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Petition for Divorce.

(Filed August 27, 1929)

IN CHANCERY OF NEW JERSEY.

TO HIS HONOR EDWIN ROBERT WALKER, CHANCELLOR OF THE STATE OF NEW JERSEY:

The petitioner, Evelyn Michels, now of the City of Jersey City, County of Hudson and State of New Jersey, respectfully shows: 10

1. Your petitioner was lawfully joined in the bonds of matrimony to her present husband, Arnold D. Michels, the defendant in this action, on February 20, 1920, by the Reverend J. W. Kirsch, Minister of the Gospel, at Jersey City, N. J.

2. Your petitioner and defendant cohabitated in the City of Jersey City aforesaid and in the Township of Hasbrouck Heights, Bergen County, New Jersey, from the time of their said marriage until July 29, 1929, when this petitioner was obliged to leave her home in Hasbrouck Heights, in order to protect her own life. 20

3. Practically from the beginning of her married life, petitioner suffered from the violence and ill-governed temper of her husband; that your petitioner was subject to numerous acts of extreme cruelty and violence on the part of the defendant as hereinafter set forth; until they culminated in the instance now particularized; that while they were residing in the Township of Hasbrouck Heights aforesaid, the defendant came home intoxicated every night in the week; that on or about February 20, 1928, during one of these violent and unreasonable fits of temper, the defendant beat and 30 40.

Petition for Divorce.

10 kicked the petitioner, striking her about the face
and head, and threatened to kill her; and again
on or about February 16, 1928, during one of these
fits of temper while defendant was in his usual
intoxicated condition, he kicked his son, and when
this petitioner remonstrated, he struck her several
blows upon her face and body, so that her body
20 was black and blue, and he again threatened to
kill her; that from and about the year of this peti-
tioner's marriage, the defendant did beat and
threaten the petitioner; that he is a habitual drunk-
ard, so that at no time is the petitioner's life not
in danger; that he uses his bed and bedroom, in
fact, any room in the house, as a lavatory; that
on the occasion mentioned above, to wit: February
20, 1928, when the petitioner was struck by the
defendant, the latter was arrested for assault in
the Hackensack Police Court, subsequently the con-
sequences, and ever since that occasion he has
threatened the life of this petitioner, and demand-
ing that she leave the house or suffer the conse-
quences; that he has failed to support her for more
than a year; that he can be found almost every
night in the saloons of Hackensack in an intoxi-
cated condition; that he has notified the butcher
and grocer not to extend any credit to the peti-
30 tioner, and stated on several occasions that he was
through with her; that because of such violence,
the petitioner has become nervous and ill, and has
been living in constant fear of her life, and because
she was no longer able to endure such abuse and
fear, she was obliged to move out, and in fact, on
or about July 29, 1929, she did move to Jersey City,
N. J.; that more than six months have elapsed since
the last acts of cruelty hereinabove stated.

Petition for Divorce.

4. The petitioner was a bona fide resident of the State of New Jersey when this matter arose, and has ever since and for more than two years preceding the commencement of this action, continued to be a bona fide resident of this State, residing at the Township of Hasbrouck Heights, and in the City of Jersey City aforesaid, and State of New Jersey.

10

5. Petitioner has no means of support except from her own exertion.

6. A child was born of the marriage aforesaid, to wit: Arnold Michels, aged seven years, who is in the custody of the petitioner, and is now supported by her.

7. 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 the defendant may be compelled by the decree of this Honorable Court, to support your petitioner, and that she may be allowed to resume her maiden name; and that she may have such further relief as may be just.

20

And your petitioner will ever pray.

30

FEINBERG & FEINBERG,
Solicitors for and of
Counsel with Petitioner.

40

Answer.

(Filed September 28, 1929)

IN CHANCERY OF NEW JERSEY.

10	Between EVELYN MICHELS, Petitioner, and ARNOLD D. MICHELS, Defendant.	}	On Petition For Divorce Answer.
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The Answer of Arnold D. Michels, defendant, to the petitioner, Evelyn Michels.

20 1. This defendant admits to be true that the petitioner and defendant were lawfully married on February 20, 1920, as in said petition as alleged.

30 2. This defendant admits that the petitioner and defendant cohabited in the City of Jersey City and in the Borough of Hasbrouck Heights, Bergen County, N. J., from the date of their said marriage to June 29, 1929, but denies that the petitioner was obliged to leave her home in Hasbrouck Heights in order to protect her own life, but as a matter of fact, defendant was at work during the entire day and when he came home that evening, found the petitioner, the child and the furniture moved out of the house with no word of where they had gone to, and that subsequently thereto, the petitioner and the defendant again cohabited together as husband and wife until the 6th day of September, 1929, when the citation and copy of the petition was served upon him in the presence of the petitioner.

40

Answer.

3. This defendant denies that from the beginning of his married life with the petitioner, the petitioner suffered from violence and ill-governed temper of this defendant; this defendant denies that the petitioner was subject to numerous acts of extreme cruelty and violence on the part of this defendant, or that when they were residing in the Borough of Hasbrouck Heights, N. J., he came home intoxicated every night in the week. He admits that on or about February 20, 1928, that he quarreled with petitioner, that she attempted to strike him with an iron elephant and he tried to protect himself from being struck, but denies that he ever beat or kicked her, struck her about the face or head, or that he ever threatened to kill her. He denies that on or about February 16, 1928, that he was in a fit of temper or that he was in an intoxicated condition, and that while in such a condition, he kicked his son, or that because of this remonstrance on the part of the petitioner, he struck her several blows on the face or body, or that he did again threaten to kill her. He denies that from the beginning of petitioner's marriage to this defendant, he has beaten and threatened the petitioner or that he is a habitual drunkard or that at any time petitioner's life has been in danger, as a matter of fact, for the last twenty-three years, he has been working continuously day after day and has brought and used every cent of his salary as well as other moneys which have come to him because of previous savings made by him before his marriage, or his inheritance received from his grandmother's estate, for the benefit of his family. He denies that he used the bed and bedroom or any other room in the house as a lavatory. He admits that on February 20, 1928, he was arrested for as-

Answer.

sault by his wife, and that later upon her testimony and that of her mother, he was adjudged guilty of assault and battery, but at no time, either before or since that occasion, has he ever threatened the life of the petitioner, or has he ever demanded that she leave the house or suffer the consequences, nor has he failed to support her for more than a year.

- 10 Only about a year ago he received part of his inheritance from his grandmother's estate amounting to Twenty-three hundred (\$2300.00) Dollars, and that was deposited in a bank to a joint account of himself and the said petitioner, and she has gradually taken all of that money out of the bank and used it for purposes unknown to this defendant, taking out at one time as much as Seven hundred (\$700.00) Dollars. It is absolutely untrue that he
- 20 frequented the saloons in Hackensack almost every night and that he is in an intoxicated condition almost every night. It is true that he notified the butcher and grocer not to extend any further credit to the petitioner because all the money he earned, he turned over to her, and yet, notwithstanding that fact, she was in a habit of using the money for personal purposes, and not to pay the bills incurred at the butcher and grocer or other dealers, so he was obliged to notify the dealers not to give any
- 30 credit to the petitioner, but to exact cash for any purchase, that she was receiving cash from him. That was the only way they could possibly get along on his income. He denies that he has on several occasions told petitioner that he was through with her; that as a matter of fact, she has always made threats against his life and told him that she was through with him and that on numerous occasions she left him without any cause and taken
- 40 the furniture with her, at times disposing of part of it. At no time, because of any violence on the

Answer.

part of this defendant, has the petitioner become nervous and ill, or that she has been living in constant fear of her life or was she obliged to move out of the house because she could no longer endure such alleged abuse or fear.

4. This defendant admits it to be true that petitioner was a bona fide resident of the State of New Jersey when this cause of action arose, as alleged in the petition, and he admits it to be true that she has been a bona fide resident of the State of New Jersey for more than two years preceding the commencement of this action. 10

5. This defendant admits the petitioner has no means of support except from her own exertion, but believes that she has put aside part of the moneys that she has taken out of the bank account from time to time. 20

6. This defendant admits it to be true that a child was born of the marriage aforesaid, to wit: Arnold Michels, aged 7 years, who is in the custody of the petitioner.

This defendant prays to be himself dismissed of his reasonable costs and charges on his behalf so wrongfully sustained. 30

ARNOLD D. MICHELS,
Defendant.

WM. DE LORENZO,
Solicitor of Defendant.

Supplemental Petition.

(Filed November 21, 1930)

IN CHANCERY OF NEW JERSEY.

10	Between EVELYN MICHELS, Petitioner, and ARNOLD D. MICHELS, Defendant.	}	On Petition, &c. Supplemental Petition.
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TO HIS HONOR, EDWIN ROBERT WALKER, CHANCE-
 LOR OF THE STATE OF NEW JERSEY.

20 The supplemental petition of EVELYN MICHELS,
 of No. 3719 Hudson Boulevard, City of Jersey City,
 County of Hudson and State of New Jersey, re-
 spectfully shows that:

30 1. The petitioner and the defendant since the
 filing of the original petition in this cause, and on
 or about the 15th day of November, 1929, took up
 their residence and began to live in the same house.
 Your petitioner taking this cause because of the
 lack of necessities of life in receiving money from
 the defendant or receiving any help from the out-
 side and being unable to work because of her baby
 had to either again live with the petitioner on his
 promise to reform and change his mode of living or
 starve and lose their home to live in.

40 2. After continuous promises upon the part of
 the defendant, the petitioner thereafter allowed him
 to come into her apartment and sleep in the living
 room upon a couch for which the defendant agreed

Supplemental Petition.

to support the petitioner and her baby and also promised that he would change his mode of living, giving up drinking and otherwise treat and respect the petitioner as she should be respected. After about a week of this kind of action, the defendant again returned to his old habits, that is subjecting the petitioner to numerous acts of extreme cruelty and violence upon the part of this defendant, such as his continuous drinking habit, coming home every night intoxicated, throwing and kicking around the furniture, continuously threatening the life of the petitioner and her son, threatening to throw the petitioner and her son out of the house. 10

3. On or about the 6th day of December, 1929, during one of these violent and usual fits of temper that the defendant was in the habit of getting into, he wilfully beat and hit the petitioner, striking her about the face and head and threatening her because of instituting suit for divorce against him. 20

4. On or about the 8th day of December, 1929, the defendant came home drunk and in an ill temper. The petitioner was locked in her room with her son. A short time thereafter the petitioner was awakened by the smell of gas and upon investigating she found that the defendant had turned on the gas in the apartment with an attempt to suffocate the entire family. 30

5. On or about the 17th day of December, 1929, while the petitioner and her baby were sleeping in the bedroom the petitioner heard her husband come in and a short time thereafter detected the odor of something burning. Petitioner got up and found 40

Supplemental Petition.

that the defendant had set the couch on fire with intentions to burn up the apartment. He at that time told petitioner that he would kill them all no matter how he did it. Petitioner succeeded in putting out this fire although the couch was practically ruined because the greater part of it had been burned away.

10

6. All during this time the defendant continuously failed to provide money, clothing and food for the petitioner and her child and petitioner was continually loaning money from her parents in order to buy those necessities which petitioner needed.

20

7. During the latter part of November, 1929, the petitioner was called downstairs by the janitor of the apartment house and found that the defendant was lying in the hall drunk and all bruised and cut. An ambulance had to be called to the house to have him treated for bruises, cuts and alcoholism.

30

8. About the beginning of January, 1930, the defendant failed to pay the gas and electric bills. The company informed him that unless they were paid, service would be discontinued. Notwithstanding this, defendant refused and neglected to pay said bills and the company turned off both gas and electric, leaving the petitioner without any gas with which to cook and without any electric in order to light up the apartment. Petitioner had to use candles and was unable to do any cooking for a period of two days, at which time she could no longer endure the abuse and fear that the defendant was subjecting her to and refused to continue to reside with him.

40

Supplemental Petition.

9. During the period that petitioner again resumed her residence with the defendant she at no time cohabited with him and during the entire time and up to the present time has not cohabited with him.

10. Petitioner has since the commencement of this action continued to be a bona fide resident of the State of New Jersey. 10

Petitioner therefore prays that she may have the same relief as if the facts stated in the supplemental petition had been stated in the original petition, and that the marriage between petitioner and the defendant may be dissolved for the causes aforesaid as well as the causes alleged in her original petition. 20

WALLACE P. BERKOWITZ,
Solicitor of Petitioner.

30

40

Affidavit of No Collusion.

(Filed November 21, 1930)

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

EVELYN MICHELS, of full age, being duly sworn, according to law, upon her oath, deposes and says:

10 I am the petitioner named in the foregoing petition; that my said petition is not made by any collusion between myself and the defendant, but in truth and good faith for the causes set forth in said petition.

That the facts, matters and things set forth in the said petition so far as they relate to me are true, and so far as they relate to the acts of the defendant are true to the best of my knowledge and belief.

20

EVELYN MICHELS.

Sworn and subscribed to before me }
 this 14th day of November, 1930. }

LEO DIAMOND,
 Attorney at Law of New Jersey.

30

40

Answer to Supplemental Petition.

(Filed December 3, 1930)

IN CHANCERY OF NEW JERSEY.

Between EVELYN MICHELS, Petitioner, and ARNOLD D. MICHELS, Defendant.	}	75-114. On Petition for Divorce &c. Answer to Supple- mental Petition.	10
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The Answer to the petitioner's supplemental petition.

The defendant, Arnold D. Michels, answers the supplemental petition herein and says: 20

1. The allegations of paragraph 1 are denied, and this defendant alleges that the date of the resumption of residence referred to therein as between petitioner and defendant, was in the month of October, 1929, and not the month of November, 1929. Defendant further says that such resumption was freely and voluntarily entered into by both petitioner and defendant and not because of any particular condition or particular promise. 30

2. The allegations of paragraph 2 are denied, and defendant denies that he was guilty of any acts of extreme cruelty or violence on his part as against the petitioner and he also denies that he ever made the threats which are alleged to have been made in the said paragraph.

3. The allegations of paragraph 3 are denied. 40

Answer to Supplemental Petition.

4. The allegations of paragraph 4 are denied.
5. The allegations of paragraph 5 are denied.
6. The allegations of paragraph 6 are denied.
- 10 7. The allegations of paragraph 7 are denied, and defendant further says that on the occasion referred to in said paragraph, petitioner inflicted injuries on the defendant and that the ambulance doctor was called because of the injuries which defendant so sustained.
- 20 8. The allegations of paragraph 8 are denied and defendant further says that the gas and electricity was turned off not because of any fault of defendant's, but because petitioner had not given her true name when she arranged for the turning on of the gas and electricity at the Bramhall Avenue address and because she had removed a Kelvinator machine from Hasbrouck Heights to Jersey City without the consent of the Public Service Company.
9. The allegations of paragraph 10 are admitted.
- 30 10. Defendant further says that the said supplemental petition was filed in this cause for acts alleged to have occurred since the filing of the petition and that the said alleged cause of action could only be legally prosecuted by the commencement of a new action and only after the lapse of a six months' period from the date of the last act complained of in accordance with the provisions of the Statute in such case made and provided.
- 40 11. Defendant further says that the alleged acts of cruelty were condoned by the petitioner and de-

Answer to Supplemental Petition.

defendant living together as man and wife after the alleged acts occurred.

12. Defendant repeats and realleges all and singular the allegations of his original answer in this cause.

13. Defendant further alleges that the citation 10
in this cause was served upon defendant at a time when the petitioner and defendant were living together as man and wife and that it is contrary to public policy to permit a further prosecution of this cause for any purpose.

JOHN W. OCKFORD,
Solicitor for Defendant.

20

30

40

Case.

Evelyn Michels. Called by Petitioner. Direct.

IN CHANCERY OF NEW JERSEY.

Between

EVELYN MICHELS,
Petitioner,

10

and

ARNOLD D. MICHELS,
Defendant.

1 Exchange Pl., Jersey City, N. J.,
December 3, 1930, 10 a. m.

20

Before—MARSHALL VAN WINKLE, Esq.,
Advisory Master.

APPEARANCES:

WALLACE P. BERKOWITZ, Esq., Solicitor for the
Petitioner.

ERICH H. JENTZ, Esq., Solicitor of Record, and
JOHN W. OCKFORD, Esq., of Counsel, Solicitor
for the Defendant.

30

EVELYN MICHELS, the petitioner, having been first
duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BERKOWITZ:

Q. You are the petitioner in this action? A. Yes.

Q. And when were you married? A. February
20th, 1920.

40

Evelyn Michels. Called by Petitioner. Direct.

Q. To whom were you married? A. Arnold D. Michels.

Q. Is Mr. Michaels here now? A. Yes.

Q. This gentleman sitting over there? A. Yes.

Q. Will you tell the court what happened after you got married? What I mean is, within a reasonable time after you got married, what took place?

10

Mr. Ockford: That is objected to as being too remote.

The Master: Objection sustained. The papers are voluminous, and you might tell me about the suit. On August 27th, 1929, there was filed a petition for divorce?

Mr. Berkowitz: Yes; thereafter there was an order for alimony made against Mr. Michels on September 16th, 1929. Thereafter, around November 15th, 1929, Mrs. Michels again took up her residence with Mr. Michels.

20

The Master: Had an answer been interposed at that time?

Mr. Berkowitz: Yes, I am quite sure an answer had been filed.

The Master: The answer was filed September 28th, 1929. Was alimony fixed?

Mr. Berkowitz: Yes, at the rate of \$50 per week, order submitted September 16th, 1929, and counsel fee of \$250.

30

The Master: Has the alimony been paid to date?

Mr. Berkowitz: No.

The Master: Has the counsel fee been paid?

Mr. Berkowitz: Yes. November 15th, 1929, they went together and lived under the same roof until around the middle of January, 1930,

40

Evelyn Michels. Called by Petitioner. Direct.

at which time the petitioner again refused to live in the same house with the defendant because of these acts of extreme cruelty committed during the time.

The Master: Is not this a case where there is a supplemental petition filed?

10

Mr. Berkowitz: Yes, and we are here today on behalf of the acts alleged in the original petition, and also the acts as alleged in the supplemental petition.

The Master: Was there an answer filed to the supplemental petition?

Mr. Ockford: Our time is not out yet, but we intend to file one.

The Master: Are you going to trial without any pleading on that?

20

Mr. Berkowitz: We can proceed, and if we reach that point, we can take up the supplemental matter and the answer can be filed now.

The Master: There is nothing before me on the supplemental answer. This was done recently and you can have more time if you want it, but there should be something before me on that before going on with the case.

30

Mr. Ockford: I will say now that the defendant denies the allegations of the supplemental petition, and we will file an answer during the day.

The Master: It is considered, then, that there is an answer filed to the supplemental petition making a denial. When the wife went back in November to the home of the defendant, did she resume marital relations with the defendant?

40

Mr. Berkowitz: No. We set that forth in our supplemental petition, and we even set that forth previous to that.

Evelyn Michels. Called by Petitioner. Direct.

The Master: Of course, if a wife who alleges that her husband is cruel remains in the same house, it is prejudicial, though I won't say it precludes her rights.

Mr. Berkowitz: She was forced by conditions, having no money, and on his promises, and so forth, she went back, and she simply went there for support until the time as he repeated all the acts set forth in the petition, and she could not stand it any longer. 10

The Master: That is your point of view. And on your part, Mr. Ockford, you deny that?

Mr. Ockford: Yes. As long as you have the point of view of counsel for the petitioner, it would be well to state the defendant's position in the matter.

The original petition, which was filed August 27th, 1929, alleges that on July 29th, 1929, the petitioner was compelled to separate herself from her husband because of his conduct which put her in fear; she says that up until July 29th, 1929, she cohabited with her husband. 20

Now, it is true that in the petition the explicit acts of extreme cruelty are fixed as of the previous February, but her petition sets forth that as late as July 29th, 1929, she was compelled to leave her husband. So that is an act of cruelty complained of. 30

The Master: Wouldn't it be proper, Mr. Ockford, in consideration of the petition itself, to consider what happened as alleged in the supplemental petition, not for the purpose of granting a decree on what is alleged in that petition of so late a date, but as perhaps throwing light on the previous petition? 40

Evelyn Michels. Called by Petitioner. Direct.

Mr. Ockford: Your Honor, I do not introduce any technical objection at all, but if the last act of cruelty complained of occurred within less than six months from the time of the commencement of suit, of course, I think that is—

10

The Master (interposing): The point is that the supplemental petition sets up acts of cruelty within the six months, and he has in mind the Blackwell Act. Now, I have said—and I think correctly—that any act of cruelty—any conduct of the defendant last month, or even in the court room, is admissible as throwing light on the conduct of the parties in a prior period, but you can't use that last act of cruelty—you will have to rely on averments in your original petition.

20

Mr. Berkowitz: In our last petition, we have mentioned that she was unable to stand such abuse, and she was obliged to leave on July 29th, and that six months have elapsed since the last act of cruelty.

30

The Master: There is no answer filed, but there is the suggestion that you can't use the acts of cruelty set up as a foundation for a decree. You can use them for the purpose of explaining his acts in the previous period—that is six months before the petition was filed. That is your position?

Mr. Ockford: Yes; and in addition to that, in the original petition is an allegation that the petitioner lived with her husband and cohabited with him down to July 29th, 1929. That was condonation.

40

The Master: That may not be. It may be that she was coerced, and that he made her do

Evelyn Michels. Called by Petitioner. Direct.

it, but if she did it voluntarily and of her own desire, it prejudices her case, of course.

(Discussion off the record.)

Mr. Ockford: We, of course, maintain that there was a real reconciliation, and what proof there may be on that remains to be seen.

The Master: Your contention is that all the acts of cruelty were condoned by the conduct of the petitioner? 10

Mr. Ockford: And that, if in January, 1929, or 1930 there were acts of cruelty which justified, after six months, a new suit, that would have to be the subject matter of a new action.

Mr. Berkowitz: If there had been a complete reconciliation, of course that would be so. Then of course we would have to take a dismissal without prejudice. 20

The Master: The condonation would be a matter of fact under the pleadings.

Mr. Berkowitz: Paragraph 2 of the original affidavit recites that they cohabited as husband and wife and cohabited in this sense is meant to be that they resided together.

EXAMINATION CONTINUED BY MR. BERKOWITZ:

Q. Where were you married? A. 121 Manhattan Avenue, Jersey City. 30

Q. Will you tell the court how long you lived at Manhattan Avenue? A. About two and a half years.

Q. Where did you move then? A. To 94 Summit Avenue.

Q. How long did you live at number 94 Summit Avenue? A. About ten months.

Q. Then where did you move to? A. To number 17 Van Riper Street. 40

Evelyn Michels. Called by Petitioner. Direct.

Q. Jersey City? A. Yes.

Q. All of these places were in Jersey City? A. Yes.

Q. How long did you live at Van Riper Street?

A. About seven months.

Q. And where did you move then? A. To number 3405 Boulevard, Jersey City.

10 Q. How long did you reside there? A. About a year.

Q. And then where did you move to? A. Number 53 Montrose Avenue, Jersey City.

Q. How long did you live there? A. About six months.

Q. Where did you move then? A. To 234 Williams Avenue, Hasbrouck Heights.

20 Q. That is your home? A. Yes, the home we bought at Hasbrouck Heights, Jersey City.

Q. Right after you married Mr. Michels, how did your husband treat you?

Mr. Ockford: Objected to. These parties married in 1920, and what happened between 1920 and 1928 is hardly material.

The Master: I think I will receive it, in this kind of case.

30 A. Practically every night he came home drunk and used vile language and called me all sorts of names.

Q. What kind of names? A. He always addressed me as a dizzy bastard.

Q. Did he use any other names? A. Son of a bitch, and so forth.

Q. Let me have the names. Don't hesitate. Whatever he called you, let us have it now. A. I was living on carousels and I was dizzy and they would have to take me off.

40

Evelyn Michels. Called by Petitioner. Direct.

Q. What else? A. Every name that he could think of to call me.

(Objected to, and stricken out.)

Q. What were the names that he called you, besides what you have said? A. That is all.

Q. Did your husband at any time after your marriage treat you in such a way as to put you in fear of physical abuse? A. Well, every time I was sick— 10

Mr. Ockford (interrupting): That is objected to.

(Objection sustained.)

The Master: You can ask what he did, and she can indicate the effect.

Q. When you lived on Manhattan Avenue, the address at which you lived right after your marriage, did your husband say anything to you? A. Every time I would ask him to stop drinking, he would say, I will take a poke out of you, and I would have to run and lock myself in the bathroom. 20

Q. Did he hit you? A. No, not on Manhattan Avenue.

Q. And then you moved to Summit Avenue? A. Yes. 30

Q. Did you suffer any violence at that address?

A. Yes. When I went in when it was time for him to get up, and told him it was time to get up, and he asked me what the time was, and I told him, and said, "You had better get up", and he said, "If you come in here again I will smash you", so he hit me on the chin with his fist and I went, and then he beat his fist through the glass panel and I ran out and screamed. 40

Evelyn Michels. Called by Petitioner. Direct.

BY THE MASTER:

Q. What year was that? A. 1923, the latter part. And then he left me alone. I couldn't go out because my condition was terrible. My teeth went through my lip, on the left side.

10 BY MR. BERKOWITZ:

Q. That was while you resided at the Summit Avenue address? A. Yes.

Q. And then where did you move? A. To 17 Van Riper Street.

Q. At that address did you suffer any violence? A. No,—he continually came home drunk there and said he would take a poke out of me and smash me, but he never did.

20 Q. But during that time he came home continuously drunk? A. Yes.

Q. And then you moved to where? A. 3404 Boulevard.

Q. Did you at that address suffer any violence from your husband? A. Yes.

30 Q. Tell us what happened. A. One night he came home and he started to give me a lot of abuse, and I said, "It is about time you stopped drinking and saved some money", and he said, "I will smash you", and with that he hit my chin and the back of my head hit the piano, and I ran out of the house and I went to the police station, and they said I would have to come the next morning.

Q. And then you moved to Montrose Avenue? A. Yes.

40 Q. And what happened there? A. He continually came home drunk. That was a regular thing. And he said he would hit me, and I would run and lock myself in the room.

Evelyn Michels. Called by Petitioner. Direct.

Q. Did he at any time attempt to hit you there?

A. Not at any time in 1927. He came home drunk at about four o'clock in the morning once, and he had won some money gambling, and he gave me the money and I slipped it under the pillow, and a little later he came and twisted my arm behind my back.

Q. Why? A. He said he wanted that money back, after he had given it to me. 10

Q. What did he say? A. He said, "Give me that money back,—and I said, "You gave me the money", and then he twisted my arm behind my back and got it from my hand. My mother was there and he started hitting me, and I went to the bath room.

Q. That was in the night time? A. About three or four o'clock in the morning.

Q. And your mother was staying with you? A. Yes. 20

Q. Where was she sleeping? A. Right next to me, in my bed.

Q. At any other time did Mr. Michels hit you or do anything to you after that? A. In about December, 1927, he was abusing me all the time, saying that his father wanted a second mortgage on the house, and I wouldn't do it.

30

Mr. Ockford: I move to strike out that he was abusing her all the time.

The Master: Strike it out.

Q. What happened? A. He said that his father insisted on a second mortgage, and I should go out and get a divorce and one thing led to another, and I was taken sick on the 28th of December, and my father had to call in Doctor Walsh.

40

Evelyn Michels. Called by Petitioner. Direct.

Q. That was from his treatment? A. Yes, from his treatment.

Mr. Ockford: I move to strike that out as a conclusion.

The Master: It is a leading question.

(Testimony read.)

10 The Master: It is a conclusion, but I think she has a right to make it. It is not an ordinary conclusion. She said that the doctor was called by her father because of that injury.

Mr. Ockford: As I understand it, there was no injury at that time. Maybe I missed it.

Q. What did you call the doctor for? What was your ailment? A. My mother and I were making the bed—

20 Q. (Interrupting) Why was Doctor Walsh called? A. Because I was taken sick. I was paralyzed, like; and he came down and injected a hypodermic in the hip and said, "What has been going on around here?"—and I told him.

Q. Can you tell us what was your ailment? A. Nervousness; a nervous shock.

BY THE MASTER:

30 Q. When was that? A. December—about the 28th of December, 1927.

BY MR. BERKOWITZ:

Q. Previous to that, how did your husband treat you? A. He was always saying that he was going to take a smack at me, and I had to go upstairs all the time and lock myself in the room.

40

Evelyn Michels. Called by Petitioner. Direct.

Q. There was always that question of something going to happen from him? A. Yes.

Q. That was in December, 1927? A. That is right.

Q. Did you ever have more trouble with him after that? A. In February, 1928, I had him arrested.

Q. Will you tell us what happened in February, 1928? A. In February, 1928, my boy and I were playing on the floor, and he said, "Stop that racket", and I said, "We are not making any noise", and he said, "I am trying to get the fights on the radio", and after that he came and smashed me,-- and I said, "If you smash me you won't play on the radio", and I took one of the tubes out and ran into the kitchen, and the boy took another, and he kicked my little boy because of that. 10

BY THE MASTER:

Q. And his little boy, too? A. Yes.

Q. Has he ever been married before? A. Yes.

Q. He has? A. Yes.

Q. And this little boy is your little boy and his together? A. Yes.

Q. Just one child? A. Yes.

Q. How old is he? A. Nine. 30

BY MR. BERKOWITZ:

Q. Tell us just what happened in February, 1928 when you say at this time you had the argument and he hit you. Where did he hit you? A. In the face and in the eyes.

Q. Once? A. About five times. I can't just remember the times. 40

Evelyn Michels. Called by Petitioner. Direct.

BY THE MASTER:

Q. What with? A. With his fist, and I was down on my knees and I was on my back, and that is when my mother stopped him.

BY MR. BERKOWITZ:

10

Q. What did you do? A. I said, "I will fix you. I will get the police for you",—and he said, "I don't care who the hell you get", and after that he ran out the back door. He knew I meant what I said.

Mr. Ockford: I move that that be stricken out.

20

The Master: Strike out "He knew I meant what I said".

The Witness: So he ran away and they could not find him, so they took the papers out to Hackensack, and they picked him up in a saloon in Hackensack.

BY THE MASTER:

Q. Were you present then? A. Yes.

30

BY MR. BERKOWITZ:

Q. When was that? About how long after? A. About two hours after this happened. So, when he came out of the saloon, they said, "Are you Arnold Michels?" and he says, "No; Harry Green",—and the officers said, "Is that your husband?" and I said, "Yes", and he said, "Get in the car", and we drove to the Hackensack Police Court and the
40 sergeant asked him what was his name, and he said,

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"Arnold Michels", and the officer said, "Why didn't you say 'Arnold Michels' in the beginning?" and then he began to get abusive, and I said, "When you get through with him, bring him to Hasbrouck Heights".

Q. Tell us what happened as the result of Mr. Michels' being arrested. Was he brought into court? A. Yes. 10

Q. What court? A. In the Hasbrouck Heights court.

Q. Was he tried there? A. Yes.

Q. What did he say there? A. He became abusive to the judge, so the judge referred him to the Hackensack court.

Q. And what happened then? A. He denied the charge.

Q. What did the court find? A. The court found him guilty. 20

Q. Of what? A. Assault and battery.

Q. On you? A. Yes.

Q. Will you tell us if anything else happened after that, Mrs. Michels? A. Then I moved to my mother's house in 1928.

Q. About how long after? A. Within a week.

Q. What did you do? Close up your house? A. I put my furniture in storage in Rutherford. 30

Q. And went and lived with your mother? A. Yes.

Q. How long did you live with your mother? A. Three or four months.

Q. You didn't live with Michels during that time, did you? A. No.

Q. What happened then? A. So he came around and asked me if I would go back with him, and different things. 40

Evelyn Michels. Called by Petitioner. Direct.

Q. Did he make any promises to you?

Mr. Ockford: Objected to as leading.

The Master: Yes; what did he say, Madam?

A. He said that he would me different on account of the court; that that taught him a lesson.

10

BY THE MASTER:

Q. How long was this after you separated? A. About four months.

BY MR. BERKOWITZ:

Q. And then you went back to him? A. Went back to 234 Williams Avenue, Hasbrouck Heights.

20

Q. Just about what month was that? A. About December, 1928.

Q. And you continued then to live with him again? A. Yes.

Q. And after you went back, did any more—did anything happen to you at that time? A. He said he would smash me all the time, and he didn't care about such things as courts or judges; that he didn't give a damn.

30

Q. Did he make any change? A. No, he was just the same as before. He lasted about three days—that is all.

Q. What was the nature of his acts, again? A. The same. He tried to hit me, and coming in drunk every night.

Q. He was a habitual drunkard? A. A habitual drunkard, yes.

Mr. Ockford: Objected to as leading.

40

The Master: Strike it out.

Evelyn Michels. Called by Petitioner. Direct.

BY THE MASTER:

Q. What were his habits with respect to drinking, if any? Tell us, Madam. A. Well, he was drunk all the time.

BY MR. BERKOWITZ:

Q. Will you tell us this, Mrs. Michels. How did he conduct himself around the house; A. Well, he fell all over the furniture, and he was very dirty about his person.

10

Q. Tell us what you mean by that. A. Well, he used the bed as a lavatory.

BY THE MASTER:

Q. When he was drunk, or sober? A. Always. 20

Q. When he was sober? A. He was drunk every day.

Q. You slept with him? A. No, sir, I wouldn't sleep with him then.

BY MR. BERKOWITZ:

Q. When did you refuse to sleep with him? A. Because he was so dirty.

Q. Tell us what you mean by being "so dirty". 30

Mr. Ockford: Does this relate to July, 1928?

The Witness: All the time.

BY THE MASTER:

Q. Testify when it was. A. I stopped sleeping with him at number 304 Boulevard. We bought twin beds there.

40

Evelyn Michels. Called by Petitioner. Direct.

BY MR. BERKOWITZ:

Q. Will you tell us why you stopped sleeping with him? A. Because he used the bed as a lavatory, and slept with his shoes on, and his hat on, and everything.

10 Q. That is the reason you didn't sleep with him?
A. Yes.

Q. And you say you went back with him some time in the middle—

Mr. Ockford: (Interrupting) Just a minute. I don't want to misunderstand the witness. Does that mean from that time on—from the time at 3405 Boulevard, on?

20 The Witness: Before then; and I had decided to get twin beds because every night the bed was mussed and I had to get up and change myself.

BY THE MASTER:

Q. Where were you living then? A. In Summit Avenue.

Q. You got twin beds in that place? A. No; 3405 Boulevard.

30 BY MR. BERKOWITZ:

Q. After about the middle of 1928, when you went back with him, will you tell us if there were any other acts of violence which were committed upon your person? A. Not after February, 1928.

Q. Not after that time? A. No.

40 Q. How did he conduct himself after you were back with him? A. The same way; threatening me

Evelyn Michels. Called by Petitioner. Direct.

all the time on account of my taking him to court at Hackensack.

Q. Would you say that his habits were the same? Did he continue to drink? A. He was the same drunkard, yes.

Q. Did he conduct himself around the house as he had previously? A. Yes; the police used to pick him up out of the sewer on the street.

10

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

BY THE MASTER:

Q. Did you see that? A. No.

The Master: Then strike it out.

20

BY MR. BERKOWITZ:

Q. What else happened? A. The taxi driver used to bring him to the house and give him his tea.

Q. You left Michels in August, 1929? A. Yes, in 1929.

Mr. Ockford: There has been nothing of that kind in the testimony yet.

The Master: I don't think so.

30

Q. How long did you continue to live with Michels in Hasbrouck Heights? A. From July to the month of August.

Q. What year? A. 1929.

Q. Then what happened? A. He refused to bring in food in the house or to give me any sort of living, or any money.

40

Evelyn Michels. Called by Petitioner. Direct.

Q. Then what did he do? A. He refused to give me food, even.

Q. Tell us any conversation that passed between you and Michels at that time or previous thereto regarding money matters, foodstuffs, and things of that character. A. He positively refused to bring me any food.

10 Q. Did you ask him for money? A. Yes.

Q. Did you ask him for food? A. Yes.

Q. What did he say? A. He said, no, I should get to hell out of there and get a divorce. His father said so—he said he would give me food on one condition—that I would sign a second mortgage for his father.

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

20 Q. What did you live on? A. I used to charge at the butcher store, and I would tell the fellow to collect on Sunday morning, and when the fellow would come on Sunday morning he would give him a lot of abuse and say that he didn't order it.

Q. Did you have any money to buy food? A. Never had any money—only money that he gave me. He would leave me two quarters, or two half dollars, in the morning.

