the
30 house. Deponent further says that the treatment to petitioner by defendant was always kind, considerate and courteous, that defendant always provided well and plenty for his wife. Deponent further says that on several occasions she has known the petitioner to argue and fight with the defendant without apparently any cause or justification and defendant would

frequently say at these times, go away and let me alone.

Sworn and subscribed to before me this 3rd day of July, A. Mary Dobrowolska D. 1915. X

Edward Hunt
Justice of the Peace

State of New Jersey, }
County of Mercer. } ss.

10

Samuel Susman, of full age, being duly sworn according to law, upon his oath deposes and says: I am personally acquainted with both the petitioner and the defendant in the within entitled cause, having known both for some years last past. That a short time prior to the 15th. of June, 1915, deponent was present when the petitioner had a quarrel with the defendant and upon one occasion deponent heard the petitioner say to the defendant, "You are not a fit man for me, you are a saloon keeper, I should have a lawyer for my husband," and "you stink like a toilet," and "some day I will put you in Jail."

20

Sworn and subscribed to before me this 3 day of July, A. Samuel Susman D. 1915.

Edward Hunt
Justice of the Peace

State of New Jersey, }
County of Mercer. } ss.

30

William A. Biedemback, of full age being duly sworn according to law upon his oath deposes and says: That he personally acquainted with the petitioner and the defendant in the within entitled cause, having visited the saloon of the defendant on many occasions, that deponent on many of these visits,

which were mostly in the early part of the year 1915, heard the petitioner quarrel with the defendant, and to deponent there seemed to be no occasion for the same.

Sworn and subscribed to before me this 6th day of July, A. Wm. A. Biedemback D. 1915.

Edward Hunt
Justice of the Peace

10

State of New Jersey, }
County of Mercer. }ss.

Mary Flou, being duly sworn according to law, upon her oath deposes and says, that she is acquainted with the petitioner and defendant in the within cause, having been employed by them as a domestic for one month, that while deponent was so employed she at different times had seen the defendant come down stairs and open up his bar room at 5 A. M. and stay there until 1 A. M. Deponent further says she has seen the petitioner come down stairs at 8 A. M. and would quarrel with the defendant in Jewish language. Deponent further says that she seen the defendant cook his own meals. She further says she never seen defendant hit the petitioner, or abuse her in anyway.

20

Sworn and subscribed to before me this 6th day of July, A. Mary Flou D. 1915.

30

Edward Hunt
Justice of the Peace

[Endorsed]
On Bill &c.
On Petition for Alimony
Affidavit

J. H. Kafes,
Solr of Deft.

Filed
Jul. 7, 1915
Robert H. McAdams,
Clerk

10

EXHIBIT D1—4.

IN CHANCERY OF NEW JERSEY.

Between, Esther Goldberg, Complainant, and Sol Goldberg, Defendant.	}	On Bill for Main- tenance. ANSWER.	20
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The answer of Sol Goldberg, defendant, to the bill of complaint of Esther Goldberg, complainant.

This defendant answering the bill of complaint of Esther Goldberg, complainant, or so much thereof as he is advised is necessary for him to make answer unto, answering says: 30

(1) That it is true as stated in the complainant's bill of complaint, that on the 8th day of December, in the year 1912, he was lawfully married to his present wife, Esther Goldberg, in the City of New York and State of New York by the Reverend Macht, a Jewish Rabbi.

(2) That it is true as set forth in complainant's bill of complaint that after said marriage complainant and defendant went to reside at No. 618 North Olden Avenue in the City of Trenton, in the County of Mercer and State of New Jersey, and there lived together until the 15th day of June, 1915, a period of about two and one half years, but it is not true as alleged in complainant's said bill of complaint, that defendant deserted complainant on the said
10 15th day of June, 1915.

(3) That it is true that there has been born to the complainant and the defendant, as the fruits of their marriage, one child, William, who is about ten months of age and in the custody of the complainant.

(4) That it is true that complainant and defendant co-habited at the aforementioned address without interruption until the said 15th day of June, 1915, but that it is not true that complainant was
20 compelled to separate herself from the defendant because of his extreme cruelty to her. Defendant denies that from the beginning of his married life, complainant has suffered from his violent and ill governed temper or that he made verbal and physical attacks on his said wife incessantly and uninterruptedly throughout their conjugal relations. Defendant denies that on or about the first day of October, 1914, immediately following the birth of the aforesaid child or at any other time, that he fell into
30 an unprovoked fit of rage and struck complainant with his fist in and about her face, causing blood to flow from her mouth, or that shortly thereafter, on or about the 4th day of November, 1914, or at any other time, he grabbed the complainant about the throat with his hands and proceeded to choke her, or that about that time, or any other time, while in

a fit of rage, he threw the complainant down the stairs of their home and then kicked her on and about her head and body, causing her to faint from the extreme pain, or that by reason of this or anything else that happened in their said home, complainant was compelled to go to the home of her father in another part of the city, nor did she at this time, or at any other time, have reason to fear bodily harm from the defendant if she stayed in her said home, nor was it necessary for her to lock herself in her room 10 on the return to her home. Defendant denies that on or about the 4th day of May, 1915, or at any other time, he threw a large piece of salt meat at the complainant with great force, striking her in the face, or that he then, or at any other time, threw the cutting board at complainant on which the meat had been, striking complainant about the head, or that he then or on any other occasion, struck her on the head with his fist, nor did on this occasion by reason of any conduct on his part, a neighbor come in 20 his house and demand him not to strike his wife, nor did he at any time upon the departure of the neighbor, strike complainant on the top of her head felling her to the floor and causing her to become unconscious. Defendant says that complainant did go to the Police Court and make some sort of a verbal complaint against him, that when he appeared before Justice Naar in the First District Police Station, Trenton, New Jersey, his said wife complained that he had not been giving her sufficient food and money 30 with which to get along, but made no mention of any assault ever having been committed upon her, nor did the said Justice threaten him with imprisonment if he ever came there again. Defendant denies that on or about the 9th day of June, 1915, or at any other time, he said to the complainant, "I will kill you, I

don't care what they will do to me," nor did the complainant because of anything that he had said or done to her, lock herself in a room of the house. That it is not true that he stated to the complainant, that he would not tell her to get out, but would make it so damn hot for her that she would have to leave, or that on many occasions he spat in the face of the complainant, while she was eating, and then urinated on the floor of the kitchen while she was scrubbing.

- 10 It is not true that on several occasions he ate the food prepared for him by complainant and threw the remainder in the sink; depriving complainant of her food, nor is it true that the defendant while in a fit of high temper or otherwise called complainant a whore and other vile names, nor is it true that on the 14th day of June, 1915, or at any other time in the presence of a woman engaged in washing the clothes, or under any other circumstances, without provocation, or otherwise, he beat the complainant with
- 20 his fist on and about her body, or that he pulled her hair, causing complainant severe hurts, or that because of these or any other injuries inflicted by him, complainant was compelled to go to bed and summon a physician, who treated her for her injuries inflicted by defendant; nor is it true that on one occasion when complainant was behind the bar assisting in the business and in the presence of customers or at any other time, he kicked her several times on the ankles and legs, nor did the complainant under
- 30 such circumstances, push him back, nor did he on this, or any other occasion, turn to the customers in his bar and say, referring to his wife, "See her hit me, See her hit me," come and put your names and addresses on a slip of paper you are witnesses to the act. Defendant says that if complainant's back and arms were covered with severe bruises and

black and blue marks, it was through no fault of his, that he was not responsible for the same. Defendant says that the said complainant did not leave her said home on the said 15th day of June, 1915, through any fault of his, that he treated her always with kindness and consideration and always provided for her in the manner suitable to her position and standing in life. Defendant says that shortly after their aforesaid marriage, he engaged in the retail liquor business at No. 618 North Olden Avenue, Trenton, New Jersey, where he still conducts the business, but that it is not true that he makes clear profit, on the average, of one hundred dollars a week. Defendant says that his real estate holdings are as follows, the saloon premises and two adjoining properties, for which he paid the sum of nine thousand dollars, that there is a mortgage on the said houses for four thousand dollars, that there is a balance due of six hundred dollars on a one thousand dollar note, the proceeds of which were paid on the purchase price of the said houses; that at the present time he is indebted to his sister in the sum of seven hundred dollars, borrowed money, which he placed in his said business; that while he has approximately between two and three hundred dollars in the banks, he has outstanding bills of almost an equal amount; that he is now doing in the neighborhood of one hundred dollars worth of business a week, that his weekly profits after paying all expenses and working almost day and night, are approximately twenty-five dollars per week.

(5) Defendant says that it is true that he placed the sum of five hundred dollars in the joint names of complainant and himself, that the said sum of five hundred dollars was given to him and complainant by her father, that it was given them in consideration

of their marriage, as a wedding present and for the sole purpose of buying furniture for their home, as it is always customary among the Jewish people, for the father of the girl to give his daughter and intended son-in-law a certain amount for that purpose. That defendant and his said wife, spent four hundred dollars of this money for furniture, which they bought and picked out in New York City, New York, which purchase was made at the request of his said wife, and that with the remainder of the money, they bought other small and useful articles, but that not a single penny of this money was used by him for his own personal use.

(6) Defendant says that he is now paying the weekly sum of eight dollars to complainant, for the support of herself and child as he was ordered to do by a certain Order of this Court. That he always was and still is willing that the said complainant should return to his home if she is willing to treat him as a wife should. Defendant says that his said wife is extremely nervous and troublesome and showed a disposition almost from the beginning of their married life, to nag and tantalize him and to make life altogether miserable, that almost from the beginning of their married life, she insisted on having the key to the money drawer in the bar room and that the property owned by him should be put in their joint names. That some time after his marriage to complainant, he gave her the key to the money drawer, which gave her free access to the same, that she frequently abused her privilege, so that in the end, if he were to continue in business, it became necessary for him to take the key away from her, following this occasion, complainant made all the trouble for him she could and succeeded in prejudicing all her people against him, in that she told

her people that her husband was accusing her of being dishonest and that she was not to be trusted, that her father and different members of the family called upon him and insisted that she was not dishonest and should have the key to the drawer as she formerly had, which he refused to give her. That almost day and night she would nag him over this matter, threatening that she would give him no peace, night or day, that she would drive his customers away and destroy his business if he did not give her back the key and place the properties in their joint names, which he still refused to do, saying to complainant, that if he were to transfer the properties in their joint names, that he would not have the same business standing as he had prior thereto, and that his creditors would become suspicious of him and force him to pay his debts at once and would refuse in the future to extend credit to him, but that whatever he, the defendant, had belonged as much to her as it did to him; that this did not satisfy his said wife. Defendant says that on several occasions his said wife ordered customers off the premises and told them to never come around any more; that on numerous occasions, she came in the bar and argued with him when he was the very busiest, which had the effect to make a laughing stock out of both. Defendant says that following the time that he took the key from his wife, she seldom did any cooking, that complainant would say, that the Jewish laws would not permit her to cook in the same room where cooking was done for Gentiles, and that if he was going to cook and prepare lunch for his customers, she would not do any more cooking for him. That he remonstrated with her and tried to show her that her position was a foolish one, that it was necessary for him especially when every dollar he

had in the world was invested in the saloon property and business, and in order to successfully run his said business in that locality, where there are numerous factories, potteries, &c., and where the chief source of income was from the employees, of these concerns, to provide lunch for his customers; that she still objected against any cooking being done. Defendant says that by reason thereof, he was forced to do his own cooking, that on one occasion when he
10 was cooking soup for his customers and being alone in his place of business, he was compelled to go in the bar and wait on a couple of customers, that after remaining there a couple of moments, he went to the door, which led to the kitchen and his wife, who was standing behind the door, opened it on a crack and peered through and said to him, "You can't go through this door, if you want to go in the kitchen you go out the front door and around back, through the shed," to which defendant said, "Esther the soup
20 will burn, won't you let me walk through the door," to which she replied, "no, I am the boss and I am going to show you that I can make a fool of you," to which defendant replied, "no, I won't permit you to make a fool out of me, but be reasonable and hurry up or the soup will burn, and all those working men who come here for lunch will be disappointed and I will lose their trade," to which she replied, "I don't care you don't give me the money it is of no benefit to me," defendant then said, "I am no child, I am a
30 man, go away from that door I must go through," and then used sufficient force to force her back. That his said wife then claimed that he had hurt her, that her arms and back were bruised. Defendant says that he opens his place of business at five o'clock in the morning and closes it a few minutes before one o'clock the next morning and that at the best he could

only get four hours of sleep, unless he would take a short nap in the afternoon; that when he would go to bed, complainant would nag at him for hours saying, that she intended to do so as long as they lived together, unless defendant would give her the key to the money draw, deposit the business money in their joint names and transfer the properties in their joint names, which defendant refused to do. Defendant says that during all of this time, complainant did little or no household work, so that their home became filthy, that she made all sorts of complaints to him, saying on one occasion that she was afraid to stay in the house, either day or night, that defendant must get her a dog, which he did. That after he got her two small dogs, she complained that he thought more of the dogs than he did of her. That on another occasion, complainant complained that she was unable to do the house hold work, that he then got her a middle aged woman to assist her in her house hold duties, that she almost immediately began to complain that he was intimate with her, although he denies these accusations but in order to have peace, he discharged the servant, that complainant then forced him to get another servant, which he did, that she immediately began to make the same accusations as before, that he was again forced to discharge the second servant. 10 20

(7) Defendant says that on one occasion, complainant was crying and hollering that he had struck her, that the servant said to her, "What are you hollering about, he did not touch you," that complainant replied, "It is none of your business, I guess you like my husband better than I." 30

(8) Defendant says that on the 14th day of June, 1915, at about one o'clock P. M. he started to prepare to wash the dishes, that he put the tea pot full

of water on the gas stove, for the purpose of heating it so that he would wash the dishes, that complainant immediately objected and grabbed ahold of the kettle and said, "You get out of here, you have no right in here," that he then grabbed ahold of the kettle and said, "Esther, meaning the complainant, you leave that alone I have to have hot water to wash the dishes," to which she replied, "I am going to put you in trouble", that she then started toward
10 the defendant, jumped at him and seized him by the hair, that he shoved her away, she then cried again, "You have hit me and I am going to fix you. Complainant on the following morning went to her father's home.

(9) Defendant says that he did not on this occasion or on any other occasion, strike his said wife, nor did he ever say to any person, at any time, that he had struck her and would strike her unless she did better.

20 (10) Defendant says that he has always treated his said wife, with kindness and consideration and did not through any act of his, drive her from their home, that she left voluntarily and of her own free will, due as herein before set forth, because defendant refused to place the properties in their joint names and to give her free access to the money drawer, that she had once enjoyed.

Defendant humbly prays to be hence dismissed with reasonable costs and charges in his behalf most
30 wrongfully sustained.

John H. Kafes,
Sol. of Deft.

[Endorsed]

40/105

105/C

In Chancery of New Jersey

Between

Esther Goldberg,
Complainant,

and
Sol Goldberg,
Defendant.

10

On Bill for Maintenance.

ANSWER.

John H. Kafes,
Sol. of Deft.
111 E. State St.,
Trenton, N. J.

Filed
Aug. 24, 1915
Robert H. McAdams
Clerk

20

I hereby consent to the filing of the
within answers as of the terms required
by law.

J. Albert Homan,
Solicitor of Complainant

30

EXHIBIT D1-5.

IN CHANCERY OF NEW JERSEY.

Between,
Esther Goldberg,
Complainant,
and
10 Sol Goldberg,
Defendant. } On Bill, &c.,
Petition for Alimony
pendente Lite,
ORDER.

This matter being opened to the court by J. Albert Homan, solicitor of Esther Goldberg, and in the presence of John H. Kafes, solicitor for Sol Goldberg; and good cause being shown by petition and affidavits why the complainant, Esther Goldberg, is entitled to relief in the premises:

20 IT IS THEREUPON, on this seventh day of July, nineteen hundred and fifteen, ordered, that Sol Goldberg, the above named defendant, do pay to his wife, Esther Goldberg, the above named complainant, the sum of eight dollars per week, at the beginning of each and every week from the twenty-ninth day of June, nineteen hundred and fifteen, until the termination of this suit, or the further order of the court, for her support and maintenance and that of William Goldberg, an infant child of the marriage, now in the custody of the said wife.

30 AND IT IS FURTHER ORDERED, that the said Sol Goldberg, do pay to the said Esther Goldberg, or to her solicitor, a counsel fee of fifty dollars, and the costs of this motion to be taxed.

E. R. Walker, C.

Respectfully advised
John H. Backes
V. C.

EXHIBIT D1-6.

IN CHANCERY OF NEW JERSEY.

Between

Esther Goldberg,
Complainant,

and

Sol Goldberg,
Defendant.ON BILL, &C.,
ORDER.

10

This cause coming on to be heard in the presence of J. Albert Homan, of counsel with the complainant, and John H. Kafes, of counsel with the defendant, on bill, answer and oral proofs taken in open court; whereupon, and upon duly considering the arguments of counsel.

20 It is, on this thirtieth day of December, nineteen hundred and fifteen, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, ORDERED, ADJUDGED AND DECREED that the bill of the complainant be dismissed without prejudice.

30 It is further ORDERED, ADJUDGED AND DECREED that the said defendant do pay to said complainant, or her solicitor, her costs of this suit to be taxed, and also a counsel fee of fifty dollars, and that she have execution therefor according to the practice of this court.

E. R. Walker,

C.

Respectfully advised,
John H. Backes
V. C.