30 Q. Did you get any money from anywhere? A. Only from my mother and father. They helped me out with money for food.

Q. They helped you out? A. Yes; and Mrs. Hamilton, on Belleville Avenue, used to help.

Q. How much? A. She used to feed my boy sometimes, and invite us to dinner.

Q. Just that once? A. Continually.

Q. That you always had—trouble regarding money matters? A. Yes.

Evelyn Michels. Called by Petitioner. Direct.

Mr. Ockford: I would like to know the period they are talking about; August, 1929?

The Witness: From February to August. In fact, from the time we moved in the house, he never wanted to pay any bills.

Q. Do you know of your own knowledge, Mrs. Michels, whether he had any trouble with anybody regarding the payment of bills? A. Chapman of Hasbrouck Heights, he still owes money. 10

Q. How long ago—was that for merchandise? A. For coal.

Q. Do you know when that coal was gotten? A. Oh, we would get it every winter; we always bought it from him, and he still owes him a bill.

Q. Do you know anybody else he owes money to out there and didn't pay? A. He owes my doctor in Hackensack—Doctor Conrad operated on me; \$385. 20

Q. Did he pay it? A. No.

Q. Have you seen Doctor Conrad lately? A. Yes, he has been calling me up.

Mr. Ockford: That is objected to.

The Master: I think she knows.

The Witness: My father signed for the operation, and on account of my father signing, naturally he sent the bills to my father. 30

Q. Do you know whether your father ever communicated with your husband regarding these bills? A. He talked to him often about it. He said he would not pay it. I was his wife, and it was up to him.

Evelyn Michels. Called by Petitioner. Direct.

Q. Will you tell why your father signed for this?

Mr. Ockford: That is objected to.

The Master: I will take it.

10 Q. (Repeated by the stenographer.) A. Because my husband was lying in bed, and there was no one with me to sign for the operation, and my father went with me.

BY THE MASTER:

Q. What do you mean by saying your husband was lying in bed? A. He was lying there asleep, and when I asked him to go to the doctor with me, he refused, and said nothing.

20

BY MR. BERKOWITZ:

Q. What did you do? A. I put on a nightgown and walked to my mother's three blocks away.

Q. Did you say something to your husband about it? A. Yes. It was about ten o'clock at night, and he refused to call the doctor up.

Q. And what happened? A. I was in agony.

30 Q. And you went to your mother's? A. Yes.

Q. And what did she do? A. She put a cold application on my stomach and my father called the doctor up, and so the doctor came down and called the Hackensack Hospital for an ambulance, and he said that my father would have to go along; that somebody would have to sign, and so my father went along and he signed for the operation, and my husband didn't know where I was. He knew that

40

Evelyn Michels. Called by Petitioner. Direct.

the boy was lying in bed alone, but he didn't know where I was.

Mr. Ockford: That is objected to. She said he was asleep.

Q. How long were you in that hospital? A. Two weeks.

10

Q. Did your husband visit you? A. Twice.

Q. In the two weeks? A. Yes.

Q. Going back to August of 1929, you at that time were still living at Hasbrouck Heights? A. Yes.

Q. And where did you go then? A. Moved to 470 Bramhall Avenue.

Q. What did you do with the furniture? A. Part of it I put in my mother's attic.

20

Q. What about the other part? A. We have it with us.

Q. And then you instituted your suit for divorce? A. Yes.

Q. Do you know when you started that? A. About August 2nd, 1929.

Q. That is the time you saw Mr. Feinberg? A. Yes.

Q. Then did you see your husband between August and September 1929? A. I saw him in September.

30

Q. During the month of August, while you were living in Bramhall Avenue, was your husband with you? A. No.

Q. You say you saw him in September? A. Yes.

Q. Tell us what the occasion was. A. Someone rang the doorbell, and it was my husband, and I

40

Evelyn Michels. Called by Petitioner. Direct.

pushed him away, and I said, "I am not going to live with you",—and he says, "I won't get out. I am going to live right here."

Q. Did you know whether at that time he was served with a petition for divorce? A. No.

10 Q. Did you do anything at that time in September when he came into the house, after he came into the house?

(Objected to; question withdrawn.)

Q. How long did your husband stay at the house when he pushed his way in? A. Three days.

Q. And then what happened? A. He was served with divorce papers.

Q. Did he leave three days later? A. Yes.

20 Q. Why? A. He was served with a divorce paper.

Q. How did the deputy come to serve him at your house?

Mr. Ockford: I object, unless he had some part in it.

The Master: I assume you will state, if you know; and if you don't, say so.

30 A. I called up Mr. Feinberg, and he said, Let him in, and I will serve the paper.

Q. Then he left your house? A. Yes.

Q. He was not at your house then for a long time? A. He was not there until November 15th.

Q. He came around on November 15th? A. Yes.

Q. Did you have a conversation with him then? A. Yes,—on November 15th.

Q. What was said? Why did you go back with him? A. Because I had no means to live.

40 Q. Where was that? A. 470 Bramhall Avenue.

Evelyn Michels. Called by Petitioner. Direct.

Q. That was what time, you say, about? A. About the 15th of November.

The Master: It was the husband that came to her house?

Mr. Berkowitz: Yes.

(Discussion off the record.)

10

Q. Tell the court what happened around the 15th of November. A. I had no way to live. I had no means of getting any money, and I didn't collect any alimony.

Mr. Ockford: I move that that be stricken out.

The Master: I will let it stay in.

Q. He came to your house? A. Yes.

20

Q. And then what happened? A. He said he would pay the bills all up, and would be different if I would give him another chance.

BY THE MASTER:

Q. That was after the divorce paper was served on him? A. Yes.

Q. Was the boy living there at that time? A. Yes.

30

Q. And were you supporting yourself in the meantime? A. I pawned my jewelry.

BY MR. BERKOWITZ:

Q. Do you know that there was an order of alimony made in your favor? A. Yes.

Q. How much? A. \$50 a week.

40

Evelyn Michels. Called by Petitioner. Direct.

Q. Do you know when that was? A. Around September of 1929.

Q. And at that time while you were living away from your husband, did you receive any of that money? A. Not a nickel, no.

10 Q. As you said before, when he came up to you, he promised to, be different and pay the bills, and things like that? A. Yes.

Mr. Ockford: I move that that be stricken out.

Mr. Berkowitz: That is simply repeating her testimony.

The Master: You can't do that, if there is any objection. Under objection it must be struck out.

20 Q. Then after November did he come into your apartment? A. Yes.

Q. Did you cohabit with him? A. No, I did not.

Q. How long did he stay at your place? Or, what time did he leave? A. He left around January 1st; the first week in January.

BY THE MASTER:

30 Q. Do I understand you to say that during this period you and he did not sleep together? A. Yes.

Q. Where did he sleep? A. In the living room, on the couch.

Q. How long was that? A. From November, the first week, until the first of January, 1930.

Q. Where did you sleep? A. In the bedroom with my boy.

Evelyn Michels. Called by Petitioner. Direct.

BY MR. BERKOWITZ:

Q. How many rooms did you have? A. Two rooms.

Q. Tell us what two rooms. A. Two rooms and a kitchenette. The bedroom was one, and the other, the living-room, and then a kitchenette.

Q. Was there a couch in the living room? A. 10
Yes.

Q. And your husband slept there? A. Yes.

Q. And you and your son slept in the bedroom?
A. Yes.

Q. Will you tell us if your husband committed any acts of violence after he came back in 1929?

A. On December 6th he started throwing the furniture around, and he started smashing me, and I told him then that if he didn't stop, he would have 20
to get out.

Q. You say he hit you on that day? A. Yes.

Q. Where? A. In the face.

BY THE MASTER:

Q. What with? A. With his fist.

Q. Hard or light? A. Hard.

Q. How hard? A. Hard enough to feel it and 30
know it.

Q. You mean a blow struck in anger? A. Yes.

BY MR. BERKOWITZ:

Q. During that time did your husband change his habits and stop drinking? A. No.

Q. Did he drink at that time? A. Yes.

Q. To what extent did he drink? A. He was always drunk. He was always lying in the hall, 40

Evelyn Michels. Called by Petitioner. Direct.

and I would have to pull him in or the superintendent would bring him in.

BY THE MASTER:

Q. That was in an apartment house? A. Yes.

10 BY MR. BERKOWITZ:

Q. Were any other acts committed? A. On December 8th he turned the gas on and said he was going to kill all of us.

BY THE MASTER:

Q. What time of night? A. That was around one in the morning.

20 Q. What gas did he turn on? A. A gas stove in the kitchenette.

BY MR. BERKOWITZ:

Q. Was the gas lighted? A. No, it was not; and he had the oven turned on, and all the burners on.

Q. You say it was one o'clock in the morning? A. Yes.

30 Q. Where were you, then? A. In the bedroom, and he was out there at twelve o'clock or about that time, and my boy was asleep, and I listened until he went to sleep. I used to go out to see if everything was all right. So at one o'clock I smelled this smell, and I went out, and the whole place was nothing but gas.

Mr. Ockford: Do I understand he was there?

The Witness: Certainly. He turned the gas

40 on.

Evelyn Michels. Called by Petitioner. Direct.

Q. And he stayed there? A. Yes.

Q. What was his condition? A. He was drunk.

Q. What did you do when you found the gas was turned on? A. I turned the jets off, and I opened the windows wide, and opened the door.

Q. What was Michels doing at that time? A. He was sitting there.

Q. I show you these letters. Do you know in whose handwriting they are? A. My husband's. 10

Q. And when did you find them? A. That night.

Q. What night? A. That night of December 8th, 1929, when he turned the gas on.

Mr. Berkowitz: Your Honor, I offer those two letters in evidence.

The Master: That handwriting has been identified, two sheets. 20

BY MR. OCKFORD:

Q. Did you say you found them? A. They were right next to me when he finished writing them.

Mr. Ockford: All right; I have no objection.

(Two letters marked Exhibits P-1 and P-2 respectfully.)

Mr. Berkowitz: I will read this— 30

The Master (interrupting): There are no dates.

Mr. Berkowitz: I will read this one (reading Exhibit P-1):

"To my son Arnold:

Dear Arnold: I want you to have everything in life you should have. Let my father send

Evelyn Michels. Called by Petitioner. Direct.

you to a school that will take care of you.

Become a man and not a bum like your father.

Well, goodbye, son,

Your father,

Arnold."

BY THE MASTER:

10

Q. When did you say you found those letters?

A. December 8th.

Q. What happened on December 8th? A. He turned the gas on that night.

Mr. Berkowitz: I will read Exhibit P-2 for the record.

(Reading Exhibit P-2.)

20

"To my father:

I am very sorry to have given you all this trouble in your aged life, but I made a bad mistake when I married my present wife. I owe this 'something—clothman, \$62; Citizens Finance, \$240; Public Service, \$93; Hyman Brothers, \$175; a total of \$570. When I am dead bury me next to Liberta.—"

30

The Master: Who is Liberta?

Mr. Berkowitz: The first wife. (continues reading:

"—Your loving son,

Arnold."

BY THE MASTER:

40

Q. Was your husband's first wife dead before this marriage? A. Yes.

Evelyn Michels. Called by Petitioner. Direct.

Q. How long before you married him? A. About a year.

Q. Were there any children of that marriage?

A. No.

BY MR. BERKOWITZ:

Q. Did anything else happen, Mrs. Michels? Did your husband commit any other acts of violence after the 8th of December? A. A couple of days after the 8th he set fire to the place while I was sleeping. 10

Q. Will you tell us how that happened? A. I was locked in the room—

BY THE MASTER:

Q. (Interrupting) What room? A. The bedroom. 20

Q. Did you always lock the bedroom? A. Yes.

Q. All the time that he was there? A. Yes.

Q. Why? A. I was afraid of him.

BY MR. BERKOWITZ:

Q. Tell us what happened at this time. You were speaking about the fire.

Mr. Ockford: Can I have the date? 30

Q. About when was that? A. About the 10th.

Q. Of December? A. Yes.

Q. Nineteen what? A. 1929.

Q. Will you tell us what happened on that occasion? A. I was lying in bed waiting for him to go to sleep, and the first thing I noticed, I smelled smoke, and when I went out, the place was on fire.

Q. What was on fire? A. The couch. 40

Evelyn Michels. Called by Petitioner. Direct.

Q. What did you do? Did you call the Fire Department? A. No.

BY THE MASTER:

10 Q. What did you do? A. I took a bucket of water and a blanket that I had and put it out and opened the windows.

Q. Where was your husband? A. Sitting on the chair.

BY MR. BERKOWITZ:

Q. What was his condition? A. Drunk. He always said he wanted to collect the insurance, and things of that sort.

20 Q. Was this in an apartment house? A. Yes.

Q. How many tenants in that apartment house? A. Twenty.

Q. What time was it? A. About two o'clock in the morning.

Q. Did he say anything to you? A. He said he was going to kill all of us, and we would all be better off.

BY THE MASTER:

30 Q. When was that? A. That night, when I said, "What is the idea of burning us up like that?"

BY MR. BERKOWITZ:

Q. Did anything happen after during the month of December? A. In the latter part, when the gas or electric company came to turn the gas and electricity off—

40

Evelyn Michels. Called by Petitioner. Direct.

Q. (Interrupting) When was that? A. That was the last week in December,—about the 18th.

Q. Do you know why they turned your gas off? A. They turned the gas off because they said that Mr. Michels called up and said that I was living under an assumed name and that was the reason.

Mr. Ockford: I move that that be stricken out. 10

The Master: Strike it out.

Q. And you didn't have it for a month? A. No.

Q. Did you need the gas? A. Certainly I did, for cooking.

Q. Did you use electric lights in your house? A. I couldn't. It was shut off; the meters were taken out.

Q. How did you manage to live? A. The lady upstairs used— 20

BY THE MASTER:

Q. (Interrupting) Did you have an order to take them out yourself? A. No.

BY MR. BERKOWITZ:

Q. Did your husband owe any money to the Public Service? A. Yes, about \$240. 30

Q. And what was that for? A. For Hasbrouck Heights he owes that.

BY THE MASTER:

Q. You mean for electricity in the house? A. Yes. I didn't owe anything on 470 Bramhall Ave- 40

Evelyn Michels. Called by Petitioner. Direct.

nue but he referred them to me to be responsible for the bill at 470 Bramhall—

Q. (Interrupting) What did he say? A. He said he would call up and tell them to take the Kelvinator away and to shut off the electricity because I was living under an assumed name.

10 BY MR. BERKOWITZ:

Q. And did they shut the gas off? A. Yes; and took the meters out.

Q. For about how long a period was that? A. For all of three weeks I was without gas and electricity.

Q. During this time when you went back to your husband—

20 Mr. Ockford: (Interrupting) Now, she didn't say that.

Q. (Continued) At the time your husband came to your apartment, from that time up to January did he supply you with enough food and money to buy the necessities of life? A. No, sir; he refused to.

BY THE MASTER:

30 Q. Did he give you anything at all? A. Yes, something.

Q. Did he eat there himself? A. No, sir; he said he ate in New York.

Q. He had no meals there at all? A. No.

BY MR. BERKOWITZ:

Q. You say he didn't give you enough money to live on?

40 Mr. Ockford: I object. What is "enough"?
The Master: It is a comparative word.

Evelyn Michels. Called by Petitioner. Direct.

Q. How much a week did he give you, if anything? A. Well, five dollars a week.

Q. What were you supposed to do with that five dollars a week? A. To support the three of us.

BY THE MASTER:

Q. Where did he eat? A. I don't know. 10

Q. He didn't eat there at all? A. No.

BY MR. BERKOWITZ:

Q. Did he bring in any food at any time to you?

A. He even refused to bring me butter and eggs from the store.

Q. What is his line of business? A. Butter and egg business.

Q. Is he in business for himself? A. With his father; Barthold, Michels Sons Company, Incorporated. 20

Q. And he didn't bring you any food? A. No, he refused to.

Q. Mrs. Michels, do you know what your husband's income is?

Mr. Ockford: I object to that.

Mr. Berkowit: It calls for yes or no, if your Honor please. 30

A. I only know what he told me.

The Master: "Yes"—is the answer. You do know?

The Witness: Yes.

Q. What has he told you? A. He told me he got \$125 a week. 40

Evelyn Michels. Called by Petitioner. Direct.

Q. And what position does he hold in New York?

A. Manager of the business.

Q. And that is his father's business, as you say?

A. Yes.

BY THE MASTER:

10 Q. Where is the business? A. At number 47
Vesey Street, Washington Market.

Q. Butter and eggs? A. Yes.

Q. Who was in the business besides the father?
A. Three other brothers.

Q. What is the name? A. Barthold, Michels,
Sons Company.

BY MR. BERKOWITZ:

20 Q. Were you ever at the place of business? A.
Yes.

Q. Is it a big or small place? A. A big place.

Q. Do you have any idea how much help they
employ over there at the business?

Mr. Ockford: Objected to.

The Master: I don't think that proves the
amount of income.

30 (Question withdrawn.)

Q. When did your husband leave after you went
back in November?

Mr. Ockford: There it is again. I object.

Q. After he came back.

The Master: You shouldn't do that.

Evelyn Michels. Called by Petitioner. Direct.

Q. When did your husband leave you? A. January, 1930.

BY THE MASTER:

Q. When did he come to Bramhall Avenue? A. In November.

Q. In the middle of the month or when? A. 10
About the 15th of November.

Q. And he went away in January? A. Yes.

BY MR. BERKOWITZ:

Q. And from that time on you haven't had him at the house? A. No.

Mr. Ockford: That is leading.

20

BY THE MASTER:

Q. Has he been at the house? A. He has always been in the hall, but never in the house.

Q. You live in the same place yet? A. Yes; not now, no.

BY MR. BERKOWITZ:

Q. How long did you live at Bramhall Avenue? 30
A. About a year.

Q. When did you move? A. In July.

Q. Where to? A. 3719 Boulevard.

Q. And during that time, from January until July when you moved from Bramhall Avenue, you say your husband had been around your place often? A. Yes.

Q. Once in a while? A. Yes.

40

Evelyn Michels. Called by Petitioner. Cross.

Q. How often? A. Well, about twice or three times a week.

Q. Did he ever come into your house? A. No.

Q. How do you know that he was there? A. Because the superintendent was telling me that he was lying in the hall, drunk.

10 BY THE MASTER:

Q. Did he stay all night there? A. No, I don't think so.

Q. Have you had any sexual cohabitation since? A. No.

CROSS EXAMINATION BY MR. OCKFORD:

20 Q. When did you say you last freely and voluntarily had sexual relations with your husband? A. In 1928.

Q. In what month? A. I don't remember that.

BY THE MASTER:

Q. Where were you living then? A. Hasbrouck Heights.

BY MR. OCKFORD:

30

Q. And was it in the summer or winter or when? A. I don't remember.

Q. Was it after you had stored your furniture and gone to your mother's when he came back? A. Yes.

Q. You say it was in July, 1928 that you and your husband went back to live at 234 Williams Avenue, Hasbrouck Heights? A. Yes.

Evelyn Michels. Called by Petitioner. Cross.

Q. And at that time you freely cohabited sexually with your husband? A. Yes.

Q. And how long a time after that was it before you ceased to have sexual relations with your husband? A. I don't remember that.

Q. You are living now at 3719 Boulevard? What town? A. Jersey City.

Q. What sort of an apartment have you,—if you have an apartment? A. A three-room apartment. 10

Q. A living room, bed room, and kitchenette? A. Yes.

Q. Did you move that furniture from the Bramhall Avenue place to the present place? A. Yes.

Q. In July, 1930? A. Yes.

Q. And your boy lives there with you? A. Yes.

Q. Does anyone else live there with you? A. No.

Q. You work, do you, at all? A. No. 20

Q. You are at home all the time? A. Yes.

Q. Your boy goes to school? A. Yes.

Q. Previous to this morning, when did you last see your husband and speak to him? A. You mean before this morning?

Q. Yes. A. I saw him the other day in New York.

Q. What day? A. I believe it was Monday.

Q. Of this week or last week? A. This week.

Q. Two days ago? A. Yes. 30

Q. How many times a week have you seen your husband in the past two months? A. About once a week.

Q. Where have you seen him besides in the store? Have you seen him at any other place? A. In front of the saloon one night.

Q. Where? A. 539 Jackson Avenue.

Q. How long ago was that? A. About three weeks ago. 40

Evelyn Michels. Called by Petitioner. Cross.

Q. How did you happen to be in front of that saloon? A. In order to get my check.

Q. Did you make an appointment to meet him there? A. Yes, I did.

Q. What did you say to him when you were there, if anything? A. I don't remember saying anything to him. I got my check. That is what I went there for.

Q. What time of day or night was it? A. He never got there until at night; about 7:30 or 7:50.

Q. You didn't go inside? A. No.

Q. How did you happen to make the appointment there? A. He is always there.

Q. How did you know that? A. I know what he told me and I know I can get him on the wire there.

Q. What hour could you reach Michels on the 'phone by calling that number? A. About seven o'clock.

Q. In the evening? A. Yes.

Q. On these occasions you say you have been to the store in New York, did you go inside to meet him, or outside? A. Outside.

Q. By appointment? A. He sees me standing outside. I made an appointment Monday to see him Tuesday.

Q. And he came outside and met you in accordance with the appointment? A. Yes.

Q. When was the last time that you and your husband were inside any place together; inside any place, together? A. About three weeks ago.

Q. Where? A. We went to the Tivoli Theater.

Q. You met by appointment? A. Yes, he wanted to see the show.

Q. You met by appointment—you and your boy and he and you went in to see the picture show? A. Yes.

Evelyn Michels. Called by Petitioner. Cross.

Q. Do you remember what evening that was?

A. No.

Q. What night of the week? A. No.

Q. How long were you there together? A. The time that the picture would be out. I don't know how long it would take.

Q. An hour and a half, or two hours? A. I don't know how long the picture takes to run.

10

Q. Where did you go after the show? A. Home.

Q. You and who? A. My son.

Q. Where did you leave your husband? A. At Journal Square.

Q. Did you go by bus or trolley? A. Automobile.

Q. Whose automobile? A. My father's.

Q. You drove? A. Yes.

BY THE MASTER:

20

Q. How near Journal Square is your apartment?

A. About forty blocks.

Q. That is away to the north? A. Yes.

Q. Up towards North Bergen? A. Yes.

BY MR. OCKFORD:

Q. What was the last thing you said to him when you separated from your husband—you and your boy? A. Nothing. He said he would see me next week and gave me the check.

30

Q. You had no argument with him? A. No.

Q. How many times in the last six months have you been with your husband to any place? I am speaking of being inside places. A. That is the only place I have been inside; that and the Stanley. Two places.

Q. How long ago was that? A. About two months ago. I am not sure exactly.

40

Evelyn Michels. Called by Petitioner. Cross.

Q. And you went to shows—you and your husband and the boy? A. Yes.

Q. And you were there for a couple of hours? A. Yes.

Q. And where did you go after the show? A. Home.

Q. Where did he go? A. I don't know.

10 Q. Did you drive him any place in your automobile? A. Yes, to the saloon again.

Q. You took him to what place? A. To Jackson Avenue.

Q. Did you drive him down there? A. Yes, drove him. He didn't know how to drive.

Q. And you left him at the saloon? A. Yes.

Q. And on these occasions, when you were at the theatres you have mentioned with your husband, was your husband drunk? A. Yes, he was.

20 Q. All the while? A. Yes.

Q. What did he do in the place? Anything? A. No; he fell asleep—that is all. He leaned all over the place. That is all.

Q. What did you do? Wake him after the show was all over? A. No.

Q. What did you do? A. Nothing.

Q. You didn't do anything? A. No, I didn't.

Q. Where did you meet your husband the night you went to the Stanley about two months ago? A. In the lobby of the Stanley.

30 Q. By appointment? A. Yes.

Q. How long previous to meeting him there had you made the appointment to meet him? A. I believe that afternoon.

Q. Was he drunk when he was in the lobby when you met him? A. He was under the influence of liquor. It would knock you over, the smell of the liquor. He was not so drunk that he was staggering, though.

40

Evelyn Michels. Called by Petitioner. Cross.

Q. But you went in the show—you and he and the boy, did you? A. Yes.

Q. You know that your husband goes to work every day? As far as you know, he goes to work every day? A. Yes.

Q. Do you know what time he leaves his work as a rule? A. He used to get him home about nine o'clock. Now he gets home by six thirty. If he can make that saloon by seven o'clock— 10

Q. (Interrupting) What do you, "if he can make that saloon by seven o'clock"? A. Every time he makes the appointment for the saloon, he says he is always at the saloon by seven, so I imagine he gets home earlier now.

Q. Do you know what time he is supposed to leave New York? A. He told me he quits at seven.

Q. And when he leaves the place in New York, you say he goes right to this place on Jackson Avenue? A. Yes. 20

Q. He is not drunk when he meets you there? A. I don't know. I don't come with him over from New York.

Q. He was not drunk when you met him at seven o'clock in the evening? A. Yes, he was.

Mr. Berkowitz: She says a later date than seven. 30

The Witness: He only gets there around seven.

Q. Did you ever meet him there at seven? A. I said, one quarter after seven; seven thirty.

Q. He was drunk then? A. Yes, he was.

Q. And he would give you the check, and you would go away? A. Yes.

Q. Now, this furniture you had at Bramhall Avenue—you moved it to the boulevard? A. Yes. 40

Evelyn Michels. Called by Petitioner. Cross.

Q. And the rest of the furniture is where? A. At my mother's, in the attic.

Q. Where does she live? A. 317 Williams Avenue.

Q. Hasbrouck Heights? A. Yes.

Q. When you moved from Hasbrouck Heights to Bramhall Avenue, did you arrange to have the storage man or moving man take the furniture? A. Yes.

Q. Who took the furniture from Hasbrouck Heights? A. I don't remember.

Q. Did you hire him? A. A friend of mine told me about him. I don't remember his name, though.

Q. Was it a moving man? A public van? A. No, it was a small ice wagon.

Q. Did you pay the man? A. Yes.

Q. Do you remember how much you paid him? A. No, I am not sure of the amount.

Q. You paid him something? A. Yes, I paid him something.

Q. What time of day did the wagon come for the furniture? A. About nine o'clock in the morning.

Q. Do you remember the day of the week? A. No.

Q. The day of the month? A. No; I know it was the second—

Q. (Interrupting) Didn't you tell us the day of the month before? A. August 2nd.

Q. August 2nd, 1929? A. 1929.

Q. What time did he come? A. About nine o'clock in the morning.

Q. When did you hire him? A. The week before.

Q. Did you tell your husband that you were going to move? A. No.

Q. Did you see him the night before the furniture was moved away? A. Yes.

Evelyn Michels. Called by Petitioner. Cross.

Q. Did you say anything to him that night about what you were going to do? A. No.

Q. Did you have any money to pay the moving man? A. No, I did not.

Q. When did you rent the place in Bramhall Avenue? A. I rented it from the 15th of the month.

Q. From the 15th of July? A. No, August.

Q. And you moved on the second? A. Yes; they 10
allowed me a couple of days.

Q. Did you make a deposit when you rented the place on Bramhall Avenue? A. Yes.

Q. How much? A. I don't remember.

Q. Ten dollars? A. I don't remember.

Q. Do you remember who you paid it to? A.
Yes.

Q. To whom? A. The superintendent.

Q. Where did you get the money? A. From my 20
mother.

Q. That was how long before the day you moved there? A. That I paid the deposit?

Q. Yes. A. The Saturday before.

Q. What day was it that you moved? What day of the week? A. The second of August.

Q. Do you remember the day of the week? A.
No, I don't remember the day of the week.

Q. How many days before you moved had you paid the deposit? A. On Saturday. It was a 30
couple of days before the day I moved in.

Q. You moved there all in one day? A. Yes.

Q. All of this furniture was taken there A. Yes.

Q. Who took the furniture to your mother's place—the part that you didn't take to Bramhall Avenue? The same wagon? The same man? A.
No; another man.

Q. Did you pay him? A. Yes, he was paid.

Q. That was done the same day? A. The same 40
day.

Evelyn Michels. Called by Petitioner. Cross.

Q. How do you fix this date of August 2nd specially? How do you know that that is the date?

A. I remember it was the first of the month.

Q. You are sure that it was August, 1929? A. Yes.

Q. Did you telephone your husband at the store after you had moved? A. No.

10 Q. Did you leave any note at the house telling him where you had gone? A. Nothing.

Q. Did you say anything to anyone except your mother as to where you were going? A. No.

Q. When did you next see your husband after August 2nd when you moved to Bramhall Avenue? A. In September.

Q. September what? A. About the 15th of September.

20 Q. September 15th. Where did you see him then? A. That is the night he pushed his way in.

Q. That is at Bramhall Avenue? A. Yes.

Q. Between August 29th and September 15th, 1929, you didn't see your husband anywhere? A. No, I did not.

Q. Sure? A. He was around the hall in Bramhall Avenue, drunk. I don't remember whether he came before that or not.

Q. Did you see him? A. No.

30 Q. How do you know he was around the hall? A. Because the superintendent told me about this man lying out in the hall.

Q. After you moved to Bramhall Avenue, did you telephone your husband at the store? A. No.

Q. Did you write any letter to him? A. No.

Q. Did you ask any support from him? A. No, I did not.

40 Q. How did you get along? A. Pawned my jewelry.

Evelyn Michels. Called by Petitioner. Cross.

Q. Where? A. At the Provident Loan, New York City.

Q. Whereabouts in New York City? A. Lafayette Street.

Q. Do you know the number? A. No.

Q. What street is it near? A. I don't know.

Q. You know how to go there? A. Certainly.

Q. And you went there? A. Surely.

10

Q. How many times did you go there? A. About four times.

Q. And on each occasion did you pawn something? A. Yes.

Q. How much did you raise altogether from the Provident Loan on the jewelry you pawned? A. About \$385.

Q. Where did you get the jewelry? A. My husband gave it to me.

20

Q. When? A. Some of it before I was married.

Q. All of it? A. Not all of it, no.

Q. What did you pawn? A. They were all rings.

Q. What kind of rings? A. Diamond rings.

Q. How many? A. Four.

Q. Each time you pawned one; one at a time? A. Yes.

Q. And you raised \$385 altogether? A. Yes.

Q. And you have got the pawn tickets? A. Yes.

30

Q. Have you them here? A. No.

Q. You haven't redeemed them? A. No.

Q. The pledges haven't run out? A. They did run out, and I paid the interest on them.

Q. What is the largest amount you got on any one ring? A. \$125.

Q. Do you know when that was? A. No.

Q. Was it in August, 1929? A. It was August, yes.

40

Evelyn Michels. Called by Petitioner. Cross.

Q. You say you saw your husband on September 15th, 1929, the first time after you moved to Bramhall Avenue, at the time he came to the door?

A. Yes.

Q. And he pushed the door open? A. Yes.

Q. And he went in and he stayed there three days—is that right? A. Yes.

10 Q. You are sure it was the 15th of September?

A. I am not sure of the date, no. It was around that day.

Q. What time of day was it that he got there?

A. Around nine o'clock at night.

Q. Do you remember the day of the week? A. No.

Q. And then he went to business the next day?

A. Yes.

20 Q. And came back the next evening? A. Yes.

Q. And stayed all night? A. Yes.

Q. And went to business again? A. Yes.

Q. And stayed there another night? A. Yes.

Q. And then when did you see him after that?
A. In November; I saw him at court a couple of times after that.

Q. But you didn't see him at Bramhall Avenue?

A. No.

30 Q. Do you remember the occasion when papers were served on your husband at Bramhall Avenue? A. Yes.

Q. You were there? A. Yes.

Q. What time of day or night was it? A. About 7:30 at night.

Q. And that was on the third night he had been there? A. Yes.

Q. And after papers were served, then he didn't come back the next night? A. No.

Evelyn Michels. Called by Petitioner. Cross.

Q. What did he say to you when papers were served upon him? A. He called me a son of a bitch and then went out of the door.

Q. Did you say anything to him? A. No.

Q. Let us go back to the second of August. Nothing had happened, particularly, before you left? A. No.

Q. And nothing had happened particularly between you and your husband at that time at Hasbrouck Heights during the month of July, 1929, had it? A. Between what dates? 10

Q. During the month of July, 1929. A. Only he refused to pay the butcher and the doctor and the coal man and the gas and electricity.

Q. During July, 1929? A. Yes.

Q. In July, 1929, what bills did he refuse to pay? A. He refused to pay the butcher and the doctor and the coal man and the gas and electricity. 20

Q. Any others? A. Any number of them, but I can't recall all of them.

Q. This doctor's bill was incurred when? A. 1926.

Q. So he didn't— A. (Interrupting) Oh, yes, he did; he wrote letters every month; monthly statements. He—

Q. (Interrupting) I didn't finish the question. There was nothing new about his paying up the doctor's bill in 1929? That was an old story? A. Yes. 30

Q. Was the gas and electricity off while you were living in Hasbrouck Heights? A. No.

Q. When you moved at that time did you leave it shut off? A. No.

Q. Do you now who did? A. Why, the tenants that moved in—they just had it transferred. 40

Evelyn Michels. Called by Petitioner. Cross.

Q. There was no trouble about the gas and electricity being shut off? A. No, because they knew we were the owners, and it was not necessary.

Q. So you had gas and electricity there? A. Yes.

Q. What was the name of the butcher? A. Steve Stagler, or some such name as that.

10 Q. What did you say to your husband when you asked him for money and you asked him to pay the butcher? What did you tell him you were going to do if he did not pay? A. I was going to leave. I told him so.

Q. You did tell him that. So that for some time before August 2nd you told him you were going to leave? A. Yes.

20 Q. And the only thing that occurred in the month of July, 1929, prior to your packing up and moving, was disputes over how much money he was giving you and what bills he would not pay? A. Yes; and the fighting and the threatening, and hitting me all the time.

Q. He didn't hit you in July? A. No.

Q. And he hadn't hit you for a long time before that, had he? A. In February.

Q. Not since February? A. He hit me several times after.

30 Q. (Interrupting) But it didn't amount to anything? A. No, that didn't amount to anything.

Q. Did you receive any money from your husband for your support between August 2nd, 1929 and September 15th, 1929? A. No.

Q. And you said you didn't ask him for anything? A. I asked him, but it didn't do any good.

Q. You didn't ask him after you went to live at Bramhall Avenue? A. No.

Evelyn Michels. Called by Petitioner. Cross.

Q. Do you now how he found out where you lived? A. I think he got the address in the paper.

Q. What paper? A. I don't know. There was a writing up in the paper about us.

Q. About your moving? A. No, not about our moving; when we came to court here.

Q. You said he didn't know where you were until you came to court? A. Yes. 10

The Master: There was something in the paper about when this suit started. That is what she means.

Q. Let us take the three days he was there in September. He came there about half past nine in the evening? A. Yes.

Q. And you went to the door and didn't know who was at the door? A. Yes. 20

Q. And you opened that door and saw your husband, and you say he pushed his way in? A. Yes.

Q. Was he drunk? A. Yes, he was drunk.

Q. Did you put him to bed? A. No. I never do that.

Q. What did you do? A. I went in my room and locked the door; in the bedroom—when I saw he wouldn't go out, and I couldn't do anything with him. 30

Q. This was an apartment house? A. Yes.

Q. Did you have a telephone? A. No.

Q. You didn't make any effort to put him out, did you? A. I told him to go out, and he wouldn't go out.

Q. You said that he said he was going to stay? A. Yes, he said that he was going to stay there, and he stayed there and went to bed later on.

Q. Did you see him go to bed? A. No. 40

Evelyn Michels. Called by Petitioner. Cross.

- Q. What did you see him do between the time he came there and the time he went to bed? A. He was sitting there reading the paper.
- Q. Did he do anything else except read the paper? A. No.
- Q. Did he talk to anybody? A. No.
- Q. Did he talk to you? A. No.
- 10 Q. Did you talk to him? A. No.
- Q. What time did you go to bed? A. About ten o'clock.
- Q. What time did you get up the next morning? A. Seven o'clock.
- Q. Where was your husband when you got up? A. Lying on the couch.
- Q. Asleep? A. Yes.
- Q. What time did he wake up? A. I don't know; about eight, or 8:30.
- 20 Q. What did you say to him? A. I told him not to come back again that day.
- Q. What? A. Not to come back.
- Q. What did you say? A. I told him not to come back any more.
- Q. What did he say? A. He said he would; that it was his house—his furniture.
- Q. And what did you say to that? A. I said it was not.
- 30 Q. What time did he go to work? A. About 8.30.
- Q. The next morning? A. Yes.
- Q. Was he sober in the morning? A. He had a bottle in his pocket. He always had to have a drink every morning.
- Q. One drink? A. I don't know how many.
- Q. He wasn't drunk when he left the house? A. No.
- Q. What time did he come back that evening? A. About 7:30.
- 40

Evelyn Michels. Called by Petitioner. Cross.

Q. What happened when he came in? A. He just sat down and read the paper and asked me what was the big idea in moving out on him and gave me a lot of abuse on it.

Q. Talk? A. Yes.

Q. What time did you go to bed that night? A. Ten o'clock.

Q. What time did he leave the next morning? 10
A. About eight o'clock.

Q. Did he come back the next evening? A. Yes.

Q. What time? A. About 7:30.

Q. What happened? Was there talk again? A. No.

Q. He read the paper? A. Yes.

Q. And you went to bed? A. Yes.

Q. And the next morning the same thing happened? A. He was only there three nights. 20

Q. The same thing happened the following morning? A. Yes.

Q. When was it that you called up your lawyer, Feinberg, and told him your husband was there?

A. The first night.

Q. Did you go outside to telephone? A. Yes.

Q. What time did you telephone? A. I don't remember what time it was. I called him at his home.

Q. It was after half past nine? A. Yes, after 30
half past nine.

Q. You called him on the telephone? A. Yes.

Q. Did you get him on the 'phone? A. Yes.

Q. How long after that was it that the papers were served on him? A. The third day.

Q. You knew that your lawyer was anxious to have papers served on your husband while he was there and could be served. You knew that, didn't you? A. Yes. 40

Evelyn Michels. Called by Petitioner. Cross.

Q. Then why did you tell him to go away and not come back there? A. I didn't want him there when he wouldn't pay any bills or anything.

Q. You had gone to the trouble of telephoning your lawyer the night before, and you knew the lawyer wanted to serve the papers on him there? A. Yes.

10 Q. You knew that the papers had not been served that next morning? A. Yes.

Q. Then why did you tell your husband to go away and stay away? A. I did tell him to go away and stay away.

Q. You did? A. Yes.

Q. Do you remember signing the application for divorce in this case? A. Yes.

20 Q. And you knew what you were signing when you signed that? A. Yes.

Q. Why did you say in your petition of divorce that you left your husband July 29th, 1930, when you say now that it was August 2nd? A. Well, it was around that time.

Q. You know it was August 2nd? A. It was August 2nd I moved.

Q. Was there any reason you said July 29th—

30 Mr. Berkowitz (Interrupting): It seems to me that he is trying to confuse the witness. She didn't sign the petition. She signed the affidavit.

The Master: He means that by signing the affidavit she endorsed the petition as being true.

Mr. Ockford: I am asking her if there is any reason that date is selected,—if she knows; the 29th of July.

Evelyn Michels. Called by Petitioner. Cross.

Q. Do you know? You specified July 29th, 1930, instead of August 2nd. Do you know why?

Mr. Berkowitz: I don't remember the difference—

The Master (Interrupting): Is July 29th in the petition?

Mr. Ockford: Yes.

10

The Master: She has not admitted that she said that, yet. Call her attention to the statement in the petition, and ask the proper question. Now, listen to the question.

Q. Your petition states that you lived with your husband "from the date of their said marriage until July 29th, 1929, when this petitioner—(that is yourself)—was obliged to leave her home in Hasbrouck Heights in order to protect her own life".

20

The Master: She has not signed the petition, has she?

Mr. Ockford: No.

The Master: How does the affidavit read?

(Mr. Ockford reads from the affidavit referred to, to the Court.)

The Master: The usual affidavit.

30

Q. You read the petition before you signed the affidavit attached to it, didn't you? A. Yes.

Q. And you gave your lawyer the information as to the dates, didn't you? A. Yes.

Q. Do you remember telling him July 29th was the day you left Hasbrouck Heights?

The Master: She says now, August?

Mr. Ockford: August 2nd.

40

Evelyn Michels. Called by Petitioner. Cross.

The Master: What is the significance of this? What does it mean?

Mr. Ockford: It has a particular significance, because the cause she cites in her petition is different from the cause she gives now, and I want to show—it has to do with the credibility.

10 The Master: I wouldn't think very much of it. Some lawyers do these things carelessly.

Q. Is there any reason that you know of why the date is specifically July 29th, 1929, when the fact is, as you say, the date was August 2nd? A. No, I don't know any reason.

BY THE MASTER:

20 Q. Do you remember the date you gave the lawyer? A. No, I don't remember now.

BY MR. OCKFORD:

Q. Do you remember that you signed the affidavit attached to the petition on the 26th of August, 1929?

Mr. Berkowitz: That is conceded.

30 BY THE MASTER:

Q. You signed the affidavit? A. Yes.

BY MR. OCKFORD:

Q. Within less than a month from the time you had left Hasbrouck Heights? A. Yes.

40 Mr. Berkowitz: The petition speaks for itself, if your Honor please.

Evelyn Michels. Called by Petitioner. Cross.

Q. Do you remember that you told your lawyer you had moved on August 2nd?

Mr. Berkowitz: She has answered that.

The Master: I will admit the question. I think she said she didn't remember.

Q. (Repeated by the stenographer as follows): 10
Do you remember that you told your lawyer you had moved on August 2nd? A. Yes, I remember.

BY THE MASTER:

Q. Did you have any lawyer except Mr. Feinberg? A. No, that was Feinberg.

BY MR. OCKFORD:

20

Q. On August 26th, when you signed the affidavit attached to the petition in your lawyer's office, do you remember whether you told your lawyer where your husband was—where he could be found, and where he could be served?

Mr. Berkowitz: This is improper cross examination. I object to it as improper cross examination.

30

The Master: I will admit it.

BY THE MASTER:

Q. Did you tell your lawyer, Mr. Feinberg, at the time, where your husband might be found? A. Yes, I told him. I told him that before.

Q. You were at the lawyer's office more than once? A. Yes.

40

Evelyn Michels. Called by Petitioner. Cross.

BY MR. OCKFORD:

Q. Did you tell your lawyer that your husband could be found at number 470 Bramhall Avenue that night? A. Yes, I called him that night that he pushed his way in.

The Master: She said that.

10 Mr. Ockford: I am speaking now of the time when the papers were drawn.

Q. You didn't know he was coming to your house in September? A. No.

Q. That was not arranged between yourself and your husband? A. No.

Q. Now, I am asking you when you told your lawyers in August, when you signed the paper, where your husband could be served?

20 The Master: It was served September 6th. Her story is that there was some story in the newspapers, and that gave the petitioner's address, and then that she telephoned Mr. Feinberg where to find her husband, when he broke in.

Mr. Ockford: The papers are part of the case. They were given to the Sheriff.

(Discussion off the record.)

30 (Mr. Ockford shows a paper to the Master.)

The Master: This was served September 6th.

Mr. Ockford: I want to know how he knew he was going up there?

Mr. Berkowitz: She said she telephoned Mr. Feinberg that evening. Is there anything wrong about that?

Mr. Ockford: No.

Mr. Berkowitz: Then I can't see why we are wasting time on this.

40

Evelyn Michels. Called by Petitioner. Cross.

BY MR. OCKFORD:

Q. What did you tell your lawyers in August when you signed the paper for divorce, as to where your husband could be served? A. At 47 Vesey Street.

(Discussion off the record.)

10

Q. During the three days in September that your husband was at Bramhall Avenue, the apartment there, did you at any time tell your husband that you had started a divorce case, and that the papers would be served upon him there at Bramhall Avenue? A. No, sir, I did not.

Q. You called your lawyers the first night that he came there? A. Yes.

Q. And the third night somebody came with the papers and served him? A. Yes. 20

Q. And your husband stayed there at Bramhall Avenue that night after the papers were served? A. He went right out after the papers were served.

Q. Did he come back the next day? A. No.

Q. Did he come back any time after that in September? A. No.

Q. Do you remember the name of the landlord at Bramhall Avenue to whom you paid rent? A. Yes. 30

Q. What is his name? A. Pashinsky.

Q. You paid a deposit about the first of August? A. Yes.

Q. When did you pay the balance of the August rent, if you remember? A. I don't remember.

Q. You did pay it, didn't you? A. Yes.

Q. And you paid the September rent, did you? A. Yes. 40

Evelyn Michels. Called by Petitioner. Cross.

Q. And did you pay the October rent? A. Yes.

Q. Did you pay the landlord himself, or did you pay an agent for it? A. The agent; the superintendent.

Q. Right in the building? A. Yes.

Q. Did you get receipts?

10 Mr. Berkowitz: I object to that.

The Master: That is objected to. What is the point?

Mr. Ockford: This is the point: that her story as to the resumption of relations shows November 15th, and we say it occurred in October, and the circumstances will have a tendency to show whether or not her story is probable as to how it happened that he came back and that she had no marital relations with him.

20

Mr. Berkowitz: I don't think that is proper testimony to bring out by this witness. If they have that testimony, it seems to me they should produce it.

The Master: I can't tell counsel how to try his case. Go ahead.

Q. (Repeated by the stenographer as follows:)
30 "Did you get receipts?" A. No.

Q. After your husband came back to live at the Bramhall Avenue apartment, who paid the rent? A. Why, he paid the rent once or twice. Once or twice he paid the rent.

BY THE MASTER:

Q. Was the rent paid monthly or weekly? A. Monthly.

40

Evelyn Michels. Called by Petitioner. Cross.

BY MR. OCKFORD:

Q. Your husband paid the November rent, didn't he? A. I don't remember, because he came in the latter part of November, and the rent is due on the first.

Q. What do you remember about the November rent? A. I don't remember. 10

Q. Do you remember anything about the December rent? A. No, I don't.

Q. Or the January rent? A. No, I don't remember.

Q. When did you say that your husband came to the apartment at Bramhall Avenue in November? What date? A. The latter part; around the 15th.

Q. You are sure about that? A. I think so. 20

Q. What time of day or night did he come on that occasion? A. About nine o'clock, or 9:30.

Q. And what did he say when he came? A. He said that it was his home, and that he was going to stay there.

Q. What did you say? A. Well, I said that he shouldn't; that he should get out.

Q. Don't you remember telling us a little while ago that is not what he said at all? Do you remember telling us that he said he was going— A. 30
(Interrupting) To stay there.

Q. That he was going to act differently? A. Yes; that was in November.

The Master: I don't think that is quite fair. That is a part of the conversation.

Mr. Ockford: She testified both things, according to my notes.

(Question withdrawn.) 40

Evelyn Michels. Called by Petitioner. Cross.

Q. He said it was his home, and that he was coming back? A. Yes.

Q. And you said what? A. In November I went back with him on account of having no money, and he said that he would support me and he would be different, and I had no support at the time. That is why I went back with him in November.

10 Q. In November he came back to you at half past nine in the evening? A. Yes.

Q. Just what did he say? Remember, it was after you had started this divorce case. What did he say when he came in? A. He said that he would be different, and that he would pay the bills that he owed. That is all.

Q. What did you say? A. I said I would take a chance and try him over again.

20 Q. Did he bring his clothes with him? A. No.

Q. He stayed there that night? A. Yes.

Q. And he stayed on until some time, I think you said, in the following January? A. Yes.

Q. Did he pay any of the bills as he had promised? A. He paid a couple of bills.

Q. And from that time on did he pay the rent? A. I don't remember.

Q. Did he give you any money for your personal needs? A. No.

30 Q. Did he give you any money to run the house? A. No.

Q. What did he do as far as contributing any money was concerned? A. If he did bring anything in the house, he would bring it for himself, as far as food was concerned. He wouldn't buy any clothes for the baby or for me.

Q. Just what did you mean when you said you were without support, and that you had to take him back because you needed support? Is that right? A. Yes.

40

Evelyn Michels. Called by Petitioner. Cross.

Q. Had you used up all this money that you had borrowed? A. Yes.

Q. You had an automobile at the time? A. Yes.

Q. You owed money on that? A. I don't remember.

Q. You had a radio, didn't you, that you owed money on? A. Yes.

Q. Do you remember at that time telling your husband that you owed certain expenses? A. Yes. 10

Q. That you owed some money? A. Yes.

Q. And that if he was to come back and you were to make up, that your husband would have to pay up those obligations of yours? A. Yes.

Q. Do you remember the amount that you told him you would have to pay to get clear? A. No.

Q. Do you remember what they were for? A. No, I do not. 20

Q. Do you know whether your lawyer had been paid the counsel fee of \$250 at that time? A. No, he was not paid at that time.

Q. That is one of the things you talked about at that time? A. No.

Q. That the lawyer would have to be paid? A. No.

The Master: How could there be a conversation at that time about a lawyer's bill? 30

Mr. Ockford: She fixes the time as November 15th, and this order was made in September.

The Master: I see; and \$250 was the amount of that?

Mr. Ockford: Yes.

Q. What did you say, if anything, after your husband came back about his paying your lawyer 40

Evelyn Michels. Called by Petitioner. Cross.

\$250? A. I don't remember saying anything about the \$250. I didn't know I owed \$250.

Q. He owed it? A. I don't know anything about owing it.

Q. What were those expenses of yours that you did tell him about, that would have to be paid?

10 Mr. Berkowitz: I don't see the materiality of all this.

The Master: It is proper cross examination. It may be material. I don't know.

Mr. Berkowitz: I object to it.

A. I don't remember.

Q. Do you remember any one of the items that you spoke to your husband about as being something that should be paid? A. No, I don't remember. There were so many things at that time.

20 Q. Can you tell us of any of them? A. No, I can't.

Q. Do you remember the item for repairing the automobile that you owed at that time? A. Yes, I remember I owed it.

Q. See if you can think of any others.

The Master: The question is, did she speak to him about it.

30 A. Not that I can remember.

Q. Was that item taken care of by your husband? A. No.

Q. Who did pay it? A. My mother.

Q. Where did she get the money, if you know?

Mr. Berkowitz: I object to that. What difference does it make?

40 The Master: Is not that going far afield?

Evelyn Michels. Called by Petitioner. Cross.

Q. Didn't your husband furnish the money? A. No, he didn't.

Q. What money did he furnish you, as you say, when you said you would take him back and give him a chance? A. He bought the food sometimes for the table. But he refused to buy food for me and he left me about four quarters or two half dollars every morning before he went to work. 10

Q. At the time you said you would give him another chance and take him back, you say there was some talk about certain bills that had to be paid? A. Yes.

Q. Now, what money did you husband contribute to you, or for you, at that time? A. I don't remember his giving me any money at all.

Q. You wouldn't say that he did not? A. No, I wouldn't say that he didn't. 20

Q. In December you say that—I think you said the 6th—December 6th—your husband struck you—hit you in the face with his fist? A. Yes.

Q. And he was drunk at the time? A. Yes.

Q. That was in the evening after he came home from work? A. Yes.

Q. You didn't do anything about it, did you? A. No, I did not.

Q. You knew he was drinking and not responsible. Is not that the reason? A. Oh, he is responsible whether he is drinking or not. 30

The Master: What do you mean by "not responsible"?

Q. What I mean is, did you consider his striking you unintentional? A. No, he knew what he was doing.

Q. You are satisfied that he knew what he was doing? A. Yes, he did know what he was doing. 40

Evelyn Michels. Called by Petitioner. Cross.

Q. That is the first time you say he struck you from the time he came back to you in November?

A. Yes.

Q. Now, between the time he came back and December 6th, nothing happened between you, did it?

A. Not up until December 6th.

Q. Everything was all right up to December 6th?

10 A. Yes.

Q. On the 8th day say you found the gas turned on? A. Yes.

Q. And you found these two notes that were marked Exhibits P-1 and P-2? A. Yes.

Q. An this was in the middle of the night or the early morning? A. Early in the morning.

Q. At one A. M? A. Yes.

20 Q. And when you came out of your room and went to the kitchen and turned the gas off and opened the windows, just where was your husband at that moment? A. Sitting on the chair next to the piano.

Q. What was he doing? A. Nothing. He had just finished writing those notes.

Q. Did you see him while he was writing, or after? A. No, he had a pencil in his hand.

Q. What did you say to him? A. I said, "What are you trying to do?"

30 Q. What did he say to you? A. "I am going to kill all of us."

Q. Did he say how long the gas had been turned on? A. No, he did not.

Q. You don't know how long? A. No, I do not.

Q. You think that before he said that, that he wanted to "kill all of us", after you found the couch on fire? A. Yes.

40 Q. And you now said that he said that after you found the gas turned on? A. Yes.

Evelyn Michels. Called by Petitioner. Cross.

Q. Did you stay up any length of time after you opened the windows and turned off the gas and said to your husband, "What are you trying to do"? A. Yes.

Q. How long did you stay up? A. I don't remember; about an hour or so after.

Q. Then what did you do? A. Went back again to bed.

10

Q. What did he do? A. I don't know what he did.

Q. You simply went back to bed? A. Yes.

Q. On the 10th of December you found the couch on fire, you say? A. Yes.

Q. Where was your husband at that moment? A. Sitting in the same chair.

Q. By the piano? A. Yes.

Q. Did he have anything in his hand? A. No.

20

Q. And the couch was on fire? A. Yes.

Q. Your husband was drunk? A. Yes.

Q. And you put the fire out? A. Yes.

Q. How long did you stay up afterwards? A. I don't remember how long.

Q. Well, half an hour? A. I don't remember.

Q. You went to bed, anyway? A. Yes, I went to bed before the morning was over.

Q. And you left him sitting there in the chair? A. Yes.

30

Q. You didn't say anything the next day about it, did you? A. No, sir.

Q. An on that night also he said that he wanted to "kill all of us"? A. Yes.

Q. And then nothing happened from the 10th of December until the 18th of December, when you say the gas was turned on? A. Yes.

Q. What was your husband's attitude toward you from the 10th of December, the time you found

40

Evelyn Michels. Called by Petitioner. Cross.

the couch on fire, as you say, and the 18th? A. Well, he was going to smash me all the time. That is all.

Q. But he didn't do it? A. No, he didn't do it.

Q. How did you know the gas was turned off? Did you discover it? A. I discovered it, and I went to the superintendent, and he said they had taken
10 the meters out.

Q. That was the 18th? A. About that time, yes.

Q. It was a few weeks before your husband left in January? A. Yes.

Q. Was the electricity turned off at the same time? A. Yes.

Q. And when your husband came home that evening, what did you say to him? A. I said the gas and electric have been turned off.

Q. What did he say? A. He said "What are you
20 going to do about it? I have no money."

Q. What did you tell him that you were going to do? A. I said I would have to go up to my mother's.

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

Q. You stayed there in the apartment after that time? When did you have the gas turned on again? A. I don't remember what day that was.

Q. Did you have it done, or did your husband?
30 A. I don't know.

Q. Did you pay any gas and electric bills in that apartment at any time after January 30th? A. Yes.

Q. Do you remember whether you had the gas and electricity turned on again? A. I know it was turned on, but I don't know what day.

Q. Do you know who had it turned on? A. I don't know.

Q. You say you didn't have it done? A. No.
40

Evelyn Michels. Called by Petitioner. Cross.

Q. You didn't? A. No.

Q. You don't know who? A. I spoke to Mr. Berkowitz about it and they spoke about it in the office there.

Q. When was that? A. In the month of January.

Q. After your husband left? A. Yes.

Q. During the period that the gas and electricity were off, did you have any meals in your apartment? A. I couldn't. 10

Q. What kind of light did you use? A. Candle light.

Q. Do you remember how long it was altogether that it was turned off? A. No, I don't remember.

Q. You say you went to Mr. Berkowitz and your husband? A. Yes.

Q. In January? A. Yes. 20

Q. How long after the last time he was at the apartment was that? A. I don't remember. A couple of weeks.

Q. And was that the time that arrangements were made that you were to get some money from him? A. Yes.

Q. What was the amount your husband agreed on? A. \$31 a week.

Q. What was the extra five dollars a week for? A. Furniture. 30

Q. What furniture? A. That he owned on a bedroom suite.

Q. A bedroom suite that you were using? A. Yes.

Q. And since that time you have received \$31 a week regularly? A. Yes.

Q. Do you remember the date of the last time your husband was at the Bramhall Avenue place in January? You have already testified that you 40

Evelyn Michels. Called by Petitioner. Cross.

don't remember the dates exactly. A. It was late in December, or the first week in January. I don't remember the exact date.

Q. It was about how long before he started in giving you \$31 a week? A. About two or three weeks.

10 Q. Where did you get support from? A. My parents.

Q. You borrowed money from them? A. Yes.

Q. Do you know whether your husband paid this five dollars a week besides this \$31 that he gave you? A. Yes.

Q. At that time you were still living in Bramhall Avenue? A. Yes.

Q. You lived there until July of this year? A. Yes.

20 Q. When was it after the time in November your husband came back and lived at that apartment? When was it that you first decided that he had not, or would not, change his habits? A. After the first or second week.

Q. The first week was all right? A. Yes.

Q. And there was no trouble? A. Well, we had arguments over money matters.

30 Q. After the second week you were satisfied that he was not going to change. Is that right? A. Yes.

Q. Did your mother come to visit you at Bramhall Avenue between the time your husband came back, as you say, in November, and January? A. Yes.

Q. Did she ever stay all night there? A. Yes.

Q. And when she stayed all night there, where did she sleep? A. With me.

Q. And your boy? A. Yes.

Evelyn Michels. Called by Petitioner. Cross.

Q. And where did your husband sleep? A. On the couch.

Q. Did you have any other accommodations during that time? A. No.

Q. If anyone wanted to stay all night? A. No.

Q. When your mother stayed there, do you remember how many times your mother stayed all night at Bramhall Avenue? A. Any number of times. She used to come any number of times. But my mother—

Q. (Interrupting) Did you ask your husband to sleep on the couch? A. I didn't have to ask him. That was his bed, out on the couch.

Q. When was that arranged? A. He knew that the day he came in—where he was to sleep.

Q. How? A. That was the agreement between us.

Q. What? A. That he was to sleep on the couch.

Q. What was said? A. He just said that he would sleep out there.

Q. At that time in November when he came back and said he would change, what was said, if anything, about where he was to sleep, at that time? A. He said that he would sleep on the couch.

Q. He said he would? A. Yes.

Q. And you didn't say anything to him? A. He knew that he was to sleep on the couch.

Q. Did you say anything to him about where he was to sleep in the apartment? A. Yes, he knew he was to sleep on the couch.

BY THE MASTER:

Q. Did you say anything to him? A. Yes, sure.

Q. What did you say? A. "You are to sleep on the couch."

Evelyn Michels. Called by Petitioner. Cross.

BY MR. OCKFORD:

Q. What did he say? A. "All right."

Q. Was anything said about how long this arrangement was to continue? A. No, nothing was said.

10 Q. Was there any reason given by you? A. His filthiness. His using the bed as a lavatory.

Q. You mentioned that to him at that time? A. Certainly.

Q. You said you took him back because he said he would change and you were willing to give him a chance? A. Yes.

Q. Is that so? A. Yes.

20 Q. You didn't know what his habits were going to be? A. They were always the same, and I knew they would not change.

Q. So you realized, did you, that there would be no change? A. I thought that maybe there might be a change in the drinking part, and the supporting part.

Q. When you said that when he came back you would give him another chance, what did you mean? A. To do better.

Q. And you thought he would? A. Yes.

30 Q. And for two weeks you believed that he would? A. Yes.

Q. He knew you were satisfied that he wouldn't? A. Yes.

Mr. Berkowitz: I object to his method of questioning. He asks questions before the witness has answered, and he nods his head.

The Master: I think it is clear that she would give this man another chance and she had in mind drunkenness and support.

40

(Discussion off the record.)

Evelyn Michels. Called by Petitioner. Cross.

Q. I understand you had your husband in the police court on only one occasion. A. Yes.

Q. And that was in Hasbrouck Heights, and that was in 1928? A. That is right.

Q. At no time after you were reconciled, after that occasion, did you apply for any police protection? A. No.

Q. You made no complaints to the police at any time when you were living at Bramhall Avenue? A. Yes, I did, on Bramhall Avenue. 10

Q. When was that? What was the occasion? A. I don't remember. He was annoying me. He was not living with me. He was annoying me and calling me vile names out in the hall, and so I called the police up.

Q. Was this after this time in November that you began living there? A. That I don't remember. I was not living with him at the time. 20

Q. Was that the time you went to the Central Avenue station? A. No.

Q. Where did you go? A. 3405 Boulevard Avenue. That was the time I complained on Central Avenue.

BY THE MASTER:

Q. Where did you go at the time of the Bramhall Avenue incident? A. I just called the police up to get him out of the hall. 30

BY MR. OCKFORD:

Q. Was that between the time in November, as you say, and the time in January? A. No.

Q. Was it after January? A. I think it was after January. I was not living with him at the time. 40

Evelyn Michels. Called by Petitioner. Cross.

Q. Was it after he had commenced paying you the \$31 a week? A. Yes.

Q. You made a complaint over the 'phone? A. Yes.

Q. Whom did you call? A. Someone at the desk; whoever it was.

Q. What court? A. Communipaw Avenue.

10 Q. And did an officer come? A. Yes.

Q. Did you see the officer? A. Yes.

Q. Did you see him do anything? A. I saw him take him out of the superintendent's quarters in the basement.

BY THE MASTER:

Q. Was he sober or drunk? A. Drunk.

20 Q. What time was it? A. About nine o'clock at night.

BY MR. OCKFORD:

Q. Did you make a complaint in any court about that? A. No.

Q. Were you asked to go to court? A. No.

Q. You don't know where the officer went with the man? A. No, I do not.

30 Q. Between November, when you say you took him back, and the time in January when he left you, you had no occasion to complain to the police? A. No, I didn't complain.

Q. And this time that you complained to the police at the Central Avenue Precinct, you say you were referred to Oakland Avenue? A. Yes.

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

40 Q. You made no complaint in court at that time? A. No.

Ann Hamilton. Called by Petitioner. Direct.

Q. That occurrence in Hasbrouck Heights was referred to Hackensack. That was before you made up with him in 1928? A. Yes.

Q. Have you seen your husband at the Boulevard address where you now live? A. No.

Q. Or in front of your place there? A. No.

Q. Does your mother visit you there? A. Yes.

Q. You know, do you not, that your husband makes \$65 a week? A. He told me he made more. 10

Q. When did he tell you he made more? A. When I first married him, in 1920.

Q. But at the time you and he were in the lawyer's office arranging about what he would do about the furniture, didn't your husband say that he was making \$65? A. Yes.

Q. As far as you know, there has been no change since then? A. No. 20

Q. Has he ever said anything to you since then about how much he is making? A. No.

(Witness excused.)

ANN HAMILTON, called as a witness on behalf of the petitioner, having been first duly sworn, testified as follows: 30

DIRECT EXAMINATION BY MR. BERKOWITZ:

Q. Where do you live? A. At number 220 Bell Avenue, Hasbrouck Heights.

Q. Are you acquainted with Mrs. Michels? A. I am.

Q. Are you acquainted with Mr. Michels? A. I am. 40

Ann Hamilton. Called by Petitioner. Direct.

Q. You know that Mrs. Michels lived in Hasbrouck Heights? A. Yes.

Q. You knew her while she lived there? A. I did.

Q. Did you ever visit Mrs. Michels? A. I did.

Q. Did you ever visit Mrs. Michels when Mr. Michels was present? A. I did.

10 Q. Will you tell us whether, at any of your visits, you saw Mr. Michels intoxicated, or in a drunken condition?

Mr. Ockford: I object to that on two grounds: that no time is fixed, and that the question is leading.

The Master: Yes; fix the time.

20 Q. How long have you known Mrs. Michels? A. It will be four years this coming year, 1931.

Q. And you knew Mr. Michels during that time, too, did you? A. Yes.

Q. When you visited Mrs. Michels at her home in Hasbrouck Heights, three or four years ago, when you made their acquaintance, did you see Mr. Michels there? A. Yes, I did.

30 Q. Will you tell us his condition? A. I can't state every time he has been intoxicated, but there have been times when he was intoxicated. I may have seen him in the morning when he was not intoxicated, but at night he was intoxicated.

Q. Would you say that he was intoxicated more times than he was sober when you saw him?

Mr. Ockford: That is objected to.

The Master: Objection sustained. Ask her if she ever saw him intoxicated, and where and when.

Ann Hamilton. Called by Petitioner. Direct.

Q. Did you ever see Mr. Michels drunk? A. I did, yes.

Q. Can you tell when it was, approximately? That is, if you don't know the date. A. I don't know the date. I haven't seen them, of course, in the past year and a half, or maybe a little bit over, but before that time I saw him at his home intoxicated.

10

BY THE MASTER:

Q. Day or night? A. At night, when he would come from his office. I suppose he was able to go to the train and come home, but after he got home, he had whiskey and he drank before he ate and after he ate, and then he went out.

Mr. Ockford: That is objected to. Wait.

20

Q. Did you see him drinking on these occasions when he drank before he ate and after he ate, and then went out? A. Yes.

BY MR. BERKOWITZ:

Q. Did you ever see Mr. Michels ill-treat Mrs. Michels in any fashion?

The Master: That is a conclusion and I rule it out.

30

Q. What did he do on these occasions? A. Well, they fought about money matters.

BY THE MASTER:

Q. He and his wife? A. Yes, your Honor; and it was rather unpleasant, and I was wishing at

40

Ann Hamilton. Called by Petitioner. Direct.

times that I was not there, and of course I spoke to them about it, but it was too much for her and she would run upstairs and lock herself in the room.

Mr. Ockford: I move that that be stricken out.

The Master: Well, it is a conclusion.

10

BY THE MASTER:

Q. Tell us what you saw. A. To get away from it, she locked herself up in her room, when I was there.

BY MR. BERKOWITZ:

20 Q. On these occasions, when you were present at their home, how did Mr. Michels act toward Mrs. Michels? A. Most of the times I have seen him intoxicated they argued a lot, and argued about money, and at home she hadn't enough to eat and hadn't enough to wear and the child had no clothes or shoes or anything, and of course I am a widow with six children and she would be at my house to eat and would stay at my house all night.

30 Q. Who? A. The boy. I fed him, and kept him when they didn't have coal, until they got some coal in the house.

Q. Did you ever hear Mr. Michels call her vile names? A. Yes, I have heard him call her a son of a bitch and tell her to go to hell and so on. I don't remember it all, but I heard him swear at her.

40 Q. Do you recall the names he used? A. Not everything. I heard him swear at her, and I have heard him call her a son of a bitch and tell her to go to hell and say "You bastard" and more things like that.

Ann Hamilton. Called by Petitioner. Direct.

Q. Did you on any occasion see Mr. Michels strike Mrs. Michels? A. No, I could not state that.

Q. Did you ever see Mr. Michels attempt to strike her? A. No, I never have.

BY THE MASTER:

Q. Did you ever see Mr. Michels use violence on Mrs. Michels? A. No. 10

BY MR. BERKOWITZ:

Q. Did you ever have any conversations with Mr. Michels? A. Any conversations with him? In what respect?

Q. Respecting their house—respecting foodstuff and moneys and so forth. A. I have told him time and time again, but when he has been with me—he didn't just come deliberately to my house to talk on that subject, but in conversation it has come up, and I have said that he ought to arrange things—that they ought to come to some agreement, and I have said, "If you would stop drinking, maybe things would get better." 20

Q. Did he ever ask you to do anything for him? A. Did he ever ask me to do anything for him? I don't know what you are referring to. If you tell me what you are referring to, maybe I will be able to answer the question. 30

Q. I am just trying to get it from you? A. No, I can't truthfully say right now. I don't know what you mean by the question.

Q. Did you ever have any conversation about a building and loan on that house? A. Yes.

Q. Can you tell us what that was? A. I was at the house at the time that this argument came up, and I said to him, "Why don't you attend to those 40

Ann Hamilton. Called by Petitioner. Direct.

affairs yourself? If you don't give your wife the money to do it, it is up to you to look after it. I have a mortgage on my home, and of course after my husband died, I took care of the mortgage."

10 Q. What did he say? A. He said that he didn't do things like that, and I said that "these things are up to you. You are certainly the provider of the home, and you are looked upon to attend to these things", and he began asking me if I would go down with him, and I said, no, that I wouldn't agree to undertake anything like that, and his mother-in-law was there, so she said she would.

Q. Did you tell her why he asked you to do that?

Mr. Ockford: That is objected to.

The Master: What is the significance of that?

20 Mr. Berkowitz: That he didn't give it to the wife but that he gave it to someone else.

The Witness: I said, "Why can't you have your wife do these things, if you don't want to take care of them?" and he didn't answer, and he said the thing had been neglected and the best thing to do was to get it paid.

BY MR. BERKOWITZ:

30 Q. Did you have any conversation about the butcher or the grocery man? A. Yes, I know they had an account at the butcher's.

Q. What conversations did you hear between Mr. and Mrs. Michels and yourself referring to this butcher bill? A. I heard her say that he would get what she wanted there and he would have to pay the account and he said he wouldn't pay for it, and he told her to tell the butcher that he wouldn't pay for it, and the butcher said yes he would; he would 40 compel him. That is what Mr. Michels told me.

Ann Hamilton. Called by Petitioner. Direct.

Q. Did you ever hear Mrs. Michels ask Mr. Michels for money? A. Yes, I have.

Q. Do you know what his reply was to that? A. He said he wouldn't give her any.

Q. Mrs. Hamilton, do you remember what was the reason for Mrs. Michels running away on these occasions when you said she locked herself in the room?

10

Mr. Ockford: I object to that.

The Master: What did you see yourself happen just before she ran upstairs?

A. I suppose they argued so much that she couldn't stand it any more. Maybe she thought that he might hit her, I suppose.

Mr. Ockford: I move to strike that out.

The Master: Strike it out.

20

BY MR. BERKOWITZ:

Q. Did you see anything which would cause her to run upstairs? A. No, I can't state that I did.

Q. Mrs. Hamilton, did you ever see Mr. Michels hit or attempt to hit Mrs. Michels?

The Master: I think she said that she didn't.

A. I can't say that I did. I saw what might turn to that, but I never saw him strike Mrs. Michels.

30

Q. In your presence, did Mr. Michels ever threaten to strike Mrs. Michels? A. I don't recall.

Q. Did you ever have any conversations with Mrs. Michels regarding the habits of Mr. Michels?

The Master: Just what do you mean?

Mr. Berkowitz: From what she saw of his habits around the house.

The Master: When he was present?

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Ann Hamilton. Called by Petitioner. Direct.

Mr. Berkowitz: Yes, when he was present, or when he was not.

The Master: If he was present, yes; but not if he was not.

BY THE MASTER:

10 Q. Did you have any conversation with Mrs. Michels at the time when he was there about his habits? A. I don't recall.

BY MR. BERKOWITZ:

Q. What, if anything, do you know about Mr. Michels' habits?

Mr. Ockford: I object to that as too general.
20 The Master: If he makes it particular, you will object because it is leading.

BY THE MASTER:

Q. What do you know about his habits; anything you have observed—things you have seen yourself?
A. I have seen myself that he was intoxicated around the house and that he talked to her and called her names. I can't tell you just what his
30 habits were—what way he acted around the house, otherwise than that he was drunk and fought with her, and, as I say, she couldn't stand it any longer and ran upstairs and locked herself up in the room.

Q. Were you on any occasion away with Mrs. Michels for a few days? A. Yes, for a little more than a week.

Q. Where? A. To a little place, Rumsen, New Jersey.

40

Ann Hamilton. Called by Petitioner. Direct.

Q. Did Michels go down there? A. Yes, several times when we were there.

Q. What was his condition when he came down there? A. Well, he was intoxicated.

Q. When was this? A. I should say it would be three years ago this coming summer.

Q. What was his condition when he came on these occasions? A. I don't remember the first occasion now, but on the second occasion he was intoxicated,—very much so. 10

Q. Did he do anything at that time? A. No, he was not boisterous or anything. He went to bed and wet himself all over the next morning when he got up.

Q. That is all you remember. Was there any occasion that he came after this second time? A. I don't recall. 20

Q. Did you stay over night at Mrs. Michels at any time? A. Many times.

Q. At Hasbrouck Heights? A. Many times.

Q. You saw Mr. Michels come into the house on these different occasions? A. Yes.

Q. Did you notice him on any occasions vomiting, or anything like that?

Mr. Ockford: Oh, I object to that.

The Master: I think she has told us the story, has she not? 30

Mr. Berkowitz: We have a situation here—we have interviewed Mrs. Hamilton before, and she is apparently not getting the drift of what we want, and apparently she has not got our idea of what we want her to tell.

The Master: I will admit it.

A. Just that one occasion. 40

Ann Hamilton. Called by Petitioner. Direct.