Order Substituting Solicitors

229

[Endorsed]

Copy

Decree

Goldberg vs. Goldberg

Costs 50.29

Counsel fee 50.

\$100.29

10

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NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between

SIMON GOLDBERG,
Petitioner-Appellant,
and
ESTHER GOLDBERG,
Defendant-Respondent.

} BRIEF OF
PETITIONER-
APPELLANT.

STATEMENT OF THE CASE.

The petition for divorce filed in this cause was by the husband on the ground of desertion. The petition alleges and the proofs sustain it, that the wife left her husband on December 28, 1919, and has since then refused and failed to live with him. The answer denied that the defendant, since that time and for more than two years next preceding the commencement of the action, wilfully, continuedly and obstinately deserted the petitioner, and set up a counter-claim for constructive desertion on the ground of cruelty. The counter-claim was dismissed because not sustained by the proofs.

At the hearing the petitioner proceeded to produce the proofs sufficient and necessary to sustain the ordinary petition for desertion, but the defendant adduced some proof as to the mental condition of the defendant, attempting to show insanity on her part during the two-year period. This defense had not been pleaded, but no objection was made

thereto and the parties went to hearing on the issue of the mental condition of the defendant. At the conclusion of the testimony and argument the learned Vice-Chancellor decided that he was not satisfied from the testimony as to the mental condition of the defendant that the husband has shown that she was during the time she was absent from him, prior to the commencement of the suit of a mental condition capable of rendering her absence from him a wilful desertion. And in his memorandum and in the final decree advised by him, he stated that the evidence leaves him in doubt as to whether the defendant's mental condition was such during the entire two-year period as to render her absence wilful "The burden being on petitioner, the petition will also be dismissed." (During the argument no mention was made by counsel for either party as to the question upon whom is the burden of proof as to the mental condition of the defendant.) The facts bearing upon mental condition will be dealt with more fully *infra* under a discussion as to the proofs themselves.

The petitioner-appellant in support of the relief he asks maintains the following propositions:

I.

THE BURDEN OF PROOF OF INSANITY OR OF THE EXISTENCE OF SUCH MENTAL CONDITION AS WILL EXCUSE A DEFENDANT IN A PETITION FOR DIVORCE ON THE GROUND OF DESERTION IS ON THE DEFENDANT SETTING UP THE DEFENSE; THAT INSANITY IS AN AFFIRMATIVE DEFENSE TO BE PROVED, AND THAT IF THE EVIDENCE ON THE QUESTION OF INSANITY OR MENTAL

CONDITION IS EQUALLY BALANCED OR DOUBTFUL, THE DEFENSE HAS NOT BEEN ESTABLISHED.

II.

THE EVIDENCE IN THIS CAUSE NOT ONLY FAILED TO ESTABLISH INSANITY ON THE PART OF THE DEFENDANT DURING THE NECESSARY PERIOD, BUT ACTUALLY CLEARLY ESTABLISHED HER SANITY AND THAT THERE WAS CLEARLY A WILFUL, CONTINUED AND OBSTINATE DESERTION DURING THE NECESSARY PERIOD.

I.

ARGUMENT.

THE BURDEN OF PROOF OF INSANITY OR OF THE EXISTENCE OF SUCH MENTAL CONDITION AS WILL EXCUSE A DEFENDANT IN A PETITION FOR DIVORCE ON THE GROUND OF DESERTION IS ON THE DEFENDANT SETTING UP THE DEFENSE; THAT INSANITY IS AN AFFIRMATIVE DEFENSE TO BE PROVED, AND THAT IF THE EVIDENCE ON THE QUESTION OF INSANITY OR MENTAL CONDITION IS EQUALLY BALANCED OR DOUBTFUL, THE DEFENSE HAS NOT BEEN ESTABLISHED.

A. The rule has, in its application generally to civil actions been so often laid down, as hardly to

need citation of authority. The rule as stated generally is that all men are presumed to be sane until the contrary is proven and the burden of proving it is on the one who adduces it.

14 R. C. L. 622, p. 74;

22 C. J. 146;

32 C. J. 756, Sec. 560.

In 14 R. C. L. 622 the author says:

“In all civil actions it is generally held that the burden of proof of insanity rests upon him who alleges insanity or seeks to avoid an act on account of it and it devolves upon him to establish the fact of insanity by a preponderance of the evidence.”

In 32 C. J. 756, it is said:

“It is presumed in law that all men are sane and the burden to prove insanity is on the person alleging it; thus if insanity is set up as an affirmative defense, the burden of proving it rests on defendant.”

B. Not only do we find this general statement made by cases and text writers, but the principal is applied in all particular branches of the law.

a. In Criminal Law, this is undoubtedly the rule.

Graves v. State, 45 N. J. L. 347 (1883, Ct. of Errors and Appeals);

State v. Herron, 77 N. J. L. 523, 71 Atl. 274 (1908, Ct. of Errors and Appeals).

State v. James, 96 N. J. L. 132, 114 Atl. 553 (1921, Ct. of Errors and Appeals).

These three cases are cases of murder in the first degree. We have cited murder cases, first, because

that is the most extreme, private crime and second, because the statute (as applied at least in the Graves case) requires proof of a wilful, deliberate and premeditated killing. The meaning of the word "wilful" in both the Divorce and Crimes Acts as applied to the question involved will be discussed *infra*. There is, of course, no question but that the same rule of law is applied to crimes other than murder.

In *Graves v. State (supra)* the defendant was convicted of murder in the first degree. The indictment charged that the defendant did wilfully, feloniously and of his malice aforethought, kill and murder the deceased. The defense was insanity. The Court said, quoting from the charge to the jury:

"The law presumes that every man is sane until the contrary is proved. Hence when an accused sets up the defense of insanity the burden of proof is upon him; and to make effectual such a defense, the proof of the prisoner's insanity must be satisfactory. He must overcome the presumption of sanity by a clear preponderance of proof and by the most satisfactory evidence."

In that case a request to charge had been made that "if they had any doubt as to whether he was sane or insane at the time he committed the act of killing, they should resolve the doubt in favor of his insanity."

As to this the Court said:

"It is manifest that if the burden of establishing the defense is upon the accused, the proposition involved in that request cannot be maintained. The proposition is that though the accused may have failed to establish his insanity, yet if he has succeeded in casting doubt on

the subject, he is, therefore, on that ground alone, entitled to the benefit of the defense as if he had proved it. If the burden of proving the defense is on the accused, as it undoubtedly is, it follows that he is not entitled to the benefit of the plea unless he establishes it."

Similarly, in the James case the Court said:

"The law presumes a man to be sane and if the contrary exists, thereby defeating this natural presumption, it must be shown by the party who alleges it."

b. In Wills it is also the settled law. Some of the cases are:

Sloan v. Maxwell, 3 N. J. Eq. 563, 581 (1831);

Trumbull v. Gibbons, 22 N. J. L. 117, 155 (1849);

Smith v. Smith, 48 N. J. Eq. 566, 582 (1891).

In the Sloan case the Court quoted the following from the Supreme Court of New York in *Jackson v. Vandusen*, 5 John. 158:

"In all cases where the act of a party is sought to be avoided on the ground of his mental imbecility, the proof of the fact lies upon him who alleges it, and until the contrary appears, sanity is to be presumed. He says not only that this is the rule, but that independent of authority, it ought to be so, and that it is recognized in all the elementary writers, and in all the adjudged cases he had met with both in law and equity. To the numerous authorities he quotes may be added a train of cases to the same effect in the American courts. We forbear to enlarge. The objection, although unsound, could not be passed without respectful attention."

The Court in *Trumbull v. Gibbons* (*supra*) says:

“Every person is presumed to be of sound mind until the contrary is proved; it is, therefore, incumbent on the party attempting to defeat a will on the ground of the testator’s insanity, to prove the existence of such disability. The rule is well established by authority and it is one which is in accordance with sound reason. He who wishes to impeach a will for such cause must support his allegation by proof, before he can overcome the presumption which the law raises of the sanity of the testator.”

c. In Contracts and Conveyances this is the settled law.

Lozear v. Shields, 23 N. J. Eq. 509, 510 1872, Ct. of Errors and Appeals);

Matthiessen Co. v. McMahon’s Administrator, 38 N. J. L. 536, 543 (1876), Ct. of Errors and Appeals).

For cases from other states see:

Killian v. Badgett, 27 Ark. 166;

Menkins v. Lightner, 18 Ill. 282;

Hiett v. Shull, 36 W. Va., 563;

Powell v. Powell, 27 Miss. 783.

In *Matthiesson Co. v. McMahon’s Administrator*, (*supra*), suit in trover was brought by McMahon’s Administrator, with respect to title to certain goods. The defendants claimed title under an alleged purchase from McMahon orally. The plaintiff set up the Statute of Frauds. Defendant then set up the delivery of goods. The sur-rejoinder by the plaintiff was that he was incapable of making the contract and delivering the goods by reason of insanity.

The Court held: “ * * * The instruction that the burden of proving the mental capacity of the deceased was on the plaintiff [he set it up], and that the plaintiff must satisfy the minds of the jury by the proofs he adduces of the fact, were correct.”

In *Swayze v. Swayze*, 37 N. J. Eq. 180 (1883), it was held that the burden of proving mental incapacity to give a release rested with the person who set it up.

d. And in a suit for divorce on the ground of desertion, where insanity is set up as a defense, as in the present case, it would seem that the same rule would be applied.

Youmans v. Youmans, 3 N. J. Misc. 576,
129 Atl. 122 (May 20, 1925, Buchanan,
V. C.)

Youmans v. Youmans was a suit by the husband on two grounds, desertion and extreme cruelty. The facts were such that the husband would be entitled to divorce on both grounds, if the wife were mentally responsible for her acts.

The wife believed wrongly that her husband was guilty of undue intimacy with another woman, and admitted she had no proof of it, and showed a course of conduct so illogical and irrational that it would seem probable that she was mentally defective.

At the hearing the Court took the view that where the proof showed that such a mental condition is so highly possible an explanation of the wife's acts, the husband has not sustained the burden of proof to present evidence to negative the possibility, *i. e.* that she was not mentally defective.

The question of the burden of proof, as the Court pointed out, was not considered in the argument and re-argument was moved for and granted.

The Court held on re-argument that “omitting from consideration the question of the presumption of sanity, that insanity is an affirmative defense which must be pleaded and was not in this case, and that as an affirmative defense, the burden of proof thereof is on the defendant,”* the petitioner is entitled to a decree on the ground of extreme cruelty, notwithstanding that it arises from delusion, at any rate, so long as defendant is not insane generally.

Now, it must be remembered that this case was decided about five months after the case at bar, that in the case at bar the question of the burden of proof of mental condition was likewise not raised on argument.

We maintain that this case is authority for the proposition contended for here. It may be urged that the remarks of the learned Vice-Chancellor are only *dicta*. If they are, it must surely be conceded that they are the strongest kind of *dicta* obtainable for a case like the instant one. They come from the same Vice-Chancellor, five months after the present case, and after re-argument on the question, the Court most clearly indicating that it has changed its mind on this question.

Indeed, the syllabus of this case in 3 N. J. Misc., 576, reads as follows:

Divorce—Desertion and Extreme Cruelty—*
wife’s conduct such as to indicate mental de-
rangement—Insanity an affirmative defense
which must be pleaded, and Burden of Proof is
on defendant—Extreme cruelty is ground for
relief, though it arises from delusion, at least

so long as defendant is not insane generally."

*Interlineation ours.

In fact, it would seem almost beyond dispute that had there been a re-argument in this case the decree would have been otherwise.

We have diligently examined the decisions both in this State and other States, but have been unable to find any case other than *Youmans v. Youmans* which deals with the precise question here involved of the burden of proof of mental condition in desertion.

The question of the burden of proof of mental condition in a suit for divorce on the ground of adultery was dealt with in this State, and it was held insanity was a defense to be established by the defendant.

Hill v. Hill, 27 N. J. Eq., 214 (1876).

In that case, Chancellor Runyon said: "A very careful consideration of the testimony has led me to the conclusion that her irresponsibility on the ground of insanity has not been established."

In *Carpenter v. Carpenter*, Milward's Irish Rep., 161 (1827, Consistory Court of Dublin) suit was begun for divorce and separation on the ground of extreme cruelty. The Court used the following language: "I had doubts whether such conduct [the cruelty] was not caused by derangement of mind, in which case it could not be acted on here, being an infirmity merely; but in the absence of all defensive explanations, or evidence of insanity, I am not warranted in inferring it."

C. The learned Vice-Chancellor seems to have based his conclusion upon the reasoning that since the statute required proof of a wilful desertion, it

required proof of a volitional desertion and, therefore, it was for the petitioner to prove sanity or sufficiency of mental condition.

This, it is submitted, is a conclusion based on erroneous premises. The Legislature never intended, of course, that in every suit for divorce on the ground of desertion, the petitioner must prove a sane desertion. Proof of a wilful desertion does not necessarily mean proof of a sane desertion. It will be considered to be proved, or at least presumed, that when a wife leaves her husband, saying she will not live with him that she is guilty of a wilful desertion. See *Edwards v. Edwards*, 69 N. J. Eq. 522, 61 Atl. 531 (1905). And the mere fact that she makes the statement that she was insane does not change the fact that her desertion was wilful.

Moreover, if we examine the meaning of the word "wilful" in the Divorce Act and in the section of the Crimes Act dealing with the degrees of murder, we find that they have similar meanings, and we have seen that the burden of proof of insanity in a charge of wilful murder is on the accused.

The word "wilful" in the Divorce Act means an intentional leaving by one spouse against the will of the other.

Stover v. Stover, 94 N. J. Eq. 703, 120 Atl. 788 (1923);

Meier v. Meier, 68 N. J. Eq. 9, 59 Atl. 234, (1923);

Biddle on Divorce, 2nd Ed., page 76.

In other words, the essence of wilfulness in the Divorce Act is intention. It must be an intentional act.

The word "wilful" in the section of the Crimes

Act dealing with degrees of murder means an intentional killing.

State v. Zdanowicz, 69 N. J. L., 619, 626, 55 Atl. 743, (1903), Court of Errors and Appeals.

That is to say, these words have similar meanings in their respective statutes. We have seen in *Graves v. Graves* (*supra*), that the burden of proof of insanity in first degree murder is on the accused. The conclusion would seem inescapable that the same rule should be applied here. The Legislature never intended that because wilful means volitional or intentional that the burden of proof of insanity should be on the petitioner.

In this connection it may not be amiss to call attention to the statement frequently seen that "it is presumed that every person intends the natural and probable consequences of his acts." 22 *Corpus Juris*, 143, Sec. 74. That is, if a person does an act, it is presumed he intended to do it, and if he wishes to excuse it on the ground of lack of intention, or volition, he must show the justification. In *Smith v. Wilcox*, 47 Vt. 537, 545, there is this language:

"The presumption in the first instance always is that a person intends to do what he does, so far as he can intend. Accordingly, proof that an intoxicated person committed an injury, if no excuse or justification appears out of the circumstances, is sufficient from which to find that he did it wilfully, according to his capacity, and such proof will make out his part of the case under the statute, unless some excuse or justification is made to appear by way of defense."

D. The test frequently applied to determine who

has the burden of proof of an issue is this: Who would prevail if no evidence at all were produced on this issue? As has been said:

“The test for determining which party has the affirmative and, therefore, the burden of establishing a case is found in the result of an inquiry as to which party would be successful if no evidence at all were given, the burden being of course on the adverse party.”

22 *Corpus Juris*, 70 and cases cited.

Tested by this principle, the present case, if the evidence were equally balanced or doubtful, as the learned Vice-Chancellor says it is, which is the equivalent of there being no evidence on the question, the burden of proof of insanity is on the defendant. If no evidence had been produced on insanity, the result would have been otherwise.

And see the note in 36 L. R. A., 723, where it is said that: “When unsoundness of mind is alleged as a ground for setting aside a deed, the fact must be established with reasonable certainty, and if there is only a balance of evidence or a mere doubt of the sanity of the maker of the deed, the presumption in favor of sanity must turn the scale in favor of its validity.”

Citing:

Myatt v. Walker, 44 Ill. 485;

Lilly v. Waggoner, 27 Ill. 395;

Wall v. Hill, 1 B. Mon 290, 36 Am. Dec. 578.

II.

THE EVIDENCE IN THIS CAUSE NOT ONLY FAILED TO ESTABLISH INSANITY ON THE PART OF THE DEFENDANT DURING THE NECESSARY PERIOD, BUT ACTUALLY CLEARLY ESTABLISHED HER SANITY AND THAT THERE WAS CLEARLY A WILFUL, CONTINUED AND OBSTINATE DESERTION DURING THE NECESSARY PERIOD.

The Test of Insanity. In order to discuss properly whether the evidence showed the defendant to have been sane or insane, we must know what is the test of insanity in divorce. It would seem that the test applied by the Courts is the same as is applied in other branches of the law, viz: whether the defendant understood the nature of his or her act, and whether it was right or wrong to commit it.

Hansell v. Hansell, 3 Pa Dist. 724, 15 Pa. Co. 514;

Yarrow v. Yarrow (1892) P. 92 (Eng.).

And see:

Duvale v. Duvale, 34 Atl. 888, 896 (1896),
affirmed 55 N. J. Eq., 589, 39 Atl. 1113;
affirmed 65 N. J. Eq., 771, 60 Atl. 1134.

In *Hansell v. Hansell* (*supra*) the Court said:

“To constitute insanity a defense, it must have been such as to deprive defendant of the use of his reason to the extent that he did not know right from wrong and was incapable of willing the one or the other.”