Q. When was that? A. That was in the course of the time I have known him. I can't state just what day.

BY THE MASTER:

10 Q. How many years ago? A. They have been away more than a year and a half, and I might say that it has been two and a half years ago.

BY MR. BERKOWITZ:

Q. Where did that occur? A. I saw him intoxicated and he went upstairs and vomited.

Q. Where? A. Upstairs, all over the hall, and in the bathroom.

20 Q. Did you ever see him falling over any furniture during the time you knew him at Hasbrouck Heights? A. Yes.

Q. Did you ever see the condition of the place where he slept? A. Yes.

Q. What was its condition? A. I wouldn't say it was a very good condition.

Q. What was the matter? A. The mattress was very much soiled, and the bed unfit to sleep in for a man in his position.

30 BY THE MASTER:

Q. Soiled from what? A. Soiled from wetting the bed.

BY MR. BERKOWITZ:

Q. Did you—do you know whether Mrs. Michels ever had to get a new mattress and such things

Ann Hamilton. Called by Petitioner. Cross.

for his bed? A. I do know it, yes. On one occasion she did.

Mr. Berkowitz: I think that is all.

CROSS EXAMINATION BY MR. OCKFORD:

Q. How long ago was the last time you were present when Mr. and Mrs. Michels were together at their home in Hasbrouck Heights? A. How long ago? 10

Q. Yes,—how long ago? A. I don't know now. It is in 1927 or—well, she moved away from there in the summer time. It was maybe March when I last saw her.

Q. A year ago, last March? A. Yes.

Q. And they continued to live there until the following August? A. I believe so. 20

Q. And then Mrs. Michels moved away. You never visited Mr. and Mrs. Michels on Bramhall Avenue? A. Yes—Mrs. Michels; not Mr. Michels.

Q. Did you ever visit Mr. and Mrs. Michels at Bramhall Avenue? A. I have not.

Q. This occasion at Rumsen, or near Rumsen, was two years ago last summer? A. I couldn't state. Maybe that time. It was just one occasion we were away together, and Mrs. Michels very kindly paid my fare—hers and mine. 30

Q. It was at least two years ago? A. I suppose it is going to be three years pretty soon, yes.

Q. This occasion when you say you saw Mrs. Michels have an argument and run upstairs and lock herself in her room, that— A. (Interrupting) Yes.

Q. That was about March a year ago? A. About March a year ago? Well, probably it was. 40

Ann Hamilton. Called by Petitioner. Cross.

Q. How long did you stay downstairs after Mrs. Michels went up to her room? A. Well, I think that was the time about the building and loan argument and so forth, about money matters, and her mother and I stayed there and we talked, and he talked.

10 Q. For how long a time? A. I don't know. Maybe an hour and maybe longer. I couldn't be sure.

Q. And all that time she stayed up in the room? Is that right? A. She was upstairs, yes.

Q. Did she come down again while you were there? A. Yes, I think she did.

Q. After a little while? A. After a little while.

Mr. Ockford: That is all.

The Master: The next witness.

20 Mr. Berkowitz: That is all we have today.
(Discussion off the record.)

Adjourned to Wednesday, December 10th,
1930, at 10 A. M.

Ida Niemi. Called by Petitioner. Direct.

1 Exchange Place, Jersey City, N. J.
Wednesday, December 10th, 1930,
Ten A. M.

Present—THE MASTER.

APPEARANCES:

10

Mr. BERKOWITZ, for the Petitioner.

Mr. OCKFORD, for the Defendant.

Mrs. IDA NIEMI, called as a witness on behalf of the petitioner, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BERKOWITZ:

20

Q. Where do you live? A. At number 470 Bramhall Avenue.

Q. That is in Jersey City? A. Yes.

Q. What is your business there? A. I am the superintendent of the apartment house.

Q. Do you know Mrs. Michels? A. Yes.

Q. Does she live in that apartment house? A. Yes.

Q. And for how long was it that she lived there? 30
A. About ten or eleven months.

Q. About ten or eleven months? A. Yes.

Q. Did you ever see Mr. Michels there? A. Yes.

Q. Do you know who Mr. Michels is? A. Yes.

Q. Now, Mrs. Niemi, did you at any time have any trouble with Mr. Michels in that apartment house?

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Ida Niemi. Called by Petitioner. Direct.

Mr. Ockford: I object to that. That is very general.

The Master: Objection sustained.

Q. Mrs. Niemi, did Mr. Michels ever come around to the apartment house drunk? A. Yes, he did.

10 Mr. Ockford: I think that is rather leading.
The Master: Yes, it is.

Q. What did Mr. Michels do at any time he came around to that apartment in that ten or eleven months you were superintendent there? A. He wouldn't do anything, only a couple of times—one time I see only he was laying out there in the hall, one or two times.

20 BY THE MASTER:

Q. What time was that—day or night? A. That was night.

Q. What time of night? A. Before ten o'clock. I am not just sure.

BY MR. BERKOWITZ:

30 Q. Were you ever called upstairs to Mrs. Michels apartment? A. Yes, Mrs. Michels called me up there a couple of times.

Q. Will you tell us what happened, or what you found there?

The Master: Fix the time.

Q. Can you fix the time? A. She called me upstairs at the same time he was in the hall.

Ida Niemi. Called by Petitioner. Direct.

Q. Can you tell us about when that was? A. That was one Sunday night, but I can't say the month and the date.

Q. And when you went upstairs in the hall, what did you see? A. I saw him in the hall behind his door. He wanted to get in to see his boy.

Q. Did you hear him say anything to Mrs. Michels? A. He said, "I want to see my boy. I don't want to see you". 10

Q. Did he call Mrs. Michels any names?

Mr. Ockford: Objected to.

The Master: Objection sustained.

Q. Did Mr. Michels say anything to Mrs. Michels? A. Yes. He said, "I want to see Michael. I don't want to see you". 20

Q. Anything else? A. "You are a whore, anyhow".

Q. That is what he said to Mrs. Michels? A. That is what he said to her.

Q. This was in the hallway? A. Yes, in the hall, behind her door.

Q. Did Mrs. Michels live on the second floor? A. Yes.

Q. This was an apartment house? A. Yes.

Q. How many families in that apartment house? 30
A. Twenty.

Q. This was on a Sunday night? A. Yes.

Q. About what time? A. Before ten o'clock I think.

Q. You went to bed at ten o'clock? A. Yes, after ten.

Q. And this was before you had gone to bed?
A. Yes.

Mr. Berkowitz: That is all.

Ida Niemi. Called by Petitioner. Cross.

CROSS EXAMINATION BY MR. OCKFORD:

Q. How long before Mrs. Michels moved out of her apartment at 470 Bramhall Avenue was it that this talk between Mr. Michels and Mrs. Michels about his wanting to see the body took place? A. That I can't remember, but I think that was in
10 January.

Q. That would be January 1930? A. Yes.

Q. Last January? A. Yes.

Q. That is only one occasion that you heard any such thing? A. Yes, that is the only time that I heard that.

Q. Was that before or after the two occasions that you say you saw Mr. Michels lying in the hallway? A. Only one or two times I say he was laying out in the hall.
20

Q. How long before, or how long after the time you heard this talk at the door, was it that you say you saw Mr. Michels lying in the hallway? How long before or how long after, or was it the same night? A. That night he didn't lay out in the hall. He was standing alongside her door—her apartment.

Q. At the time you heard this talk, he was standing at her door? A. Yes.

30 Q. Speaking through the door? A. Yes.

Q. And the door was not open? A. No.

Q. Just you heard Mrs. Michels' voice from the inside? A. Yes.

Q. And you heard and saw Mr. Michels? A. Yes.

Q. How long before that occasion was it that you say you saw Mr. Michels lying in the hallway? A. That I can't remember. If it was before or after that he was laying in the hall.

40

Ida Niemi. Called by Petitioner. Cross.

Q. Was it only that time? A. Yes, I knocked at Mrs. Michels' door about him lying there in the hall, but I can't remember who it was that called me and told me that there was a man laying in the hall.

BY THE MASTER:

10

Q. Was he in the hallway near the door to her apartment? A. Yes.

Q. Which floor was it? A. Second floor.

BY MR. OCKFORD:

Q. The second floor? A. Yes, alongside of her door up on the second floor.

Q. Near her door? A. Yes.

Q. How far away? A. He was laying like this— 20
and her door was like this (indicating).

BY THE MASTER:

Q. You mean that he was lying on the floor? A. Yes.

BY MR. OCKFORD:

Q. You say that that was the only time that you 30
heard the talk through the door? A. Yes; but I can't remember if it was before or after.

Q. And how far apart were the two occasions, when you say you saw him lying in the hall and—you say you saw him twice? A. Only once I say that he was laying in the hall.

Q. On this occasion you say you saw Mr. Michels lying in the hallway near her apartment on the sec-

40

Ida Niemi. Called by Petitioner. Cross.

ond floor, you say you went to Mrs. Michels and told her about it? Is that right? A. Yes.

Q. Did she open the door when you knocked? A. Yes. I came to the door and saw Mrs. Michels come out, and when she came out I said to Mrs. Michels, "Let your husband in", and she let her husband in, and afterwards I went downstairs.

10 Q. Had you seen him when he came in that evening? A. No.

Q. You only saw him when he was lying there? A. Yes.

Q. You didn't know what was the matter with him, did you?

Q. You say you didn't know what was the matter with him. When you spoke to him, he got up and you went to Mrs. Michels door with him, and called Mrs. Michels and he went in? A. Yes, he went in.

20

Mr. Berkowitz: That is objected to.

The Master: This is cross examination.

Q. You didn't know what was the matter with him, did you? A. Him?

Q. Yes. A. Well, I don't know.

BY THE MASTER:

30

Q. Did you know what was the matter with him? A. No.

Q. You observed him—you saw him there? A. I saw him; and I said, "Mr. Michels, you"—

Q. (Interrupting) Did you see what was the matter with him? A. Maybe he was drunk, because he was lying there.

Q. You inferred that he was drunk? A. Yes.

40

Ida Niemi. Called by Petitioner. Cross.

BY MR. OCKFORD:

Q. You said maybe? A. Yes.

Q. You don't know that he was drunk, do you? You don't know what made his lie down there? A. I don't know. He got up and came in the apartment then.

Q. You called to him and he got up? A. Yes. 10

Q. And he went to the door with you and went in after you asked Mrs. Michels to let him in? A. Yes, after I asked her to let him in.

Q. You don't know how long he had been lying there? A. I don't know, because some of the tenants came home and saw him in the hall and called me and said there was a man laying in the hall and I went upstairs and there I seen Mr. Michels.

Q. You don't know how long he had been there? A. No. 20

Q. You don't know what condition he was in when he came in the street entrance? A. No, I didn't see him when he came in.

Q. Do you know what night of the week this was? Was this a Sunday night? A. That was a Sunday night.

Q. And what night of the week was it that you heard the talk between Mr. Michels and his wife through the door? A. That was Sunday night, too. 30

Q. And not very long before or after. Is that right? A. Not very far, but I can't say whether it was before or after.

Q. Would you say it was in the same month? A. Yes.

The Master: Mr. Ockford, let us clear the atmosphere. The inference would be that the man was drunk if other parts of the testimony 40

Ida Niemi. Called by Petitioner. Cross.

indicate that he was a drinking man, unless you put in evidence to show that he was sick; but I infer that he was drunk from this testimony.

Mr. Ockford: I have no way of knowing.

10 The Master: I have to make some investigation, you know, and the proof is that he is a drinking man, and I would infer that he was drunk, unless you put in evidence to show that he was sick.

(Discussion off the record.)

Q. Do you remember when Mrs. Michels first came to Bramhall Avenue? A. Yes.

Q. Do you remember what month that was in? A. September, 1929.

20 Q. Who rented the place? A. I rented it.

Q. To whom? A. Mrs. Evelyn Taylor.

Q. Did she pay a deposit? A. Yes.

Q. Do you know how much? A. Five dollars. Let me see—five or ten dollars. That I can't remember; either one or the other.

Q. That is, either five dollars or ten dollars? A. Yes.

Q. She told you that her name was Mrs. Evelyn Taylor? A. Yes.

30 Q. Did she have a boy with her? A. Not at the time she took the apartment.

Q. Do you remember when she moved in with the furniture—how long it was after the deposit? A. I think a couple of days later.

Q. How long after that was it that you first saw Mr. Michels at Bramhall Avenue? A. I think a month later or something. I don't remember. I am not sure.

40 Q. Did you collect the rent? A. Yes.

Ida Niemi. Called by Petitioner. Cross.

Q. Do you remember when the balance for the month for which the deposit had been paid—how long after the furniture came in was it that you got the rest of the month's rent? A. That I can't remember—if I got it the same day or I got it later.

Q. You got it during the month? A. Yes.

Q. About the time they moved in? A. Yes.

Q. Who paid you the difference between the deposit and the month's rent? A. Mrs. Michels. 10

Q. When did you first learn that her name was Michels and not Taylor? How long after she moved in? A. About I think—about four weeks later.

Q. About the time Mr. Michels showed up? A. Yes.

Q. Was he ever introduced to you by her? A. Who?

Q. Was Mr. Michels introduced by his wife? How did you meet him? How did you know who he was? A. I don't know. I saw a couple of mornings that Mr. Michels went out of the apartment, and so after that I hear her say something about it, and called him her husband, and that is how I knew he was her husband. 20

Q. Do you remember the words? How did you know he was her husband from what he said? A. She said something about it. From that I understand he was her husband. 30

Q. From what she said, you knew that this man was her husband? A. I can't remember, but I understand that he was her husband.

Q. Mr. Michels paid the rent thereafter, did he not? A. Yes.

Q. And gave it to you? A. Yes.

Q. Sometimes cash and sometimes a check from which you knew his name? A. Yes, the first rent I got from Mr. Michels I saw the name Michels on the check. 40

Ida Niemi. Called by Petitioner. Cross.

Q. And that is how you knew that his name was Michels? A. Which I gave to the landlord, and I said, I don't know whether her name is Evelyn Taylor. The check is Michels.

Q. Do you know what month it was that you got the first check from Mr. Michels, which month's rent? A. I think it was October or November; I should think it was October.

Q. And from that time on Mr. Michels paid the rent either by check or cash, did he not? A. Yes.

Q. Sometimes a check and sometimes cash? A. Yes.

Q. And you saw him coming in and going out from time to time? A. I saw he came every night, and I let him in the apartment, because I saw he got no key, and Mrs. Michels never was at home, so I let him in myself every night.

Q. About what time was it that he would come home and you would let him in? A. Sometimes he came after six and around seven, and sometimes later.

Q. Do you know what time he usually left in the morning? A. I think after seven o'clock, or something like that.

Q. You saw him going out in the morning and coming in at night, and very often you let him in yourself? A. Yes.

Q. Did you see Mrs. Michels come in and out during the daytime? A. Yes, I did.

Q. You saw her coming in and going out in the evenings, did you? A. Yes.

Q. And it was not until January that there was any disturbance of any kind or any trouble of any kind, so far as you know? That was the first occasion, was it—this time that he was lying in the hall was the first time that there was any trouble. Is that right? A. I didn't see anything else.

Ida Niemi. Called by Petitioner. Cross.

Q. Well, as far as you are concerned, you don't know what went on in the apartment, of course, before the first trouble? The only thing you had anything to do with was when you took him to the door and asked her to let her husband in? A. Yes—that is the only trouble.

Q. And you say that was only once, in January?
A. Yes. 10

Q. Before that it was that he was there one night, on a Sunday night, and talked through the door to her, about seeing the boy and not seeing her? A. Yes.

Q. I think that conversation, you said, took place on a Sunday night after the Sunday night when he was in the hall, lying there? A. What?

Q. The conversation you heard between Mr. and Mrs. Michels through the closed door, and after the time you had asked her to open her door, because he was lying in the hall? A. I can't remember that. 20

Q. You are not sure? A. No.

Q. Is that the last thing that happened so far as you saw Mr. Michels there? A. Yes.

Q. Did you see him back there any time after those two occasions? A. Did I see him after?

Q. Did he come again to the place and cause any trouble or disturbance in the hallway after you heard him call his wife these names? A. I think he came again, but he didn't make no trouble. 30

Q. Did Mrs. Michels, or Mrs. Taylor, continue to live there until the summer of 1930? A. Yes.

Q. Do you remember the month in which she moved out? A. August or September; either one.

Q. Last summer? A. Yes.

Q. And for how long a period of time before she moved out was the last time you saw Mr. Michels there on the premises? A. Before she moved out? 40

Ida Niemi. Called by Petitioner. Cross.

Q. Yes. A. I can't remember that. I cannot just say that.

Q. Was it a long time, or just a short while afterwards between January when this trouble took place in the hallway and August when Mr. Michels moved out—during that time I think you said you saw him there once. Maybe he was there once. Is that what she said? A. You mean come around to the place? I saw him more than once around, but making no trouble.

10

Q. But you didn't see him at all—is that right—from the time in January that there was trouble in the hall, until August when Mrs. Michels moved out? Would you say that you ever saw him around? A. Yes, I saw that he came around.

20

Q. How many times? A. I can't say how many times; a few times.

Q. Many times or a few times? A. I saw him—

Q. How many times? A. I can't say.

Q. What time or day or night was it you saw him on those occasions? A. Some afternoons I used to see him. He used to say he wanted to see his boy.

Q. Do you know where Mrs. Michels left her boy when she was away from the apartment? A. Outside.

30

Q. Whereabouts? A. He used to play with the other boys outside.

Q. Would the apartment door be locked? A. Sometimes locked and sometimes not.

Q. Did you ever let the boy in at night before his mother came home? A. Yes.

Q. When there was no one in the place at all?

Mr. Berkowitz: That is objected to as irrelevant.

40

Ida Niemi. Called by Petitioner. Cross.

The Master: The question is, what bearing has this?

Mr. Ockford: It has a direct bearing on the truthfulness of her story as to cruelty.

The Master: What she said about the boy being out at night, or about having the door locked?

Mr. Ockford: There will be plenty of testimony to contradict her testimony, and as long as this witness is here, we won't call her back. 10

The Master: I will admit it.

Q. Did you ever provide any meals for the boy?

A. Yes.

Q. Where? A. At my place.

The Master: It is my duty under the direction of the Chancellor not to have these cases take up more time than they should, and this question will not help me in deciding the case, unless you state that it is for the purpose of attacking the witness' credibility. She has not testified about these things, but you have a right to show she is lying, if you can. 20

Mr. Ockford: You admit that?

The Master: Yes, at the present time.

Q. Your husband lives with you? A. Yes. 30

Mr. Berkowitz: We object to that.

The Master: I think it is proper.

Q. You and your husband generally supervise the apartments, do you not? A. Yes.

Q. What is your husband's first name? A. Mat-ty. 40

Elizabeth Taylor. Called by Petitioner. Direct.

Q. And you occupy an apartment in the apartment house? A. Yes.

Q. What number, or on what floor? A. The basement.

Q. You have been subpoenaed to come here this morning. You were given a paper last night to come here?

10

Mr. Berkowitz: I object to that on the ground that the witness is called by the petitioner. I have not suggested or done anything to impeach her testimony, or make any charge that she is not here properly.

Mr. Ockford: I want it on the record that she is here involuntarily.

20

ELIZABETH TAYLOR, a witness called by the petitioner, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BERKOWITZ:

Q. Are you the mother of the petitioner, Evelyn Michels? A. Yes.

30 Q. Where do you live? A. At number 317 Williams Avenue, Hasbrouck Heights.

Q. Do you recall, Mrs. Taylor, where your daughter and Mr. Michel lived in Hasbrouck Heights? A. 234 Williams Avenue.

Q. About how far is that from your home? A. I judge about a block.

Q. Do you remember when your daughter was married? A. No, I don't just remember.

40 Q. About. A. I don't know whether it is ten or eleven years.

Elizabeth Taylor. Called by Petitioner. Direct.

Q. Did you visit your daughter regularly since she has been married? A. Yes.

Q. And your daughter has visited you? A. Yes, regularly.

Q. On any of these visits, you say that in Hasbrouck Heights your daughter's house was about a block away? A. Yes.

Q. Now, about how often, can you tell us, was it that you visited her? Was it once a week,—once or twice or three times? A. Two or three times a week, sometimes. 10

Q. You called on her and she would come to your place regularly? A. Yes.

Q. Do you remember on any occasions seeing Mr. Michels present? A. Yes; seeing him at their house?

Q. Yes; at your daughter's house. A. Yes. 20

Q. Was it often that you saw him there? A. Yes.

Q. Can you tell us what his condition was at any time that you saw him? A. Always drunk,—positively drunk.

BY THE MASTER:

Q. How drunk? A. Well, he would lay all over the place—fall all around—over the chairs and bed. 30

BY MR. BERKOWITZ:

Q. You mean that he would lie on the ground? A. Yes.

Q. How often? A. Two or three times a week.

Q. Did you ever see him give her any money? A. Yes—he came home and he had sixty dollars and he 40

Elizabeth Taylor. Called by Petitioner. Direct.

gave it to my daughter and she was sound asleep and she just took the money and put it behind her back, and he came back and he twisted her arm, and she started to scream and we jumped up and he slapped me alongside the face and I said, "You can't hit me. I will tell Mr. Taylor, and you won't hit me again"—and she ran in the bathroom.

10 Q. When did this take place? A. November, 1927.

Q. Where were you at the time? A. Sleeping with my daughter.

Q. Why were you sleeping with your daughter? Why didn't you go home to your own house? Why did you stay at your house? A. Mr. Taylor is a detective, and he is away all night, so I used to go there.

20 Q. He works nights? A. Yes.

Q. On this particular occasion in November, 1927, you were sleeping with your daughter? A. Yes.

Q. Do you know what Mr. Michel's condition was? A. He was drunk, and he shouted the vilest names. He called her everything, and he called me, also.

30 Q. What did he call you and your daughter? A. A dirty son of a bitch of a bastard, and a stinking whore and everything, and he said, "You are no better"—meaning me.

Q. On another occasion do you remember being present when Mr. Michels was there? A. Yes,—February, 1928, when he was arrested down in the Hackensack court.

Q. Were you present in the house at the time? A. Yes.

Elizabeth Taylor. Called by Petitioner. Direct.

Q. Tell the Court just what happened and what you saw then.

Mr. Ockford: That is February 28th,—what year?

Q. That was February, 1928? A. Yes. She was playing with the dog and the child on the floor and he called her everything. 10

Q. What did he call her? A. God damn this, and God damn that, bitch, bastard, and he said "Stop making that noise, so that I can hear the radio." He said, "I am trying to get Chicago"—and with that he punched her with his fist and she went upstairs and called the cop.

Q. Did she have any bruises? A. Yes.

Q. Where? A. Right on her face. And the cops advised her at the station—I came up and said, "You can't do that to my daughter—punch her face." 20

Q. Do you know what happened? A. He kicked the child out in the kitchen.

Q. What was his condition at that time? A. Drunk.

Q. Did you know that he was arrested later? A. Yes, I went home after that, and my daughter told me he was arrested down in Hackensack. 30

Q. Did you go to court? A. Yes.

Q. Do you know what happened in Court to Mr. Michels?

Mr. Ockford: That is objected to.

The Master: Objection sustained. You can tell what happened in court—what was said in his presence. 40

Elizabeth Taylor. Called by Petitioner. Direct.

Mr. Berkowitz: It is admitted in an answer filed by Mr. Michels that he was convicted on this particular charge.

The Master: Is that so? Does the answer admit the conviction?

Mr. Ockford: The record speaks for itself.

10 Mr. Berkowitz: They admit he was convicted.

Mr. Ockford: All right. The record speaks for itself.

The Master: If the answer admits the conviction, it seems to me there shouldn't be any objection. If not, go ahead.

20 Q. Now, Mrs. Taylor, do you remember anything happening after that February 28th? Were you present at your daughter's house again on other nights? A. Yes; a couple of days after that she moved home to our house.

Q. Do you know how long she stayed there? A. Until about June or July.

Q. Then what happened, if you know? A. I don't know what you mean by that.

Q. Did she stay with you? A. Yes.

Q. Until June or July? A. Yes.

30 Q. Then what happened? Where did she go?

BY THE MASTER:

Q. When did they separate? A. Why, right after that—after February, 1928.

Q. After the police court affair? A. Yes.

BY MR. BERKOWITZ:

40 Q. Did she go back to her husband in June or July, after she left your place? A. Yes.

Elizabeth Taylor. Called by Petitioner. Direct.

Q. And that was back in Hasbrouck Heights again? A. Yes.

Q. You visited her again at her house and you saw Mr. Michels there? A. Yes.

Q. What, if anything, happened, on the occasion after they went back together? Did he ever come home drunk again? A. Yes.

Q. This was in the summer? A. Yes. He was always drunk. 10

Q. Did you on any occasion from that time on see him hit your daughter or hear him call her names? A. Yes, after that on Bramhall Avenue he called us everything during the nights—

The Master (interrupting): The question is, at Hasbrouck Heights did you see him strike her?

The Witness: No. 20

BY MR. BERKOWITZ:

Q. Did you see him in the house drunk? A. Yes.

Q. Did he call her names? A. Yes.

Q. What? A. Dirty bastard and stinking whore, and I told him that we didn't talk that way before his people—why should he have to talk that way before us?

BY THE MASTER: 30

Q. How do you know that he was drunk? A. He always had whisky bottles, until I used to be ashamed to go out, and went out the back door.

Q. At Hasbrouck Heights? A. Yes.

BY MR. BERKOWITZ:

Q. Did you ever go, while you were at the Michels house, into his bedroom? A. Yes; and the bedroom was always mussed up. 40

Elizabeth Taylor. Called by Petitioner. Direct.

BY THE MASTER:

Q. How? A. He used it as a lavatory, and the smell was something terrible, and she had to clean her house up all the way from the bathroom to the parlor.

10 Q. How do you know he slept in the bed? A. I was there.

Q. What condition was the bed in? Was it filthy? A. Filthy.

Q. It was filthy? A. Yes.

Q. Soiled? A. Yes.

Q. Where he had been sleeping? A. Yes.

Q. How many times would that happen? A. Every night; and while she was in the hospital, he did it at my house.

20 Q. What did he do at your house? A. Wet the bed and blamed it on the child.

BY MR. BERKOWITZ:

Q. Do you remember the occasion when your daughter came down to your house and had to be operated on? A. Yes; that was in—that was May 3rd.

Q. What year? A. 1926.

30 Q. And do you remember—just tell if you know what happened on that occasion? A. She came down about three o'clock in the morning and said she was very sick, and I thought of course that she had appendicitis or something and I put cold applications on and I saw that she wasn't getting any better, and then I thought maybe she had inflammation of the stomach and so I put hot applications to her, and after that she went to sleep. She had an inward hemorrhage, and when I laid alongside of

40

Elizabeth Taylor. Called by Petitioner. Direct.

her, she was all flushed and the heat must have made her—

Mr. Ockford (interrupting): I don't think the witness can tell all that.

The Master: No.

The Witness (continuing): And then Mr. Taylor came in.

10

BY MR. BERKOWITZ:

Q. When was that? A. In the morning, around seven or half past seven o'clock. He came in and said, "That girl is dying. Her face is black"—and he ran to the telephone to get the doctor and he said yes, and they came from the hospital and took her.

Q. You sent her to the Hackensack Hospital? A. Yes.

20

Q. And she was operated on then? A. Yes.

Q. Do you know who they billed this to—charged it to? A. He had paid the other two bills—and the hospital bill—

Q. (interrupting) What do you mean? Whom do you mean by "he"? A. Mr. Michels. Mr. Taylor signed because they wouldn't operate on her in the hospital, and when he signed, of course they operated on her right away.

30

Q. Do you know of your own knowledge if that bill has been paid? A. No, it hasn't. We just got a letter yesterday that Mr. Michels refused to pay it, because Mr. Taylor's name is signed to it.

Mr. Ockford: I move to strike that out. How does she know?

The Master: Strike it out.

40

Elizabeth Taylor. Called by Petitioner. Direct.

Q. Do you remember when your daughter left Hasbrouck Heights? A. I don't know. I have so much to remember, I couldn't tell you that.

Q. Were you present at the Bramhall Avenue house when your daughter moved to Bramhall Avenue? Were you ever there? A. Yes.

10 Q. Did you see Mr. Michels down there? A. He used to come every night and curse and call us everything.

Q. Do you know if he had been drinking? A. Yes.

BY THE MASTER:

Q. Tell us what he called you. What did he say? A. He said she was a stinking whore, and that I was no better, and he hollered out a lot of names.

20 Q. Where was he when he said these things? A. Out in the hall.

Q. Where? A. In Bramhall Avenue, in front of my daughter's room.

Q. What time of day or night was it? A. About seven or eight o'clock.

Q. In the evening? A. Yes.

BY MR. BERKOWITZ:

30 Q. When you say "in the hall", is that hall in her apartment, or was it a public hall? A. It is a hall for all the tenants to come through.

Q. Where all the apartments lead into? A. Yes. Mrs. Niemi came up and said, "This is terrible talk. You come down out of here."

Q. Did that happen just on one occasion? A. A couple of times.

40 Q. He was drunk out in the hall? A. Yes.

Elizabeth Taylor. Called by Petitioner. Cross.

Q. Did you ever let him in? A. No; and he hollered it outside, and before the next apartment, too.

CROSS EXAMINATION BY MR. OCKFORD:

Q. When was the last time you visited your daughter at 470 Bramhall Avenue? A. You got me. I am no good at dates like that. I don't remember anything. I went in there while she lived there. 10

Q. Where does she live now? Do you know? A. I don't remember, I am telling you.

BY THE MASTER:

Q. Where is it? What streets? A. The Boulevard. 20

Q. Jersey City? A. Yes, sir. I don't know the number, because we drive right there, and so I never bother about the number.

BY MR. OCKFORD:

Q. Do you ever visit your daughter at the place where she is living now? A. Yes.

Q. When is the last time you visited your daughter? A. Monday. 30

Q. What part of the Boulevard is it? A. Bayonne? A. Near Cortlandt Street out on the Boulevard. Yes, it is Courtlandt.

Q. How long has your daughter lived at that place, on the Boulevard, near Courtlandt Street? A. I don't know all these things. I can't answer, because I don't remember.

Q. You can remember what happened in 1926, 1927, and 1928. Now please tell us what happened 40

Elizabeth Taylor. Called by Petitioner. Cross.

in August, 1930. A. I don't know nothing about August, 1930.

Q. You don't know what happened in August, 1930, as far as your daughter's living was concerned? A. What about? Where she lives?

Q. I asked her how long she has been living— A. (interrupting) I don't keep track of my daughter all the while.

The Master: Just answer to the best of your ability.

The Witness: How long did she live there?

Q. Yes. How long has your daughter been living at the place on the Boulevard near Cortlandt Street, where she is now living? A. I don't know whether it is six or seven months.

20 Q. How long did your daughter live at number 470 Bramhall Avenue? A. About ten months, or eleven months. I don't just know.

Q. When did your daughter last live in Hasbrouck Heights? A. In 1928.

Q. Where did your daughter move to, if you know, after she left Hasbrouck Heights? A. To Bramhall Avenue.

30 Q. And she lived in Bramhall Avenue ten or eleven months and then moved to where she is now? A. Yes.

Q. And she has been where she is now for six or seven months? A. Yes.

Q. Where was she between the time she left Hasbrouck Heights and the time she went to 470 Bramhall Avenue, if you know? A. I can't answer that.

Q. How many times on the average do you see your daughter each week or month? A. Two or three times.

40

Elizabeth Taylor. Called by Petitioner. Cross.

Q. A week or a month? A. That is out here in Jersey City.

Q. Two or three times a week? A. Yes.

Q. Do you see her in the daytime or at night?
A. Sometimes I will be there a day or night—sometimes two nights or two days; sometimes from Saturday until Monday.

Q. On the average, how many times a week do you stay all night? A. Well, generally, when I go in I stay all night. I don't go back home. 10

Q. That means two or three times a week? A. Yes.

Q. And you have been doing that for the past six months, have you? A. Yes.

Q. In the summer of 1928 you say your daughter and her husband resumed living together at Hasbrouck Heights after the time she had spent some time with you? A. Yes. 20

Q. Who brought about the reconciliation between them, if you know? A. Mr. Michels came in my back bedroom window at our house. He used to come to our back bedroom at our house and talk to Mrs. Michels.

Q. And as the result of those talks your daughter left your house and went back to the house at number 234 Williams Avenue. Is that right? 30

Mr. Berkowitz: I object to that. How can this woman be asked that? He is asking her to testify to a mental condition.

The Master: Objection overruled.

Mr. Berkowitz: Exception.

A. Yes.

Q. Did you take part in the conversation? A. No, I did not. 40

Elizabeth Taylor. Called by Petitioner. Cross.

Q. Did you advise your daughter to stay or go or did you advise her at all as to what to do? A. No, I said nothing to her.

Q. After she went back to live with her husband at number 234 Williams Avenue, she stayed there and lived there with her husband until she moved to Bramhall Avenue. That is right? A. Yes.

10 Q. And during that time you went to visit your daughter at number 234 Williams Avenue and at times you stayed there all night? A. Yes.

Q. And on these occasions you slept with your daughter, did you? A. Yes.

Q. Where did the boy sleep? A. He slept in the back bedroom.

Q. Where did Mr. Michels sleep? A. In the next bedroom. There were three bedrooms there.

20 BY THE MASTER:

Q. Did Mrs. Michels sleep with her husband at Williams Avenue after she went back? A. No.

Q. So far as you know, she did not cohabit with him during that period? A. No, sir. He had his own room.

Q. After she went back? A. Yes.

30 BY MR. OCKFORD:

Q. Of course you don't know what happened the nights you were not there? A. Oh, no.

Q. And you were not here the last time to hear your daughter testify about that? A. No, I was sick. I am sick right now.

40 The Master: It is my recollection that she did not sleep with him on account of this so-called lavatory affair.

Elizabeth Taylor. Called by Petitioner. Cross.

Mr. Ockford: She testified that the last time she freely and voluntarily cohabited with her husband was in the summer of 1928.

The Master: You mean while she lived in Williams Avenue after the police court affair?

Mr. Ockford: Yes.

The Master: I thought that she discontinued after the lavatory affair.

10

Mr. Ockford: That was some time later.

The Master: Well, we will have the testimony and can see it.

Q. Did you take part, Mrs. Taylor, in any way, in assisting your daughter when she moved from the Williams Avenue house to Bramhall? A. Yes; and I am assisting her yet.

Q. You are assisting her now? A. Yes.

20

Q. Did you do anything about the time she moved? A. Yes, all along.

Q. Did you go with her when she rented the apartment? A. What do you mean? Did I move with her?

Q. Did you go with your daughter when she rented the apartment at Bramhall Avenue? A. No.

Q. Did you help her pack? A. No.

Q. Did you hire the moving van? A. No.

Q. What help did you give? A. You mean did I give her the money?

30

Q. Yes. A. Certainly. We always gave her the cash money.

Q. How much cash money did you give her at that time? A. Fifty dollars.

Q. In cash or check? A. No; cash money.

Q. Were you there when your daughter moved out and the furniture was moved out? A. No.

Q. How long after your daughter left the house at Williams Avenue, Hasbrouck Heights, did you

40

Elizabeth Taylor. Called by Petitioner. Cross.

first visit her at Bramhall Avenue? A. About the next week after she was fixed up.

Q. At the time you got to Bramhall Avenue she was all settled in this apartment? A. Yes.

Q. Did you give her any more money at that time? A. I told you I have been giving her money right along. I just can't remember that. I gave
10 her money yesterday. I don't send her any check. I am giving her money all the time.

Mr. Ockford: I move that that be stricken out.

Q. I am asking you if you gave your daughter any money on the occasion of your first visit to her at Bramhall Avenue? A. No, I told you I gave her fifty dollars before.

20 Q. You didn't give her money when you got there on your first visit? A. No; but I bought the grub. I always buy things to eat.

Q. How long was it after your daughter moved to Bramhall Avenue that you say that you first saw Mr. Michels there at the Bramhall Apartment? A. I couldn't remember.

Q. Was it in the first month that she was there? A. I don't remember when she moved in.

30 Q. From the time she moved in, after your first visit, you went to visit her regularly? A. Yes.

Q. And stayed there all night at times? A. Yes.

Q. How many rooms were there in this apartment? A. Two rooms and a kitchenette. ..

Q. What were they used for? A. A living room and a dining room and the kitchenette.

Q. How many beds in the bedroom? A. One.

Q. What was in the living room to sleep on? A. A big tete—a tete or lounge or what you call it.
40

Elizabeth Taylor. Called by Petitioner. Cross.

Q. You stayed at nights at times? A. Yes, and slept with my daughter and the little boy, and he slept on the couch or tete—that was his bed.

Q. Who slept there? A. Mr. Michels.

Q. How long after your daughter moved to Bramhall Avenue was the first occasion Mr. Michels slept on the couch while you and your daughter slept in the bedroom? A. How long? 10

Q. Yes, a short time, wasn't it? A. Yes.

Q. Within a month, wasn't it? A. Yes.

Q. Were you in the apartment there when papers were served in this case on Mr. Michels? A. I don't know. I won't say. I don't know.

Q. You say you don't know that. Weren't you there? A. No, I wasn't there when any papers were served—no. I won't tell no lies. I was not there.

Q. Do you remember your daughter telling you right at the start of the divorce suit— 20

Mr. Berkowitz (interrupting): I object to that.

The Master: Is it important?

Mr. Ockford: Yes.

The Master: Go ahead.

Q. (Question repeated by the stenographer.) A. Yes. 30

Q. And that was at the time that Mr. Michels was there at Bramhall Avenue when you were there on visits? A. Yes.

Q. At the same time? A. Yes.

Q. And for some time after—he continued to be there for some time after that? A. Yes.

Q. You remember seeing Mr. Michels at the Bramhall Avenue place for several months after that time when you heard about the divorce case 40

Elizabeth Taylor. Called by Petitioner. Cross.

being started? A. No, he used to stay out in the car and hang around all over. He was not in while I was there. Some nights he would be sleeping in the car.

Q. What car? A. Their car. It used to stand out in the back of the house and he slept in it.

Q. At Bramhall Avenue? A. Yes.

10 Q. But there were times when he slept on the couch? A. Yes.

Q. The last time that you saw Mr. Michels strike Mrs. Michels was the time that the police were called in? A. Yes.

Q. It was only one occasion that that ever happened—that the police were called in, as far as you know? A. That I don't know.

Q. I say, as far as you know, there was only one time? A. Yes, out in Harbrouck Heights.

20 Q. This occasion when you told us about the sixty dollars—under the pillow, was it? A. No, he gave it to her, and she put it under her back—like that (indicating). She was lying with her head at the foot of the bed, and he pulled her arm.

Q. That was in November, 1927? A. Yes.

Q. How do you remember that that was in 1927, and not 1926? A. Not long after that we had to call the doctor; his father called up and wanted a mortgage on the house, and we called Dr. Walsh, and Dr. Walsh said, "Don't listen to any such suggestion. You are nervous" and it was a week we had the doctor—

30 Q. (Interrupting) Doctor Walsh—that was in November, 1927? A. December.

Q. And you know that this \$60 episode occurred shortly before that? A. Yes.

Q. That is how you know it was 1927? A. Yes.

Elizabeth Taylor. Called by Petitioner. Cross.

Q. You were there that night at the house? A. What do you mean?

Q. That night they had the argument on the \$60.

A. Yes.

Q. What time was it at night that Mr. Michels got there at the house? A. It was in the morning.

Q. The morning? A. It was in the morning—
towards morning. 10

Q. He had been there all night? A. No, he came in and said that he had won it playing cards.

Q. What time in the morning? A. I should judge about three or four o'clock.

Q. Where were you, and where was your daughter at that time? A. What do you mean?

Q. You were up that night, too? A. No—in bed. That is how he pulled her arm.

Q. You and your daughter had gone to bed in the evening, and at three or four o'clock in the evening Mr. Michels came in and woke everybody up? A. Yes. 20

Q. Was he drunk? A. Yes.

Q. And he handed his wife \$60? A. Yes.

Q. In bills? A. It was rolls. He said, "Here is sixty dollars".

Q. And she put it where? A. Under her back.

Q. She didn't get up out of bed? A. No, sir.

Q. Neither did you? A. No; I was standing at the foot of her bed, and she was lying with her head at the foot of the bed. 30

Q. Then you got up, and your daughter didn't? A. Yes.

Q. And the money she put under her back? A. Yes.

Q. What did he say? A. He went out in the bathroom and then he walked in the back bedroom and looked at the child and he came in and twisted 40

Elizabeth Taylor. Called by Petitioner. Cross.

her arm and she started to scream and holler, and he said, "You God damn bitch,—give it back", and she says, "Here—don't keep twisting my arm"—and I said, "You don't need to twist her arm."

Q. Did he get the money? A. Yes; there was a scrimmage.

Q. Did you take part in the scrimmage? A. Yes.
10 He hit her in the face, and he hit me in the face.

Q. Did you take part in it? You say there was a scrimmage.

The Master: She answered that. She said she took part in it.

Q. What did you do? A. He hit me, and I kept pushing him, and he held my wrist and he kicked me, and I said, "If you do that again,—hit me—I will tell Mr. Taylor, and it won't be good for you."
20

Q. You pushed him? A. I had to. He had told of my wrist.

Q. Did you hit him? A. No.

Q. Did your daughter hit him? A. No; she ran in the bathroom. She was so afraid of him that she ran in the bathroom and locked the door.

Q. Did he stay there or get out? A. I don't know. There was such a fuss,—I don't know.

Q. You went back to bed? A. No, I went home.

Q. What time was it that you left the house? A.
30 I couldn't tell you that. It was getting daylight. He told me to get out.

Q. And you got out? A. Yes.

Q. Where was your daughter when you left? A. In the bathroom, I told you; locked in.

BY THE MASTER:

Q. Why was she locked in? A. She was afraid
40 of him.

Elizabeth Taylor. Called by Petitioner. Cross.

Q. Who locked the door? A. She locked the door from the inside.

BY MR. OCKFORD:

Q. And she was still in there when you left? A. Yes.

Q. And you don't know what happened after that? A. No. 10

Q. You were not afraid to go away and leave your daughter there? A. When she was locked in the bathroom, why should I?

Q. I said, you were not? A. No.

Q. You were not afraid of him? A. No; he went and lay down in the back bedroom then.

Q. Before you went out? A. Yes.

Q. How drunk was he? Did he stagger? A. Yes, and fell all over the tete. 20

Q. Did he fall on the floor? A. Sometimes he did and sometimes he didn't.

Q. We are talking about this particular occasion. A. He went back in the back bedroom.

Q. And he was dead drunk? A. Yes, with his clothes on and his hat on.

BY THE MASTER:

Q. He went to bed with his clothes on? A. Yes,— 30
his hat, and everything.

BY MR. OCKFORD:

Q. You don't know what became of the money? A. He took it off of her.

Q. I mean after that. A. I don't know.

Q. Did you come back the next day to see if everything was all right? A. No. My daughter came to me. 40

Elizabeth Taylor. Called by Petitioner. Cross.

Q. You went back again and visited your daughter within a short time? A. Yes.

Q. And you continued to do that until the following February when this next affair took place? A. Yes.

10 Q. Nothing happened in between? A. No, only he used to come home drunk and call her all kinds of names. That is all I know, and insult her before everybody.

BY THE MASTER:

Q. You saw that yourself? A. Yes.

BY MR. OCKFORD:

20 Q. Did they ever have another scrimmage? A. He would make a smack at her, and she would run.

BY THE MASTER:

Q. What do you mean? A. He would go to hit her, and she would run upstairs.

Q. How often did that happen? A. A couple of times when I was there.

30 BY MR. OCKFORD:

Q. Between November 1927 and February 1928, you don't remember anything between those dates—anything that happened? A. What?

Q. From November 1927 to February 1928. A. No,—only the times at Bramhall Avenue when he came and called us everything.

Q. That was not in 1927, and it was not in 1928. A. No.

40

Elizabeth Taylor. Called by Petitioner. Cross.

Q. Now, in February 1928 what time was it that he came home on that occasion? If you remember, tell us about what happened. A. That was late in the evening,—I couldn't say whether that was eleven or around twelve. It was late, because everything was shut up.

Q. You and your daughter had gone to bed; or hadn't you? A. You mean after this fuss?

10

Q. I am talking about February 28th. You said that in February 1928 Mr. Michels came home and called your daughter names and then started to punch her. A. Yes.

Q. I don't know why you say February 1928,—but you said it. Now, on that occasion when he got home, had your daughter and you gone to bed, or were you still up? A. Didn't my daughter go to the police station?

20

Q. That is what I am trying to find out. Were you and your daughter up and dressed when Mr. Michels got home that night? A. Yes.

Q. Will you tell us what time of the evening that was? A. I couldn't tell you.

Q. When he came in, he was drunk? A. Yes.

Q. Did he stagger? A. Yes.

Q. Did he fall down? A. Well, they fell down when he was punching her. He had her down on her knees, and he was kicking her around and holding her and punching her around the face.

30

Q. Did he fall down because he was trying to punch her or was he pushed, or how did it come about? A. He fell down. They were both down on the floor where he had knocked her down.

Q. The first thing he did was to call your daughter names? A. Yes.

Q. What was the next thing he did after he started to call her these names? A. He told her about her and the dog playing on the floor.

40

Elizabeth Taylor. Called by Petitioner. Cross.

Q. What? A. About the dog; she was playing with the dog and the little fellow on the floor, and he said, "Cut your God damn noise out."

Q. And then what about the radio? A. He said he couldn't hear, and he said he wanted to get Chicago, and she said, "I will get it for you", and then he took a step or two and punched her in the face, and when I heard the punches, I jumped up.

10 Q. Did you hit him? A. No.

Q. Did she hit him? A. No; she went up and called the cops.

Q. No—but did she hit him? A. She had no chance to hit him.

Q. Did she hit him? A. No.

Q. He knocked her down? A. Yes; and when he knocked her down, he fell over.

20 Q. He fell down because he was striking at her. He lost his balance and fell over? A. Yes.

Q. Did he continue to lie on the floor after he fell on the floor? A. No, he got up and put on his clothes and ran out. He knew what he had been doing, and he ran away and said he was afraid. His neighbors heard it, and testified that in court.

Q. How long a time elapsed from the time he got home until he ran out? A. I don't know. He was arrested.

30 Q. Were you there? A. He ran out as soon as this—

Q. (Interrupting) All right; but how long a time was it between the time that he got in the house that night and the time he went out that night? A few minutes or an hour? A. That he went out after the fuss?

40 Q. How long was he there altogether from the time he came in? A. I couldn't tell you. I can't specify about that. I was lying on the couch asleep.

Elizabeth Taylor. Called by Petitioner. Cross.

Q. Did it all happen in a few minutes? A. No, it was quite a while that they were fooling around, with the dog on the floor.

Q. Mr. Michels and Mrs. Michels and the boy and the dog? A. Yes.

Q. They played around on the floor and fussed about the radio? A. Yes,—he fussed with her about the noise with the dog and the boy. 10

Q. Then she was on the floor? A. He knocked her down and punched her face.

Q. Altogether—did it all take place in a few minutes? A. About ten minutes, because she ran up, and called the cops and the cops came down to the house and took her up to the police station.

Q. And when she went out you stayed there with the boy? A. Yes, with the boy.

Q. Didn't you? A. With the little fellow, yes. 20

Q. You are sure that this whole thing happened within a period of ten minutes? A. I don't think it was any longer.

Q. Did you see which way he went after he went out? A. No, he ran out the back door.

Q. Did he stagger on the way out? He was pretty drunk? A. Yes,—but I couldn't see him. He just got his clothes and beat it out. He could run.

Q. You are sure he ran? A. I don't know. He got out. He was sure that the cops would come. She had called them up. 30

Q. He said that he didn't want the neighbors to see any fuss? A. That is what he testified in court.

Q. What did he say? A. Nothing. He got his clothes and went out. He was afraid of the cops.

Q. Did he say so? A. What did he run for?

Q. Did he say anything about the cops? A. No,—he didn't speak no words to me, no.

Frank Taylor. Called by Petitioner. Direct.

FRANK TAYLOR, called as a witness on behalf of the petitioner, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BERKOWITZ:

10 Q. Are you the father of Mrs. Michels? A. Yes.

Q. Where do you live? A. 317 Williams Avenue, Hasbrouck Heights.

Q. Is your wife Mrs. Taylor? A. Yes.

Q. That is about a block or so from where Mrs. Michels lived? A. Yes.

Q. Now, Mr. Taylor, were you present at any time at your daughter's house and did you see any of these goings-on with Mr. Michels? A. No.

20 Mr. Ockford: Which place? Which house?

The Master: He says "No". What difference does it make?

Q. Do you remember, Mr. Taylor, back in 1926, coming home one morning and finding your daughter at your house? A. Yes.

Q. Will you tell the court—

30 The Master: (Interrupting) When was it, first?

The Witness: It was in May of 1926.

The Master: Go on.

Q. Will you tell the court what you know about that incident. A. I came home at about seven-ten in the morning, and Mrs. Taylor said that the daughter was very sick, and I went in to see what was the matter, and I thought she was dying—that is all,—and I got a doctor—Doctor Parham.

40

Frank Taylor. Called by Petitioner. Direct.

BY THE MASTER:

Q. Was the daughter living at your house at that time? A. No.

Q. What time of the day was it? A. Seven-ten in the morning.

Q. How did she come there? A. I don't know. I didn't see her come there, but I knew she was there at the time. 10

Q. Was she dressed when you saw her? A. No.

Q. She was in her night clothes? A. Yes.

BY MR. BERKOWITZ:

Q. Had you been working all night? A. Yes.

Q. You are a detective on one of the railroads? A. On the Erie. 20

Q. Did you see any of her street clothing around the house on that particular occasion? A. No.

The Master: If I am correct in my recollection, Mrs. Michels said she went there in her night clothes.

Mr. Berkowitz: That is right.

BY THE MASTER:

Q. How far away was her house? A. About a block. 30

BY MR. BERKOWITZ:

Q. You called the doctor? A. Yes; and he in turn got the ambulance from the Hackensack Hospital.

Q. And took her down to the hospital? A. I went down with him, after the ambulance came. 40

Frank Taylor. Called by Petitioner. Direct.

Mr. Ockford: With whom?

The Witness: With the doctor, after the ambulance came. I got in his car and went down with him.

Q. What were you told at the hospital? A. Like all hospitals, they give you the papers to sign, and consent to the operation, and one thing and another, and you sign them. That is all.

Q. Was there any imminence about it, that it had to be done? A. Well, it had to be done immediately, just when she got there.

BY THE MASTER:

Q. Where was her husband then? A. I don't know.

Q. Was he there? A. No.

BY MR. BERKOWITZ:

Q. I show you a letter. Did you receive this letter? A. Yes, I get one once in a while. He said he didn't order that.

Q. Do you know if the doctor has been paid? A. No.

Q. This is a letter you received? A. Yes.

Q. Asking for the money? A. Yes; a couple of days ago.

Q. Mr. Taylor, at any date later, after this, did you communicate with Mr. Michels regarding this operation? A. No, sir.

Q. Did you ever tell him that he had to pay for it? A. I did not, no, sir.

Q. Did you inform her husband that she was in the hospital? A. Yes; after the operation I telephoned.

Frank Taylor. Called by Petitioner. Cross.

Q. What did her husband say to you at that time? A. Oh, he said he would be over, and he came over in the afternoon, around four or five o'clock.

Mr. Berkowitz: That is all.

CROSS EXAMINATION BY MR. OCKFORD:

Q. What time did you telephone Mr. Michels about there being an operation? A. About eight thirty—after the operation was over. 10

Q. Where did you call him? A. At Vesey Street, in New York.

Q. At his place of business? A. Yes.

Q. You don't know what time he left the house that morning to go to work? A. No, I do not.

Q. You don't know what time your daughter came to your house that night? A. No, I do not, personally, no. 20

Q. You called Doctor Parham? A. Yes.

Q. Is he nearby? A. He lives in the town. I don't know his address.

Q. Nearby? A. Nearby.

Q. You didn't have to pay him, did you? A. No.

Q. You know that Mr. Michels paid Dr. Parham, don't you? A. Why, yes, certainly. Nobody pays mine—only myself. 30

Q. Mr. Michels paid Dr. Parham? A. Yes, I knew.

Q. You don't owe any money to this Dr. Conrad, do you? A. Well, Dr. Conrad wrote a letter and told me that I owed that money.

Q. That doesn't make you owe him—

The Master: (Interrupting) No—that is argument. 40

Frank Taylor. Called by Petitioner. Cross.

Q. Do you owe him any money? A. No, I don't think I do.

Q. How long have you lived in Williams Street—number 317? A. Five years.

Q. When did your daughter move to 234 Williams Avenue, if you know? A. I don't know the date.

10 Q. How long did she live there altogether? Do you know? A. I don't know anything about it—about the dates.

Q. Do you know when she moved from there? A. No, I don't know the date, no.

Q. Did you visit your daughter at Bramhall Avenue? A. I did, yes.

Q. When? A. Oh, I don't recall any date that I visited her now. I visited her—that is all.

20 Q. This year? A. Yes.

Q. Last year? A. Yes.

Q. Have you ever been at Bramhall Avenue when Mr. Michels was there? A. I was, yes.

Q. You never stayed all night there? A. I did, yes.

Q. When your wife was there, too? A. Yes.

Q. Where did you sleep when you were there?

A. Mr. Michels and me—we slept on the floor.

30 Q. All right; and your wife and daughter slept where? A. Slept in the bed.

Q. Where did the boy sleep? A. On the tete.

Q. How many times altogether did you spend the night there? A. It might be once or twice—that is all. It might be twice—but I think only once.

Q. Can you give us approximately the date of the last time you visited Bramhall Avenue when Mr. Michels was there and you stayed all night? A. No, I don't know the date. I never keep any dates of visits.

40

Arnold Michels. Called by Defendant. Direct.

Q. I don't mean the exact date. Was it this year? A. No, I think it was last year, if I am not mistaken.

Q. It was in the fall of last year, around Election Day? A. I don't know whether it was the fall or spring, or what it was. That I don't know.

Q. Don't you remember whether it was Election Day? A. Not the exact date, no. 10

Mr. Berkowitz: That is our case.

DEFENDANT'S CASE.

ARNOLD MICHELS, the defendant, having been first duly sworn, testified as follows: 20

DIRECT EXAMINATION BY MR. OCKFORD:

Q. Mr. Michels, you remember being served with the papers in this suit? A. Yes.

Q. Do you know the date? A. Friday, September 6th, 1929.

Q. Where were you at the time? A. At number 470 Bramhall Avenue.

Q. Whereabouts in 470 Bramhall Avenue? A. 30 There were only two rooms; in the living room.

Q. The living room of which apartment? A. Apartment 2-C.

Q. Do you remember the time of day that it took place? A. Approximately between 7:15 and 7:30.

Q. A. M. or P. M.? A. P. M.

Q. Who was there besides you? A. The wife and Mrs. Jansen. That is all I remember; and the man that served the thing—the provess server, or whoever he is. 40

Arnold Michels. Called by Defendant. Direct.

Q. Where was the boy? A. The boy was there.

Q. How long had you been home at that time?

A. About five minutes.

Q. Had you been in the apartment that morning? A. Yes.

Q. Do you remember what time you left? A. About 7:30.

10 Q. You stayed there all night? A. Certainly.

Q. The day before had you been there? A. Yes.

Q. And the day before that? A. Yes.

BY THE MASTER:

Q. How long had you been there before? A. I should judge since August 15th.

Q. When did you first come to Bramhall Avenue? A. We were living at Hasbrouck Heights—

20 Q. (interrupting) When did you go to Bramhall Avenue first,—yourself? A. I, alone?

Q. I suppose you went alone. A. I have never gone alone. She brought me there.

Q. When did you go there with her? A. August 15th.

Q. And when did they serve that paper on you? A. September 6th.

30 BY MR. OCKFORD:

Q. Between August 15th and September 6th, 1929, where did you live? A. At 470 Bramhall Avenue.

Q. Who did you live with there? A. With my wife and boy.

Q. Did you live at any other place during that time? A. No. How could I, when I lived there.

Arnold Michels. Called by Defendant. Direct.

BY THE MASTER:

Q. Just answer the question. A. No.

BY MR. OCKFORD:

Q. During that time, were you working? A. Certainly. 10

Q. Where did you work? A. 47 Vesey Street.

Q. What hours did you work? A. From eight in the morning until half past six at night.

Q. How did you come to go to number 470 Bramhall Avenue on August 15th? A. Through a trick—

Q. (interrupting) No—how did you come to go there? A. She called me on the 'phone.

Q. Who? A. The wife.

Q. Where were you? A. At work. 20

Q. She called you up and what did she say? A. She said I should meet her in Jersey City.

Q. Where? A. She didn't mention any special place.

Q. Did you? A. I said, "No, I have got a commutation ticket to Hasbrouck Heights, and I live in Hasbrouck Heights and I am going there."

The Master: Did you meet her? 30

The Witness: She says, "Meet me at my mother's", and I met her at her mother's at number 317 Williams Avenue, Hasbrouck Heights.

Q. What time? A. About seven-fifteen.

Q. You met her at her mother's? A. Yes.

Q. Where did you go after you met her? A. She says, "I got an apartment"—and I says, "Yes? 40

Arnold Michels. Called by Defendant. Direct.

That is good." She says, "Do you want to go down?" and I says, "No—I am making out all right"—and she says, "You better come down with me"—and I says, "I will call up my lawyer first," and I called up my lawyer and he was not at home, and I says, "I will take a chance anyway", and I went with her, and we had supper at the
 10 corner of New York Avenue and Garfield Street.

Q. What town? A. Jersey City.

Q. How did you go from Hasbrouck Heights to Jersey City? A. In an automobile.

Q. Whose? A. Our automobile.

Q. And what happened after you had supper? A. We went to number 470 Bramhall Avenue.

Q. What time did you get there? A. About—after we had supper. It was half past nine.

20 Q. Where was the boy? A. The boy was with us.

Q. When you came to number 470 Bramhall Avenue, what did you do? A. Read the paper.

Q. When you came to the apartment, how did you get in the apartment house? A. I went right in.

Q. How did you get in? A. She had the key.

Q. And you went inside? A. Yes.

Q. What happened then? A. I sat and read the paper and had a smoke.

30 Q. Were you sober? A. Yes, certainly.

Q. After these papers were served, did you continue to stay? A. After the papers were served, I walked right out.

Q. When did you go back, if you went back at any time? A. On Monday, October 7th.

The Master: From September 6th to October 7th you were away?

40 The Witness: Right.

Arnold Michels. Called by Defendant. Direct.

Q. Between August 15th, 1929, and September 6th, 1929, where, in the apartment, did you sleep at night? A. I slept in the bed, except on occasions when we had company.

Q. Then where did you sleep? A. On a couch, and one time when Mr. Taylor was there, we slept on the floor.

Q. Where did your wife sleep during that period of time? A. In the bed. 10

Q. With whom? A. With the boy and me.

Q. Between August 15th, 1929, and September 6th, 1929, did you and your wife sexually cohabit? A. Certainly.

Q. How did you come to go back on October 7th? Was that the result of any talk or communication, or did you just walk in, or how did you get there? A. I walked right in; rang the bell. 20

Q. Do you remember what time of the day or night that was? A. I should judge about a quarter to ten. It was a Monday night.

Q. You rang the bell? A. I rang the bell and went right in.

Q. Who was there? A. The wife and the boy.

Q. Anybody else? A. Nobody else.

Q. Did you stay there all night? A. Certainly.

Q. For what period of time after that did you remain there? A. Until around the 20th of January—the 15th or 20th of January. 30

Q. Of what year? A. This year.

Q. Between October 7th and January 15th or January 20th, you said— A. (interrupting) It was shortly before the first of February.

Q. Did you live anywhere else except at number 470 Bramhall Avenue? A. No.

Q. Did you go to work every day? A. I haven't missed a day. I never lost a day. 40

Arnold Michels. Called by Defendant. Direct.

Q. Did you go there every night? A. Certainly.

Q. What were the sleeping arrangements between those dates? A. What do you mean by that?

Q. Where did you sleep? A. In the bed.

Q. Where did your wife sleep? A. In the bed.

Q. The same bed? A. Yes; there was only one bed in there.

10 Q. Where did the boy sleep? A. In the bed.

Q. Did you have company at any time? A. Sometimes her mother would come there.

Q. On these occasions, where did you sleep? A. On the couch.

Q. Between October 7th, 1929, and January 15th, 1930, did you sexually cohabit with your wife? A. Yes.

20 Q. Prior to August 15th, 1929, and in the month of August, 1929, where did you live? A. 234 Williams Avenue. I lived there alone, between about the first and the 15th.

Q. Did your wife live with you at the house at number 234 Williams Avenue at any time in the month of August, 1929? A. No. I think she packed up shortly before the first of August.

Q. She lived there with you in July, 1929? A. Yes.

30 Q. Tell us what happened at the time you say she packed up and moved. Tell us just what you had to do with that, if anything. A. I had nothing to do with it. I went to work Monday morning, and when I came home Monday night, everything was out.

Q. What do you mean by everything being out? A. The whole works—furniture and everything. She didn't even leave me a bed.

garage and went upstairs in the attic, and I took

40 Q. What did you do? A. I went around to the

Arnold Michels. Called by Defendant. Direct.

—what do you call it—a comforter,—and I just stayed there by myself and wasn't bothering about anybody. I didn't look for her or care or worry about her.

Q. Before that day—before you came home, had your wife said anything about moving? A. No.

Q. Had you said anything about moving? A. No.

10

Q. Did you make any effort to find out where your wife had moved to? A. No.

Q. Did you hear from your wife directly or indirectly between that time and the telephone talk on or about August 15th? A. No, I didn't know where she was.

Q. Did you go to see her mother? A. No.

Q. Did her mother see you? A. She may have seen me passing the house.

20

Q. Did I ask you to tell us when it was that you moved to 234 Williams Avenue? A. It was in 1924 or 1925; around August.

Q. That house was owned by whom? A. When we got it, or now?

Q. When you got it. A. It was owned by a Mr. Cavanaugh.

Q. When you first went there, did you rent it or own it? A. Bought it.

Q. Who owned the title to that house? A. It was joint.

30

Q. You and your wife? A. Yes; jointly.

Q. You still own it, don't you? A. Yes; jointly.

Q. And you lived there from 1924, to the summer of 1929? A. Yes.

Q. What was the occasion of your leaving the Bramhall Avenue place in January, 1930? A. Well, I went to the house and the wife was there, and she went downstairs and said, "I forgot something

40

Arnold Michels. Called by Defendant. Direct.

in the car", and she brought up this process server and he handed me the paper, and I looked it over, and I says, "How long have I got to answer this?" and he said, "Twenty days", and I said, "K. O." and he left.

10 Q. I am asking you about the occasion of January, 1929. You say you didn't live there after the middle of January, 1930. What was the occasion of your leaving? A. It was a case of compulsory getting out.

Q. Tell us what, if anything, was said by you or by Mrs. Michels at the time relative to your leaving? A. Nothing. She just told me to get out, and I didn't want no argument, because a man ain't got no chance, and I walked out.

20 Q. Was the gas, the electricity, on or off at that time? A. It was off.

Q. How long had it been off? A. A couple of days.

Q. How long was it off altogether? A. It was off a couple of days, when I was there. Probably it was off four days.

30 Q. Why was it cut off? A. Because she took the stuff that was in our name and went to the gas company and gave them a fraudulent name and moved the stuff without notifying the gas company, and they wanted to know who was responsible.

Q. Now, the gas was off for a couple of days in what month? A. January.

Q. Was it off in December? A. No.

Q. While it was off, where was your wife? A. I don't know.

Q. Was she at home at number 470 Bramhall Avenue? A. She was not.

Q. Were you there? A. Yes.

40 Q. Where was the boy? A. Out with her.

Arnold Michels. Called by Defendant. Direct.

- Q. Who had the gas turned on? A. I did.
- Q. How did you get it turned on? A. Called them up and told them to turn it on.
- Q. Who? A. The Public Service.
- Q. Did you pay something to get it turned on? A. I paid \$15.34.
- Q. When you went to Bramhall Avenue in August did you pay any deposit for the gas and electricity? A. When I went there? 10
- Q. To Bramhall Avenue, in August, 1929,—did you have to pay a deposit for gas and electricity? A. The deposit was paid under an assumed name.
- Q. Did you pay anything? A. No; I didn't move there.
- Q. After you went there, did you pay any gas and electric bills? A. No.
- Q. Who did? A. I guess the wife did. 20
- Q. Where did she get the money from? A. From me.
- Q. When this gas and electricity was turned off, did you know that it was going to be turned off? A. They kept bothering me and wanted to know where the Kelvinator was; that we had no right to move it.
- Q. This Kelvinator had been purchased by whom? A. By us. 30
- Q. From whom? A. The Public Service.
- Q. Was it moved to Bramhall Avenue? A. Yes.
- Q. Had it been paid for in January, 1930? A. No.
- Q. Did you have to pay the balance in order to get the gas and electricity? A. I told them to take it back.
- Q. Did they take it back? A. Right.
- Q. Did you have to pay any money? A. \$15.34. 40

Arnold Michels. Called by Defendant. Direct.

Q. And after that was the gas and electricity turned on? A. Yes.

Q. How long after that did your wife show up? A. After I paid it, it was turned on the same day.

Q. How long after that did your wife come to the apartment? A. I don't know. It wasn't long.

10 Q. Where did you go to? A. I went to a hotel.

Q. How do you know whether she came back there or not? Were you ever there again with her? A. No.

Q. The next time you met her was where? A. I didn't meet her. The next time I met her was at that lawyer's office.

Q. What lawyer? A. Her lawyer.

Q. Which one? A. This one here.

20 Q. Where was the office? A. Arcade Building; the Spingarn Arcade.

BY THE MASTER:

Q. What is his name? A. Berkowitz.

BY MR. OCKFORD:

30 Q. How long after you moved away from Bramhall Avenue was it that you met her at Mr. Berkowitz's office? A. A few days.

Q. You didn't go back to the Bramhall Avenue apartment any time after you left in January? A. I haven't gone to any apartments since.

Q. When you went to Mr. Berkowitz's office, was your wife there? A. Yes.

Q. Who else? A. Mr. Jentz.

BY THE MASTER:

40 Q. Whom did Mr. Jentz represent? A. Me.

Arnold Michels. Called by Defendant. Direct.

BY MR. OCKFORD:

Q. Tell us what took place on that occasion,— what was said by the lawyers or by you or by your wife. Did you say anything? A. They did all the talking.

Q. The lawyers did all the talking? A. Right.

Q. Did Mrs. Michels say anything? A. I didn't 10
take much notice.

Q. As the result of the talk there, what, if anything, was done as to providing for the support of your wife and child? A. I agreed to give her \$31 a week.

Q. Did you agree to give her anything else? A. No.

Q. Did you pay any additional money? A. I have had to pay for the furniture, five dollars a 20
week on that.

Q. On account of furniture held by whom? A. By her. I didn't have any furniture.

BY THE MASTER:

Q. You mean furniture that had not been paid for? A. Yes.

BY MR. OCKFORD:

Q. \$31 a week. Have you paid that since? A. Yes.

Q. Have you paid it down to the present time? A. Yes.

BY THE MASTER:

Q. When you bought the Kelvinator, you did not pay for that? A. No. 40

Arnold Michels. Called by Defendant. Direct.

Q. You bought it on time? A. Yes.

Q. How long had the furniture been bought?
How long ago? A. I don't remember.

Q. How long had you been paying on the furniture? How long did it take? A. About a year and a half.

10 BY MR. OCKFORD:

Q. Was the furniture you were making the five dollar payments on after January 1930,—was that the furniture you had at Hasbrouck Heights? A. Yes.

Q. Do you remember what articles of furniture? A. We had plenty of furniture, and we bought some more; a dresser and a bed.

20 Q. Has your wife an automobile? A. Yes.

Q. What kind of a car is that? A. Diana straight eight.

Q. Is it paid for? A. Yes.

Q. Who paid for it? A. I paid most of it. Her father paid the rest.

Q. Has your wife still got the car? A. To the best of my knowledge, yes.

Q. Have you seen your wife in the car? A. I have seen her occasionally.

30

The Master: How does that have any bearing?

Mr. Ockford: To contradict her statement that she was living without any support.

Q. From the time in January when you met your wife in the lawyer's office, down to the present time, you have paid \$31 a week. Do you remember how much you have paid altogether on this additional five dollars a week? A. \$135.

40

Arnold Michels. Called by Defendant. Direct.

Q. Are you in business for yourself, or do you work? A. I work.

Q. Who do you work for? A. My father—the corporation.

Q. Do you own any stock in the corporation? A. No.

Q. Did you ever own any stock in the corporation? A. I did. 10

Q. How long ago? A. Five years ago.

Q. What salary do you get? A. \$65.

Q. A week? A. A week.

Q. How long have you been getting \$65 a week? A. About four years.

Q. Did you ever make any more than that? A. No, I made less.

BY THE MASTER:

Q. Did you ever get any bonuses in the business? A. No. 20

Q. Any Christmas presents? A. No.

Q. Does your salary appear on the books of the company at the amount of \$65 a week? A. Right.

BY MR. OCKFORD:

Q. What did you tell your wife at any time as to how much you were making? A. She knew. 30

Q. What did you tell her? A. \$65.

Q. Did you ever tell her that you made \$125 a week? A. No, sir.

Q. Between the middle of August 1929 and the middle of January 1930, did you give your wife any money to run the house or for any purpose? A. Certainly.

Q. How much did you give her as a regular amount? A. An average of about \$25 weekly. 40

Arnold Michels. Called by Defendant. Direct.

Q. Out of that what did she have to pay? A. Gas and electricity. I paid the rent.

Q. Did she pay the butcher or the grocer? A. I brought all the stuff home. She didn't have to buy anything.

BY THE MASTER:

10

Q. Did you spend your whole \$65 on the house, directly and indirectly? A. Well, running the place—

Q. (Interrupting) You consumed your income in supporting the house and yourself and your own food and clothes? A. Yes.

BY MR. OCKFORD:

20

Q. When did you commence paying rent at Bramhall Avenue? A. I paid the first rent on November 1st, 1929.

Q. How did you pay it? Who to? A. To that Mrs.—I don't know her name; to the janitress.

Q. Who testified here this morning? A. Yes.

Q. Cash or check? A. Check.

Q. From that time on, who paid the rent at the Bramhall place? A. From that time on until January, I did.

30

Q. Did you pay the January rent? A. I paid the January—I only paid three rents there; November, December, and January.

Q. Now, in July 1929, when you were still living at Williams Avenue—number 234 Williams Avenue, Hasbrouck Heights, did you give any money to your wife for any purpose? A. I always gave her money.

40

Q. How much? A. About \$25 a week. I had to pay the building and loan.

Arnold Michels. Called by Defendant. Direct.

Q. When did you get paid? A. On Saturdays.

Q. How were you paid? A. Money.

Q. How did you get your money? A. Cash money.

Q. Does everybody working there— A. (Interrupting) Everybody gets paid in cash.

Q. How many people worked there altogether? A. About seventeen. 10

Q. And when did you give your wife the \$25? A. Late Saturday night, or Sunday morning.

Q. Was that true in July, 1929? A. That is true in July. In fact, the morning she moved away I gave her money.

Q. The morning she moved away how much did you give her? A. \$25.

Q. What day did you say that was? A. It was on a Monday, I know. 20

Q. Had you been home the day before? A. Certainly.

Q. Do you remember anything that occurred on that Sunday before the Monday morning she moved out? A. No, I was surprised.

Q. Was there any trouble between you and her on the previous day? A. No; she just moved out.

Q. You were surprised. Had there been any trouble between you over money matters? A. No, nothing special. 30

Q. Was there an unpaid butcher's bill that caused an argument at that time? A. No.

Q. Who paid the butcher at Hasbrouck Heights? A. I did.

Q. Were there any unpaid bills at that time that caused arguments between you and your wife? A. Not that I know of. 40

Arnold Michels. Called by Defendant. Direct.

BY THE MASTER:

Q. What is the name of the business that you work for? A. Barthold Michels Son Co.

Q. Where is the address? A. 47 Vesey Street.

Q. The business is located outside of New Jersey? A. Yes; we have customers in Jersey.

10 Q. But the business itself is located in New York City? A. Yes.

BY MR. OCKFORD:

Q. Where is the business located in New York, besides Vesey Street? A. There is a branch in Washington market.

Q. How long has that business been in existence? A. Since 1856.

20 Q. It has been in the family ever since? A. Ever since 1856.

Q. Now, in the month of July, 1929, or shortly before, was there any talk between you and your wife at the time about separating? A. Not that I know of.