And in *Yarrow v. Yarrow*:

“If the wife were capable of appreciating the nature of the act and its probable consequences, her insanity in other respects is no defense.”

And in the New Jersey case of *Duvale v. Duvale*, it seems that Vice-Chancellor Reed had the same test in mind, for he said:

“She was sane enough to know that for such marital conduct by the defendant she was entitled to a divorce and sane enough to know that the domestic quarrels were the consequences of her own charges, reproaches and violent conduct. I am, therefore, constrained to regard her as responsible.”

In other words, if a person knows when it is wrong or right to commit a certain act toward his or her spouse, that is, whether the law will or will not allow a divorce for such act, the person is sane.

In addition, in the *Duvale* case, the Court seems to make this requirement: That if the person is not so disordered mentally as to be incapable of restraining herself from the commission of the acts complained of, that person is sane.

Moreover, it must, of course, be borne in mind, that a person may be medically insane, but not legally, and if not legally, he is responsible for his acts.

Kern v. Kern, 51 N. J. Eq. 586, 26 Atl. 837, 841 (1893).

There the Court said:

“A man may be mentally unsound in a medical point of view from certain conditions which exist, which would not in a legal sense relieve him from responsibility. He may be subject to

mania, and medically of unsound mind; yet, if the peculiar phase of mania had no influence upon the act brought in question, such act is not in the law invalidated. He may be an imbecile, and medically of unsound mind, but, if he has sufficient mind to reasonably understand the act which is brought in question he is legally competent."

So that, although the mind may be defective, and the person medically insane, yet if he understands the nature of his act, and whether it is right or wrong to do it, he is not legally insane and is responsible for his acts.

The test of insanity in divorce as herein outlined will be applied *infra*.

Now, the appellant in support of the proposition that the proofs show the defendant to have been sane relies upon the following:

A. The evidence showed that she was examined by a mental expert in 1918, the year before she left, and found sane, and the presumption is she continues sane until the contrary is shown. The examination was made by Dr. Henry A. Cotton, one of the leading mental experts of the world, and director of the New Jersey State Hospital. At that time he found her sane. State of the case, pages 163, 170, 171. He found she was nervous, but nervousness is, of course, not insanity, id. page 163.

Dr. Cotton testified (page 163), as follows:

"Q. Did you see Esther Goldberg or examine her in 1917, '18 or '19?

A. There is a record of her husband bringing her to me some time in 1918, if I recollect correctly and at that time I advised her teeth extracted and tonsils out. She had very bad teeth.

Q. It was for her teeth and tonsils?

A. Yes.

Q. Was she insane at that time?

A. She was not insane at that time. She was brought in consultation because she was nervous.

Q. It was nervousness?

A. Yes, sir.

Q. And nervousness is not insanity?

A. No."

It is most significant that this is the only testimony as to defendant's condition a short time before she left her husband, and it is produced by the petitioner-appellant. Dr. Cotton said that in 1918 (she deserted December 28th, 1919, *id.* page 26), she was sane, and of this there was no contradiction whatever.

And, once sanity is shown, the presumption is that it continues until the contrary is shown.

Boylan v. Meeker, 28 N. J. L., 274, 280 (1860).

We must presume, therefore, that she was sane thereafter until the contrary is shown.

B. The acts and statements of the defendant show that she was sane during the necessary period.

The defendant acted from a definite reason—that her husband was cruel to her and was not fit for her by education or otherwise—inadequate as it proved, it is true, but nevertheless a motive or reason.

The defendant's father testified, *State of Case*, page 130, that the defendant claimed the petitioner did not give her enough money to live on, and that she could not live with him because he threatened to

kill her. And again (page 135), he said: "She told me the reason they can't live peaceful was because he beat her, etc." And similarly at top of page 236. And again at page 140, he testified as follows:

"Q. How long after your daughter left her husband was it that you brought the children to him?

A. About a year and a half, not quite two years.

Q. Now, didn't you think it was possible for Mr. Goldberg to change his attitude or his mind about the manner in which he was going to treat your daughter during the year and a half?

A. I don't know, how can I tell?

Q. Then, why didn't you go to see him, whether or not he didn't change his mind or his manner of treating her?

A. That didn't belong to me. It belonged to my daughter.

Q. You were interested in your daughter's welfare?

A. Why, I couldn't command her to go there or make her go there unless she wanted to.

Q. Did you ever ask her to go there and see how he was then?

A. Yes, sure I did.

Q. Did you request her to go?

A. Yes.

Q. What did she say?

A. She told me if he treated her good, 'If he treat me good, I would go to him.' "

And in the same manner the defendant's brother testified, page 148:

"Q. Did you ever sit down and talk to her?

A. Oh, yes.

Q. About going back to her husband?

A. Yes, sir, she would be willing to go back. Many times I spoke to her. She was afraid. She left him because he made her nervous and she was afraid to stay with him in the house because he told her he was going to kill her."

And so also, at page 151:

"Q. So she said he used to beat her?

A. Yes.

Q. And that is the reason she wouldn't go back?

A. She was afraid to. If he would promise not to beat her and treat her better, the children and herself, even today she would rather _____,"

Samuel Sussman, a brother-in-law of the defendant, testified at page 76, lines 23 to 25, that the defendant said: "I can't live with him, he is not good educated; he is not fit for me." And also at page 77, line 24, and page 79, line 25.

The defendant's defense and counter-claim on the ground of cruelty are likewise an indication of her sanity as tested by her acts. She knew when it was right or wrong to leave her husband and that it was right for her to leave him on the ground of cruelty. To us it seems that this is almost the keynote of the whole question as to whether she was sane or not. She gave perfectly good reasons for leaving and staying away, although she failed to prove them. Whatever else we may deduce from the testimony, we cannot escape the fact that she knew when it was right or wrong to leave and the nature of the act of leaving.

The Court in *Graves v. State (supra)* examined the acts and statements of the defendant in a similar manner to determine his sanity. In that case the Court said:

“Again, the prisoner acted from a motive—inadequate, it is true, but a motive that influenced his conduct. He had had disputes with the Soden family, and with the deceased personally. The boy had jeered him, etc. [The Court goes on to give his reasons for killing] * * * for if the prisoner had sufficient intelligence, by a process of reasoning, to connect his injuries with the person who inflicted them, and to sum up the cost [he had said to a policeman he had summed up the cost before, namely, that he would have to stand trial for murder] * * * and to anticipate the result that would follow, it would be difficult to deny him the possession of sufficient mind to understand the nature and quality of the act he was about to engage in, and volition in the execution of his purpose. For the question is not whether the accused when he engaged in the deed, in fact thought whether the act was right or wrong, but whether he had sufficient mind and understanding to have enabled him to comprehend that it was wrong, if he had used his faculties for the purpose.”

And in *Duvale v. Duvale (supra)* this method was also used. Let us quote here again:

“She was sane enough to know that for such marital conduct by the defendant she was entitled to a divorce and sane enough to know that domestic quarrels were the consequences of her own charges. I am, therefore, constrained to regard her as responsible.”

C. The testimony of the witnesses directly upon the question during the necessary period show the defendant to have been sane then.

The testimony of the witnesses in this case should be classified, for better understanding, we think, into three classes:

1. That by the experts;
2. That by physicians not mental experts who had good opportunities to observe the defendant; and
3. That by laymen.

1. Each side produced one mental expert. The defendant produced Dr. Carl L. Pierson, a young physician on the staff of the New Jersey State Hospital, whose only actual experience in mental diseases dated from 1922 (page 107, the date of the hearing was January 5th, 1925). Dr. Pierson testified that the defendant came under his observation or attention for the first time on January 29th, 1923, the date she was admitted to the State Hospital (page 108) and that he did not examine her at all prior to that date. At page 111 he said he did not examine her at all in 1920 or 1921. He also stated that she was suffering from a mental disease which was constitutional (page 110), which is one that might arise before the teens (page 110, line 15), that this was a condition that came on gradually. He also testified as follows:

“Q. Having found the condition was constitutional, what was this disease she was afflicted with? Or would you say that this disease that she was afflicted with came on suddenly?”

A. It was a gradual condition.

Q. It took a number of years to come to a head?

Mr. Perlman: That is objected to as leading.

A. I would not say that. I would say the condition might have existed to some certain period and some precipitating factor might bring it out more pronounced."

It must be borne in mind, however, that there is nothing anywhere in the testimony of Dr. Pierson to show that during 1920 or 1921 the defendant was legally insane, i. e. that during those years she did not know right from wrong. He did testify that in 1923 and at the time of the hearing he did not believe she knew right from wrong all the time. But we are concerned with the two years immediately following the leaving, December 28th, 1919, that is, 1920 and 1921.

Gordon v. Gordon, 89 N. J. Eq., 535, 105 Atl. 242, (1918, Ct. of Errors and Appeals).

Indeed, on cross-examination, Dr. Pierson admitted (page 115) that he would not know distinctly whether the defendant knew in 1922 whether it would be wrong or right to desert her husband even if he knew distinctly that in 1923 she did not know whether it would be right or wrong to desert.

The petitioner-appellant produced Dr. Henry A. Cotton, a mental expert for twenty-five years, and a world famous man in his field, and, as already stated, the director of the New Jersey State Hospital.

Dr. Cotton testified, as already pointed out, that he examined the defendant in 1918 for nervousness, bad teeth and tonsils (page 163) and that she was sane then.

He also testified that, in his opinion, no mental expert who examined a patient for the first time in 1923, could tell what the patient's mental condition was in 1920 or 1921 (page 160, line 35, page 161, lines 16 to 18; page 162, lines 27 to 30). And at page 162, asked specifically as to this defendant, and as to whether she knew right from wrong in 1920 or 1921, using an examination of her in 1923 as the basis for diagnosis, he said that he would not want to make the distinction (page 163) because in his opinion such a distinction based upon such diagnosis could only be problematical and conjectural.

He also testified that if the defendant were certified to be insane in 1923, it would be perfectly possible for her to have been sane in 1922, even as late as October or November, 1922 (page 163, line 31, etc.); that neurosis or nervousness does not mean legal insanity at all (page 175).

The result of the testimony of the mental experts is this:—Dr. Pierson said that the condition of the defendant is one which might have existed before (page 110, line 31), and in his belief did not come on suddenly. But he admitted that he did not know distinctly whether she knew right from wrong in 1920 or 1921. His testimony as to medical insanity was, therefore, only guesswork and conjecture. He admitted he was guessing. His testimony as to legal insanity in 1920 or 1921 was that he did not know. Hence, Dr. Pierson gave no testimony which was solid and definite, upon which a Court could place reliance, and without any real foundation upon which to pass judgment with any degree of confidence.

Dr. Cotton, it seems to us, undermined whatever possible value Dr. Pierson's testimony could have by his statements that no mental expert, in his opinion, could possibly tell the mental condition in 1920 or 1921 from an examination in 1923, either medically or legally. And his testimony that in 1918 the defendant was sane is entitled to very great weight.

2. The defendant and petitioner each produced a physician, not a mental expert, who testified among other things, as to the defendant's mental condition. Dr. Nathaniel Koplin, produced by the defendant, had been treating her for a number of years for nervousness and asthma, which was chronic (page 117, line 34). He treated her in 1918, 1919, 1920 (page 118, lines 3 and 4). He treated her in 1922 for asthma and nervousness (page 119, line 12).

Dr. Koplin was one of the physicians who committed the defendant as an insane person in 1923. On cross-examination he testified (page 121, line 22, etc.), as follows:

“Q. Then there weren't any facts showing she was insane prior to the time you examined her? [i. e. for commitment.]

A. Not directly.

Q. What do you mean?

A. I would say I wouldn't commit her in 1919 or '20. I wouldn't commit her as an insane person, that is to say, she was a highly nervous person.”

He also testified page 122, line 5, etc.:

“Q. Did she seem to answer your questions in 1920 or '21 in a normal manner whenever you treated her?

A. Yes, more so than later.”

The testimony of this physician, the defendant's own witness, was that in his opinion, she was not insane in 1919, 1920 or 1921.

The petitioner called Dr. Barney D. Lavine, who also treated her for chronic bronchitis and asthma (page 125). Dr. Lavine treated her from 1916 on upon a number of occasions. He testified (page 126), as follows:

“Q. During 1920 and '21, when you saw her, did you speak to her when you treated her?

A. Yes, sir.

Q. Did she seem to speak normally?

A. She did.

Q. Did she impress you in any way as being mentally abnormal?

A. She did not.

Q. Did she answer your questions all right?

A. Every one.

Q. Did she seem to know the difference between doing wrong and doing a right act—between doing a wrong act and the doing of a right act, would you say?

A. Yes, sir, I would say she did.”

He also said (page 128) that in 1919 she wasn't nervous to any great extent.

The testimony of both these physicians, therefore, one produced by the defendant and the other by the petitioner was that during the two years in question she was sane.

3. The defendant's lay witnesses who testified as to her mental condition were Solomon Cantor, the defendant's father, and Isador Cantor, her brother.

Her father testified (page 143) that when she came to him in 1920 “she was already not sound minded,” and also, at page 131, he said that when she came to

him, she didn't have her sound mind. Asked how he knew she was sick mentally, he replied (page 142) because "she wanted to lick me."

Her brother testified (page 147) "she wasn't dependable."

"A. We couldn't talk to her. We couldn't depend nothing upon her. She wouldn't give the right answers. She wouldn't do things right. She would lie down on the couch and she wouldn't eat for three days.

Q. That was when?

A. Nineteen twenty and '21, after the second time she comes, she was very bad. Mentally she was very bad and so was she physically. I believe she don't weight today more than 75 or 80 pounds."

It is highly significant however, that both these witnesses testified that the defendant would not return because she could not live with the petitioner, that he beat her and that she was afraid of her life. As to the father, see page 130, line 12; page 134, lines 9 to 13; page 135, lines 4 to 13:

At page 140 the father testified:

"Q. Did you ever ask her to go there and see how he was then?

A. Yes, sure I did.

Q. Did you request her to go?

A. Yes.

Q. What did she say?

A. She told me if he treated her good, 'If he treat me good, I would go to him.' "

See also, page 142, lines 21, 22, 23.

As to the brother, see page 148, lines 8 to 13.

These answers were perfectly intelligent, rational

and good reasons for leaving on the part of the defendant, if true. And the fact that the father and brother believed them true indicate, it seems to us clearly, that they did not think her insane at the time.

Moreover, the defendant's answer and amended answer were filed March 25, 1922, and December 19, 1922, setting up cruelty and containing not a word of her insanity. If she were insane at the time, it is a fair presumption to suppose that they knew it and would not have filed an answer merely on the ground of cruelty. It is likewise an indication that they believed the story of cruelty, and that this was a rational reason for defendant's leaving.

The petitioner, on the other hand, in addition to testifying himself that the defendant was sane during the necessary two years, produced other lay witnesses.

The petitioner (page 52, lines 5 and 6) testified that between 1916 and 1919 she was positively normal and that she showed no signs of nervousness. And at page 55, line 23, he testified as follows:

“Q. In 1919, the early part, what was her mental condition then?”

A. What do you mean by mental condition?

Q. Well, how was her mind, was it clear, as clear as yours?

A. Yes, positively, as clear as could be.”

And at page 154, line 17, etc., he testified that in 1920 and 1921 “she was all right.”

Samuel Sussman, a brother-in-law, testified also that she was normal in 1919 (page 85). He had spoken to her a number of times about returning.

She gave him the answer that he was not fit for her (pages 76 and 77). At page 85 he testified:

“Q. Would you say she wasn't clear in her head?

A. She was clear; she talked all right.

Q. She talked sensibly?

A. Yes.

Q. Rationally?

A. Yes.

Q. You wouldn't think she was crazy, would you?

A. No, I don't think she was crazy.”

Bernard Selden, at whose home the petitioner kept their children and where the defendant came in November, 1922, two or three times (page 156), said that she was normal.

In addition, several other persons who, though they saw the defendant only occasionally and had few words to say to her, said she was normal. See the testimony of Frank Ahlback (page 90, lines 3 to 12); Adam Hayden (page 92, lines 7 to 10); John Walker (page 95, lines 11 to 13).

To sum up the testimony of the witnesses directly on the question of insanity, it can be seen, it seems to us, that not one of the defendant's witnesses gave any testimony of her insanity which did not have serious and fatal flaws and defects in it. The testimony of the expert contained an admission that he was guessing and couldn't tell whether she was legally insane in 1920 and 1921. The testimony of the physician, Dr. Koplín, contained an admission that he did not think her insane in 1920 and 1921. The testimony of the father and brother contained admissions that she knew right from wrong because of her reasons for leaving and staying away, and

their conduct in permitting the answer and counterclaim to be filed setting up only cruelty is a silent indication that they did not consider her insane.

The petitioner's expert said she was sane in 1918 and that no one could tell from an examination in 1923 whether she was sane or insane in 1921, that it was perfectly possible for her to have been sane as late as November or December, 1922. Dr. Lavine testified she was sane and several lay witnesses did likewise. The deductions fairly to be made from this is that the defendant was sane.

D. Surrounding circumstances and facts indicate the defendant to have been sane during the time in question.

1. The defendant was kept at home by her parents for 37 months after she left. She was not committed to the New Jersey State Hospital until January 29th, 1923, (page 108). If she were insane in 1920 or 1921, she more than likely would have been committed by them before 1923. People do not normally and in the usual course of events keep insane persons at home for any length of time.