Q. Did you and she go out together to any place? A. Certainly.

Q. Such as what? A. Moving pictures.

30 Q. Go on. A. And restaurants.

Q. Any other places? Any social affairs? A. No.

Q. Did you go to visit anybody? A. We went to her mother's.

Q. And her mother came to see her? A. Right.

Q. Was there anything about the living situation between you and your wife at Hasbrouck Heights moving out that was out of the ordinary? A. Well, in the summer of 1929 prior to her packing up and

40

Arnold Michels. Called by Defendant. Direct.

there probably was; but I didn't realize it at the time.

Q. Did your wife make any complaint to you about your conduct? Did she say anything to you, or complain about anything you did? A. In reference to what?

Q. Anything. A. No.

Q. Did your mother-in-law complain? A. No, I always got along pretty good with my mother-in-law. 10

Q. Did the—there was some trouble, was there, in February 1928? A. Yes.

Q. That resulted in that police court affair? A. Yes.

Q. And there had been some trouble the previous November,—1927—had there not? A. Not that I know. 20

Q. Over some money. There was some argument over sixty dollars that you were looking for? A. That is all noise, when I heard it today.

Q. There was a police court affair in 1928? A. Probably.

Q. After that, did you ever go to her mother's? A. That was on a Friday. I think I came home Saturday and everything was all right, and Sunday everything was all right, and then Monday night I came home and everything was packed up. She had sent it to the storage and she left me a bed and a glass. 30

Q. Did you continue to stay at number 234 Williams Avenue? A. I stayed there.

Q. When, if at all, did she come back there? A. She came back on Palm Sunday, of her own free will.

Q. She came back? A. Yes.

Q. Did you ask her to come back? A. No. 40

Arnold Michels. Called by Defendant. Direct.

BY THE MASTER:

Q. Had you been there at the rear window talking to her at any time? A. Not prior to that. She came to me first.

BY MR. OCKFORD:

10

Q. That was when you went to the mother's house that you talked through the window? A. The day I took the boy to the movies,—on a Sunday. I think it was Easter Sunday.

Q. Around that time? A. Yes. After the Sunday she was up there.

Q. The Sunday after the Sunday she came back? A. Yes.

20

Q. What about the furniture? A. The furniture was in storage.

Q. What happened to it when she came back? A. It was brought back again.

Q. Who brought it back? A. The name was Holman.

Q. You mean the storage man? A. Yes.

Q. From that time on you and your wife continued to live there at Williams Avenue until about the first of August 1929. Is that right? A. Yes.

30

Q. And between the time she came back—you say she came back on Palm Sunday? A. Palm Sunday.

Q. From that time on until the first of August 1929 did you have any fist fights with her? A. No.

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

Q. Did she ever strike you? A. She tried to, but I just ducked.

40

Q. What if any complaint did your wife make as criticising your conduct? What did you have argu-

Arnold Michels. Called by Defendant. Direct.

ments about? A. I never had many arguments with her. I used to read. I didn't bother with her.

Q. What did she say to you when she talked to you? Did she ever complain about anything you did or did not do? A. Not that I know of.

Q. Did you, on the occasion that you told us about in February, 1928,—the time the police were called and you were arrested,—did you hit your wife on that occasion? A. No. 10

Q. Just tell us briefly, and don't comment on it—just tell us what happened just prior to the police being called in. A. She picked up an iron elephant and she wanted to hit me on the head with it, and I put up my hand to protect myself.

Q. Who picked it up? A. My wife.

Q. Was her mother there? A. She was lying on the couch. 20

BY THE MASTER:

Q. Did your wife go to the bathroom and lock herself in? A. No,—she just picked up the telephone, and I walked out.

BY MR. OCKFORD:

Q. Was there an argument between you before she tried to strike you? A. I came home and said that "I brought some meat home and let us have supper." She was monkeying around the radio and she picked an argument and got excited, and she picked up the elephant and wanted to hit me with it, and I put up my hand and pushed her away. 30

Q. What did her mother say? A. She said enough, and I walked away and went to Hackensack, and I called up the mother, and said "How is 40

Arnold Michels. Called by Defendant. Direct.

everything?" and she says, "Evelyn went to the police station", and she said, "You had better get out of town. He is chasing after you. You had better come to Jersey City." My mother-in-law was pretty well on the level at that time.

Q. Who went out first? A. I did. She went up-stairs to telephone.

10 Q. Who did? A. The Missis.

Q. Did you know who she went to telephone to? A. I heard her. She asked for the police.

Q. And then did you say anything to her before you went out? A. I said, "I am going out. I don't want the neighbors to be bothered with us."

Q. Where did you call up from? A. Hackensack.

20 Q. Whereabouts in Hackensack? A. Main Street.

Q. What kind of a place? A. A candy store.

Q. And you called your house? A. Yes.

Q. You had a 'phone at that time? A. Yes.

Q. And you talked to the mother? A. Yes.

Q. Did you talk to your wife? A. The wife was out.

Q. Did you go back home after the telephone call? A. No.

30 Q. Where did you go? A. To a club, and played cards.

Q. Did you go back the next day? A. No, I was locked up that night.

Q. And when did you get out? A. Next morning.

Q. Did you go back home that night? A. I went to work, and I went back home at night.

Q. You were home at night? A. Yes.

40 Q. Was your wife there? A. Yes, and the mother-in-law was there, and the father-in-law was there.

Arnold Michels. Called by Defendant. Direct.

Q. You stayed there? A. I stayed there.

Q. From that time on? A. I stayed from that time on, yes.

Q. Did your wife have any bruises on her face at that time? A. No.

Q. Was there a hearing in the Police Court? A. There was a hearing that Wednesday.

Q. Before whom? A. Judge Wallace Leyden. 10

Q. Were you ever in a police court before or since? A. No, that was my first experience.

Q. And since then? A. Well, we were back there again on November 13th.

Q. What year? A. 1929; on November 20th, 1929, the same case.

Q. Was it finally disposed of in November, 1929? A. Yes.

Q. At the time you and your wife were living together at Bramhall Avenue? A. Yes. 20

Q. Do you know what the purpose of bringing the case up in November, 1929, was? A. Why, it was brought up again?

Q. Yes. A. I don't know. It always was a mystery to me.

Q. Did you get bail in connection with the arrest? A. Yes.

Q. Do you know why it came up in November? A. I have no idea. 30

Q. You don't really know? A. Well, it seems to me that the boy had done something, and they wanted thirty-three off of me—

Q. (interrupting) At any rate, that is a fact,—that it was disposed of in November, 1929? A. Yes.

Q. Was your wife in court that day? A. Yes.

Q. And you went to the lawyer's—I am talking about November 20th, 1929. A. November 20th, 1929—right. 40

Arnold Michels. Called by Defendant. Direct.

Q. Your wife was there? A. Certainly.

Q. Did you go together, or did you go separately? A. I went up by train, and they went by car.

Q. How did you come back? A. By car.

Q. Together? A. Together.

Q. To Bramhall Avenue? A. Yes.

Q. Now, in the winter before the occasion that
10 the police were called up in February, 1928, was there any argument between you and your wife about sixty dollars that you gave her and wanted to take away again? A. No—that is all brand new. I never heard of it until today.

Q. Is it true that you slapped her face and twisted her arm and took the money away from her at three or four o'clock in the morning? Is that true? A. Certainly not.

Q. Now, at the time you say your wife tried to
20 hit you with this iron elephant and went up and called the police, were you sober or drunk? A. I was sober. You can't play cards if you are drunk.

Q. Did you go home to your home in Hasbrouck Heights when you were living there with your wife at any time in the year 1929 when you were drunk? A. No.

Q. Did you go home regularly at the same time? A. I always took the 6:52 train.

Q. What time did you leave your place of business? A. At half past six.

Q. And got the 6:52 train where? A. The Erie.

Q. What time did you get home? A. At seven-sixteen.

Q. Did you drink any strong liquor on the way to your home? A. No.

Q. Did you have whisky in the house or bring strong liquor in? Did you carry it on the hip? A.
40 No, sir.

Arnold Michels. Called by Defendant. Direct.

BY THE MASTER:

Q. Don't you drink at all, Mr. Michels? A. No, I don't drink. I have drank. I never drink to excess.

Q. You mean that you— A. (interrupting) I say that I have never drunk to excess. I take a drink, but it stands logically that a man who—

Q. (interrupting) You never drink at all? A. Not lately. 10

Q. Are you a teetotaler? A. What do you mean by a teetotaler?

Q. Don't you know what a teetotaler is? A. No.

(Discussion off the record.)

BY MR. OCKFORD:

Q. You do drink strong liquor at times? A. I have. 20

The Master: Somebody is committing perjury in this case. Here is a man who says that he does not drink at all. Now, tell the truth about it. Your lawyer is asking you about it, and I also am asking you.

Q. I am talking about the period you were living at 234 Williams Avenue, prior to August, 1929. You went home on the 6:52? A. Yes. 30

Q. What train did you take in the morning? A. The 7:13.

Q. Now, during that period of time that you commuted to Hasbrouck Heights, tell us: Did you drink at all? A. Not before I came home.

Q. Did you drink when you got home? A. I would go home and there would be nobody at home, and I would go out. 40

Arnold Michels. Called by Defendant. Direct.

The Master: Your lawyer asked you whether you drank after you got home. Tell us the truth.

The Witness: Yes, I drank.

Q. I want to know when and where. You didn't drink until after you got home? A. Right.

10 Q. Did you drink while you were at home? A. No.

Q. You went out and drank? A. Right.

Q. Where did you go? A. No special place.

Q. In the same town, or where? A. Either Hackensack, Garfield, or Passaic.

Q. Did you do that frequently? A. Maybe once a week.

20 Q. Did you have a special night for doing it? A. No special night.

Q. You say you did it—would you say you did that more than once a week? A. No; maybe Friday, or Saturday.

The Master: Mr. Berkowitz, have you got anybody that can prove he was drinking continually, besides the wife and her mother, and drinking to excess?

30 Mr. Berkowitz: Yes, your Honor; Mrs. Hamilton.

The Master: You understand, Mr. Michels, that you are under oath before this Court, and that I have the power to send you to jail if you commit perjury, and you are being asked about your drinking habits.

Mr. Ockford: And I am begging you to tell the entire truth, whether it hurts or not.

40 Q. While you lived at 234 Williams Avenue, you went straight home from work? A. Right.

Arnold Michels. Called by Defendant. Direct.

Q. And when you got home on occasions of how many times a week would you drink? A. Once or twice.

Q. You would go to Hackensack, Passaic or Garfield, would you? A. Either one; no special place.

Q. And you would drink strong liquor? A. Yes.

Q. And you would come home then? A. Yes.

Q. What time would you get home, on the average, when you went out? A. Around half past ten. I had to get up and catch the seven o'clock train. 10

Q. And on these occasions when you got back to the house at half past ten, or whatever time it was, do you know what your condition was from drink? A. Certainly.

Q. What was it? A. I was O. K.

Q. Could you walk straight? A. Certainly. 20

BY THE MASTER:

Q. Were you ever lying in the hall at the Bramhall Avenue apartment house? A. I was, once.

Q. Was that from liquor? A. No, I don't think so.

Q. What was it? A. I got to napping. I didn't have no key, and I was sitting on the stoop waiting, and I fell asleep. 30

Q. On the floor? A. On the stoop.

BY MR. OCKFORD:

Q. What stoop? A. On a stoop—on the stairs—on a landing, or whatever you call it.

Q. Now, while you are on that, let us cover that. What time did you get home on that occasion? A. That was on a Sunday. 40

Arnold Michels. Called by Defendant. Direct.

Q. Do you remember the month—about how long before you left there, do you know? A. I do not remember.

Q. Was it while you were still living there? A. While we were living at Bramhall Avenue.

Q. You and she were out at her mother's? A. Yes.

10 Q. What time did you get back? A. I should say around ten o'clock.

Q. And then what did you do? A. I went around and got a drink. I went and then I came back.

Q. Where did you go? A. Around the corner.

Q. And where did your wife go, if you know? A. I don't know.

Q. Did you have a drink? A. Yes, sir, I had a couple.

20 Q. Then what did you do? A. Then I came back and I didn't want to bother the superintendent to come up with the key, and so I was in the hall waiting, and while I was in the hall, I was sitting there on the stairs, and I must have fell asleep.

Q. Were you outside or inside? A. I was inside the building.

Q. On the stairs coming from where? A. From the second to the third floor.

30 Q. You were at the second flight? A. I rang the bell and nobody came.

Q. And you sat on the stairs? A. Yes.

Q. What else happened? A. The next thing I remember was that I had a cut.

Q. Where? A. Around the eye—and there was a doctor there and a cop, and the wife says to the doctor, "Take him along"—and he says, "No; there is nothing the matter with him. He has just got a little bruise—a little alcoholism.

40 Q. Where did you go? A. I stayed there.

Arnold Michels. Called by Defendant. Direct.

Q. Do you know where the doctor came from?

A. From the Jersey City Hospital.

Q. Did you go in your apartment after that? A. Yes.

Q. Did you stay there that night? A. Yes.

Q. What was your condition the next morning?

A. O. K. I went right to work.

Q. And about the cut; did the doctor do anything to you? A. No. 10

Q. What did he say about it? A. He said it was just a little cut.

Q. Do you remember how many drinks you had that night? A. Two or three.

Q. Did that happen on any other occasion? A. No.

Q. While you were at Bramhall Avenue? A. No.

Q. While you were living at Bramhall Avenue, did you drink on two nights a week, or one night a week, the way you did at Hasbrouck Heights? A. No. I used to have a couple of drinks and then go home. 20

Q. Did you ever have to be taken home? A. Never.

Q. You got home on your feet? A. Positively.

Q. Do you know of any occasion when you were too drunk to stand up? A. No, sir.

Q. Do you know of any occasion when you were so drunk that you have fallen? A. No. 30

Q. Do you remember any occasion when you talked to your wife through the door about seeing your boy and said that you didn't want to see her—or words to that effect? A. At that time we made an arrangement, and the arrangement was that I was to see the boy every Sunday.

Q. Was there such a talk through the door? A. As to what? 40

Arnold Michels. Called by Defendant. Direct.

Q. About wanting to see the boy and not her?
A. No.

Q. When was that? When you were living at Bramhall Avenue, or after? A. After I left Bramhall Avenue.

Q. How long after? A. Maybe a week or a month.

Q. You were drunk at that time? A. No.

10 Q. Did you call your wife names? A. I may have.

Q. Did you get in that time? A. Get in where?

Q. Did you get into the apartment on that occasion? A. I went in the hall, but not in her apartment.

Q. And you spoke to her through the door? A. Yes.

20 Q. You did call her names? A. Certainly. I had reason to.

Q. Did you see the boy on that occasion? A. No.

Q. What arrangement, if any, did you have with your wife about seeing the boy? A. I was supposed to see him every Sunday.

Q. That was arranged in the lawyer's office? A. At that time that that was made, yes; and I was supposed to see him every two or three days.

Q. Where? A. She was to bring him to the Hotel Plaza.

30 Q. Was this occurrence on a Sunday, that you called your wife names through the door? A. Yes; she was supposed to bring him down and she fell down on it and didn't show up.

Q. On that occasion, when you called her names? A. Yes.

Q. Did you go to the Hotel Plaza to meet the boy that day? A. Yes.

Q. Did you meet him? A. No.

Arnold Michels. Called by Defendant. Direct.

Q. Where did you go? A. I went down to find out what was the matter.

Q. Did you know what time of day that was? A. I should judge around seven or eight o'clock.

Q. Did you see your boy on any occasions from the end of last January down to the present time?

A. I seen him around Easter time.

Q. Have you seen your wife during the last four or five months at any time? A. Yes. 10

Q. Did you go to the theatre and moving pictures with your wife and boy? A. Yes.

Q. On how many occasions? A. Twice.

Q. Were you drunk on those occasions? A. No.

Q. Did you stay through the show? A. Certainly.

Q. Where did you go after the show was out? A. We went up and had a beer. 20

Q. Who is "we"? A. The wife and I.

Q. Where? A. Jackson Avenue.

Q. Does your wife drink? A. I put a drink in a paper bag and brought it out.

Q. When you were out together, when you would go places together, did she drink? A. Certainly.

Q. So did you? A. Certainly. I couldn't out-drink her.

Q. Did you ever see your mother-in-law take a drink? A. No. 30

Q. Did you ever see your wife take a drink? A. Plenty.

Q. What does she drink, usually, that you have seen her actually drink? A. Highballs.

Q. Do you drink highballs too? A. I drink mine straight.

Q. Now, since the end of January, 1930, how many times, would you say, altogether, that you 40

Arnold Michels. Called by Defendant. Direct.

have seen your wife and been to any place with her, with or without the boy? A. Since January?

Q. Since the time you made the arrangement in the lawyer's office about the \$31. A. I have never been out with her alone. Only with the boy.

Q. On how many occasions? A. Twice.

10 Q. When you send her the money, how do you do that? A. Mail it to her by check, at 3719 Boulevard.

Q. Did you send her any checks to Bramhall Avenue? You left before your wife moved? A. No, I used to mail it to Mr. Berkowitz.

Q. Now, in May, 1926, your wife was taken to Hackensack to the hospital? A. I heard of that, yes.

20 Q. Were you at home at the time? A. Certainly I was home.

Q. What happened that night? A. I don't know. She got up in the middle of the night and went out.

Q. Did she say where she was going? A. No, she never told me.

Q. What did she say? A. She didn't say nothing. She just walked right out. I didn't know anything about it. I was sleeping.

30 Q. Were you awake when she left the house? A. No.

Q. When did you first hear that she had been taken sick and taken to the hospital? A. I didn't know nothing about it; I got up in the morning and I seen the kid was alone, and I got the kid dressed and I sent the kid to his grandmother's and went to work. I didn't worry about her at all.

Then I got a telephone call, and—

40 Q. (Interrupting) Was that anything unusual? A. Nothing specially.

Arnold Michels. Called by Defendant. Direct.

Q. Did you go to the hospital to see your wife?

A. I went to the hospital. I called up the hospital and they said that I could not see her until about two or three o'clock.

Q. Did you go later? A. Yes, the same day.

Q. Did you pay the doctor's bill? A. I paid the hospital bills, and the doctor's bill was eighty dollars and some odd cents. You have the check. 10

Q. Did you have any idea where your wife had gone that night? A. No, I didn't know. I didn't care.

Q. Were you drunk that night? A. No.

Q. Did you drink in 1926 in the same way that you have told us about? A. I took an occasional drink.

Q. How long was your wife away that time in the hospital? A. I believe she was down there about ten days. 20

Q. She came home after that, did she? A. Yes.

Q. You lived there without any further interruptions until February, 1928? A. Right.

Q. You say she was in the habit of being away and you didn't know where she was? A. I didn't trail around with her. If she came in, O. K.,—and if not, all right.

Q. Was that a regular performance? A. She would go and be gone a couple of days. 30

Q. When did that commence, that she would go and be gone a couple of days? A. I would say about five years after we got married.

Q. You were married in 1920? A. Yes.

Q. And five years after your marriage—from that time on, she kept that up? A. She would be out and I would never bother about where she was going. She would go away and I would ask her where, and she would say, "To Long Island". It was only afterwards that I got wise about it. 40

Arnold Michels. Called by Defendant. Direct.

Q. During January, 1930, when the gas and electricity were turned off at Bramhall Avenue, did you know where your wife was then? A. I didn't know.

Q. How long had she been away? A. A couple of days.

Q. You don't know when she got back there?

10 A. No.

Q. In July, 1929, just before she packed up and moved from Williams Avenue, was she away for any length of time? A. A couple of weeks.

Q. Where? A. I don't know; I didn't at that time, at any rate.

BY THE MASTER:

20 Q. Did you ask her where she was? A. She said Long Island.

BY MR. OCKFORD:

Q. Did she say who with? A. Her cousin.

BY THE MASTER:

Q. Did she have a cousin there? A. Yes.

30 Q. And you thought that she was there? A. I did, at that time; but now I know different.

BY MR. OCKFORD:

Q. Were you with your wife at Rumsen? A. Yes—twice.

Q. When was that? A. A couple of years ago.

Q. It was not this summer? A. No.

40 Q. Last summer? A. No; it must have been the summer before.

Arnold Michels. Called by Defendant. Direct.

Q. What was she down there on? Vacation? A. With Mrs. Hamilton.

BY THE MASTER:

Q. Was it a vacation, as you understood it? A. Yes.

10

BY MR. OCKFORD:

Q. How long was she there altogether? A. A week.

Q. How long were you there? A. One night—two nights, I guess.

Q. Did you drink that night? A. We all drank. We all went to a roadhouse—the wife and Mrs. Hamilton.

Q. Did you have any fight with her—with your wife—or words, with her? A. No,—we all drank. We got some old smuggler whisky and we talked.

20

Q. Were you away any other place out of town besides this occasion in Rumsey? A. No.

Q. What period of time was she away for the longest time, when she was away on these trips, or these continuous visits? A. Oh, about seventeen or eighteen days.

30

BY THE MASTER:

Q. In the summer time was that? A. Summer.

Q. Didn't you ask her where she was? A. No; I was glad there was peace.

BY MR. OCKFORD:

Q. You were not so very friendly there? A. Well, diplomatic relations were not so hot.

40

Arnold Michels. Called by Defendant. Direct.

Q. When did your wife first get an automobile?
A. 1922.

Q. Where did she get it? A. I paid for it; from a dealer at Communipaw.

Q. What did you pay for it? A. \$1,795.

Q. Do you remember what kind of a car that was? A. A Durant.

10 Q. Did she have any car besides? A. After that I bought her a Flint. It cost \$2,320 and she was not satisfied with that.

Q. Do you remember when that was? A. Around 1926.

BY THE MASTER:

20 Q. Did you buy this out of your \$65 a week? A. No. I had an inheritance. I had money.

BY MR. OCKFORD:

Q. 1926; what car came next? A. The Diana brougham.

Q. That is not the straight eight? A. No.

Q. When was the straight eight purchased? A. Decoration Day, 1928.

30 Q. Do you remember how much you paid when you bought that? A. We turned in the old car.

Q. The Diana brougham, and bought the straight eight? A. And gave them \$100 in cash and notes for the rest.

Q. Did you pay those notes? A. They were all paid, except, I think, three notes left, and I asked them for an extension of time.

Q. It was finally paid? A. Yes.

40 Q. You furnished the money? A. I borrowed the money.

Arnold Michels. Called by Defendant. Direct.

Q. You say you got an inheritance. When was that? A. When my mother died, instead of the money that was to go to her, it was divided between my brother and my sister and myself. It was to be divided when the infant reached the age of thirty-one years, at the discretion of the executors.

Q. Never mind that. When did you get your share? A. Whenever I asked for any. 10

Q. When did you get the last? A. I got the last at the time I bought the Flint car—that was the last money; and then I got ten shares of Central Railroad of Georgia refunding, which I hypothecated at the bank for \$1,500.

Q. When was that? A. 1928.

Q. How much did this inheritance amount to, altogether? A. Around \$22,000.

Q. How much have you got left of it? A. Not 20 any left. In fact, I am in debt.

BY THE MASTER:

Q. When did you get the \$22,000? What year?

BY MR. OCKFORD:

Q. Over what period of time? A. Between the period of 1920 and 1930.

Q. And the last was the Central Railroad of Georgia stock? A. Ten shares, Central Railroad of Georgia, refunding. 30

Q. How much did you borrow on that? A. \$1,500.

Q. Where? A. At the Rutherford National Bank.

BY THE MASTER:

Q. Out of this money you received, you used some of it for yourself, and you used some of it for these cars, did you? A. Yes. 40

Arnold Michels. Called by Defendant. Direct.

BY MR. OCKFORD:

Q. Did you buy anything else for your wife? A. Plenty of things.

Q. You bought a house, too? A. Yes.

Q. Do you remember how much cash you paid?

A. The first time we paid \$1,000 down.

10 Q. How much when you took title? A. When we paid the second mortgage up, twenty-two hundred and some odd dollars, and that was all.

Q. Did you put the building and loan mortgage on? A. Yes.

Q. What diamonds did you give your wife, and when? Be brief, and give us their total value?

A. It is pretty hard to estimate the total value.

BY THE MASTER:

20 Q. Tell us what you paid. A. Say about \$2,500. You could perhaps pawn them for half.

BY MR. OCKFORD:

Q. It was testified that there are four rings in pawn now. Did you give these rings to your wife? A. Yes.

30 Mr. Berkowitz: I object to that.

The Master: I think the wife said that they were rings that he gave her.

Q. Do you know what is the value of those four rings? A. I know I took them to Simpson's one time and borrowed \$700.

BY THE MASTER:

40 Q. The ones you paid \$2,500 for?

Arnold Michels. Called by Defendant. Direct.

BY MR. OCKFORD:

Q. That includes these four rings? A. That includes everything.

Q. Did you or did you not give your wife any cash presents at any time outside of what you gave her as a regular contribution? A. When she was short, I always gave her money.

10

Q. Can you give us any idea of the amount of money which you gave to her outside of any household moneys, and besides any money you spent for furniture? A. I bought her a squirrel coat, which cost three hundred dollars.

Q. Any cash? A. That was cash.

Q. Did she buy the coat, or did you? A. I went down with her.

Q. Have you any idea of the amount of money you have given her since you were married, in addition to the ordinary contribution for the ordinary household expenses, and clothing? A. I didn't keep any record of that.

20

Q. Do you know when it was that you obtained this loan on the shares of stock? A. I should say it was about December, 1927?

Q. Do you remember what you did with the \$1,500? A. We had a joint account, and I put it in, and she drew it out.

30

Q. Where was that account? A. At the Rutherford National Bank.

Q. Do you remember the amount of that? A. That was \$1,500.

Q. You say she drew the money out? A. Yes, we had a joint account, and I thought that I had to sign before the money could be taken out, but later I found out different.

Q. Did you draw the money? A. No.

40

Arnold Michels. Called by Defendant. Direct.

Q. Up to what time was there money in that account, to your knowledge? A. Until the checks came back.

Q. When was that? A. I don't know. That lasted a couple of months, and then I got wise.

Q. Did you ever have any other joint account, or bank account, that she could draw money from?

10 A. No, that was the only account. I always thought when you had a joint account that I had to sign the checks but I found her checks went through with only one signature.

Q. Did you ever have any arguments with your wife about that? A. Yes.

Q. Did your wife have any money, that you know of, besides money that you gave her, and the money that came out of that account? A. No, she never had no money.

20 Q. I show you two papers marked Exhibits P-1 and P-2. We will take P-1 first. Did you write that? A. Yes.

Q. All of it? A. Certainly.

Q. Look at this one,—Exhibit P-2. Did you write that? A. Yes.

Q. Do you remember where it was that you wrote these notes? A. At 470 Bramhall Avenue.

30 Q. Do you remember when it was? A. No, there is no date on them.

Q. With respect to the middle of January, when did you write that? A. It was shortly after that doctor was there from the hospital, because the people—

Q. (Interrupting) Let us see if you can't fix the time. Do you remember whether it was before or after Christmas, 1929? A. I think it was around November, I guess.

Arnold Michels. Called by Defendant. Direct.

Q. And about how long after you had gone back there was that? A. Maybe four months; or, say, three months.

Q. It was not during the period between the middle of August and September 6th when you were served with the papers? A. No.

Q. And it was not in the month you left there? A. No,—it was in December.

10

Q. As far as you know, then, it was in December? A. Yes.

Q. Was it the first part of December? Or you are not sure? A. No, I am not positive. There is no dates.

Q. Were you drunk or sober when you wrote those notes? A. As it looks here, it looks like I was sober.

Q. Do you remember writing them? A. I remember them now.

20

BY THE MASTER:

Q. What makes you say it looks like you were sober? A. Because the handwriting represents that.

BY MR. OCKFORD:

Q. You say you remember now? A. Until I seen them.

30

Q. When these notes were offered the other day, did you or not remember having written them? A. I didn't know about them until I seen them.

Q. After you did see them, did you see them at the last hearing? A. I seen they lying there, yes.

Q. Do you remember the time or day or night it was that you wrote those notes? A. It must have been at night, because I worked in the day.

40

Arnold Michels. Called by Defendant. Direct.

Q. Do you remember the circumstances? A. I remember now that I was sick at the time.

Q. Do you remember who was at the place at the time, Mr. Michels? A. I imagine the wife was.

Q. Now, never mind your imagination, Mr. Michels. What we want is your recollection. Either she was there or nobody was there. Do you remember which it was? A. I imagine there was nobody there.

Q. Do you remember what you did with those notes after you wrote them? A. No; I laid them on the table.

BY THE MASTER:

Q. What did you do with those notes? A. Nothing. I was up all night. I had sciatica and I had a cold.

Q. Doesn't that note mean that you were about to commit suicide? A. No.

Q. What about it? A. It seems to me that my wife told me when this ambulance came up that the limit of my life was about three months, and that about two and a half months had passed, and I had such terrible pains in my side and arm that I thought he might be right, and I said, "I don't want to cash in"—and I thought I might just as well let that be that,—and I thought I was going to cash in that night, and so I wrote them.

BY MR. OCKFORD:

Q. Who told you that? A. My wife told me that the ambulance doctor said I had only three months to live.

Q. The doctor didn't tell you that? A. No.

Arnold Michels. Called by Defendant. Direct.

Q. What had you been doing? A. I had been up.

Q. Do you know what you did after you had written those notes? A. I laid them on the table.

Q. Then what did you do? A. I expected to check out. I thought it was the end, because I had such terrible pains.

Q. Where did you have the pains? A. All through the side and in the arm. 10

Q. Did your wife ever say anything to you about these notes after you wrote them? A. No.

Q. Did you ever turn on the gas and leave it on one day in the apartment at number 470 Bramhall Avenue? A. No, sir.

Q. Did you ever set fire to the couch in Bramhall Avenue? A. No.

BY THE MASTER: 20

Q. Was there a fire on the couch there? A. No, not that I know of.

BY MR. OCKFORD:

Q. Did you ever see any signs of burning on the couch? A. No.

Q. Where is the couch now? Do you know? A. I don't know. 30

BY THE MASTER:

Q. What did you mean by saying in one of those notes that you were a bum? A. Well, she figured I was, and so I said that.

Q. You mean that she called you a bum? A. No, —but she was always causing trouble, on the slightest occasion calling in the cops, like she called in the ambulance people. 40

Arnold Michels. Called by Defendant. Direct.

Q. And that made you call yourself a bum. Is that right? A. Yes.

BY MR. OCKFORD:

10 Q. What is it that you did that justified your characterizing yourself as a bum? What did that relate to? Your work? A. Yes.

Q. You say you never lost a day from your work. A. No,—not in twenty-five years.

Q. And you drank on occasions on an average of two nights a week? A. Yes.

Q. Did you go out with women? A. No.

Q. Did you gamble? A. I played cards. I didn't gamble.

Q. Did you hang out on the streets? A. No.

20 Q. Did you neglect your clothing and your appearance, Mr. Michel? A. No.

Q. What was it that prompted that characterization—the use of the word “bum”? A. Oh, she was always trying to get stuff in the paper—notoriety against me.

Q. What the Court has asked you, and what I am asking you about now, is this: You accepted her statement? She called you a bum. She said you were a bum? A. Yes.

30 Q. And apparently at the time you wrote this note, you had in mind that that was a proper word to use? A. Yes.

Q. Now, in what respect were you a bum? Tell us why you thought you were a bum? A. I felt I was a sap. I was putting the dough up, and I was not getting fair treatment.

BY THE MASTER:

40 Q. That is what you meant by the use of the word “bum”, is it? A. Yes; a dub.

Arnold Michels. Called by Defendant. Direct.

BY MR. OCKFORD:

Q. Did you ever have any trouble with the police besides this occasion? A. No,—the police were always friends of mine. I never had any trouble with them.

Q. You say to your father that you caused him trouble. What trouble did you cause your father? 10
A. Unnecessary expense, because of her.

Q. You say "I made a bad mistake when I married my present wife." Why did you say that? A. I was married before for seven years, and I had no trouble and I had plenty of money because my wife saved the money and didn't spend it.

Q. You say, "I made a bad mistake when I married my present wife." Is that because she didn't save, as your first wife did? A. And also moral reasons. I am satisfied that she is an immoral woman. 20

Q. What is this? Oilcloth? A. Oilcloth man, yes.

Q. It says, "I owe this oilcloth man." A. Oilcloth; that is the linoleum man.

Q. Where is this oilcloth man? A. At present, I don't know.

Q. You owe him sixty-two dollars? A. He said so. 30

Q. Citizens Finance, \$240. What was that for? A. Automobile.

Q. Is that on the Diana straight eight? A. Yes.

Q. Public Service, \$93. What was that for? A. That was the Kelvinator.

Q. And Hyman Brothers, \$175. A. I can pretty near figure from this when that was written, because at the time of the separation I owed Hyman Brothers \$175. 40

Arnold Michels. Called by Defendant. Direct.

Q. You are referring to January, 1930? A. Yes.

Q. Who was Liberta? A. My first wife.

Q. When did she die? A. October 8th, 1918.

Q. Did you have any children by your first wife?

A. No.

Q. Just one child by the second wife? A. Right.

10 Q. Did you ever say anything to anyone, at or after the time you wrote these two notes, that you thought you were going to cash in, as you say? A. No. I told my father about what my wife said the doctor said, and he said he never said anything of the kind.

Q. Do you remember his name? A. I remember I heard my wife say that he was the ambulance doctor.

20 BY THE MASTER:

Q. Why did you write those notes that day unless you intended then—intended to commit suicide? A. I thought I was gone.

Q. That particular day? A. That day when I wrote them.

Q. Where did you leave the notes? A. On the table.

Q. And where did you go? A. I stayed home.

30 Q. You were in the house? A. Yes.

BY MR. OCKFORD:

Q. Was your wife at home that night? A. I don't remember.

Q. Did you speak to her? A. No. She grabbed them and put them away and I didn't bother to take them away from her.

40 Q. Did you forget all about that until they were produced in court? A. It slipped my memory.

Arnold Michels. Called by Defendant. Direct.

Q. Did you ever make any attempt to commit suicide? A. No. What for?

Q. Well, did you? A. No.

Q. Was the gas ever left turned on in the stove at Bramhall Avenue? A. No.

Q. Was there a fire in the apartment at Bramhall Avenue at any time? A. Not that I know of.

Q. When you were there? A. No.

10

Q. Did you ever say to your wife that you were going to end it all—meaning by that you and your son and your wife? A. No.

Q. There was not anything to that effect? A. No, sir.

Q. Did you ever say anything to your wife about intending to commit suicide? A. No.

Q. Or that you intended to kill her? A. No.

Q. What did you do about this pain that you had that night? A. I put peppermint on it; winter-green.

20

Q. Did you consult a doctor about it? A. No, I never had a doctor.

Q. How long did the pain continue that night? A. It continued for about three nights, and then it went away itself.

Q. Did it come back again at any time? A. No.

(Adjourned without date.)

30

40

IN CHANCERY OF NEW JERSEY.

Between

EVELYN MICHELS,
Petitioner,

and

ARNOLD MICHELS,
Defendant.

10

No. 1 Exchange Place, Jersey City,
New Jersey,
January 7th, 1931, 10 A. M.

Before—MARSHALL VAN WINKLE, Esq.,
Advisory Master.

20

APPEARANCES :

WALLACE P. BERKOWITZ, Esq., Solicitor for
the Petitioner.

ERICH H. JENTZ, Esq., Solicitor of Record,
and

JOHN W. OCKFORD, Esq., of Counsel, Solicitor
for the Defendant (Appearing by a Repre-
sentative of his Office).

30

Mr. Berkowitz: The situation is this, Mr. Master: Mr. Ockford is actually engaged before Vice-Chancellor Fallon, and he suggests that perhaps the testimony could be written up before the hearings are continued.

The Master: How far have you gotten in this case?

40

Mr. Ockford's Representative: The petitioner's case is all in, and the defendant was on the stand, and we have almost finished with the direct examination.

Mr. Berkowitz: Our case is all in, and we have finished.

The Master: Has he been cross examined yet?

Mr. Berkowitz: The defendant was almost finished with his direct testimony, your Honor. 10

The Master: How much longer will the case take?

Mr. Berkowitz: I certainly will take an hour for cross examination, if not more than that, and the chances are that we shall have some more witnesses.

Mr. Ockford's Representative: Yes,—and we have some more witnesses, too; and there will probably be several other witnesses produced. 20

The Master: Was the case before Vice-Chancellor Fallon set some time before?

Mr. Ockford's Representative: It was started on Monday of this week, and has been continued.

The Master: Well, of course we would like to have this case go on, but that is a good excuse.

Mr. Berkowitz: Well, I am satisfied that Mr. Ockford is engaged before Vice-Chancellor Fallon, and I don't know what we can do about it but take an adjournment. 30

(Discussion off the record.)