2. She was at White Haven Sanatorium, a tuberculosis sanatorium (page 146, line 4), for a period of 8 months (page 131, line 20, page 145, line 23), in 1922; (page 150, lines 25 and 26). She was brought back from White Haven after 8 months because "it was too much expense" (page 131, line 31). Now, it is reasonable to infer that if the defendant were insane in 1922, the physicians at the sanatorium would have discovered it during a period of 8 months. It is also reasonable to infer that they would not have kept her there in a tuberculosis sanatorium that length of time if she were a lunatic.

3. The defendant's witness, her brother, testified on cross-examination, when asked if they had consulted brain specialists, that they had, and asked further whether they didn't tell then that she was not insane, he evaded the question and simply said they told her to consult some more doctors (page 150, line 35, page 151, line 15). It is reasonable to suppose that if these doctors had told them she was insane, they would have seized this opportunity of presenting hearsay evidence to say they had told them so.

4. Furthermore, if these doctors, or any of them, had told them she was insane, why did the defense not produce at least one of them to testify to that effect, or account for his or their absence? Such testimony would have carried weight.

To summarize briefly, the decree is based upon erroneous principles of law, unsupported by authority or reason, and is clearly against the weight of the evidence, and ought to be reversed.

Respectfully submitted,
PERLMAN & LERNER,
*Solicitors and of Counsel with
Petitioner-Appellant.*

NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between

SIMON GOLDBERG,

Petitioner-Appellant,

and

ESTHER GOLDBERG,

Defendant-Respondent.

} REPLY BRIEF OF
PETITIONER-
APPELLANT.

The petitioner-appellant in reply to the points made in the brief of the defendant-respondent, urges the following contentions:

1. The first argument that the burden of proof of the wilful, continued and obstinate character of the desertion is upon the petitioner is beside the point. The appellant does not deny this proposition. Appellant maintains, however, that the burden of proof of a wilful desertion does not necessarily mean the burden of proof of desertion by a sane person, if it appears otherwise wilful as normally and ordinarily shown. Neither the statute, nor the cases cited, meant that every desertion otherwise shown to be wilful normally, must be shown to be by a sane person, and do not deal with the burden of proof of insanity.

As we have pointed out in our main brief, in *Edwards v. Edwards*, 69 N. J. Eq., 522, 61 Atl. 531 (1905) Chancellor Magie held that when a spouse says: "I never intend to live with you again," that is proof of a wilful desertion. If the proofs stopped

there, there would be a wilful desertion. Now, if insanity is interjected, is it not for the person stating it exists to prove his statement?

In the case at bar, there is no question but the defendant said she would not live with the petitioner (State of Case, page 26, line 28, page 29, line 21, page 32, line 20, page 34, line 8 and numerous other places which will hereafter be pointed out.) There is no question then but that there is proof that the desertion is wilful as committed by normal persons. If then, it is attempted to show that the alleged deserter is not normal, is not then the burden on the person alleging it?

Counsel in his first point seems to make a sub-point of the proposition that insanity and confinement in a lunatic asylum arrests the wilfulness of the desertion. This proposition, we admit, is likewise sound, but, of course, does not touch the question of who has the burden of proving insanity.

In counsel's first point it is also contended that the petitioner did not perform a duty alleged to be his of caring for the defendant with a view to restoring her to health. We do not see the bearing of this in connection with the legal question of the burden of proof or insanity, but shall discuss it, however, *infra*, in connection with the facts of the case.

2. Counsel's second argument is that the evidence did not establish a wilful, continued and obstinate desertion during the statutory period.

Insanity. He seems to sub-divide this into several sub-points, the first of which is that the defendant was insane and did not understand the nature of her act of leaving. He relies mainly upon the testimony of Dr. Carl L. Pierson, of the staff of the

State Hospital at Trenton (P. 106, line 33, State of Case), who said that upon admission, January 29, 1923 (id. page 108, lines 2-10) defendant was suffering from a constitutional or congenital psychopathic state with episodes (p. 109, line 32, p. 110, line 4) that she had a mental disease which has existed no doubt for a number of years, dating back maybe to childhood, that it was a gradual condition, that her mind is deteriorating compared with 1923, that at the time she was admitted to the hospital the condition of her disease was such as to prevent her from knowing what she was doing.

Appellant contends that the testimony of Dr. Pierson is not entitled to great weight, for

(a) At the time of his examination of the defendant on January 29th, 1923, he had had very little actual experience with mental diseases, in fact only about one year. He was in the State Hospital from January 15th, 1922 (p. 107, line 2). He practiced medicine generally before that from his graduation in 1919 (p. 107, line 8), in two hospitals (p. 107), and then came to the State Hospital.

(b) Dr. Henry A. Cotton, a world renowned expert and head of the State Hospital at Trenton, explained (page 164), that the diagnosis made by Dr. Pierson as it appeared on the report of a "constitutional psychopathic state with episodes" meant a nervous individual "not necessarily insane, but nervous, neurasthenic and things of that type." The episodes are episodes of excitement (p. 164, line 10), that is, episodes of nervous excitement.

"Q. What is the affliction that Esther is suffering from, Doctor?

A. Well, I think it is a question as to diag-

nosis. The diagnosis made in the record here is constitutional, psychopathic state with episodes, episodes of excitement.

By the Court:

Q. That is not very apprising?

A. No, it is not.

Q. That means simply mental affliction?

A. Yes, a nervous, psychopathic individual more or less queer, perhaps, not necessarily insane but nervous, neurasthenic or things of that type. That is based largely upon the history, perhaps given by the parents."

Dr. Pierson's statement, therefore, that she had at the time of admission a mental disease which existed a number of years, no doubt, is not accurate. The meaning of the words of the diagnostic record, according to Dr. Cotton, is not at all what Dr. Pierson says it is. Dr. Cotton says that this means a nervous person, queer perhaps, but not necessarily insane. So that, according to Dr. Cotton, the diagnosis at the hospital at time of admission was not at all that she was insane, but nervous and neurasthenic.

(c) Dr. Pierson himself said (p. 108, line 36, page 109, top of page) that at the time of admission she answered questions relevantly, but not truthfully. "She could tell her name, her age, and said she had been to the hospital before, but not as a patient, that she had been examined by Dr. Cotton as a private patient." Dr. Cotton had examined her in fact in 1918 for nervousness, teeth and tonsils (page 163, lines 22-26). If the defendant could answer questions, could tell her name, age and have a memory sound enough to carry her back five

years, she could not have been in a bad mental condition on January 29th, 1923. It must be borne in mind that the statutory period of desertion ended December 28th, 1921.

(d) Dr. Cotton testified (page 172, line 24), that at the time of admission her "mental condition hadn't unfolded, so to speak. It was just beginning apparently." Dr. Cotton's opinion was that in January, 1923, her mental condition was just commencing. He went on to say that now she was very much more deteriorated, and that it had become very progressive, but in 1923, it must be remembered, he thought it was just beginning.

(e) Dr. Pierson had not examined the defendant before January 29th, 1923 (page 108, line 2, page 111, lines 18 and 19). As we have pointed out in the main brief, Dr. Cotton testified (page 160, line 35, 161, lines 16-18, 162, 27-30) that in his opinion no mental expert who examined a patient for the first time in 1923, could tell if the patient was sane or insane in 1920, or 1921, that if the defendant were certified to be insane in 1923, it would be perfectly possible for her to be sane as late as October or November, 1922 (page 163, line 31). If Dr. Cotton's opinion be given any weight, Dr. Pierson could not possible tell whether the defendant was sane or insane in 1920 or 1921 from his examination in 1923.

(f) Dr. Cotton disagreed with the diagnosis of Dr. Pierson (page 166, line 14). From this it seems to us that that defendant could not have had any marked or distinct mental disease at the time of admission in 1923, especially in view of Dr. Cotton's statement that the condition was only beginning at

the time. If the defendant had a distinct condition, we do not believe the physicians would have differed. In her condition was not marked and distinct even then, and was only beginning, the value of Dr. Pierson's testimony as to her condition in 1921, it seems to us, must not be great, and must be considered to have been exaggerated.

(g) Dr. Pierson admitted that he could not tell from his examination in 1923, whether defendant knew in 1920 or 1921 whether it would be right or wrong to desert her husband (page 115, line 10). He, therefore, admitted that he knew nothing of whether she was legally insane then or not. This, after all, is the important question.

Counsel for respondent also relies upon the testimony of Dr. Nathaniel H. Koplín who treated defendant for a number of years for various ailments (page 117, line 1), that she had asthma, and who was one of the physicians who had the defendant committed to the State Hospital (page 120, line 27, 28), that he treated her for nervousness.

So far from his testimony showing insanity in 1920 or 1921, it shows that she was merely nervous, but sane, for

(a) He testified (page 118, line 25), that in 1919:
 "Her asthma was worse, she apparently lost a lot of weight, she was more nervous than before."

He also said that in 1920 this condition continued (page 119, line 2).

He also testified (page 119, line 9), as follows:

"Q. Did you treat her in 1922?"

A. I did.

Q. What condition?

A. The same condition, asthma and nervousness.’’

In other words, during 1919, 1920, 1921, 1922, she was nervous, that her nervousness was getting worse. He did not, however, say at all that during those years she was insane.

(b) As pointed out in our main brief, Dr. Koplín admitted on cross-examination that there were no facts prior to January 24th, 1923, date of his examination for commitment (page 121, line 24) showing she was insane.

He testified:

“Q. Then there weren’t any facts showing she was insane prior to the time you examined her?

A. Not directly.

Q. What do you mean?

A. I would say I wouldn’t commit her in 1919 or ’20. I wouldn’t commit her as an insane person, that is to say, she was a highly nervous person.’’

(c) He also said (page 122, lines 6 and 7) that in 1920-21 she answered his questions normally.

Dr. Cotton’s testimony is attacked by counsel for respondent. He points out first, that Dr. Cotton says that condition might have begun ten years before. But, he fails to state that Dr. Cotton said it might have begun a day before (page 168, line 5). He next attempts to show that Dr. Cotton had not examined his records with reference to his examination of the defendant in 1918, and could not clearly give its results—But, the following is his testimony in this respect (page 170, line 18 to page 171, line 22):

“Q. He told you, however, that she wasn't right?

A. Not that I know of, because if there was a question of her being insane, I wouldn't have sent her off to have her teeth and tonsils attended to, outside. I would have her put in the hospital. I don't treat them on the outside.

Q. Do you keep a record of them?

A. I do.

Q. Why didn't you bring your record in court today?

A. I haven't had time to do it. I was in the operating room all morning.

Q. You were not subpoenaed in this case?

A. Yes.

Q. And you ought to bring all the books you had. Didn't you think it would be material to show your diagnosis of her in 1918?

A. I think that is self-evidential. I sent her to a doctor to have her teeth out and her tonsils. If she was insane I would not have done that, certainly. That is not my method of procedure. If there is any mental trouble I have them put in the hospital.

Q. If there is mental trouble?

A. Yes.

Q. Immediately?

A. Immediately, either Mercer or the State Hospital.

Q. You can't say whether there was an examination of her mental condition or not?

A. I probably did.

Q. And probably didn't?

A. I probably did.

Q. But you are not certain?

A. Well, I make an examination of every case

that comes for consultation. I go over them and satisfy myself.

Q. Every case?

A. Yes."

Dr. Cotton was certain from the methods he pursues that she was sane in 1918. Counsel also asserts that Dr. Cotton stated (page 171-172) that Dr. Pierson's opinion as to the period of mental disturbance might be correct. We fail to see in this testimony anything whatever concerning Dr. Pierson's opinion as to the period of mental disturbance.

It is then urged that Dr. Cotton's testimony that neurosis merges into psychosis, and that nervousness found in 1918 was undoubtedly the beginning of the trouble but not continuous, indicates insanity during the years in question. We cannot see the force of this. It is undoubtedly true that nervousness merges into insanity, but a person may be nervous for years and not be insane (p. 174, line 12).

Counsel seems to rely further upon some evidence of nervousness of the defendant. He points out that her health was not good. He attempts to show that in the maintenance suit in July, 1915, petitioner swore to an affidavit that defendant was nervous at that time, and that he contradicted himself in this case in this respect (page 40). But, he does not show that the testimony as to nervousness on page 40 of the State of the Case refers to an entirely different period, that between 1912 and 1914.

He also says that petitioner replied in the affirmative as to whether he had said at the previous hearing what counsel repeated to him about getting a dog to protect his wife because she was nervous and had hallucinations at night, during 1915. The last part of the question was: "That was your

second trouble wasn't it, the fact that she was nervous at night and had hallucinations, etc." Now, it must be remembered that at the previous hearing no question was raised as to her mental condition or hallucinations. That is an interpolation by counsel and a distortion of the real meaning of the statement made at that time. But, even admitting for the sake of argument that this showed nervousness on the part of defendant, it does not affect the proof on the question of insanity. Many women are nervous, especially at night, and want a dog or some other protection about the house. That does not mean they are insane, or even nearly insane. Moreover, this statement was made in 1915. No one contended that she was insane before 1919 or 1920. The answer to this long question which appears in respondent's brief, has, therefore, it seems to us, no bearing on this case.

Reference is also made that between 1916-1919, petitioner said defendant "didn't feel very good." The testimony (page 52, lines 7-13) in this respect was:

"Q. Did she ever complain to you about anything?

A. What do you mean about anything?

Q. Anything, in general, about her health?

A. Her health?

Q. Yes.

A. Well, when she didn't feel very good."

Petitioner simply said when she didn't feel very good, she would complain. It is also said that petitioner took her to Dr. Cotton in 1918. Dr. Cotton states, as already pointed out, that this was for nervousness (page 163, line 26). It is also said that in 1918 she was sent to the Catskill Mountains. Peti-

tioner sent her there for several weeks (page 53, line 24) at considerable expense to him. He gave her \$127.50 besides \$25 per week (pages 53 and 54). He went to New York to meet her (page 53, line 34), "She gained 26 pounds and she was as fine as could be" (page 54, line 4). Here again we fail to see the force of this testimony or reference on the question of insanity in 1920 or 1921. If it is meant to show nervousness, even if it be said it shows it, the nervousness does not prove insanity. Millions of persons are nervous but not insane, and never become insane.

Counsel also states that the petitioner testified his wife accused him of infidelity. The purpose of this was to show one of the reasons for the wife's leaving, although no proof was offered by the defendant as to this.

Many remarks are made in respondent's brief concerning alleged assaults and bruises and threats upon the defendant, committed before and after the maintenance suit in 1915. Petitioner denied this in counter affidavits in the maintenance suit and also in this suit. Some of these remarks quote testimony of alleged assaults in 1915 (as on page 134) before dismissal by V. C. Backes. If these references are made to create "atmosphere" we need only say that the learned Vice-Chancellor found (page 176) that the proofs failed to show any evidence to substantiate the wife's claim set up in the counter-claim, and counsel acknowledged (page 176, opinion), that, and the cause of action on these charges was abandoned.

Considering all this evidence of nervousness to which reference is made, the most that can possibly be said is that defendant was a nervous woman. She probably was. Nervousness is not insanity (page 163, line 29). And proof that a person is nervous is no proof as to when that person became insane.

Reliance is also placed upon the testimony of the father of the defendant that when she came to him in 1919, she didn't have her sound mind, that two or three months later, *i. e.*, early in 1920, she was in a New York hospital for two months. Counsel states that she was then taken to White Haven Sanatorium, that some time after she came back she was put in the New Jersey State Hospital; that between the time she returned from White Haven and the time she went to the State Hospital she showed unmistakable symptoms of insanity, that she was sick in her mind in 1920, that she wouldn't answer right. He also relies upon the testimony of defendant's brother, a resident of Baltimore that in 1920 she was sick mentally and physically, that in 1920 and 1921 "we couldn't talk to her, we couldn't depend nothing upon her," that 1920 and 1921 "mentally she was very bad."

Before discussing their testimony we wish to point out that counsel has not correctly stated the time when defendant was in the White Haven Sanatorium. This was not in 1920, but in 1922, after suit for divorce was started.

Isador Cantor, the brother, testified on cross-examination (page 150, line 24 to 27):

"Q. She was in White Haven in 1922?

A. In White Haven she was in 1922.

Q. That was over two years after she left him?

A. That was about two years after she left him. I couldn't tell you exactly the dates. I went down there myself to take her."

Solomon Cantor, the father, testified (page 132, lines 2-5).

"Q. After she came back from White Haven, how did she act around the house?

A. About six months later I gave her to the State Hospital.”

She was admitted to the State Hospital January 29th, 1923. She was in White Haven for six or eight months (page 131, lines 18-19; page 145, line 23). So that she was at this institution for eight months in 1922 and not in 1920.

Their testimony, it seems to us, has such serious defects that it is entitled to very little credibility:

(a) As pointed out in our main brief, they both testified that defendant would not return because she could not live with petitioner, that he beat her. These are good reasons for leaving, if true. And the fact that they believed them true indicates they did not think her insane at the time.

(b) Defendant's answer and amended answer, filed in March, 1922, and December, 1922, setting up cruelty and not saying that she had become insane—indicate they did not think her insane.

(c) They took her to a New York Hospital in 1920. They did not state that this was a hospital for insane persons. It was apparently not such a hospital.

(d) White Haven is a tuberculosis sanatorium. This is well known and it was testified to (page 146, line 3). If she were insane in 1922, they wouldn't take her to a tuberculosis sanatorium. It must be remembered she suffered from asthma. Why send her to a tubercular sanatorium if her mental condition was bad? The sanatorium authorities and physicians would not admit her. Lunatics are not kept in ordinary tubercular institutions. In fact,

her brother said they would not keep her there (page 146, line 6). But, she was there eight months. They certainly would have discovered her mental condition long before that and would not have kept her that length of time.