The Master: You are receiving your temporary alimony, are you not?

Mr. Berkowitz: It has been going on since last January.

The Master: How much is paid per week? 40

Mr. Berkowitz: \$31.

The Master: Is there a child?

Mr. Berkowitz: Yes.

The Master: Is the child with the mother?

Mr. Berkowitz: Yes.

10 The Master: The best I can do, gentlemen, is to put the case off, and we will have to have the testimony written up before we can go ahead in this matter, and I understand Mr. Ockford suggests and consents that the testimony be transcribed.

20 I direct that you take an order, and the order will provide that the testimony be transcribed up to and including today. It would not be fair to the parties to decide this case on what my recollection of the testimony is, and I am now directing you to present an order to me that the testimony be transcribed,—all of it,—at the expense of the husband, and he will need to see the stenographer, and of course if he does not do that, I have a right to compel him to pay for the testimony, so he will have to arrange with the stenographer about that. The testimony must be transcribed,—all of it, up to today, at his expense, as the matter has been carried on such a long time now that I would not like to take my recollection of it.

30 Mr. Berkowitz: All I have to ask is that you will put it down at your earliest convenience for a hearing, because we are all in a position where we have forgotten what has transpired in the matter.

Adjourned to date to be fixed.

Arnold Michels. Called by Defendant. Cross.

IN CHANCERY OF NEW JERSEY.

Between

EVELYN MICHELS,
Petitioner,

and

ARNOLD MICHELS,
Defendant.

10

Continuation of the hearing of the above entitled cause this twenty-fifth day of March, 1931, at ten o'clock in the forenoon.

Appearances as heretofore.

20

ARNOLD D. MICHELS, being recalled, testified further as follows:

CROSS EXAMINATION BY MR. BERKOWITZ:

Q. Where do you live? A. Jersey City.

Q. Where? A. In Journal Square.

Q. What number? A. 12, I think.

30

Q. What is the name of the place? A. The Hotel Barrett.

Q. How long did you live there? A. About a year.

Q. One year? A. Approximately.

Q. When did you first go there? A. Around January.

Q. Of last year? A. Yes, sir.

40

Arnold Michels. Called by Defendant. Cross.

Q. And have you lived there ever since? A. Yes, sir.

Q. Do you remember living down on Newkirk Street? A. For a week.

Q. That was between January and now? A. Yes, sir.

10 Q. When was that? What time of the year? A. Oh, I don't know, maybe a couple of weeks later or so.

Q. What were you leaving there for?

Mr. Ockford: I object.

The Court: Sustained.

A. It wasn't handy.

20 Q. What is the name of the woman that ran that place? A. I don't know.

Q. You lived there a couple of weeks, didn't you? A. One week.

Q. And did you hear anything said about your drinking, while you were there—

Mr. Ockford: I object.

The Court: Sustained.

30 Q. Why were you told to get out of the place?

Mr. Ockford: I object.

The Court: Sustained.

Q. Are you still at the Hotel Barrett? A. Yes.

Q. Now, do you remember back in August of 1929? A. What date?

Q. What day were you served with the papers? A. September 6th, Friday.

40 Q. And how long previously to that date did you go to your wife? A. October 7th.

Arnold Michels. Called by Defendant. Cross.

Q. Previous to September? A. I don't remember.

Q. You told your lawyer, the last time, suppose you tell me. A. I cannot tell the exact date.

Q. About how long before? A. About three or four weeks.

Q. What date do you make that? A. It must have been the first part of August; I know it was in August I purchased a commutation ticket, for August. 10

Q. Do you remember telling your lawyer the last time that you went to your wife, on August 15th? A. I said the first part of August.

Q. Do you remember making that statement, August 15th? A. Not the exact date. I might have said on or about.

Q. When you were served with the papers, Mr. Michels, you say that you walked right out of the house? A. Yes. I walked out. 20

Q. And what did you say to your wife at that time? A. I didn't say anything; she said it was a friendly suit, not to show up and everything would be O. K.

Q. And what did you say? A. I said "All right, I won't show up."

Q. Show up where? A. At the court.

Q. Well, you did show up, didn't you? A. I did not. 30

Q. Well, what was she referring to, to show up in the court at what time? A. September 16th.

Q. So that is the reason you didn't show up? A. Yes, I thought it would go by default.

Q. Do you remember making an affidavit to Mr. Gentz? A. In reference to what?

Q. In reference to what you said. A. When the fellow handed me the papers, he said "You have thirty days to answer". 40

Arnold Michels. Called by Defendant. Cross.

The Court: Answer the question.

The Witness: An affidavit in reference to what?

The Court: Show him the affidavit.

Q. Yes. (Counsel exhibits a paper to the witness.) I will just show him. On September 28,
10 1929, you had to make an affidavit before Mr. D. Lorenzo?

Mr. Ockford: I object.

The Court: You must show it to him.

(Counsel shows a paper to the witness.)

Mr. Berkowitz: The original, your Honor, will be in your papers; I only have a copy.

The Court: Maybe Mr. Ockford will consent to the copy being used.
20

Mr. Ockford: That is a copy, Mr. Michels, not the one you seek to look at; see if you recall signing the original.

(The witness examines the paper.)

The Court: Did you make that affidavit?

The Witness: My name is on it, I must have.

The Court: That is not the answer; you had better send for the original, Mr. Berkowitz.

The Witness: Is that by my writing?
30

Mr. Berkowitz: No, no.

The Court: Get the papers. It will be the shortest way, I think.

Mr. Ockford: Maybe Mr. Berkowitz can go on with something else, in the meantime?

The Witness: There seem to be two papers in that copy.

Q. Well, anyhow, Mr. Michels, you were served
40 with papers on September 6th? A. Right.

Arnold Michels. Called by Defendant. Cross.

Mr. Ockford: I object, there is no question about that. The record shows it, and he testified twenty times.

Mr. Berkowit: I know.

The Court: What is the point about it. It seems to be uncontroverted.

Mr. Berkowitz: Yes, I think so—no doubt but Mr. Michels himself will remember what was said, and I want to lay the foundation for further questioning. 10

Q. Do you remember who served you, Mr. Michels? A. I never saw the man before, who served me?

Q. Yes. A. I don't know the man who served me.

Q. And what did he say— 20

The Court: It is not likely he would remember that; I would like to see the importance of the testimony.

Mr. Berkowitz: I would like to get the affidavit.

The Court: We will wait until he comes in, then.

Q. I show you this affidavit, Mr. Michels— 30

The Court: Look at this— The sole question is: Did you make that affidavit; is that it?

Q. Yes; is that your signature? A. Right.

Mr. Berkowitz: An affidavit made on the 26th of September, 1929, it was used in connection that day in order to show cause. 40

Arnold Michels. Called by Defendant. Cross.

Q. In that affidavit you set forth "that at the time these papers were served upon me, the officer or constable told me I had to reply to them within twenty days"? A. That is right.

Q. "I put the papers in my pocket and asked my wife why she was playing such tricks on me; she told me she was tired of living with me"? A. Right.

10 Q. "And I had better get out of the house that same night. I put all these papers in my pocket, thinking I would, at the first opportunity, go to see my lawyer, Mr. Dorando, of Hackensack, and give him the papers, so that he could properly—" A. Right.

Q. (Continuing) —"advise me what to do"? Now, a few minutes ago, in answer to a question of mine— A. Yes.

20 Q. (Continuing) —you said you had intended to let this go by default. A. Yes.

Q. Here you make an affidavit saying that you were told you had twenty days to do it, and that you had intentions of making your answer within twenty days, but it had slipped your memory; now, what is right? A. Oh, they are both right.

Q. How can they both be right?

Mr. Ockford: I object.

30 The Court: Overruled. It is a matter of argument.

Q. Did you intend to let it go by default? A. I would have, sure, only I found out afterwards there was two papers there, one for September 16 and the other was for September 26th.

40 Q. And which one did you think you were going to let go by default? A. I didn't know about the 16th, because that was a little bit of a paper in there.

Arnold Michels. Called by Defendant. Cross.

Q. What did you find out afterwards? A. When I read the papers—

Q. And you were served, since, in September?
A. Friday.

Q. And after the 16th you read in the papers?
A. Yes.

Q. Where did you read it? A. I don't know. Either on the train or somewhere, the newspapers. 10

Q. In the newspapers you read the affidavit? A. I read the article in the newspapers and nobody served me with any papers.

Q. You were not served with papers? A. No. Not after this, nobody served me with anything.

Q. Mr. Michels, just what did Mrs. Michels say to you, when the man served you with these papers?

The Court: What did she say?

Q. Yes. A. She didn't say nothing, that I remember. 20

Q. Nothing at all was said? A. No.

Q. When was the time Mrs. Michels said that it was "all right, you let it go by default"? A. Prior to that.

Q. Prior to the service of the papers? A. Yes.

Q. Where was this? A. Oh, she was talking about it a long time.

Q. Where? A. In the house. 30

Q. What house? A. Hasbrouck Heights, Jersey City.

Q. Where? A. I think it was at both places, not on one occasion. Various occasions.

Q. Well, did you hear about it before Mrs. Michels moved out of the house in Hasbrouck Heights?
A. About what.

Q. About letting this divorce matter go by default. A. If she lived in Hasbrouck Heights, it must have been there. 40

Arnold Michels. Called by Defendant. Cross.

Q. You testified the last time you didn't know anything about it; there was nothing ever said. A. It was in a vague way.

Q. What do you mean by "it was in a vague way"? A. Lots of people talk about things, and it is forgotten—

10 Q. What did she say? A. She wanted to get a divorce.

Q. And what else did she say? A. I said "All right, get a divorce".

Q. When was this? A. Oh, possibly in 1926.

Q. You bought a car for her after that, didn't you? A. Those things were forgotten.

Q. You bought a car for her after that, didn't you? A. Yes.

20 Q. You bought diamond rings for her after that, didn't you? A. No.

Q. You got quite a bit of money after that, and put it in her name, didn't you? A. No, in our joint names.

Q. Don't you remember testifying last week, or a couple of weeks ago, you got some Central bonds, of the Jersey Central Railroad Company, loaned or lots 1500, and put in her name, in 1927? A. I said I put it in our joint name.

30 Q. And she drew it out? A. Yes, she drew it out; I put it in.

Q. Then, Mr. Michels, to get the matter straightened out, nothing was said by Mrs. Michels at the time the deputy sheriff served the papers on you, at Bramhall Avenue? A. Nothing—I can't remember, to the best of my knowledge and belief.

Q. Well, you have a pretty good memory, haven't you? A. At times.

40 Q. You remember what happened in 1926 and 1925 and in 1929; can't you? A. I don't remember

Arnold Michels. Called by Defendant. Cross.

her saying anything very much, that I could remember, that stuck to me, any special reason—

Q. Oh, I see, some things stick to you and some don't; will you tell me how you happened to go to Bramhall Avenue? A. Well, she packed up, and moved out of Hasbrouck Heights.

Q. What time was that? A. The latter part of July, and I was living alone. 10

Q. Do you remember the date? A. No—it was on a Monday.

Q. Was it the 25th or the 20th? A. It was on a Monday, the latter part of July.

Q. There is about four Mondays in July. A. Five—only a couple in that latter part, and it must have been one of them—

Q. And what else happened? A. I went to work Monday, and when I came home Monday night, everything was moved out, even my bed; and I went up in the attic and found some comforters and put them down in the bedroom; and I walked out; and I came back at night, and slept there. 20

Q. What time that night was it when you got these comforters?

Mr. Ockford: I object.

The Witness: Oh, 7:16—along between 7:16 and 7:20— 30

The Court: Objection sustained. Go ahead.

Q. How did you go to Bramhall Avenue, Mr. Michels? A. How?

Q. Yes. A. Well, I had been living there alone for about two or three weeks, and she called me up on the telephone—

Q. When? A. I should say about the tenth or fifteenth of August, in between that time. 40

Arnold Michels. Called by Defendant. Cross.

Q. Go ahead. A. She said did I want to meet her in Jersey City. I said no, "I will meet you in Hasbrouck Heights, when I am getting off the train"; and I met her as I got off the train, and she met me and we went down to Bramhall Avenue; I heretofore didn't know where she was living.

10 Q. Did you say anything to her when you met her? A. No—I asked her what was the matter.

Q. Did you ask her where she had been? A. No. So, she said she had moved enough. And I said "All right".

Q. And did she tell you at that time she had moved to New York? A. Yes.

Q. When did you go back with her? A. The same night.

20 Q. What did she tell you then? A. We went out to eat, and went to Bramhall Avenue—

Q. And what did you say about it? A. I thought it was strange.

Q. That is all? A. Yes.

Q. You didn't say anything at all, to Mrs. Michels, about it? A. No, but I thought, afterwards, why it was.

30 Q. Will you tell us now what happened that particular night when you went up to Bramhall Avenue? A. Oh, I don't know—nothing unusual, we went to bed and went to sleep.

Q. Was the boy with you? A. Certainly.

Q. Where did he sleep? A. I don't remember; we all slept together.

Q. And how long did you stay there with Mrs. Michels? A. Until September 6th.

40 Q. And on what date did you say you went back to her from Hasbrouck Heights to Bramhall Avenue? A. Between the 10th and the 15th of August, approximately.

Arnold Michels. Called by Defendant. Cross.

Q. And you stayed there a little over two weeks with Mrs. Michels? A. Yes, sir.

Q. And then you were served with these papers? A. Yes. She packed up and went down to the lawyer; and all this time while this was going on, she was down to the lawyer.

Q. What time? A. The default—while this here thing was going on, when the lawyer told her that she left and couldn't get a divorce. 10

Q. Do you know what the lawyer told her? A. No, but I can read between the lines.

Q. When did you go back again to Bramhall Avenue? A. Monday, October 7th.

Q. How did that come about? A. I just went back, that is all.

Q. And will you tell us just what you did when you went back to Bramhall Avenue that day? A. Well, I thought— What do you mean? In what respect? 20

Q. Did you go up and knock at the door? A. I rang the bell, and walked in and she opened the door.

Q. You walked right in? A. Right.

Q. And you had been away for about a month then? A. Weeks—

Q. Did you say anything to her when she opened the door? A. I don't remember the exact words. 30

Q. You remember lots of things, tell us what went off on that occasion, what happened? A. I just walked in, that was all.

Q. Wasn't it unusual for you to be away for a month and to walk in there without saying anything; or, was it a usual happening? A. No, it was the first time it ever happened.

Q. Did she say anything to you? A. Nothing, that I can recall, that would have anything to associate with anything. 40

Arnold Michels. Called by Defendant. Cross.

Q. So then you want the Judge to believe you went there, after being absent a month, you went to the door, knocked and she opened the door, and nothing was said between the two of you? A. Certainly, something was said; I didn't have a stenographer with me.

10 Q. Now, Mr. Michels, you said under your direct examination when Mr. Ockford asked you about the furniture being moved out of Hasbrouck Heights, he asked you whether or not you had heard from your wife directly or indirectly between the telephone calls she made to you— A. Yes.

Q. —and after that, between the time you went back to her, and you said, no, you said you didn't know where she was? A. I didn't know where she was.

20 Q. And then you were asked if you made any effort to find out where your wife had moved to, you said "No"? A. No, I didn't know; that's right.

Q. Did you care? A. What do you mean?

Q. Did you care where your wife went? A. In what way?

Q. Well? A. What way do you have reference to, financially, or what?

Q. She was your wife, wasn't she? A. She was.

Q. She had your son with her? A. Yes.

30 Q. One day you came home and they were gone? A. Packed up.

Q. Didn't it mean anything to you? A. It was not the first time it happened.

Q. It was a regular happening? A. It happened before—she went, and I thought she would come back.

Q. When? A. When what?

40 Q. When it happened before. A. It happened around February 15, 1928.

Arnold Michels. Called by Defendant. Cross.

Q. Was there a cause for it at that time? A. Not to the best of my knowledge and belief.

Q. Wasn't it at the time, just shortly before that, that you had been in police court, you and your wife? A. It was.

Q. Did you think there was any cause for it, Mr. Michels? A. No.

Q. How long was she gone, on that occasion? 10
A. At the least, Monday after Easter.

Q. Did she move at the time all the furniture, at that time? A. All except the bed.

Q. This last time, in August, 1929, she didn't even leave the bed? A. She didn't even leave anything.

Q. At any time previous to February, 1928, did she move out? A. What do you mean, the furniture? 20

Q. Yes. A. No.

Q. So that in other words, it was on just one other occasion, a year and a half previously to this August, 1929? A. Yes.

Q. And therefore, it was a regular occurrence, as far as you were concerned? A. I didn't say a regular occurrence.

Q. You thought nothing of it? A. I thought she went, and would come back.

Q. You made no attempt to find out where she was, did you? A. How could I find out? 30

Q. You made no attempt to find out where she was, did you? A. No.

Q. You knew where her mother lived, didn't you? A. I knew, certainly.

Q. Didn't you go down to her mother and ask her where her daughter was? A. No.

Q. You didn't make any attempt, did you? A. No. 40

Arnold Michels. Called by Defendant. Cross.

Q. Will you tell us what the reason of your wife's moving out, in August, 1929, was? A. Why?

Q. Yes. A. I don't know. Ask her, I didn't move.

Q. You don't know? A. No.

Q. It wasn't your drinking, was it? A. No, it was a common occasion for her to move.

10 Q. A common occasion for her to move? A. Yes, sir.

Q. Isn't it— You testified just a minute ago that only one other time she moved out, the year previous to that? A. You asked about Hasbrouck Heights.

Q. I asked how many previous to 1929, how many times she moved out on you? A. In Hasbrouck Heights?

20 Q. Any place, is what I asked you before. A. She moved about nine or ten times.

Q. I am asking you the question. A. Well, I will give you the places, and you mark them down; 121 Manhattan Avenue—

Q. When did she move? A. I don't know.

Q. How long did you live in 1921— A. About a year and a half, and to 94 Summit—

Q. You lived there a year and a half altogether, at Manhattan Avenue? A. About.

30 Q. How long was she living there when she moved out on you? A. We must—we lived there a year and a half, when she moved out.

Q. Did she come back to Manhattan Avenue? A. She moved the furniture out, everything we bought she moved out.

Q. You moved with her? A. No, I went to work in the morning and when I came back in the night she was moved out; I didn't know about it.

40 Q. How long after that did it take you to find her—

Arnold Michels. Called by Defendant. Cross.

The Court: Mr. Michels, listen to the question; I understand the counsel is asking you, how many times previously the wife moved out without your consent.

The Witness: She always moved out without my consent; I didn't agree to anything.

The Court: How many times, approximately?

10

The Witness: I will have to add them up.

(The witness figures.)

From 121 to 94; 94 to 17; 17 to 3405; 3405 to Montrose Avenue—I cannot think of the number; I think, 53,—five times.

The Court: On some of these occasions, did your wife move out without your consent to such an extent that you didn't know where she lived?

20

The Witness: Yes, sir.

Q. Isn't it true that on each and every one of these occasions your wife was forced to move out because of your drinking habits? A. No.

Q. Isn't it true every time your wife moved out a regular moving time and you went with her? A. No, I didn't know anything about it, or know anything about packing or moving.

Q. You never knew she was going to move? A. Not until maybe a day or so later.

30

Q. And from the time she moved out, you had to look for her? A. Either that or wait until she called up.

BY THE COURT:

Q. On these several occasions when your wife moved, did she give you any reasons for moving? A. I didn't know she was going to move.

40

Arnold Michels. Called by Defendant. Cross.

Q. Did she complain about your actions at all?
A. No.

BY MR. BERKOWITZ:

Q. When you came back, on these different occasions, what did you say to your wife about her moving habits? A. I didn't say much—I don't know; I was busy.

Q. Isn't it a fact that you didn't pay the rent in these different places and your wife had to move?
A. No.

Q. In 3105— A. No, I always paid the rent.

Q. Didn't a lawyer come to visit you at the house? A. No, I never spoke to any lawyer.

Q. And you said nothing to your wife on these five different occasions when she moved and told you nothing about it? A. No.

Q. You didn't care, did you? A. I wasn't worrying about it.

Q. She always told you when she was going to move, didn't she? A. No.

Q. How did you find out? A. She called me up.

Q. She called you up, where? A. The store.

Q. So that then, you did know, didn't you? A. Afterwards, not before.

Q. What did you do between the time that you found out and the time that you didn't know, or the time she moved? A. Well, on two nights I lived in 94 Summit alone.

Q. How about the other four places? A. She called me up; I went away in the morning, and, on one occasion, she said the boy was sick and she had to meet me at the station.

Q. When was that? A. I can't remember the exact date.

Arnold Michels. Called by Defendant. Cross.

Q. About when—1925? A. 1924 or 1923; along in there.

Q. You remember that? A. Yes, I remember that occasion. She said the boy was sick and was in the hospital, and to get in the car; and she took me to the new place, and it was all fixed up.

Q. It was a surprise to you? A. Yes, it happened so quick. I went to work in the morning, and when I came home at night, she had moved. 10

Q. And then you didn't stay any night out of your home? A. Only on two occasions, at 94 Summit Avenue.

Q. Now, Mr. Michels, some time in January or December, the gas was turned off at Bramhall Avenue? A. Yes, in January.

Q. Were you present when it was turned off? A. No. 20

Q. Did you go home and find out about it? A. Yes.

Q. Were you living at Bramhall Avenue at that time? A. Certainly; it was the latter part of January or around the 15th.

Q. You went out about the 15th of January? A. Approximately.

Q. Do you know when the gas was turned on? A. No, I wasn't living there then.

Q. Do you know why the gas was turned off? A. Yes. 30

Q. Why? A. Because she took the stove from Hasbrouck Heights and moved to Bramhall Avenue and didn't notify the Public Service.

Q. Well, do you know how the Public Service found it out? A. I told them.

Q. Why did you tell them? A. What was I going to say, when I had them bother me so on the telephone. 40

Arnold Michels. Called by Defendant. Cross.

The Court: Was there an unpaid bill in the old house?

10 The Witness: There was something there bought and they claimed that stove was moved out of there without letting these people know where the stove was, and that was contrary to the law and that she took the place in her maiden name and they didn't have any record, or, where that stove went to.

The Court: So they turned the gas off down here?

The Witness: Yes, sir.

The Court: Go on.

Q. How much did you owe the Public Service?

A. I don't know—one hundred dollars and some odd cents.

20 Q. How much did you owe on the one in there?

A. Altogether, \$105.34—I think \$105.34.

Q. Did they ever turn your gas off at 234 Williams Avenue, Hasbrouck Heights? A. No; not as I know of.

Q. Are you sure of that? A. No.

Q. What do you mean—no? A. No. They never turned it off.

30 Q. Now, Mr. Michels, after you left your wife's apartment, at Bramhall Avenue— A. Yes.

Q. Where did you go? A. When? At night, or when?

The Court: No, no; just listen before repeating the question; you are asked where you went when you left Bramhall Avenue.

Q. 1930. A. Around January.

40 Q. You know when you were there? A. Yes, where did I go?

Arnold Michels. Called by Defendant. Cross.

Q. That is the question. A. What do you mean?
To sleep or what?

The Court: Mr. Michels, you are doing your best, I daresay, to show the Court what kind of man you are, and it is the duty of the Court to observe you and your actions, as you are testifying now; I am just telling you that. Go 10
on.

Q. What hotel? A. I think it was the Barley.

Q. Do you think or know?

BY THE COURT:

Q. Was it or was it not? Understand, you are under oath, now if you don't, say so; if you do, say so. A. I think it was the Barley. 20

Q. Why do you say you think it was the Barley?

A. Because that would be the handiest place.

Q. Don't you know where you went? A. I am not sure, I might have gone to the Kinzella's, because I have lived there before.

The Court: He doesn't remember.

The Witness: No.

Q. Then why did you testify a short time before, you lived at the Barley, from last January up until now, if you don't know that you lived there or not? 30

A. Well, just on this one particular night, maybe I didn't have enough money to go to the Barley, and went down to the Kinzella, it was cheaper.

Q. When did you start to live at the Barley? A. Shortly after I left Bramhall Avenue.

Q. How long after? A. It might have been the same night or same day. 40

Arnold Michels. Called by Defendant. Cross.

Q. Within a day or two? A. Right.

Q. That is, excluding the time you lived on New-kirk Street? A. Right.

Q. Where were you living when you got a letter from me? A. At the store.

Q. Where were you living? A. At the Hotel Bar-ley.

10 Q. Do you remember when that was? A. Which letter? You wrote me a couple.

Q. I only wrote you one letter. A. I beg to differ.

Q. Have you the other letters here? A. No, but I remember another.

Q. I wrote you one letter, the first letter. A. Last night?

Q. What was the first letter? A. In January.

20 Q. You said you had a letter from me last night. A. I was looking at a letter last night from you, dated February 13th.

Q. Have you got it here? A. No.

Q. When was the first letter you say I sent you? A. January.

Q. What date? A. Around the 20th or something—the 22d; somewhere along in there.

Q. Do you remember coming into my office? A. Yes, with Mr. Gentz.

30 Q. Do you remember what went on with yourself and Mrs. Michels, on that occasion?

The Court: Try to not repeat the question; listen to the question and answer the question the best you can.

The Witness: Well, nothing in particular.

40 Q. Do you remember what Mrs. Michels said to you? A. No.

Arnold Michels. Called by Defendant. Cross.

Q. Well, what was the gist of the meeting at any office? Do you remember that? A. I don't get the meaning of the word "gist."

Q. What was the purpose of meeting at my office?
A. The purpose was to get the thing so that we wouldn't be bothered with costs, and get the thing temporarily settled, to keep it out of Chancery Court.

10

Q. What thing? A. The difference.

Q. Explain what you mean by "difference", Mr. Michels? A. The differences between the wife and I, have it settled; temporarily or smoothed over, and give us so much and don't be bothered with it.

Q. Was that what transpired at my office on that day? A. To keep the thing out of the Chancery Court.

Q. Is that what happened in my office that day?
A. Well—

20

Q. Do you remember your wife asking for support? A. Yes; that is what the whole thing was for.

Q. It was support, wasn't it, then, not to keep it out of court? A. Yes, for support.

Q. Do you remember your wife said she had no money, nothing to eat, the gas was turned off? A. Yes.

Q. She asked you for money on that occasion?
A. Yes.

30

Q. Do you remember what you gave her? A. I gave her five dollars.

Q. Do you remember what day it was? A. It was a Friday.

Q. Are you sure about it being a Friday? A. It was supposed to be. Let me think back.

Q. Wasn't it Monday afternoon? A. Before Friday, it didn't come up until Monday.

40

Arnold Michels. Called by Defendant. Cross.

Q. And that day your wife asked you for money, and you gave her five dollars? A. Yes—I only had a dollar, and I gave her five dollars.

Q. How much do you make at the present time?

A. Up to the present time, \$65 a week; but things don't look so good now on account of the bad industrial and financial shaving of commodity prices.

10 Q. How much did you make previously, the last two or three years? A. \$65.

Q. A steady income of yours? A. Yes.

Q. For how long? A. Three or four years.

Q. What did you make before that? A. \$60.

Mr. Oxford: I object. It is rather remote, over three years ago.

The Court: Yes.

20 Q. What did you make before that? A. \$60, I think.

BY THE COURT:

Q. What is your age? A. Forty-two, I will be on the—May 27th.

Q. How old is your wife? A. I don't know.

30 BY MR. BERKOWITZ:

Q. Now, Mr. Michels, while living out at Hasbrouck Heights what did you give your wife in the form of money, how much a week? A. Well, I paid all the bills and gave her \$20 a week; she paid some of the bills, laundry, insurance and stuff like that.

40 Q. Did you give her twenty or twenty-five dollars a week? A. \$20 and \$25, I don't remember exactly which, whatever I happened to have.

Arnold Michels. Called by Defendant. Cross.

Q. Did you ever give her \$15? A. Not that I remember.

Q. Did you ever give her more than \$25? A. No, unless she took it out of the bank.

BY THE COURT:

Q. What did you do with the rest of your salary during that period? A. We had bills to pay, building and loan. 10

Q. Just around the house? A. That was for incidental expenses, like laundry or some needs there; the small things—for the butcher.

Q. What did you say else, in addition to that, outside of that? A. Building and loan, and different things?

Q. Any household supplies? A. Taxes; and I brought stuff from New York to eat. 20

BY MR. BERKOWITZ:

Q. How much building and loan did you pay a month? A. \$50.

Q. Did your father loan you any money to pay for taxes? A. Who?

Q. Your father. A. No.

Q. Never? A. No; that was my money. 30

Q. Did you ever lend any money from your father? A. Yes, plenty of times.

Q. How much? A. I don't know—maybe a couple of thousand dollars.

Mr. Ockord: I object.

The Court: What is that point?

Mr. Berkowitz: This man claims he had \$22,000, alleging Mrs. Michels had used it, all of it was spent on her. 40

Arnold Michels. Called by Defendant. Cross.

The Court: Objection sustained, unless you have some other purpose.

Mr. Berkowitz: I withdraw the question.

Q. When your wife left in August of 1929, were there any bill sowing at that time, Mr. Michels? A. No, only the Public Service, the Kelvinator.

10 Q. That was all? A. That was all.

Q. Wasn't the building and loan due? A. The building and loan was all paid up.

Q. To date in August of 1929? A. As far as I know.

Q. You paid the building and loan, didn't you? A. When I had a check account.

Q. When did that come? A. When the checks started to come back.

20 Q. When? A. I don't remember.

Q. Up to what date did you pay the building and loan? A. I don't know, I haven't the book; she has the book.

Q. So you don't know? A. No.

Q. You don't know when the checks started coming back? A. Before that?

Q. Before when? A. Before she moved.

Q. And all you owed at that time was the Public Service; do you remember owing a Dr. Conrad?

30 A. I don't know anything about Dr. Conrad.

The Court: The doctor at the hospital?

Q. Yes—you know the doctor at Bellevue, an operation of your wife, didn't you? A. I heard of it; I didn't see it.

Q. You never paid Dr. Conrad, did you? A. No.

Q. You owed him money, didn't you? A. I don't know, I didn't—had nothing to do with it.

Arnold Michels. Called by Defendant. Cross.

Q. You paid him something on account, didn't you? A. No.

Q. Who did? A. My wife must have.

Q. You received bills, didn't you?

Mr. Ockford: I object; the testimony is that in 1926, and it isn't paid yet.

The Court: Objection sustained.

10

Q. Now, Mr. Michels, you came to Bramhall Avenue some time, you claim, around October of 1929; is that right? A. October 7, 1929.

Q. How long did you live there? A. Until January some time.

Q. Now, during that time you claim that you paid the rent for what months? A. What months—November, December and January.

Q. You have checks for that? A. I have a check for November.

20

Q. You have a check for November, December and January? A. Yes, and one before.

Q. Have you it here?

Mr. Ockford: Yes, it is right here.

Mr. Berkowitz: May I see it?

Mr. Ockford: (Handing.)

Q. And you haven't checks for December and January? A. No, I paid in cash.

30

Q. Did you get receipts for it? A. No.

Q. You just gave the money without receipts? A. I wouldn't get it the second time.

Q. Now, do you remember?

Mr. Ockford: I ask that the check be marked.

(Received in evidence and marked Plaintiff's Exhibit 1, of this date.)

40

Arnold Michels. Called by Defendant. Cross.

Q. Do you remember the occasion when you wrote those two notes that were shown to you last time? A. I don't remember the exact date—around August something.

The Court: Are these the so-called suicide notes?

10

Mr. Berkowitz: Yes.

Q. When did you write to Mrs. Michels? A. Well, it must have been before September 6th.

The Court: Were those notes marked; what marks have they?

Mr. Berkowitz: P-1 and P-2.

The Court: Reference is made to P-1 and P-2.

20

Q. And that was some time previous to September 6th, you say? A. Yes, sir.

Q. Do you remember the occasion that you wrote them? A. I will tell you about the exact time; let me think of it: It was along the latter part of August—

Q. And will you tell us exactly what the condition of your arm was at the time you said you had neuritis? A. Yes.

30

Q. And did you get any treatments? A. No.

Q. That was before or after your wife left you?

Mr. Ockford: I object "time".

The Court: Some time in August—frame another question, Mr. Berkowitz.

Q. When was the occasion that these notes were written?

40

Arnold Michels. Called by Defendant. Cross.

BY THE COURT:

Q. Where was your wife at the time you wrote the note? A. She was out, I guess.

Q. Do you remember them? A. I remember, it was shortly after the hospital doctor had been there; and she said that the hospital doctor said I wasn't going to live over a month; and then I had this awful pain; and I thought there must be something in it, and I thought I was going to go. 10

Q. And you wrote the notes? A. Yes.

Q. Where did you leave the notes? A. I left them on the table.

Q. Where was your wife then? A. She was out.

The Court: May I see the notes a minute?

(Mr. Berkowitz hands some papers to the Court.) 20

(The Court examined the papers and handed same back to counsel.)

Q. Now, you are clear about these notes? A. Of the date, I think.

The Court: No date I think.

The Witness: Well, it was after the doctor was there. 30

Q. And you say that was some time in August? A. Sometime in August, the latter part of August.

Q. And didn't the doctor say you were suffering from alcoholism? A. That is what the paper said.

Q. I am asking you, weren't you suffering from alcoholism? A. He didn't say nothing to me.

Q. What paper do you mean said that? A. The newspaper. 40

Arnold Michels. Called by Defendant. Cross.

Q. You mean the account of the note was in the newspaper? A. No.

Q. What was in the newspaper, generally? A. About this doctor coming up from the medical school or city hospital here.

10 Q. And what else? A. They seen I had a cut over the eye, and he came up and said "You are all right, just a little alcoholism", and they didn't take me—

The Court: Go ahead.

BY MR. BERKOWITZ:

Q. Where were you living then, Mr. Michels? A. When the doctor was there or when?

20 Q. That is what we are talking about now. A. 470, apartment 2-C, Bramhall Avenue, yes.

Q. Did you see the doctor— What was your condition when the doctor came in? A. I was sleeping.

The Court: Had you been unconscious at all, if you remember?

The Witness: I don't remember, except he bathed my eye, and he left me there.

30 Q. Now, at the last time, you, Mr. Michels, testified that there was a doctor there and a cop on this particular occasion, and you were sitting in the hall, and claimed you fell asleep; is that right? Was the cop there? A. It is a matter of record.

Q. I asked you was the cop there. A. Yes.

Q. And were you living with your wife at that time? A. Yes.

Arnold Michels. Called by Defendant. Cross.

Q. Then when you testified last time, you testified your wife said "Take him along" to the cop?

A. She did.

Q. Are you friendly with your wife?

The Court: Friendly doesn't mean anything definitely.

10

Q. You said the doctor treated you for a little bruise and a little alcoholism? A. He didn't do anything; just looked at me and walked away and the next day I saw it in the paper.

Q. Was your eye cut? A. I had a slight gash there.

Q. Didn't the doctor treat that? A. No, he looked at it.

Q. Did he do anything to it? A. No.

20

Q. Nothing at all? A. It wasn't serious enough.

Q. Had you been drinking before that? A. I might have had a drink.

Q. Well, did you or didn't you have a drink? A. I think I came home, there was nobody home, and I went out and had a couple of drinks, and came back again.

Q. Where had you been previously to coming home? A. The first or the second time?

Q. On this particular night. A. I came back a couple of times, I didn't have the key. 30

Q. Where had you been earlier in the evening? A. To a show.

Q. With whom? A. Myself.

Q. You are sure of that? A. Yes.

Q. Do you remember testifying the last time that on this particular occasion, this night I am talking about, that in the day you went to Hasbrouck

40

Arnold Michels. Called by Defendant. Cross.

Heights with your wife; do you remember that? A. Yes.

Q. And that you came back to Jersey City? A. Yes.

Q. Do you remember saying that? A. Yes.

Q. And you were at a place on New York Avenue and Putnam Street; do you remember saying that? A. Yes.

Q. And then you came home with Mrs. Michels; do you remember saying that? A. Yes.

Q. Now, what is the true story of what happened that night?

Mr. Ockford: I object on the ground the statement of facts, the testimony in the question relates to a different time, the time he first went back and met her at Bramhall Avenue, it related to that night, the time the notes were written.

Mr. Berkowitz: No.

The Court: When do you mean?

Mr. Berkowitz: The night when he claims the alleged sitting in the hall and he fell asleep; and the next time, as he states, he came and there was a cop and an ambulance there and he was treated for alcoholism, that cut over his eye.

The Court: Allowed; it stands.