(e) The father said the reason she came back from White Haven was because it was too much expense (page 131, line 31) then catching himself, he added:

“A. It was too much expense. I thought she would be better with her mental condition, with her brain, but it was not better and I took her back.”

The brother said the reason they took her back was because they (the authorities) wouldn't keep her there on account of her mental condition (page 146, top). They give different reasons for taking her back in 1922. One said she was getting no better mentally, and I took her back. The other said, they (the authorities), wouldn't keep her there. Knowing that insanity was an issue and an important one in this case, they would be most unlikely to differ on this if they were telling the truth. The truth probably is, as stated by the father, that it was too much expense, and that is the reason she was taken back.

(f) The father testified (page 131, lines 21 and 22, as follows:

“Q. When she came back from White Haven, how was her condition?

A. The asthma got quite some better but she was awfully nervous.”

In other words, his own statement is that she was

awfully nervous after eight months in White Haven in 1922. If she were insane, he would not have said she was nervous, knowing the importance of this issue.

(g) Her brother testified on cross-examination that in 1922 she was nervous (p. 150, line 32). Asked if they consulted brain specialists and what they said, he replied "we should build her up. She is run down and nervous." His testimony follows:

"Q. That was over two years after she left him?

A. That was about two years after she left him. I couldn't tell you exactly the dates. I went down there myself to take her.

Q. You said you took her?

A. I did.

Q. She was a little bit nervous then?

A. A good bit nervous.

Q. Did you consult a brain specialist about her?

A. In New York.

Q. What did they say?

A. We should build her up. Her physical condition might help her for the mental condition. They said she is run down and nervous and probably building up her physical condition will help her mental condition. That is the reason we took her to White Haven.

Q. She was run down and nervous?

A. She was run down and nervous, and her physical condition was bad, too.

Q. They didn't tell you to take her to an insane asylum, did they?

A. He tried —

Q. Answer, please, did they tell you to take her to an insane asylum?

A. They told her to consult some more doctors.”

In other words, in 1922, he says brain specialists told them she was nervous, and really admitted after being asked twice, that they did not tell them to take her to an insane asylum.

For these reasons, it seems to us, very little credibility can be given to their testimony. For testimony contrary to this, reference is made to our main brief, where the testimony of Dr. Lavine, the petitioner, Mr. Sussman, Mr. Selden and others is discussed.

Counsel also urges that there is a presumption backwards that it may be inferred from subsequent insanity that insanity existed before. We have never heard of any real presumption of this kind, and on the contrary, we urge that once sanity is shown, it is presumed to continue until the contrary is shown.

Boylan v. Meeker, 28 N. J. L. 274.

He relies on an early California case, *Cohn v. Cohn*, 85 Cal. 108. This case is very meagerly reported. Suit was started on the ground of cruelty. There was a default and a decree entered. Within a month after decree defendant was put in insane asylum. Motion to set aside decree was allowed. The Court said that there was proof of inhuman acts on part of defendant. She went to asylum so close to that time that they thought she was insane. The Court stated no general presumption such as counsel urges.

Counsel also relies upon *Kretz v. Kretz*, 73 N. J. Eq. 246, an opinion by Vice-Chancellor Leaming and quotes from the case. He omits to quote, however, some important facts in the case. In that case

suit was on the ground of adultery. The defense was insanity at the time of the alleged offense. For a number of years prior to the date, the wife had indulged in alcoholics to such an extent that she became feeble minded and grew worse, until she became insane as a result of alcoholics. The dispute was as to when she became insane. It appears, and this is omitted in counsel's quotation, that about six months before the alleged offense her husband filed a petition for her commitment to an insane asylum based upon an allegation of her insanity. Two physicians then examined her and certified she was a proper person to be committed. One of them, the family physician, testified she had been insane for a long time prior to the date of the alleged offense. The husband, also, being aware of her condition, went away to Europe, and left her alone in the house, and the Court said the facts were such that he could have reasonably anticipated that this would happen, and knew she was utterly incapable of protecting herself against evil doers, and that the situation was such as to amount to a procurement on his part of her infidelity. This case, it can readily be seen, is totally different from ours. The husband himself had previously acknowledged she was insane before the alleged offense and the family physician said she was insane and was suffering severely from alcoholism. This in no way is an authority for the case at bar.

Obstinacy. Counsel's second sub-division of his second point seems to be an attempt to show that the desertion was not obstinate, that defendant wanted to come back and petitioner wouldn't take her. In reply to this, we call attention, of course, to the oral opinion of the learned Vice-Chancellor (page 176). The Court after referring to the obstinacy and continuous character necessary, said:

“The particular difficulty that arises in the present case is as to the wilful character of the desertion.” It did not seem to have been seriously urged in the proofs that the wife wanted to come back and that the husband did not seek to have her come or that he refused to have her come. But, inasmuch as there is some argument along this line in respondent’s brief, we shall proceed to reply thereto.

The facts are that the parties quarreled over property, money, women and jealousy (page 18, line 18; page 20, line 20; page 22, line 20; page 24, line 13; page 25; page 59, line 20). The wife left early in the morning of December 28th, 1919, taking \$2200 of the petitioner’s money from under the pillow and went to her father (page 26, top of page). Upon discovering this in the morning, petitioner dressed and went to her father’s and said: “Good morning,” but she wouldn’t answer him. He testified as follows (pages 26 and 27):

“A. When I went into her father’s house, I said, ‘Good morning, Esther.’ She wouldn’t answer me. I said, ‘What ails you again?’ She wouldn’t say nothing. So I stayed there about a half an hour and played with the kids and talked to them and I said, ‘I will go out a while and come back about five or six o’clock.’

Q. Did you go out?

A. I went out and took a little walk and seen people I went to see and came back around six o’clock.

Q. What happened?

A. I said, ‘Esther, get dressed and let’s go home before it gets too late.’ She says, ‘I’m not going home any more.’ I said, ‘Why?’ ‘Well, because I’m not going home.’

Q. What else?

A. When she says, 'I am not going home' and her father wasn't eating supper, I went to her father and said, 'Did you hear what she says?' I said, 'What is the reason?' He said, 'I know all about it, she is not going home now.' I said, 'Why?' He said, 'Because you are not a fit man to live with her,' so I talked to him and talked to him. I couldn't do nothing. He says, 'It's no use talking of me now. I don't care if you talk from now till tomorrow, it won't do you any good.' Her father said to me, 'My wife is now in New York City and I write a letter to her and my daughter is in New York and my son, Isadore, in Baltimore, and we were consulting with him and we will decide whether she comes back or not, and it takes two weeks' time to let you know yes or no.' So I went out of the house; I couldn't do nothing with him, so I thought I will get an officer.

Q. What did you do.

A. I got an officer.

Q. You did get an officer?

A. I got an officer, thinking it might scare her.

Q. What officer?

A. I took Officer Hort.

Q. Is he in the court room now?

A. Yes, I called Officer Hort and he come in the house. He said, 'What is the trouble?' She says, 'No trouble.' I says, 'Yes, there is trouble.' He says, 'I want you to go home.'

Q. Who says that?

A. I said it to her. She says, 'No, I'm not going home, you think I'm afraid of you or the officer; I'm not going home any more. I'm done with you.' So her father says to me in Jewish, 'That way.' He said, 'Look at here,

if you don't get out, I will get hold of the chair and break your neck; don't you ever come into my house any more.' I went out of the house.

Q. Did you ask her for the money at any time?

A. The officer asked her for the money, and she say, 'No, the money is mine as good as his.' "

The second time he was there that day, the father told him they would take two weeks to decide if she would come back, and they would let him know. The third time he was there with the officer, the father threatened, in Jewish, to break his neck with a chair and told him never to come into his house any more. The father had previously told him he was not a fit man for his daughter, and the daughter absolutely refused to go home, giving him no reasons whatever.

Two weeks later the father telephoned and asked him to support the children. He asked (page 28, line 13): "Ain't Esther coming home any more?" He said: "No, forget it, she won't come back to you" and dropped the receiver.

The following week he went again (page 29, line 8). He testified (page 29, line 20, *et seq.*):

"A. I asked her to come home. She said, 'No, I will not come back any more. I said, 'Why, what I done to you?' She said, 'You are not a fit man to live with you.' I said, 'Why, ain't I making a living for you?' She said, 'You live with different women, and she didn't want to live with a whoremaster.'

Q. She called you names?

A. Yes, sir. I said, 'You can't prove this and you know I'm not,' so finally she wouldn't come

back home no more, so I asked her if we have Rabbi Conwitz.

Q. Her father said something before you said something?

A. He said, 'She won't come back any more to me and it was no use talking to her.'

Q. What did you say to her father?

A. I said, 'Listen, father, we have a Rabbi in Trenton here a smart man, Rabbi Conwitz, you come to him and decide what to do; he might do something for her.' He said, 'All right.' He made an appointment to go the next Sunday, so I went over the next following Sunday afterwards, up to the house and knocked on the door. My father-in-law went out of the door and said, 'What do you want?' I said, 'You know what I want, you make an appointment to go to the Rabbi.' He said, 'No, I am not going to no Rabbi, I am a Rabbi myself.'

Q. What did you say?

A. I said, 'What are you going to do? Ain't Esther coming back any more?'

Q. What did he say?

A. He said, 'No, she is not coming back.'

Q. Is her father a Rabbi?

A. He is a Reverend.

Q. What is the difference?

A. He is only a Rabbi to kill cattle and such work. He can't take a position as Rabbi.

Q. Something was said about a piece of bread at that time, can you recall that?

A. Yes, that is right. He said that time when I asked her to come back, he said, 'Look here, listen, no use asking her to come back, because she is not coming.' He said, 'You got your loaf of bread and cut off a slice of bread you can't put it back the same as before and the same

thing between you and her, she never come back to you any more. She is done.'

Q. Was she standing there then?

A. Yes."

That is, she refused absolutely to return. He proposed to talk it over before a Rabbi the following week. Petitioner came, but the father refused to go to keep the appointment, although petitioner was there, saying he was a Rabbi himself, though he is not an ordained Rabbi. He told petitioner that she will never come back any more. Thereafter, the defendant's father, mother, and defendant came with the children to leave them with him.

Petitioner testified as follows (pages 31 to 32):

"Q. You treated them?

A. Yes, put a bottle of soda in there and some fruit, and they talked to the kids, and so on, and when they got through talking, they went home, and I said, 'Esther, now listen, you know this is your home, what is the use of going back, come back and let us live happily and forget things, and let's make up right and live right.' She says, 'No,' she says, 'No, my mind is such not to, and I will not come back any more to you.' I said, 'Don't you know any sympathy with your own children, with your kids, that is your kids just as good as mine, why don't you stay here and take care of them?' She says, 'No, I'm not coming back, I will not take care of them any more.' Her father said, 'She take care of the children, but you have got to support them.' I said, 'What do you mean?' He said, 'They got to get fifteen dollars a week and clothing and doctors.' I said, 'Is that the best you could do?' He said, 'Yes,

that's the best, if you don't do that, we won't take them.' ”

Next day he again went there. He testified as follows (page 32, lines 17-27):

“A. I knocked on the door, she came out. I said, ‘I got the children with me, you know.’ I said, ‘We might as well go home and live happy; let's live happy.’ She said, ‘No, I'm not going home.’ I said, ‘Here is the kids and here is a check for fifteen dollars,’ I give the children and the check and the clothing and I went home.”

He next saw her about three months later near a department store coming toward him. He made an effort to talk to her, but she disappeared in the crowd (page 33, line 9).

Later in 1920 she came to his house to see the children. He testified that the following conversation took place (page 34, lines 1-8):

“A. I stood there, you know, I said, ‘Esther, by God, you are a good mother, anyhow, you come to see the kids, why don't you have sympathy with them, your two kids, to stay here with them and let's live together?’ She said, ‘No, if I wanted to come back, I would come back long ago. I don't want to come back to you any more; forget it.’ And she went home.”

In 1921 he moved from his residence several miles away to a house a block from her father's (page 34, lines 10-12) in order to give her an opportunity to see the children and to come back to him, and to get together again. He also testified (page 34, lines 22-28):

“Q. Why didn't you go to her father's house and ask her to come back?

A. Her father says it is no use, he is going to break my neck; it is no use, never I don't want to go there in the house; I was afraid of him. He told me it was not use to ask her any more.”

She came to see the children at this place. The conversation (page 34, line 33 to line 5, page 35):

“A. The time I moved out there, she come to see the children and also the same thing, they talked to the kids, and I asked her I asked her, I said, ‘Why don't you want to come to get together; we got a nice little apartment here; let's live happy.’ She said, ‘You keep asking me to come back and I told you I am done with you, I won't live with you any more;’ that's all she said at that time and she went home.”

Even after he started suit for divorce in 1922, he spoke to her in friendly and solicitous tones. But defendant told him that she didn't want him to worry about her (page 35, line 20, etc.).

Petitioner testified (page 21, line 10) that the father once said: “Look at here, I make the thing very short. You can't be his wife, and I told you to separate and the sooner you separate the better for you to get a divorce.” As soon as he said it, I broke my heart. I started to cry. Her father said, he said that statement in front of my presence. I said, “You don't want to break my home up.” She said, “Well, it is.” I went out in the bar room and attended to business. The father admitted this (page 135, line 10), “I thought I just propose that to them. I said, if you can't get along, why don't

you divorce her? Mr. Goldberg said, "I will not divorce her for life."

Samuel Sussman, a brother-in-law testified (page 75, line 31, that he heard petitioner say to his father-in-law, "don't break up my home."

He also testified (p. 77, line 18) that she told him in 1920 she wouldn't live with him that he is not educated enough:

"Q. What did you say to her?

A. I said, 'It don't look good, you go and he go, you better go live together. You will good learn when you get a little older and you get used to it and live all right after.' She said, 'No, I wouldn't come to him, he is no good to me.'

Q. What?

A. I can't live with the man, he is not educated enough."

And again (p. 78, line 8) he said she said "no use talking about it any more." And around Christmas of the same year he tried to bring them together, and she said (p. 78, line 20), "No, I wouldn't go for no money." And again (p. 79, line 25), "Well she was complaining the same thing, I can't live with him, that is always what she said, he is not educated." And again (p. 80, line 31)) he wasn't educated enough. He testified further:

"Q. She herself was not very intelligent, was she?

A. She said she is educated a lot; she knows Jewish a lot.

Q. When she spoke of education to you, what she meant was character, didn't she, she didn't mean book knowledge, did she?

A. She mean something higher than like a Rabbi.

Q. She meant his character wasn't right?

A. And he was much—he don't know so much, because he don't like the father, or some other good learned Jew that is educated."

He explained that she wanted someone of the same station in life as her father. Petitioner's father (p. 100, line 31) testified that she always said she wouldn't live with him. Everything was just bad for her (p. 101, line 2). Petitioner's mother also testified to this effect (p. 98, line 12):

"Q. Who was it that said she didn't want to have anything more to do with him?

A. It was Esther, Esther, his wife didn't want to have anything to do with him. 'I don't want to know you.'"

It seems to us clearly, then, the petitioner acted like a reasonable and just man, and that there was very ample proof indeed to sustain the Court and that he was sincere and honest about getting his wife back. But what could petitioner do about it? They had let him know it would do absolutely no good to ask her to come back, they wanted him to forget it; the father threatened to kill him if he came to the house any more; the defendant gave no reasons which the petitioner could remedy, he couldn't change his station in life or education; she was utterly and unalterably opposed to going back; there was absolutely nothing petitioner could do about it. Every time he had a chance he spoke to her and asked her to come back. The father, in fact, admitted she didn't want to go back (p. 137, line 28). On p. 136, line 33, he testified:

"Q. Well, you know, as a matter of fact, that he asked her to return to him, don't you?

A. I cannot say, maybe he did and maybe he didn't."

He didn't deny the petitioner wanted his daughter home with him. Also p. 138, line 7, he testified:

“Q. Why didn't you go to him and ask him to take care of her if she was sick?”

A. What was the use of going and asking him? It happened once or twice before and it was no use of going and asking him to take care of her.”

This case is even stronger than the class of cases where it is evident that overtures or efforts on the part of the husband to resume relations would have been futile and in such a case the law does not require them.

Rogers v. Rogers, 81 N. J. Eq. 479, 86 Atl. 935 (1913 Ct. of Errors & Appeals).

Here the husband kept on making overtures even after it was clear that it was useless.

In fact, it seems to appear most significantly throughout the case, that the father was largely to blame for their troubles and continued separation. He did not like the petitioner. He was an ignorant man, a saloon keeper, the father was some sort of Rabbi or “Reverend,” his son-in-law's station in life was not suited to his own nor his daughter's and he thought it would be a good thing if they separated and got divorced.

Counsel refers to several bits of testimony in an effort to show lack of obstinacy. For example, he says defendant came to see her boy when he had the measles (p. 141) and the petitioner refused to let her in. Petitioner says he let her in (p. 35, line 20) and gives the conversation that ensued between them. This, moreover, occurred in 1922 (p. 35, line 10) after suit for divorce had commenced and he did not have to let her in anyway.

He also says her brother interviewed petitioner as to her return and he spurned all suggestions for reconciliation. Petitioner denies this and says this conversation occurred April 15, 1922, after suit started (p. 153, line 18). He said he marked this date down in the presence of the brother because he expected trouble. The brother did not deny that, petitioner marked it down in his presence and it must be taken as true.

But, he says, moreover, that he was willing to take her back even then, if she would come around and talk to him.

“Q. In 1922, in the machine, did he ask you to take your wife back?

A. In 1922 when I was talking to him he said to me, ‘How about taking Esther back.’ I said, ‘Yes, I will take her back.’ He says, ‘Let’s go into his father’s house.’ I said, ‘Why,’ I said, ‘No, I don’t have to go to your father’s house.’ He said, ‘Will you take her back?’ I said, ‘Yes, I will take her back, if she comes round to talk to me.’”

He also says he never spoke to the brother before about her returning then (p. 153, line 21, 22) and denied he spoke to him in 1920 or 1921 about it.

The case of obstinacy it seems to us is clearly proved.

Counsel’s final sub-division seems to be the petitioner did not properly take care of the defendant while she was sick and in that way did not perform his duty to her, and quotes further from *Kretz v. Kretz*, (*supra*). As we pointed out above, the Court found that the adultery committed there was under circumstances that practically amounted to a procurement by the petitioner of her infidelity.

But it cannot be seriously urged here that the petitioner procured the desertion. He did everything he could to prevent it. He also did everything, while it was possible for him to do so, to protect her health. He called the doctors whenever she was sick and paid for their services. This was corroborated by the physicians (p. 124, line 18, p. 126, line 31). He took her to Dr. Cotton and paid for his services (p. 53, line 8). He sent her to the Catskill Mountains after that and paid, as already shown, \$25.00 per week and gave her \$127.50. When she was at White Haven in 1922, he was unaware of the fact and couldn't have done anything about it. This was also after suit for divorce was commenced. During 1920 and 1921, he had no knowledge that she was ill at all; if she was. She and her family refused to have anything to do with him, to let her go back. How, it may be asked, did he violate any duty to care for her? If she came back, it is fair to suppose, he would have attempted to take care of her if she were ill, as he had done for a number of years prior to that.

We cannot see in what respect he has failed to do his duty as a just and decent husband. To us it seems as if her family wanted her to be rid of him. The most they can say is that she was a nervous woman and that at the time of the hearing they thought that since she was in the asylum, the burden of keeping her had better be his than theirs, and they seized upon this as an after-thought and ground of defence. It is respectfully submitted the necessary desertion was clearly shown.

It is also urged that petitioner did not show good faith. The case of *Percival v. Percival*, 94 N. Y. S. 909 is cited. This was a case in which the wife got a decree of divorce in New Jersey. No process was served on her here and the case was uncontested. The wife remarried. Husband sued in New York for

divorce on ground the decree was invalid and that she had committed adultery. He said that at time of New Jersey decree he was a resident of New York but offered no proof as to his residence between the time of the decree and the present case. There had been a New York decree of separation previously in which the parties were adjudged residents of New York. Two months before this suit started he said in a partition suit in New York in which the question of dower was involved that she was formerly his wife and offered the New Jersey decree and on faith thereof got an adjudication that she was not entitled to dower. He offered no proof as to when he became aware of wife's alleged wrongdoing. Court held the issue of good faith "is before the Court in cases of this kind and Courts have not relieved plaintiff of burden of meeting these issues where they are directly raised by defendant's proof at the trial."

This case, we think, has little bearing on the case in hand. It is beside the point and if at all in point, there is here no lack of good faith as shown by the proofs.

3. Counsel's third point is the failure to appoint a guardian *ad litem* when it became evident that respondent was insane, deprived this Court of jurisdiction.

We respectfully submit that there is no lack of jurisdiction and no failure to follow proper procedure, and no ground for denying appellant's appeal.

1. In equity a lunatic defends only by a guardian:
In re Rogers Est., 96 N. J. Eq., 6, 125 Atl.,
 318 (Chancellor Walker);
Webb v. Webb, 96 N. J. Eq., 1, 124 Atl. 706
 (1924);

In re *Martin*, 86 N. J. Eq., 265; 98 Atl. 510 (1916);
Van Horn v. Hann, 39 N. J. L., 207, 213 (1877);
Harris Pleading and Practice in N. J., 253.

In *Webb v. Webb*, 96 Eq. 1, 4, Chancellor Walker said infants, idiots and lunatics are as incapable to defend a suit alone as they are to prosecute one alone; and although named in a bill as parties defendants they conduct their actual defense through a guardian *ad litem*, appointed by the Court on the application of a friend or of the opposite party, although occasionally by the general guardian, conservator or committee without his special appointment as guardian *ad litem*, at least where his interest is not adverse to his ward's.

In in re *Rogers, supra*, the Court says:

“And a lunatic defends by guardian. This is usually a guardian *ad litem*, appointed by the Court, although occasionally the general guardian is permitted to defend in the case of his ward without special appointment, at least where his interest is not adverse to that of his ward.”

In re *Martin* cites *Van Horn v. Hann*, 39 N. J. L. 207, 213, with approval.

Van Horn v. Hann, says:

“In suits in equity, the practice is different. In those the lunatic defends by guardian *ad litem*, and his committee is appointed such guardian as, of course, unless there is no committee, or the committee has an interest adverse to him in the suit. There a third party is appointed.”

2. But, no guardian can be appointed except upon notice to the lunatic and an adjudication of lunacy, which must precede or at least be contemporaneous with the appointment.

Webb v. Webb, supra;
In re *Martin, supra.*

In *Webb v. Webb*, Chancellor Walker said:

“A guardian can only be legally appointed on notice to the lunatic defendant, for, in the first instance, he has a right to defend on the question of lunacy, an adjudication of which must precede, or at least be contemporaneous with the appointment of a guardian.”

In that case, application was made for appointment of a guardian and was refused because there was no finding of an inquisition or adjudication that the applicant was a lunatic.

In re *Martin, supra*, the Chancellor uses similar language, at top of page 272.

And it is was further held in *Webb v. Webb*, citing authority in the Court of Errors and Appeals that the finding in inquisition must be that the subject thereof is of unsound mind, so that he is unfit for the government of himself or his property.

Now, we contend, that no guardian could have been appointed in this case, that the petitioner could not have had a guardian had he wanted to. There is no adjudication of lunacy which must precede. The Court of Chancery cannot take away from a defendant the control of his personal liberty or his property unless it has some finding or adjudication before it upon which to base such an order. This is fundamental.

And it certainly could not have been the petitioner's duty to bring the defendant in and have her adjudicated or to search records anywhere to see if there is an adjudication and have it presented to the Court.

King v. Robinson, 33 Me., 114;
Maloney v. Dewey, 127 Ill., 395;
 14 R. C. L., 614, sec. 64.

In *King v. Robinson, supra*, the Court says:

“The law does not appear to have imposed it as a duty to be performed by the plaintiff to ascertain the mental capacity of the defendant and bring it before the Court for its consideration, that such a guardian may be appointed.”

In *Maloney v. Dewey*, 127, Ill., 395, the Court said:

“Until inquisition and the appointment of a conservator, it is competent to commence suit against a lunatic. The complainant is not bound to ascertain the mental capacity of the defendant.”

If the Court had such adjudication before it, as required, it might have been the duty of the petitioner to have the guardian appointed. But, without it, the Court could not have done so, and the duty of presenting it, if there was such duty, devolved upon her natural guardian or persons interested in her.

3. Even apart from these contentions, however, respondent's point that there is no jurisdiction is unsound.

(a.) Jurisdiction of the person and jurisdiction of the subject-matter are the only elements necessary to give a Court jurisdiction.

In this case process was served on the defendant personally about a year before she was in the asylum, and the Court, of course, had jurisdiction of the subject-matter. General legal principles, which require no citation of authority, give the Court jurisdiction when these elements are present. In fact, the statute gives the Court jurisdiction of a divorce suit where the defendant is served personally within the state. Surely, it is not a question of lack of jurisdiction.

(b.) There being no question of jurisdiction, a judgment or decree against an insane person for whom no guardian has been appointed is not void, but voidable.

14 *R. C. L.*, 615;

Hare v. Ft. Smith & W. R. Co., 104 Ark., 187;

Dunn v. Dunn, 114 Cal., 210;

Ward v. Miller, 143 Ga., 164;

Judd v. Gray, 156 Ind., 278; 59 N. E., 849;

Allison v. Taylor, 6 Dana 87 (Ky), 1838;

Vance v. Ellerbe, 150 La., 388;

King v. Robinson, 33 Me., 114, 1851;

Johnson v. Cook, 179 Mich., 117;

Herd v. Sack, 81 Mo., 610;

Lamphrey v. Nudd, 29 N. H., 299;

Thomas v. Hunsacker, 108 N. C., 720;

Johnson v. Pomeroy, 31 Ohio St., 247;

Bobell v. Wagenaar, 106 Ore., 232;

Atwood v. Lester, 20 R. I., 660;

Fleming v. Seeligson, 57 Tex., 524;

Pollock v. Horn, 13 Wash., 626;

Withrow v. Smithson, 37 W. Va., 757;

White v. Hinton, 3 Wyo., 753.

14 *R. C. L.*, 615, says:

“The rule is substantially uniform that such

judgments or decrees (*i. e.* against insane persons) are not void, but merely voidable under circumstances that would render any other judgment or decree voidable and that they will be sustained when collaterally attacked.”

In *Withrow v. Smithson, supra*, the Court said:

“A judgment against one insane at the time it is rendered is not void and cannot be collaterally attacked.”

This Court also says:

“A lunatic is within the jurisdiction of the Court as others. The Court may appoint a guardian *ad litem* to defend him if his lunacy is discovered, but if the case goes on without such guardian, the judgment is not void or reversible” “* * * we are the more satisfied in reaching this conclusion as we find that a full and so far as we can see, adequate defense was made to the action in which the judgment was rendered.”

(c.) Moreover, such decree is voidable only when the Court is satisfied that the defendant has a meritorious defense, that his interests were not protected, and injustice was done to him and that a new trial or hearing will result differently.

Hare v. Ft. Smith & W. R. Co., supra;

Johnson v. Cook, 179 Mich., 117; and

See *Ammon v. Wiebold*, 61 N. J. Eq., 351;

and *Weber v. Weitling*, 18 N. J. Eq., 441.

In *Ammon v. Wiebold*, the complainant, with knowledge that the defendant was a lunatic, obtained an assignment of a mortgage from her. No guardian *ad litem* had been appointed. The complainant took

a decree *pro confesso*, without the knowledge of her relatives, except one, with whom he had colluded to deprive the lunatic of her property, and the Court set aside the decree.

The Court (Pitney, V. C.) said, however:

“If in this case the complainant had merely made an innocent mistake in practice, or had been ignorant of the mental condition of the defendant, and the pendency of the proceedings had actually been brought to the attention of the friends of the defendant in time to enable them to protect the interests of their relative, little harm would have resulted from the irregularity, for the defendant has no defense to the mortgage, but that is not this case. I am satisfied that the complainant and Mrs. Baack colluded together to take advantage of the disability of the defendant for the purpose of procuring her equity in the premises by legal proceedings. This, as above remarked, was an inequitable and unjust process of the Court and must be dealt with accordingly.”

In other words, this case says the proceedings are irregular, not void. Besides that, it implies if notice were given to relatives and the interests of the lunatic protected so that no harm was done, the decree would stand.

In the case at bar no harm was done. The person usually appointed guardian *ad litem*, is the natural guardian, the father. He was present at the hearing, testified, brought his son from Baltimore as a witness, and presumably conferred with counsel. They hired expert witnesses. The Vice-Chancellor was aware, entirely, of the situation and of the condition of the defendant, and certainly would not have per-

mitted the cause to proceed had he felt the slightest doubt that her interests were not being protected. The suit was actually won, and the case was very ably defended. The father took an active part in this appeal, as shown by the fact that his affidavit was annexed to an application for a counsel fee. No guardian *ad litem* could have accomplished more, and no formal order appointing one and placed on the files of the Court of Chancery would have made a particle of difference. The defect, if any, in this case, would be one of form and not of substance. The purpose and substance of appointing a guardian is to see that the interests of a lunatic are protected. That being accomplished, no decree for such cause should be upset.

(d.) Furthermore, if it is still deemed necessary, we can see no reason why an order could not be made, appointing a guardian *nunc pro tunc*.

In *Lamb v. Lamb*, (N. J.) 23 Atl., 1009 (not officially reported), an aged and feeble-minded complainant filed a bill against a step-son to set aside certain transactions. He allowed the case to go on to a hearing and testimony produced, before he made objection for want of proper parties. The Court advised the appointment of a next friend to continue the proceedings. Does not this case indicate that in a proper case the Court can, at any time, appoint a guardian?

Again, the position taken by counsel is rather unique. If a guardian *ad litem* is necessary, counsel here, who was substituted for the solicitor of record, has no standing to make the objection, because, if a guardian is necessary, this counsel could not have had the lunatic appoint him. A lunatic cannot appoint counsel. Moreover, this Court made an order allowing him a counsel fee to defend this appeal. It

is difficult to see why this Court making such an order should prevent the petitioner who is compelled to pay, from prosecuting this appeal.

Respectfully submitted,
PERLMAN & LERNER,
*Of Counsel with Petitioner-
Appellant.*

New Jersey Court of Errors and Appeals

BETWEEN
SIMON GOLDBERG,
Petitioner-Appellant,
and
ESTHER GOLDBERG,
Defendant-Respondent. } On Appeal from
Chancery.

10

BRIEF ON BEHALF OF DEFENDANT-RESPONDENT.

This is an appeal from that part of the decree of the Chancellor which dismissed appellant's petition for divorce. The petition was filed on February 20, 1922, and alleged that the parties to this cause were married on December 8, 1912; that on December 28, 1919, the defendant deserted the petitioner, and that ever since the said alleged desertion, and for more than two years prior to the filing of the petition, the defendant had willfully, continued and obstinately deserted the petitioner. Two children were born of the marriage, William and Martin Goldberg, then seven and four years of age, respectively (Case, p. 5, 6). The answer denied the allegation of desertion (Case, p. 7). Subsequently, on December 19, 1922, the defendant filed a cross-petition, which alleged that she left the petitioner in December, 1919, because of his cruel and inhuman treatment (Case, pp. 8, 9, 10). On January 12, 1923, an answer denying the allegations of the cross-petition was filed by the petitioner (Case, pp. 11, 12, 13). This cross-petition was likewise dismissed by the final decree.

The appellant now contends that (1) the burden of proof of insanity or of the existence of such mental condition as will excuse a defendant in a petition for divorce on the ground of desertion is on the defendant setting up the defense; that insanity is an affirmative defense to be proved, and that if the evidence on the question of insanity or mental condition is equally balanced or doubtful, the defense has not been established, and (2) the evidence in the case at bar not only failed to establish insanity on the part of the defendant during the statutory period, but clearly established her sanity and a willful, continued and obstinate desertion on her part for the required period of time.

POINT I.

The Burden of Proof.

The law casts upon the petitioner the burden of proving the allegations of his petition. It was incumbent upon him to establish, by a preponderance of the evidence, a willful, continued and obstinate desertion, and a failure of proof as to either element would necessarily be fatal.

Gordon v. Gordon, 88 N. J. Eq. 436; 103 Atl. 31; affirmed 89 N. J. Eq. 535, 105 Atl. 242.

Porter v. Porter, 82 N. J. Eq. 400.

Rogers v. Rogers, 81 N. J. Eq. 312; reversed on other grounds, 81 N. J. Eq. 479.

Wood v. Wood, 63 N. J. Eq. 688.

Loux v. Loux, 57 N. J. Eq. 561.

The general rule applicable has been stated thus:

“If the desertion, under the statute, must be willful and malicious, the burden is on the plaintiff to show that it was willful and malicious, and

also that it continued to be willful and malicious during the statutory period, or if, under the statute, it must be willful and obstinate, the burden is on him to show both willfulness and obstinacy, and that it so continued during all of the statutory period."

19 C. J. 126.

In *Rogers v. Rogers*, supra, Vice-Chancellor Stevenson (81 N. J. Eq., at 314), said: 10

"When a man sues his wife for divorce for desertion and charges her with willful, continued and obstinate desertion, he must prove that the desertion had those three characteristics. The burden is upon the husband, the petitioner. He must show, by a preponderance of the evidence, that his wife was guilty of obstinate desertion, and, in my judgment, in this case the husband entirely fails. As I have already indicated, the great weight of the evidence in this case tends to show that there was not such obstinacy on the part of the wife—that if proper approaches had been made to her—if an honest, sincere effort had been made by the husband for a reconciliation, it would have been successful." 20

In the same case, Chancellor Walker, speaking for this Court (81 N. J. Eq., at 481), in approving this statement of the law, said: 30

"We are in accord with the proposition that a party to a suit for divorce who charges the other with willful, continued and obstinate desertion must prove that charge, and that the burden of proof is cast upon him or her who prefers it. This is axiomatic. It has been so often decided

as not to need the citation of authorities to support it.”

In *Gordon v. Gordon*, supra, Vice-Chancellor Stevenson (88 N. J. Eq., at 437), said:

10 “It is conceded that the mental condition of the defendant and her confinement without regard to her will in a lunatic asylum arrested the period of willful, continued and obstinate desertion which she had formerly initiated. She was not willfully absenting herself from her husband. She no longer had an opportunity to repent and become reconciled with her husband, and if she had the will to return to him she was physically restrained from carrying out such a purpose.”

In the same case, Chief Justice Gummere, speaking for this Court (89 N. J. Eq., at 537), said:

20 “The burden was upon the petitioner to prove his case, and all uncertainties of facts should be resolved against him.”

Obviously, proof of the act of desertion does not make out a prima facie cause for divorce under the statute. Although the separation by the wife may have been wrongful, the presumption does not arise that its continuance was willful and obstinate.

Ojserkis v. Ojserkis, 62 Atl. 113, at 114.

30 *Bowlby v. Bowlby*, 25 N. J. Eq. 406.

An applicant to the Court for divorce must prove a full and complete case. Nothing will be taken in his favor by presumption or intendment as to the facts, even in case of a default in answering or at the hearing.

Linden v. Linden, 36 Barb. (N. Y.) 61.

In the case sub judice, we respectfully submit, the undoubted impairment of health suffered by respondent during the period of cohabitation, followed by her complete physical collapse immediately after the separation, necessitating hospital confinement for the greater part of a year, placed upon the husband a duty greater than would ordinarily exist to care for the defendant with a view to restoring her to health and terminating the separation. The evidence, a summary of which appears hereafter, shows that he did not assume the duty which was his under the circumstances. More will be said of this hereafter. 10

Where the issue of plaintiff's good faith is directly raised by the defendant's proof in a divorce case, the burden of meeting the issue is on the plaintiff.

Percival v. Percival, 94 N. Y. S. 909; 106 App. Div. 111; affirmed 186 N. Y. S. 587, 79 N. E. 1114.

POINT II.

The evidence did not establish a willful, continued and obstinate desertion during the statutory period. 20

The evidence did not justify a finding that, during the entire statutory period, the respondent was mentally competent to understand the effect of her act in separating from her husband and living apart from him, and was, therefore, responsible for her conduct.

Dr. Carl L. Pierson, a member of the staff of the New Jersey State Hospital for the Insane at Trenton, and a specialist in mental diseases, testified that he examined the respondent on January 29, 1923, when she was admitted to the State Hospital as a patient. His testimony concerning her condition follows (Case, pp. 108, 109, 110): 30

Q. Will you tell the Court just what is her ailment?

A. I will give you a brief summary of the case. She was admitted January 29, accompanied by her brother and her father.

Q. What year?

A. 1923. Accompanied by her brother and her father, and at the time of the admission she was—she answered questions relevantly, but they were not truthful, and she showed a flight of ideas. She wandered from one subject to another, acting in a silly manner, laughed and grinned, and took very little interest in the form of commitment. She could tell her name, her age, and said she had been to the hospital before, but not as a patient, at the time of admission.

10

Q. As a result of these conversations you had with these people giving the history of her case, what did you find?

20

A. Examining her from a mental standpoint, we found she was suffering from a condition known as a psychopathic state with episodes.

Q. What does that mean?

A. She has a mental disease in which *she is incompetent, and which has existed, no doubt, for a number of years.*

Q. It didn't come out of a clear sky?

A. No, it is *congenital in character, dating back, maybe, to childhood.*

Q. It is congenital in character?

30

A. Congenital or constitutional.

By the Court:

Q. Well, it means, then, that it has been there from birth?

A. Yes.

Q. Having found the condition was constitutional, what was this disease she was afflicted with? Or would you say that this disease that she was afflicted with came on suddenly?

A. *It was a gradual condition.*

Q. It took a number of years to come to a head?

A. I would not say that, I would say the condition might have existed to some certain period and some precipitating factor might bring it out more pronounced.

Q. What precipitating factor?

A. A severe attack of sickness or some fright or shock, a psychogenic factor such as worry, death, *marital disharmony.* 10

Q. Any of these causes?

A. Any of these causes might precipitate a break.

Q. And since her confinement, what?

A. No change in her mental condition since she has been confined. She has failed physically. She is suffering from asthma.

Q. How is her mind to-day compared with 1923? 20

A. *It is deteriorating.*

When asked whether the respondent had lucid intervals, the witness replied (Case, p. 113):

"I would not say completely lucid intervals, but by episodes I mean she is excited at times, impulsive, and that she attacks other patients and nurses, and at other times she is more quiet."

He testified further (Case, pp. 113, 114, 115): 30

Q. At the time she was admitted to the hospital in January, 1923, what was the condition of the mental disease that she had? That is to say, was it *such as to prevent her from knowing what she was doing?*

A. *Yes, sir.*

Q. And is that condition constant?

A. *It has been constant since her admission.*

Q. So that, notwithstanding these episodes, these periods of greater or less excitation, at no time, in your opinion, has she been aware of what she was doing?

A. At no time has she been mentally competent to carry on her—

10 Q. That is not what I am asking you. Does she know what she is doing?

A. I believe at times she does know what she is doing, but *I don't believe she is competent to realize right from wrong all the time*, is that what you mean?

Q. *No, I want to know whether she appreciates or comprehends the acts which she does and the effects which flow from them?*

A. *She does not, sir.*

20 Q. In 1923, in January, 1923, when she was admitted, in your opinion, was her mental condition of such a kind as to permit her to exercise volition intelligently?

A. Along what lines do you mean?

Q. Well, to take the particular instance that is material to the present case as to whether or not she was able intelligently *to determine for herself whether or not she would or not live with her husband?*

30 A. *I don't think she was able at that time to determine that, due to her mental condition.*

Dr. Nathaniel Koplin testified that he knew the respondent for fifteen years, and treated her professionally very often during that period (Case, p. 116). Several times after her marriage, when called to treat the respondent, he found her in a highly nervous condition. *She complained of physical injuries sustained at the hands*

of her husband, and he found bruises on her arms. He found her in this condition two or three times in 1914 or 1915. Subsequently he was called very often to treat her for nervousness which apparently was the result of undue excitement. She suffered from asthma (Case, p. 117).

In 1919, the witness found a greater physical impairment than a year or two before. She had lost weight and her nervousness had increased. He testified (Case, pp. 118, 119):

10

Q. What did you diagnose it as?

A. I diagnosed it as a *melancholy condition*.

Q. What do you mean?

A. She was depressed and she *didn't answer questions coherently, and at times she was a little silly and wouldn't respond to questions at all*. You would ask her questions and she would look in the opposite direction.

Q. And during 1920, did it continue or lessen? 20

A. It continued, if I remember right, it was aggravated, worse.

Q. Did you treat her for this condition?

A. No, I told her father to take her to a nerve specialist, I think I referred her to Dr. Cotton.

Q. Did you treat her in 1922?

A. I did.

Q. What condition?

A. The same condition, asthma and nervousness. 30

Q. How was her nervousness or melancholy progressing?

A. In my opinion it was much worse.

Q. Still progressing?

A. Still progressing.

Q. In 1923, the first part of the year, the first part of January, did you commit her to the insane asylum?

A. I don't remember the exact month, but I probably committed her with another doctor, I am not sure.

Q. Did you examine her before you committed her?

A. Yes, sir.

Q. What did you find?

10 A. The same condition, only she was silly and seemed incoherent in speech and rather depressed at times and other times she would get a little excited.

Q. In other words, she was practically in the same condition as in 1920 or 1921?

A. Yes, only worse.

Dr. Jacob M. Fuchs, called by the appellant, testified that he treated the respondent for bronchial asthma prior to her marriage. The disease had become chronic and there could be no improvement (Case, p. 124).

20 Dr. Barney Lavine, called by the appellant, testified that he treated respondent in 1920 or 1921 for chronic bronchitis and chronic bronchial asthma (Case, p. 125). He said "She was run down in 1919, due to her asthma and bronchitis," which he described as an organic condition (Case, p. 127).

Dr. Henry A. Cotton, called by the appellant, testified (Case, p. 164):

30 "She is now more or less deteriorated and well disoriented. I talked to her to-day. She said it was June. I asked her to look out of the window and asked her if she ever saw snow in June and she said, 'Well, it must be July.' She has had several attacks of asthma and kept in bed most of the time. She talks in this rambling way, irrelevant, flighty way. She wanted to know if

she could go home right away and didn't seem to appreciate her condition at all."

He classified her mental ailment as "dementia praecox," and described it as "a chronic progressive condition" (Case, p. 165). In reply to a question as to when "this dementia praecox set in," he said (Case, p. 166):

The cases often begin as she began, nervous episodes and periods of normal condition and then getting succeeding attacks more severe. I would say her condition to-day was that of deterioration. When deterioration started in, I don't know." 10

The deterioration which the witness described was progressive. It had set in at the time of her commitment to the hospital, but the witness would not venture an opinion as to when it commenced. He said it *might have begun ten years before* (Case, pp. 167, 168). There had been no improvement since her commitment, and the witness did not believe that she had lucid intervals (Case, p. 169). He described a constitutional psychopathic condition as "nervous instability at birth which predisposes to mental trouble" (Case, pp. 167, 168). 20

He said that the appellant brought the respondent to him in 1918 *to be treated for nervous trouble* (Case, p. 169). He had not examined the records of his examination of the respondent at that time, and could not clearly give its results (Case, p. 170). 30

Characterizing all medical opinion as "conjectural," he conceded that Dr. Pierson's opinion as to respondent's condition and the period of mental disturbance might be correct (Case, pp. 171, 172). He said (Case, p. 172):

"Dementia praecox. She had episodes of severe mental disturbances and the doctor examining her thought this was based on constitu-

tional condition, which predisposes to this mental condition. At that time it hadn't unfolded, so to speak. It was just beginning, apparently, and now I would say she was very much more deteriorated. It has become very progressive."

The witness observed, when he examined the respondent in 1918, symptoms of the condition which eventuated in the mental diseases from which she suffered
10 at the time of the hearing. He said (Case, p. 174):

Q. Is there a sharp and clear distinction, a sharp and clear and distinct dividing line between neurosis and psychosis?

A. No, sir, they merge into one thing and many years ago we diagnosed as neurotic certain cases which are found later to be mental cases. *Periodic attacks, in many cases the first attacks, are nervous states.* They recover from that and go on ten years, or they may only stay well a year and each *succeeding attack becomes more severe until they finally wind up in an institution,* and have psychosis. You can make a first diagnosis of constitutional psychopathic state and you can say probably, "This patient will get well," but she has gone on to a distinct mental trouble and is getting worse.
20

Q. Mrs. Goldberg?

A. Yes.

Q. *Then, is it possible that the condition of neurosis, which you found in 1918 was the commencement of the condition which has now progressed to the point which you have described?*
30

A. *I should think that was undoubtedly the beginning of her trouble, but not continuous.* She was apparently well after that for a long period of time. After the clearing up of her tonsils and teeth.

Q. What knowledge have you of that?

A. The statement of her husband.

The witness then admitted that this statement was made to him by the appellant when, in the preparation of his case, he visited him at the State Hospital.

The appellant admitted that his wife's health was not good prior to the birth of their first child. She was afflicted with asthma and bronchial trouble. He denied that she suffered from nervousness (Case, p. 40), although he swore in an affidavit filed in a maintenance suit brought by his wife in this Court in 1915, shortly after the birth of the child, that his wife was "*extremely nervous and troublesome*, and showed a disposition almost from the beginning of their marriage life to nag and tantalize him and to make life altogether miserable (Case, p. 205). His statement in this respect was corroborated by the averments of the affidavit, outlining in detail his wife's conduct (Case, pp. 205-209). The affidavit was sworn to on July 6, 1915. In the answer which he filed to the bill in the maintenance suit, a similar allegation was made (Case, p. 220).

On cross-examination, the appellant replied in the affirmative to the following question, which recited testimony given by him at the final hearing of the maintenance suit (Case, p. 44):

Q. Yes, the second argument was quite little later on; the second argument was over dogs. I am going to talk the way I have to. *Mrs. Goldberg is a nervous woman; she went to go to bed; she couldn't sleep, and she couldn't let me sleep; she had an idea somebody was going to steal her or to kill her through the window, and she hollered at night. I was working twenty hours a day, from five o'clock in the morning till one at night, and I wanted to have a little rest. I said, "What's*

the matter, what are you getting into your head? Somebody will rob you or steal you? Nobody is going to do anything, and get that idea out." She said, "We have to get a dog." I said, "All right, I'll get a dog for you to satisfy you." I went to work, and Ed. Coughlin had a white bull terrier dog and he comes and he said, "I got a dog for you, I heard you spoke several times in the barrom that you wanted to buy a dog." I said, "Yes." I said, "My wife is making kind of a noise at night, and I want to protect her with a dog." He said, "All right, I'll sell the dog, because he bit my kid." I said, "How much do you want for the rog?" He said, "I'll take ten dollars; I paid five dollars myself." *That was your second trouble, wasn't it, the fact that she was nervous at night, and had hallucinations and that she was about to be killed, and somebody was after her all the time; that was your second trouble, wasn't it-*

Apparently realizing the force of this testimony in the trial of the issue framed in the case at bar, he was reluctant to admit the giving of this testimony, and when he finally did so, he sought in vain to qualify it (Case, pp. 44, 45, 46, 47). He admitted that, at his wife's insistence, he bought three dogs to protect her (Case, pp. 46, 47).

This maintenance suit resulted in a reconciliation, and the appellant said that after her return, she did not suffer from hallucinations or nervous spells, but her asthmatic condition was about the same (Case, p. 51). He admitted that between 1916 and 1919 the respondent did not "feel very good," and that in 1917 or 1918 he took her to Dr. Cotton for treatment. Her teeth were extracted and her tonsils removed, and she was sent to the Catskill Mountains (Case, pp. 52, 53). He denied that

he took her to Dr. Cotton on the advice of other physicians, and said it was done at the suggestion of "outside people," only because of the trouble she had with her teeth and tonsils. He said he knew she had trouble with her teeth because she complained of aches, but he was not clear as to the source of his information concerning the diseased condition of the tonsils (Case, pp. 54, 55). He said the respondent frequently accused him of illicit affairs with women (Case, p. 59).

The appellant called witnesses to prove that the respondent "abused" him and made accusations of infidelity in the presence of other persons (Case, pp. 102-104). 10

The respondent's father, Solomon Cantor, testified that shortly after the marriage, the respondent complained of assaults committed by her husband. In 1915 she came to him twice a week on the average, complained of assaults, and showed him bruises about the body (Case, p. 130). After the reconciliation which followed the hearing of the maintenance suit, she again complained of assaults sustained at the hands of her husband, and again he saw body bruises. He said that in December, 1919, she was "awfully nervous," and told him that she could not remain any longer with her husband because he kept a gun under his pillow and had threatened to kill her. She said, too, that he compelled her to work at the bar of his saloon, and that she became very nervous and could not stand it (Case, pp. 130, 131). 20

The witness said that in December, 1919, when the respondent came to his home, she was nervous and "didn't have her sound mind." Two or three months after the separation he placed her in a New York hospital, where she remained for about three months. She was then taken to a sanitarium at White Haven, in the State of Pennsylvania, where she remained for six or eight months. When she returned from that institution her asthmatic condition had improved, but she was "awfully nervous." 30

Concerning the reason for her return home from White Haven, the witness said (Case, p. 131):

A. It was too much expense. I thought she would be better with her mental condition, with her brain, but it was no better, and I took her back."

Her father paid the expense of her confinement and
10 treatment at these institutions (Case, p. 131).

Sometime later, after her return home from the White Haven institution, the witness found it necessary to have her confined in the State Hospital for the Insane at Trenton. During the period which intervened between her return from White Haven and her confinement in the State Hospital, she manifested unmistakable symptoms of insanity. The testimony of the witness concerning her conduct during this period follows (Case, p. 132):

20 Q. How did she act around the house from the time she came back until the time she went away?

A. Not very good.

Q. What do you mean by "Not very good," tell us what she did?

A. *She used to throw things off the table and start to beat somebody all the time.*

Q. Whom would she beat?

A. Myself, too.

Q. Who else?

30 A. Her mother.

Q. Would that happen very often.

A. Yes, sir.

Q. Did she have any periods when she was quiet in the house any time during this six months? Was there ever a time after the time she came back from White Haven that she was quiet and peaceful?

A. They used to be sometimes she would be quiet. She always used to say, she can't get well unless she is together with her husband and children. She went once to see the children, it was a very cold evening, and she walked over there and he wouldn't let her in the house.

Dr. Pierson testified that she manifested the same symptoms at the State Hospital. She attacked other patients and nurses. (Case, p. 113). 10

On cross-examination, Mr. Cantor told of bruises, he described them as "blue marks," found on respondent's arms and shoulder. (Case, pp. 133, 134).

When asked if he knew the cause of the bruises he said (Case, p. 134):

A. That is all I know. She used to come down and cry and show marks and said, "I will not go back to him. You can kill me right here. I won't go no more to him, I can't stand his conduct in the house, and he beats me besides." 20

The witness told of appellant's failure to deny an accusation, made by the respondent in her husband's presence, of assaults committed upon her by him. (Case, p. 136). The appellant was called in rebuttal, but he did not deny this statement of the respondent's father.

The witness did not know that the appellant had asked his wife to return to him. (Case, pp. 136, 137).

Three or four months after they resumed cohabitation in 1915, the respondent resumed her complaints of assaults at the hands of her husband. (Case, p. 138). At the witness's request, the appellant agreed to discuss the matter with a Rabbi, but he did not keep the appointment. (Case, p. 139). On one occasion the witness suggested that his daughter return to her husband and she said she would do so if he would treat her well. 30

(Case, p. 140). Again he told of appellant's refusal to permit the respondent to enter his house to see the children. At the time one of them was ill. (Case, p. 141).

He again referred to the time when she came to his house in 1920, after the separation, and told of her unbalanced mind. He said: "She was sick, she was sick in her mind, in her brain. She wouldn't answer right." (Case, p. 143).

10 Isador M. Cantor, a brother of the respondent and a resident of Baltimore, testified that he saw the respondent in the early part of 1920, after the separation. He found her very sick mentally and physically. With his father he took her to the New York hospital for treatment. Later he came from Baltimore and accompanied her to the White Haven institution, where she remained for eight months. (Case, p. 145).

20 On one of his visits to that institution, the authorities requested him to take her elsewhere "because she is mentally unfit not to be there." They refused to keep her because of her mental condition. He brought her back to Trenton, and immediately interviewed the appellant, who spurned all his suggestions for a reconciliation. The witness said (Case, p. 146):

A. I spoke to him he should take her back, and they should live peaceful and he said that could never be, he would rather kill her before he would live with her in his house.

30 Sometime after this the witness again talked to appellant, who said he "would kill her before he would taken her back." (Case, p. 147).

He said of her condition in 1920 and 1921 (Case, p. 147):

We couldn't talk to her. We couldn't depend nothing upon her. She wouldn't give the

right answers many times. She was all right sometimes and sometimes she wasn't giving the right answers. She wouldn't do things right. She would lie down on the couch and she wouldn't eat for three days.

The witness further testified (Case, p. 148) :

Q. That was when?

A. 1920 and '21, after the second time she comes, she was very bad. Mentally she was very bad and so was she physically. I believe she don't weigh to-day more than 75 or 80 pounds. 10

Q. Did you ever sit down and talk to her?

A. Oh, yes.

Q. About going back to her husband?

A. Yes, sir, she would be willing to go back. Many times I spoke to her. She was afraid. She left him because he made her nervous and she was afraid to stay with him in the house because he told her he was going to kill her. 20

Q. Did you go to visit her in 1921?

A. Yes, every month, about every month, very frequently.

Q. Was there any improvement in her in 1921?

A. Oh, no.

Q. What was her condition?

A. Worse and worse; you must consider that we tried to do all we could for her and we had to send her to the State Hospital. You see why we would give her to the State Hospital. That was the last resort. We would have done all we could. As a matter of fact, we took her to the State Hospital because my people were afraid to stay with her over night." 30

This witness also saw bruises upon respondent's body. (Case, p. 150).

On one occasion the respondent requested him to make arrangements with her husband for a resumption of cohabitation. (Case, p. 151). He proposed this several times in 1920 or 1921, but each time the appellant spurned the suggestion. In 1920 the appellant told him he "would better kill her before he took her home." (Case, p. 152).

- 10 In rebuttal the appellant denied these conversations. He said that in Isador Cantor's presence he made a memorandum of his conversation with him, because he knew "them people are liars and I expected trouble and so I marked it down in his presence." (Case, p. 153).

The appellant testified further (Case, p. 153):

- 20 A. In 1922, when I was talking to him, he (Isador Cantor) said to me, "How about taking Esther back." I said, "Yes, I will take her back." He says, "Let's go into his father's house," I said, "Why?" I said, "No, I don't have to go to your father's house." He said, "Will you take her back?" I said, "Yes, I will take her back if she comes around to talk to me."

- 30 Upon the whole evidence there was a failure of proof that the respondent was guilty of a willful and obstinate desertion for the statutory period. To warrant granting a divorce on the ground of desertion, it must appear that the respondent, during the two years succeeding the act of desertion, was of sufficient mental capacity to understand the relations existing between her and her husband, to form a rational desire to end the separation, and to take action regarding a reconciliation.

Camire v. Camire, 113 Atl. (R. I.) 748.

In the language of Chief Justice Gummere the inquiry is, was the respondent of sufficient mental capacity to be a free agent, responsible for her conduct.

Gordon v. Gordon, 89 N. J. Eq. at 537.

While there is ordinarily a presumption of sanity, this presumption was overturned in the case at bar by the proof of insanity at the time of her confinement in the State Hospital for the Insane. It may be inferred from the subsequent existence of insanity that the defendant was insane at the time of the commission of the matrimonial offense. 10

Cohn v. Cohn, 85 Cal. 108, 24 Pac. 659.

In *Kretz v. Kretz*, 73 N. J. Eq. 246, the offense was adultery. It was conceded that at the time of the hearing the defendant was insane, but it was contended that insanity did not exist at the time of the commission of the act of adultery. In finding that insanity existed at the time of the commission of the offense charged, Vice-Chancellor Leaming said: 20

“It is probably impossible to determine with entire accuracy the condition of the mind of defendant at the date of the alleged offense. * * * Upon the whole testimony my best judgment is that if defendant had not at the time of the alleged commission of the offense named reached a mental condition which may be technically defined as insanity, she had reached a mental condition so far from normal that to charge her with full responsibility for her conduct would be inconsistent with the principles upon which equitable relief is uniformly founded. She was then, at the very least, in a mental condition where no one could properly expect from her the complete exercise of a rational judgment, although it ap- 30

pears impossible to say with positiveness that she may not have then known right from wrong. Upon this branch of the case my conclusion is that defendant's mind was so far impaired at the date of the alleged offense that no decree can properly be made against her based upon the acts charged."

In the respect indicated by the learned Vice-Chancellor, 10 the proof was deficient, and for that reason alone, it is respectfully submitted, his conclusion should be approved by this Court.

At this point a pertinent inquiry is, Was respondent's confinement in the New York hospital and the White Haven sanitarium involuntary, so as to arrest the running of the statutory period? True, it was not involuntary in the sense that, for the purpose of medical treatment, she was deprived of her liberty against her will, but it was involuntary in the sense that disease compelled her confinement. 20 Can it be said that, assuming her mental competency, she was guilty of willful and obstinate desertion during the period when she was in the throes of serious illness, and because thereof compelled to live apart from her husband for the purpose of treatment. We believe not.

There is, however, another aspect of the case, not touched upon by the Vice-Chancellor in his conclusions, which gives additional support to his finding. Respondent's impaired mental and physical condition placed upon the appellant a duty greater than ordinarily would 30 rest upon him, and this duty he did not discharge. That his conduct did contribute to the respondent's condition is a fair inference from the evidence, but assuming that his conduct during cohabitation was above reproach, he did not evidence by his conduct afterwards a sincere desire to terminate the separation. He contributed nothing to the efforts to restore the respondent to mental and physical health. The expense of her treatment at the New York

hospital and at White Haven was born by her father. Nor did the appellant evince the slightest interest in the respondent's condition during the two years following the act of desertion. He did not bestow upon her that care and attention which her condition demanded.

The observations made by Vice-Chancellor Leaming in *Kretz v. Kretz*, supra, are appropriate on this phase of the case:

"Another feature of the case merits attention. 10
 Whether the defendant was technically sane or insane in January, 1906, it is entirely clear that at that time her condition was such as to demand from her husband his most solicitous care and attention. Only six months prior to that date he had alleged that she was insane and sought her commitment on that ground. His testimony now is that he sought the commitment in the hope that confinement in an asylum would operate to cure her habit of intemperance; but what- 20
 ever his belief may have been at that time as to her sanity, he was fully aware of her unfortunate condition, and owed to her the utmost care and attention. * * * In *Derby v. Derby*, 21 N. J. Eq. 40, Chancellor Zabriskie said: 'A party who has negatively violated a solemn contract in its two most vital parts, to love and cherish, and has only performed it in the last and least, to support, comes into a court of equity with an ill grace to complain of a positive breach by 30
 the party whom he first injured. His hands are not unclean in the sense which would apply if he had committed the same crime, but they were so weakened, blanched and attenuated by *willful non-performance*, that they take but feeble hold on the horns of the altar of justice. Such a complainant cannot expect any favorable leaning of

the Court, but must present a case free from any reasonable doubt.' ”

The appellant did not do all that the peculiar circumstances of the case required him to do to terminate the desertion.

In *Davenport v. Davenport*, 97 N. J. Eq. 14, Vice-Chancellor Leaming said:

10 “A wife’s desertion, though willful, cannot be adjudged obstinate unless it has resisted such efforts or concessions on the part of her husband as he ought to have made to bring it to an end, *under* the particular circumstances of the case. This is the established test in this State by a long and harmonious line of decisions.”

20 Upon the whole evidence, therefore, the matrimonial offense alleged in the petition was not proved. The willfulness and obstinacy of the desertion for the statutory period was not established.

To quote again from the opinion of Chancellor Walker in *Rogers v. Rogers*, 81 N. J. Eq., at 483:

30 “Under our statute desertion is justified when the deserting party has been so offended against as to authorize at his or her instance a decree for divorce or judicial separation, *but the guilt of the offending party must appear by clear and satisfactory proof.* *Drayton v. Drayton*, 54 N. J. Eq. at 298-301; *Suydam v. Suydam*, 79 N. J. Eq., 144-146.”

POINT III.

As to Jurisdiction.

Failure to appoint a guardian ad litem, when it became evident that the respondent was insane, deprived the Chancellor of jurisdiction to grant the prayer of appellant's petition for divorce.

In re *Martin*, 86 N. J. Eq. 265.
Webb v. Webb, 96 N. J. Eq. 1; 124 Atl.
 706. 10

The appellant failed to move for the appointment of a guardian ad litem, when the evidence of insanity was disclosed, and he cannot now complain of the decree dismissing his petition.

Respectfully submitted,

HARRY HEHER,
 Solicitor and of Counsel appearing on
 behalf of Defendant-Respondent. 20

BOOK III

THE HISTORY OF THE

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NEW JERSEY Court of Errors and Appeals.

SIMON GOLDBERG,
Petitioner-Appellant, }
vs. } On Appeal from
ESTHER GOLDBERG, } Chancery.
Defendant-Respondent. }

REPLY BRIEF ON BEHALF OF DEFENDANT-RESPONDENT.

At the oral argument the respondent was granted leave to make reply to the argument advanced by the appellant in his reply brief to be thereafter served and filed, and in accordance therewith the respondent begs leave to submit the following :

POINT I. The Burden of Proof.

Counsel for the appellant concedes that the burden was upon him to show a willful, continued and obstinate desertion for the statutory period, but he avers that "the burden of proof of a willful desertion does not necessarily mean the burden of proof of desertion *by a sane person*, if it appears otherwise willful as normally and ordinarily shown."

He cites *Edwards v. Edwards*, 69 *N. J. Eq.* 522, 61 *Atl.* 531, wherein Chancellor Magie held that when a

spouse says, "I never intend to live with you again," that is proof of a willful desertion, and argues that "if the proofs stopped there, there would be a willful desertion. Now, if insanity is interjected, is it not for the person stating it exists to prove his statement?"

The unsoundness of this argument is manifest. It overlooks the obligation resting upon the petitioner to establish a *willful, continued and obstinate* desertion for the *entire statutory period*. Determination of this question necessarily involved an inquiry into the state of respondent's mind. It was essentially a trial of the mind, to determine the existence or nonexistence of the requisite mental state for the full period of two years succeeding the act of desertion, with the burden of proof upon the petitioner.

The argument of the appellant seems to be that when the desertion occurs under circumstances which show willfulness, the law presumes it was the act of a sane person, and a prima facie cause of action is thus established, the burden being upon the defendant to prove insanity as an affirmative defense. But proof of a willful desertion is not sufficient. The desertion must be *willful and obstinate for the necessary period of time*. The appellant's contention, therefore, is in effect that these essential elements may be presumed from a willful desertion. Obviously, this is unsound.

A petitioner for divorce must not only prove strictly all the essential elements of the matrimonial offense charged, but his own testimony, no matter how convincingly it may establish the cause of action alleged, must be corroborated.

POINT II. The Evidence.

We do not regard it as necessary at this point to attempt a refutation, by a further analysis of the evidence, of the inferences of fact drawn by counsel for the appellant. Suffice it to say, that in many

instances the evidence quoted will not support the inferences drawn, while in others isolated instances are cited to support inferences which are negated by other evidence in the case.

For instance, the conduct and demeanor of the respondent at the time of her admission to the State Hospital for the Insane, and at other times, are advanced by the appellant as factors proving that she had sufficient mental capacity to comprehend her surroundings and her relations with her husband and family, and to come to a rational conclusion concerning her marital affairs. If susceptible of such an interpretation and this we do not admit, the effect of such testimony is completely destroyed by the evidence that she had lucid intervals. This counsel entirely overlooked in his analysis of the testimony.

Counsel argues that respondent's frequently expressed determination not to live with her husband because of his infidelity and physical assaults, accusations that were denied by the appellant, indicated a rational mind, because if such charges were true, respondent would have been entirely justified in separating from her husband, and that in doing so, she took a course dictated by a normal mind. This testimony, far from having the effect attributed to it by counsel, placed the appellant on either horn of a dilemma. If such accusations were true in point of fact, the respondent in separating from the appellant was not guilty of desertion. On the other hand, if such belief was the product of a deranged mind, it negatives the existence of the mental state necessary to sustain the cause of action pleaded.

In *Smith v. Smith*, 48 N. J. Eq. 566, the invalidity of a will was urged because the testator suffered from a delusion that he could not procreate a child. While the Court found that such delusion of mind did not exist, it did not doubt that such mental derangement would have invalidated the will.

In *Graves v. State*, 45 N. J. L. 347, cited by the appellant, the deceased, a boy, had actually jeered the

defendant on his personal appearance, and this prompted the killing. The defendant did not suffer from a delusion as to the conduct and attitude of the boy towards him. If he had been so afflicted, we submit, his mental responsibility would not have been established.

Testimony showing respondent's belief that her husband was unfaithful may be found at page 22 of the State of the Case, where the appellant testified that his wife said he "lived with women and had women in the cellar and lived with other women." This accusation of infidelity, the appellant testified, was made on other occasions (Case, p. 24-25-29).

The statement that Dr. Cotton testified that respondent's condition "was only beginning at the time" of her admission to the State Hospital is not supported by the record. At page 174 of the State of the Case, Dr. Cotton said that the "condition of neurosis," which he found in 1918, "was undoubtedly the beginning of her trouble, but not continuous."

It is contended that on one occasion the appellant brought a police officer to the house of respondent's father, "think^{ing} it might scare her" to return to him. As a matter of fact, the officer was brought to her home for the purpose of recovering \$2,200 which the appellant said the respondent had taken from his home when she left.

It is also contended by the appellant that the proofs show that the confinement of respondent in the New York hospital and White Haven Sanatorium followed the expiration of the two-year period succeeding the act of desertion. It is true that Isador Cantor, the respondent's brother, testified that respondent was confined in the White Haven Sanatorium in 1922; but he later said "that was about two years after she left him; I can't tell you exactly the dates" (Case, p. 150). Respondent's father testified that about six months after her discharge from the White Haven Sanatorium he had her committed to the State Hospital for the Insane. The testimony shows that she was confined in

the sanatorium for eight months, and prior to that she spent about three months in a New York hospital. Thus, part of this confinement was during the two-year period immediately succeeding the act of desertion.

The respondent's father testified (and counsel for the appellant ignores this) that two or three months after the separation he placed her in a New York hospital, where she remained for about three months. She was then taken to the White Haven Sanatorium, where she remained for six or eight months (Case, p. 131). The respondent's brother testified that she was confined for eight months in the White Haven Sanatorium (Case, p. 145). While the exact time and period of her confinement in these institutions may, under the evidence, be in doubt, this uncertainty of fact should be resolved against the appellant, in accordance with the rule laid down by Chief Justice Gummere, in *Gordon v. Gordon*, 89 N. J. Eq. at 537.

POINT III.

As to Jurisdiction.

The doctrine propounded by the appellant that a judgment or decree against an insane person for whom no guardian has been appointed is not void, but voidable, cannot apply, for obvious reasons, to actions for divorce.

A statutory cause for divorce must be proved strictly. It cannot be confessed by the defendant. Neither can the defendant make an admission which binds the Court.

Henry v. Henry, 79 N. J. Eq. 493; affirmed 81 N. J. Eq. 512.

It follows, as a corollary of this proposition, that a decree of divorce voidable at the option of one of the parties is invalid. The decree cannot rest upon the consent of the party charged with the matrimonial offense, and by the same token a decree voidable at the option of the defendant can have no legal efficacy.

The adoption of the rule contended for by the appellant would overthrow a sound public policy.

Even jurisdiction cannot be acquired by consent. *The entire proceeding must be adverse.*

In *Henry v. Henry, supra*, Vice-Chancellor Howell stated the rule as follows:

"In almost any kind of proceeding other than a divorce proceeding the entry of an appearance and the filing of an answer is sufficient to give the court jurisdiction; but in divorce cases another rule prevails. There the statute must be strictly followed, for the reason that the issue does not alone concern the parties to the cause; it concerns organized society, which is based upon the settled and orderly customs and obligations attendant upon the marriage status; it will not permit that status to be changed or modified except in the manner pointed out by the laws which it has sanctioned. Parties cannot be permitted to become divorced by any sort of consent. The proceeding *in all its parts must be strictly adverse* and in accordance with the statute. The public interest does not permit a decree upon consent. No admission binds the Court, and the analogy of ordinary actions cannot be applied. *Griffiths v. Griffiths, 69 N. J. Eq. 689.*"

Failure to appoint a guardian *ad litem*, when respondent's inability to defend because of insanity became apparent, is a defect of substance rather than of form. The respondent was admittedly insane and unable to present her defense. In that situation she could only defend by a guardian. It cannot be assumed now that a mere volunteer fully performed the duties of a guardian *ad litem*.

An order appointing a guardian cannot be entered *nunc pro tunc*. This appointment carries duties and responsibilities which must be assumed and performed after appointment, and obviously an appointment *nunc*

pro tunc would defeat the purpose of the rule requiring lunatics to defend by guardian.

See *Rinehart v. Rinehart*, 91 N. J. Eq. 354;
110 Atl. 29.

It is, therefore, respectfully submitted the decree of the Chancellor should be affirmed.

HARRY HEHER,
Of Counsel Appearing on Behalf of
Defendant-Respondent.

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quintessence of the human mind

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To the Honorable