BY THE COURT:

Q. You had determined, Mr. Michels, to end it all when you wrote those notes? A. No, I thought I was going to croak, because my wife said the doctor said I had only a short time; I couldn't sleep nights, and I was faint, and I thought I was going to pass out.

Arnold Michels. Called by Defendant. Cross.

Q. Where did you leave the notes when you wrote them? A. On the table, on a table.

Q. So they might be picked up at once by somebody? A. Well,—

Q. They were left on a table? A. Not a table, just a little table where a lamp sat on.

Q. You left them open on that little lamp-table?
A. Yes; folded them up. 10

BY MR. BERKOWITZ:

Q. On the occasion that you wrote these notes, you were in terrific pain, weren't you? A. Yes, sir.

Q. With what arm was it, Mr. Michels? A. The right arm.

Q. Did you consult a doctor? A. No.

Q. But what did you do to relieve the pain? A. I rubbed it with wintergreen and Sloane's liniment. 20

Q. On this particular occasion was the time you wrote these notes? A. Yes.

Q. You felt that you were going to die from the pain? A. Not so much from the pain, but from what the wife said, the doctor said I didn't have long to live.

Q. And you believed your wife, everything she said? A. Until I verified the condition.

Q. When? A. I called him on the wire, and he said he never said anything of the kind. 30

Q. Who did you call? A. The doctor.

Q. What doctor? A. The hospital doctor, his name was in the paper; it's a matter of record.

Q. What was his name? A. I said I don't know; I got it out of a newspaper.

Q. Do you remember testifying last time on direct examination, you didn't know who the ambulance doctor was who said it? A. I didn't. 40

Arnold Michels. Called by Defendant. Cross.

Q. How did you find out his name? A. By calling up and asking who was up there.

Q. Up where? A. To Bramhall Avenue.

Q. On what occasion? A. It was only one occasion.

Q. And when was that? A. In August, 1929, or something like that.

10 Q. And how long did it take you to get that information over the telephone? A. Three to five minutes.

Q. And how long after you were treated did you make the call to find out from this ambulance surgeon what he said? A. Oh, a month or so.

Q. And you were treated you say in August of 1929? A. I wasn't treated. Who said I was treated?

20 The Court: You recall it—see if you recall it directly.

Q. When did the ambulance surgeon see you, what time? A. Only the one occasion—around 12 o'clock at night.

Q. On what day? A. On a Sunday night.

Q. What was the date? A. August 20 or something like that—24th, I think.

30 Q. And when did you call the surgeon up and ask him about your arm; about a month after that you said— A. Oh, around the 16th of September.

Q. That was the day your wife got an order of alimony against you? A. Yes, sir.

Q. That was the day you wrote these notes? A. No—Who said that?

Mr. Ockford: I object; there is nothing so far, that that was written at the time that he

40

Arnold Michels. Called by Defendant. Cross.

called up; it was written before he called up; he wrote that at a time that he still believed so. Where is the connection? I don't think it is a fair examination.

The Court: Reframe your question.

Q. When were these notes written? A. Between August 24 and September 6th. 10

Q. And where? A. Bramhall Avenue.

Q. What hour of the day was it? A. It was at night.

Q. What time at night? A. After seven and before twelve.

Q. And between seven and twelve? A. Right.

Q. You can't make a more definite time, can you? A. No.

Q. And that is the night, now, that you were in terrific pain with your arm; am I right? A. Right. 20

Q. And you are positive of the date and the time and the place? A. I said I wasn't positive of the date; I said it was between them times.

Q. Between the 24th of August and September 6th? A. Yes, sir.

Q. Do you remember testifying that it was shortly before Christmas? A. Well, that is before Christmas.

Q. Do you remember saying that? A. No. 30

Q. That is what you said last time—that it was shortly before Christmas. A. It was.

Q. And the question was asked you about how long after you had gone back there was that, referring to Bramhall Avenue, and you said, "Maybe three or four months after". A. After what?

Q. You went back to Bramhall Avenue. A. We left there between three and four months afterwards. 40

Arnold Michels. Called by Defendant. Cross.

Q. And your counsel asked you this question:

"It was not during the period of August and September 6th you were served with papers? A. No.

Q. It was the month you left there? A. No; it was in December."

10

What was the answer? A. I don't know.

Q. You know any time? A. I know they are in my handwriting, they must have been written after August 24th.

Q. That is the nearest you can come to them? A. They were written in Bramhall Avenue; they are undated, so how do I know?

Q. Mr. Michels, you advised, in one of these notes, your son not to be a bum like your father—didn't you? A. Yes.

20

Q. You think a lot of your son, don't you? A. Well, yes.

Q. A little boy? A. Certainly, I think a lot of him.

Q. And that is why you, in this note, said that "he should not be a bum like his father"? A. Yes.

Q. And you don't want him to follow in your footsteps, do you? A. No.

Q. You don't want him to drink like you drink, do you, Mr. Michels? A. No.

30

Q. What did you send your son for Christmas? A. I didn't send him anything.

Q. Nothing? A. No, I didn't have anything.

Q. Did you say you didn't have anything? A. No.

Q. Did you send him a card? A. No.

Q. Nothing, did you? A. I saw him.

40

Arnold Michels. Called by Defendant. Cross.

Mr. Ockford: I presume you mean last Christmas?

Mr. Berkowitz: Yes.

Q. When did you see him? A. A couple of days before Christmas.

Q. Where? A. In the office.

Q. Who brought him there? A. Mrs. Michels. 10

Q. At the time you wrote these notes did you leave one for your wife? A. There was three papers.

Q. Who were they written to? A. One was for her.

Q. You are sure about that? A. Yes.

Q. What did you say in the one to her? A. Well, you read it, you know.

Q. I am asking you, now, what you said?

The Court: Is the one addressed to the wife in existence? 20

The Witness: Yes, unless it was destroyed.

The Court: I haven't it, Mr. Berkowitz.

Mr. Berkowitz: No, we never had it.

Q. What did you say, Mr. Michels, to your wife?

A. I said—

Q. What do you mean, Mr. Michels? A. Well, the note is in existence yet, as far as I know. 30

Mr. Berkowitz: I ask you, your Honor, to instruct the witness to answer the questions, instead of throwing back questions at me.

BY THE COURT:

Q. Were there three papers written, Mr. Michels?

A. Yes, sir.

Arnold Michels. Called by Defendant. Redirect.

Q. All left in the same place on the lamp-table?

A. Yes, sir.

Q. And one addressed to your wife? A. Yes.

Q. Do you know where it is? A. No.

Q. Why do you say it is in existence? A. It was.

Q. Until when? A. Probably, if not destroyed.

Q. Did you destroy it? A. No.

10 Q. Did you see it after you left it on the table?

A. I didn't see it after that; no.

Mr. Berkowitz: I asked him what he said in that letter.

Q. Do you remember what was the substance of the note addressed to your wife? A. Well, I told her to go with the boy friend—I didn't mention his name, I just put the initials down.

20 Q. What else? A. That was all.

Q. You meant to go with the boy friend, whose initials you gave, after you had gone? A. No, her boy friend.

Q. Did you mean she should go with her boy friend after you had gone? A. Yes.

REDIRECT EXAMINATION BY MR. OCKFORD:

30 Q. What were these initials? A. "E. R."

Q. Around Christmas, 1929, where were you living? A. Bramhall Avenue.

Q. And the wife was there and your boy was there? A. Yes, sir.

Q. Christmas, 1930, where did you meet your wife and boy, this last Christmas? A. That Christmas or before Christmas?

Q. The time you referred to, having met the boy.
A. In New York.

Arnold Michels. Called by Defendant. Redirect.

Q. Whereabouts? A. 47 Vesey Street.

Q. And how long were you together? A. Oh, ten or fifteen minutes.

The Court: Was that your father's place of business?

The Witness: Yes, sir.

10

Q. Did you go anywhere with your wife and son? A. No—we might have went to the hardware or paint store.

Q. You were together about fifteen minutes altogether? A. Yes, sir.

Q. When was the last time you had been out with your wife and boy? A. Oh, some time ago.

Q. How long ago? A. What do you mean?

Q. Being in their company. A. The last week.

Q. Where? A. In New York.

20

Q. How long were you together? A. Oh, an hour or so.

Q. Where did you go? A. We didn't go anywhere.

Q. Where did you stand or sit? A. Stood in front of the store.

Q. What is the last time that you went together to any place with your wife and son? A. Oh, some time ago.

30

Q. How long ago? A. A week or so.

Q. Where did you go? A. Went to a show.

Q. What show? A. Clara Bow.

Q. At what place? A. At the Orpheum.

Q. What city? A. Jersey City.

Q. And how long were you together at that show? A. I don't know; two hours or two hours and a half.

Q. Was your wife there? A. The wife and boy.

40

Arnold Michels. Called by Defendant. Redirect.

Q. Where did you go after the show? A. I went home.

Q. And how long before the show started had you met? A. About a half an hour or so.

Q. That is about a week ago, you say? A. Yes, sir.

10 Q. Coming back to this ambulance call at Bramhall Avenue, was there more than one occasion when the ambulance doctor called there? A. No.

Q. Just once this happened? A. Yes.

Q. And were you drunk that night? A. I wasn't drunk— What do you mean by the word "drunk"?

Q. Were you asleep in the hall? Do you remember going to sleep in the hall? A. Right.

Q. And do you remember waking up? A. When the doctor was bathing my eye.

20 Q. Where were you then? Still in the hall, or where? A. I was halfway.

Q. What do you mean "halfway"? A. Right in the doorway; yes.

Q. Whom do you remember being there besides yourself and the ambulance doctor? A. The wife.

Q. Anyone else? A. No, I don't remember anybody else being there.

30 Q. And after the ambulance doctor went away, where did you go? A. I stayed, I didn't go anywhere.

Q. In your apartment? A. In the apartment.

Q. Did you go to bed? A. I went to bed, and went to work in the morning.

Q. This check was shown you, marked Plaintiff's Exhibit 1, of this date; what did you pay with that check, Mr. Michels, after it had been issued to you and endorsed by you? A. I paid the rent with it.

Arnold Michels. Called by Defendant. Redirect.

Q. What did you buy with it, whom did you give it to, if anyone? A. To the janitress or the superintendent.

Q. It was paid through the bank? A. Paid through the bank.

Q. Can you tell us the date you gave the check to the janitor? A. November 4th.

Q. 1929? A. 1929. 10

Mr. Ockford: I ask that it be marked in evidence.

The Court: Received.

(Plaintiff's Exhibit No. 1 for identification is now marked in evidence.)

The Court: The month's rental in Bramhall Avenue?

The Witness: Yes, for the month of November, 1929. 20

Q. Where were you living at that time? A. 470 Bramhall Avenue.

Q. On September 6th you were served with papers, and you have testified that your wife said it was a friendly suit and not to show up; did she say that before or after the papers were served? A. Before.

Q. How long before? A. Oh, was talking about that about five years, about getting a divorce. 30

Q. Well, the last time she spoke to you before the papers were served, can you fix that date? A. I don't recall.

Q. Did your wife say anything to you in the latter part of August about having fone to a lawyer's office and signing a petition for a divorce? A. No.

Arnold Michels. Called by Defendant. Redirect.

Q. Had your wife said anything to you before September 6th that papers were to be served on you? A. No.

Q. Will you tell us the date when you read in the papers about an order for alimony having been made in your case with respect to the month of September, 1929? A. September 17.

10 Q. And was it before or after that date that you consulted your attorney about the case? A. Well, I had the papers in my pocket; it was on Monday, September 16th, and I never looked at them to see what date it was, it said twenty days, and I said, "Well, it's a long time; and I had them in my pocket. So I went out to Hackensack that night, and handed them to the lawyer Dorando, and he looked at them.

20 Q. Was that before or after the time you read in the paper about the order having been made, September 16? A. That was before September 16; it wasn't in the paper until the 17th.

Q. You went to see your lawyer for the first time on the 16th, in the evening? A. Yes, and he looked at them and said "This thing is all over already".

Mr. Berkowitz: I object to what he said.

Mr. Ockford: I withdraw what he said.

30

Q. You are quite sure you took all the papers that had been served on you to your lawyer's office on the evening of the 16th? A. Yes, sir.

Q. And the following day you read something in the paper? A. Yes.

Q. Did your wife ever say anything to you about having found these notes that you wrote and left on the table? A. No.

40

Q. Did she ever say that she had found them?

Arnold Michels. Called by Defendant. Redirect.

Mr. Berkowitz: I object to the answer to the question.

The Court: Objection overruled.

The Witness: Did she say she had found them?

Q. Did she ever say anything to you about them in any respect? A. She took them and put them away, to hold for future reference. 10

The Court: No. Did she speak to you?

The Witness: No.

Q. Did you ever see them after the night you wrote them? A. Yes, here.

Q. After you wrote them and left them on the table, what did you do? A. I went to sleep. 20

Q. Do you know what time your wife got home; did you wake up when she came in? A. No, I have to go to work in the morning; I don't keep a record of when she comes home.

Q. Do you remember your wife coming home that night? A. No.

Q. Now, you say that you do have some affection for your son, is that right? A. Yes, sir.

Q. Have you any affection for your wife? A. In what way? 30

Q. In any way. You know what affection is, don't you? A. No.

BY THE COURT:

Q. You say you don't know what affection is? A. (There was no answer).

The Court: "No" is the answer. 40

Arnold Michels. Called by Defendant. Redirect.

BY MR. OCKFORD:

Q. Describe what your feeling is toward your wife at the present time. A. I haven't any hard feeling; I don't want to do any bodily harm; that is all. When it comes to matters of business, in case we have to transact business, we transact it, and that is all.

10 Q. At this conference that you told us about in Mr. Berkowitz's office, did you agree at that time as to how much per week you would pay for your wife's and son's support, did you reach an agreement? A. We reached a temporary agreement.

Q. How much was the agreement you made? How much did you agree to pay? A. \$31.

Q. Did you pay— A. We had to pay off the furniture, the \$5—

20 Q. Was that in addition to the \$31? A. Yes.

Q. Did you make such payment? A. That is all paid up.

Q. You have made these payments ever since? A. I borrowed that money to pay that all off.

Q. And the \$31 a week, did you pay that? A. Yes.

BY THE COURT:

30 Q. Why did you have to borrow money? A. I had to live.

Q. You had \$65 a week? A. Yes, sir.

Q. And you were paying \$31 to your wife and \$5 off the furniture—\$36. A. Well, I had to pay off that other thing, the Public Service— No, I paid that, that was only \$15, a garnishee.

BY MR. OCKFORD:

40 Q. What garnishee was there against you? A. A garnishee for \$6:50 a week.

Arnold Michels. Called by Defendant. Redirect.

Q. Has that been cleared up? A. Yes. That has been settled up. A judgment for three hundred and some odd dollars, I settled for \$160.

Q. What disposition did you make of this Kelvinator dispute with the Public Service; how did you settle it? A. I paid them, they took it back; I sold it to them.

Q. How much did you have to pay, if anything? 10
A. \$15.34.

Q. And was the gas and electricity at Bramhall Avenue then turned on again? A. Yes.

Q. And do you know how long it was off at Bramhall Avenue? A. After I paid it?

Q. No, between the time it was shut off and turned on, how long was that period? A. Probably a week.

Mr. Berkowitz: I object, unless he can say 20
of his own knowledge.

The Court: He says he knows, now.

Q. And during the week it was off, did you live at Bramhall Avenue? A. I lived there two days.

Q. And was your wife there? A. Not the first time; she came in the second or third night.

Q. And were you there when the gas and electricity was turned on, after it had been shut off? 30
A. No. When she came in I went out.

Q. At the time the gas and electricity was turned off? A. Yes.

Q. (Continuing) Did you have any words between you at that time? A. Yes.

Q. What about? A. I don't remember; I thought it best to walk out and not to let the neighbors hear any argument.

Q. There was an argument? A. Yes. 40

Arnold Michels. Called by Defendant. Redirect.

Q. Do you remember what it was about? A. No.

Q. Did you have anything to do with having the gas and electricity turned on in Bramhall Avenue, August, 1929? A. No; I didn't know she was moved then.

10 Q. Did you have anything to do with having the gas and electricity—in the first instance, at Bramhall Avenue? A. No.

Q. Do you know who had it turned on? A. I think I do.

Q. You had nothing to do with renting that apartment, did you? A. It wasn't in my name.

Q. Now, at Hasbrouck Heights, during the last week that your wife was there, had you given her any money for household expenses? A. Certainly.

20 Q. The same as usual, or any particular amount? A. The same as usual.

Q. What if any bills did you pay during the month of June and July, 1929, when living at Hasbrouck Heights other than the building and loan and taxes, and you said you gave your wife twenty to twenty-five dollars a week and paid some bills; what bills? A. The bills for the necessities of life.

30 Q. Can you remember any that you paid? A. Meat bills.

Q. Anything else? A. Grocery bills.

Q. And you brought food—bought it at New York and took it out with you? A. Yes.

Q. Who paid the Public Service when you were living in Hasbrouck Heights? A. I did.

Q. Did your gas and electricity go on there after your wife moved away? A. Yes.

40 Q. While you were living there alone, with just a blanket or comfortable? A. Sure, it was right—I didn't need anything—it was there anyway.

Arnold Michels. Called by Defendant. Redirect.

Q. And this man Smith that you say wanted to know about the Kelvinator, where did he call you up? A. 47 Vesey Street.

Q. Was that when you told him where it was? A. I didn't tell him the first time, I didn't know.

Q. You did finally tell him? A. Yes.

Q. And made arrangements—you have told us about them? A. Yes. 10

Q. Now, were you in the— You met your wife in the Hackensack Criminal District Court in November, 1929, did you not? A. Yes.

Q. Did you go there together? A. In 1929, yes.

Q. You were living together in Bramhall Avenue? A. Yes.

Q. Do you remember going to the judge, Judge Lydon's court, in Hackensack together? A. Right.

Q. Do you remember what date you were there? A. November 13th, Wednesday. 20

Q. And what happened there? Was the matter disposed of then? A. No. It was carried there—

Q. Until when? A. The 20th.

Q. And on the 20th of November, what happened? A. It was all paid up.

Q. What did your wife say on that occasion? A. Which one?

Q. On the 20th. A. She didn't say nothing, she wrote a letter, or wrote a note or release, or whatever it is. 30

Q. Did you see her write it? A. She wrote first a piece of paper with a pencil, and he gave her that and asked that she write it on—

Q. Do you know what she wrote? A. No.

Q. And what happened to the case? A. It was the end.

Q. What was said? What did the judge say? A. "Next case". 40

Arnold Michels. Called by Defendant. Recross.

Q. What did he say about your case? A. He didn't say anything.

Q. The case was called, and did Mrs. Michels get something and that was all? A. Yes; and he looked at it and said something, I don't know what; and he said "Next case", and that is all.

Q. Did you and your wife go back home to Bram-
10 hall Avenue on that occasion? A. Yes.

RECROSS EXAMINATION BY MR. BERKOWITZ:

Q. You say you went to Hackensack in November, 1929? A. November 13, Wednesday night.

Q. And you went back on the 20th? A. Yes.

Q. Do you know why you went there? A. Sure.

Q. What was the purpose, the reason? A. Do
20 you mean the real reason?

Q. I asked you what was the reason. A. The reason was, that the boy had broken some things in—I don't know, these things that go over the telegraph pole; so, the chief of police of Hasbrouck Heights called me up on the phone and told me he wanted me to get this case off his books, and called me up to be up there.

Q. What case? A. This other case, the A. & P. case.

Q. You told me the boy broke something. A. I
30 told you what the real reason was.

Q. Because the boy broke something? A. Yes, sir.

Q. And the chief called you up, for what reason? A. He called me up, he didn't issue a summons; called me up on the wire and told me to come up there.

Q. Where did he tell you to come—Hasbrouck Heights? A. To Hackensack.
40

Arnold Michels. Called by Defendant. Recross.

Q. What chief of police called you? A. The chief of police of Hasbrouck Heights.

Q. And told you to go to Hackensack? A. Yes, sir.

Q. And what was the reason for that? A. The real reason?

Q. Yes. A. They wanted to get me up there to pay \$3.33 for something the kid had broken, worth 10
ten dollars—the three of them had broken.

Q. Now, you mentioned before initials "E. R.", what do they stand for? A. Edward Riley.

Q. Who is he? A. He works in the Tax Office.

Q. Where? A. In Jersey City.

Q. Do you know him? A. I have seen him.

Q. Who is he, what has he to do with you and your wife? A. Well, the telephone slips— You don't call a man up three times a day to ask him 20
what time it is.

Q. Your telephone slips show what? A. Three to four calls every day.

Q. To whom—Edward Riley? A. To his personal house, and where he works.

Q. I mean, his telephone number? A. BErgen—something.

Q. What is it? A. I don't know.

Q. You have read the slips? A. Yes, sir.

Q. Where did you get them from? A. The tele- 30
phone company.

Q. And three or four telephone slips a day, to his house? A. To his house or place of employment.

Q. His place of business? A. The courthouse.

Q. You found the telephone slips between his house and the city hall? A. Right.

Q. Who got those slips from the telephone company? A. I did.

Arnold Michels. Called by Defendant. Recross.

Q. You are sure that Ruth Fagan didn't get them for you? A. No, I wouldn't pay the bill until I got the evidence where these calls went to.

Q. Was that the one who paid your building and loan—Ruth Bagley? A. No; what has that to do with it?

Q. I am asking you. A. Ruth Bagley, she paid
10 some—

Q. You didn't give it to your wife? A. No.

Q. Some other strange girl? A. Yes; if I gave it to my wife it would never get there.

Q. You gave it to some stranger? A. Yes, sir.

Q. You never went out with Ruth Fagan or Bagley? A. No.

Q. You are positive of that? A. Positive.

Q. You saw your wife about a week ago, you said? A. Yes.
20

Q. In New York? A. In New York.

Q. She comes over to New York to get a check? A. No.

Q. You send the check to her? A. I mail it to her.

Q. When? A. Generally Thursday, sometimes Friday.

Q. Every week? A. Yes, sir.

Q. You didn't give her a check when she was over to see you a week ago? A. No, not in New
30 York.

Q. A week ago? A. In Jersey City.

Q. You gave her the check? A. Yes, sir.

Q. When she and the boy went to the theatre with you? A. Yes, sir.

Q. And what was she in New York for? A. I don't know.

Q. Well, she came down to see you, didn't she?
40 A. She brought the boy to see me, I guess.

Arnold Michels. Called by Defendant. Recross.

Q. And you are sure you didn't give her a check on that occasion? A. I don't think so—in Jersey City.

Q. Do you know or don't you know? A. No, I didn't give her the check then, but in Jersey City.

Q. How many times does she come and call for a check, and meet you in Jersey or New York, for it? A. I never gave her the check before, I generally mailed it. 10

Q. You say that your salary was garnisheed? A. It was, yes.

Q. On a judgment gotten against you in New York? A. Right.

Q. Not a Jersey judgment? A. No.

The Court: How often has your wife seen you since this case opened? 20

The Witness: About five times.

BY THE COURT:

Q. Where does she see you on those occasions in New York? Where in New York? A. 47 Vesey Street.

Q. That is your father's place of business and where you are employed? A. Yes.

Q. And I think you said she saw you outside of the place of business; is that right? A. Yes. 30

Q. On the sidewalk? A. In front of the store, maybe a door or so up or down.

Q. That is, near the front of the store? A. Yes, sir—it might not be 45—47, 51 or 45, 35—

Q. How many numbers has your father's store? A. What I mean is right around that locality.

Q. You saw her then in front of the store or near the store, around that block in the daytime? A. Oh, of course. 40

Arnold Michels. Called by Defendant. Recross.

Q. Did you ever see her there when she wasn't with the boy there? A. No, always had the boy.

Q. The boy lives with her still? A. Yes.

Q. And goes to school in Jersey City? A. No, in Hasbrouck Heights, I think so.

Q. Now, I think you said, Mr. Michels, that you had no affection for your wife, and wouldn't do her any bodily harm, and it was only a matter of business between you. A. Yes.

Q. Was there anything in these visits of your wife to you, other than business for the collection of the amount due? A. No, that wasn't the object of the visits.

Q. What was it? A. Oh, she showed me the building and loan book and asked me if I wanted to—

Q. Isn't that all business? A. No, I thought you said about the checks.

Q. What I want to know is whether you, having no affection for her, she came to see you because you wanted to see her, did you? A. I wanted to see the boy.

Q. And is it the fact that she brought the boy to see you each time, and is that the reason she came? A. No, I wouldn't say that; she brought it to show me the building and loan, and asked me what I should think she should do, rent it, or sell it.

Q. All business matters? A. Yes, sir.

Q. And also, the boy was along, for you to see? A. Yes, sir.

Q. Under the arrangement made, how much were you to pay for the support of the boy, the child? A. \$31.

Q. How did you give that to your wife? A. Mailed it—except one or two other times, and she doesn't come, I send it.

Arnold Michels. Called by Defendant. Recross.

Q. Have you ever been behind? A. Maybe a day, when my father was not there to sign the check.

Q. Any time she came to get a check, and nothing else. How about the check? Sometimes she wanted it ahead, to pay, and I gave her two checks in one.

Q. Under the arrangement you have with your wife about the support, it is a voluntary arrangement? A. Yes, sir. 10

Q. Do you have the right to see the child? A. No.

Q. Is there any stipulation? A. I am supposed to see the child, and, I don't know,—some argument, I didn't see him and I didn't bother.

Q. Well, there is nothing, if you know, understanding, in an arrangement that you had with your wife or her lawyers for your seeing the boy, any definite time? A. No. 20

Q. But you were supposed to see him? A. Yes, every Sunday.

Q. Where was the boy brought? A. To the Journal Square.

Q. And did you meet him at Journal Square with the wife, several times? A. Yes—that was in February.

Q. And you would all go to the movies together? A. No, I would just take him. 30

Q. Him, alone? A. Yes, sir.

Q. Recently, have you been to the movies with your wife? A. Yes.

Q. How long ago? A. A week or so.

Q. Where did you meet her? A. At Pavonia Ferry.

Q. How did you come to meet here there? A. She called me up. 40

Arnold Michels. Called by Defendant. Recross.

Q. About the check—was the boy with her? A. To give her the check.

Q. Did you bring the check over then? A. Yes.

Q. And when you got there you gave her the check and what did you say? A. We had something to eat and went to the show.

10 Q. You and the boy, to the show? A. I couldn't chase her home.

BY MR. BERKOWITZ:

Q. You testified, a few minutes ago, that in November, when you went to Hackensack, you and your wife went together? A. When?

Q. In November. A. No, she went alone, and I went alone.

20 Q. You testified a few minutes ago, you went together. Do you want to change that and say you went alone? A. What do you mean? We met there.

The Court: Give the particulars.

The Witness: If I go to Hackensack I am not going to Jersey City—

Q. How did you get there? A. On the ferry; I left New York— I met her there.

30 Q. So, then, you didn't go out with your wife, did you? A. No.

Q. After you were in my office, last year, and made the arrangement to see the boy, you had the boy on a table in the theatre and left him there? A. Twice.

Q. And one time you had him at the saloon, didn't you, at ten o'clock at night? A. No.

40 Q. Do you remember your wife saying you couldn't have the boy again? A. I brought the boy home.

Arnold Michels. Called by Defendant. Recross.

Q. Do you remember the occasion you left the boy on a table in the theatre and left him mthere?

A. No.

The Court: How often were you to see the boy?

The Witness: Once a week.

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Q. You now know you owe your wife \$400, is that so, Mr. Michels, on back alimony?

The Court: What has the question to do with this alimony arrangement?

Mr. Berkowitz: No.

The Court: Then there is another order?

Mr. Ockford: Between September 16, 1929, and November 15, 1929—the matter is still in litigation, I don't think counsel ought to ask it, unless your Honor is going to hear the matter.

20

BY MR. OCKFORD:

Q. As to this last time, the third appointment you were together, who suggested going to the movies—

Mr. Berkowitz: I object; what difference?

30

The Court: Admitted.

Q. Who made the suggestion? A. I think the boy did.

Q. What did your wife say, if anything? A. She was willing, and we were all willing, and we went.

Q. Do you remember what she said about it, if anything? A. About what.

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Arnold Michels. Called by Defendant. Recross.

Q. About going to the movies, that particular night? A. She said Friday night, he didn't have to go to school, it's all right.

BY THE COURT:

10 Q. Every time she saw you did she have the child with her? A. Yes, sir.

BY MR. OCKFORD:

Q. Did she ever tell you you were behind with your payments and you wouldn't see the child unless you paid her? A. No.

20 Q. I show you what purports to be telephone slips, are those the slips you referred to in the testimony, in answer to the question by counsel? A. Yes; he wanted that number, there it is.

Q. What is it? A. 7562 Montgomery. It's discontinued now, for non-payment of the bill.

Q. Well, those are the slips. I ask to have them marked in evidence.

Mr. Berkowitz: I object, there is nothing in evidence about them.

30 Mr. Ockford: The witness was interrogated by counsel.

The Court: They may be marked for identification; consider them in a bunch.

(The slips are received and marked Defendant's Exhibit for identification.)

Q. Did you ever meet Riley? A. Under a different name.

Q. Did you ever meet him when you were in company with your wife?

40

Arnold Michels. Called by Defendant. Recross.

Mr. Kespel: I object; I don't think it fair to bring in any testimony regarding Edward Riley.

The Court: Cross examination— Do you press the question, Mr. Ockford?

Mr. Ockford: Yes, for the reason the petitioner has laid great stress on these farewell notes the witness has testified to, a third one, in which he mentioned this man. 10

The Court: Admitted.

Q. Did you ever meet the man when your wife was present? A. Yes.

Q. Who introduced the man to you? A. The wife.

Q. And how did she introduce him? A. With a different name. 20

Q. What name? A. Tom.

Q. And did you ever say anything to your wife at any time about this man? A. No—there was another party there at the time.

BY THE COURT:

Q. When was this, do you recall that? A. Around May.

Q. Of what year? A. 1929. 30

BY MR. OCKFORD:

Q. You were living at Hasbrouck Heights at the time? A. Right.

Q. Now, you said a moment ago you saw your wife about five times after something happened, after what happened? You said after something opening up; what did you mean by that? The 40

John J. Daly. Called by Defendant. Direct.

question was how many times since this case has been started—or, bearing in mind the case was started September, 1929, and you were apart from September, October or November, until the following January; but, since that time you were at the lawyer's office, can you tell us, since the time you were at Mr. Berkowitz's office or made these arrangements, how often had you seen her? A. Five or six times.

Q. Have you ever seen your wife at any time since then when you and she were alone together? A. Only with the boy there.

Mr. Ockford: I desire to offer in evidence a certified copy of a transcript in this police court case, a letter referred to in this witness' testimony.

The Court: Received.

(Received in evidence and marked Plaintiff's Exhibit J.)

JOHN J. DALY, called and sworn as a witness on behalf of the defendant, testified as follows:

DIRECT EXAMINATION BY MR. OCKFORD:

Q. Do you produce an ambulance call record from the Jersey City Hospital? A. Yes, sir.

Q. Is that an official record of the Jersey City Hospital? A. Yes, sir.

Q. And you have the custody of it at the present time? A. Yes, sir.

Mr. Ockford: I offer it in evidence.

(Received in evidence and marked Defendant's Exhibit No. 12.)

Evelyn Michels. Recalled. Direct.

BY MR. BERKOWITZ:

Q. Do you know who made this memorandum?

A. Dr. Hirsch.

Q. You are not he? A. No, I am file clerk.

The Court: He has the custody of the paper, something on the paper, the signature? 10

Mr. Ockford: I want to fix the date.

Mr. Berkowitz: I don't see that it should be allowed in evidence.

The Court: Not evidence of the facts, but a paper made at that time in the ordinary course, at the hospital, and comes in proper order.

Mr. Berkowitz: He doesn't know anything about it, only something—he presents something on record in the hospital. 20

The Court: This is the original return itself, the paper; it is not evidence of the facts herein, a paper which comes from the proper custody, and I admit it.

(Received in evidence and marked Exhibit K.)

(Copy in it, worked on the ticket.)

Defendant rested.

Plaintiff rested. 30

MRS. MICHELS, recalled:

BY THE COURT:

Q. How many times have you seen your husband, from the time you and he last talked together? A. About four times. 40

Evelyn Michels. Recalled. Direct.

Q. Where? A. In front of the store, right next door.

Q. In New York City? A. Yes, sir.

Q. Why did you see him? A. To get my check.

Q. For the support of this child? A. Yes, sir.

Q. Was that the only reason? A. Yes; and he wants to see the boy.

10 Q. He sent for you? A. No, I called him up.

Q. Is the boy still living with you? A. Yes, sir.

Q. He is going to school? A. Yes, sir.

Q. Has the father seen the boy except when you have taken him there? A. On two occasions, in the theatre.

Q. After you separated the last time you allowed your husband to take the boy once or twice? A. Twice.

20 Q. And what happened? A. He left him at the theatre and the boy came home all alone, when the show was out.

Q. Since that time have you been with the boy every time the father saw the boy? A. Yes, sir.

Q. Did you have any other reason for seeing your husband but the check? A. No; he wanted to take the boy and I went along with the boy.

30 The Court: This will go over to Friday, April 10, at ten o'clock, for the Court to have briefs submitted and hear argument.

Mr. Ockford: May I file the answer to the supplemental petition, which was never filed?

The Court: Yes.

Adjourned to Friday, April 10, 1931, at ten o'clock a. m.

Petitioner's Exhibit 1.

To my son Arnold:

Dear Arnold:

I want you to have everything in life you should have.

Let my father send you to a school that will take care of your becoming a man not like a bum like your father.

Well goodbye Son,

Your Father,
ARNOLD.

10

Petitioner's Exhibit 2.

To my Father:

I am very sorry to have caused you all this trouble in your aged life, but I made a bad mistake when I married my present wife. I owe now 20

Oil cloth man	\$ 62.00
Citizens Finance	240.00
Public Service	93.00
Hyman Bros.	175.00
	\$570.00

When I am dead bury me next to Liberta and forget me.

Your loving son,
ARNOLD.

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Defendant's Exhibit I.

No. C E 288

BARTHOLD MICHELS SON CO. INC.
 Wholesale—Butter, Cheese, Eggs and Lard—Retail
 47 Vesey Street—Washington Market

New York Nov. 4, 1929

10

Pay to the order of Arnold D. Michels \$45.00
 Forty-Five and no/100 Dollars.

BARTHOLD MICHELS SON CO., INC.
 HERMAN F. A. MICHELS
 President.

HERMAN C. MICHELS
 Secretary.

20

To The Corn Exchange Bank
 West Street Branch 57
 New York

Reverse side

Arnold D. Michels
 Morris Pashchinsky
 Bank Stamp

30

Clearing House Stamp

Defendant's Exhibit J.

A true copy

Fred U. Hillers

Clerk of the Second District Criminal Court

Hackensack Nov. 20, 1929

Hon. C. Hart

10

Prosecutor of the Pleas

Bergen County

Dear Sir:

I, Mrs. Evelyn Michels wish to withdrawn complaint made by me on _____ against Arnold D. Michels as I do not want to go any further in same.

Signed MRS. EVELYN MICHELS.

20

Witness

SGT. CLARK

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IN CHANCERY OF NEW JERSEY.

Between
 EVELYN MICHELS,
 Petitioner,
 and
 ARNOLD MICHELS,
 Defendant.

10

Conclusions.

VAN WINKLE, A. M.:

20 While the parties lived at Hasbrouck Heights the husband was drunk most of the time while at home; there were acts of violence towards the wife; he accused and characterized the wife in vile language; he was arrested for striking her; there was scanty and precarious support of the wife and child, usual with an habitual drunkard.

30 Failure to support is not extreme cruelty under our decisions, but in this case the husband's attitude is shown by it and his general treatment of his wife bears upon and supports her testimony with respect to the alleged acts of extreme cruelty. His acts while they lived at Hasbrouck Heights made the wife's life one of wretchedness and extreme discomfort. His course of conduct is difficult to put on paper. Much, if not all, of the husband's misconduct may be attributed to the influence coming from the excessive use of strong liquor over a long period.

40 Drunkenness "without more" is not extreme cruelty, but in this case there is much more. This husband's drunkenness was accompanied by a filthy habit of long duration, euphemistically

Conclusions.

called "his lavatory habit". No self-respecting wife should be asked to sleep in the same bed with a husband with this habit, and I find that this wife did not sexually cohabit with her husband after the last act of cruelty set forth in the Petition. The wife testified that she did not sexually cohabit with her husband for a long period before she left him, and that after she left him she did not so cohabit. 10

I find that defendant has been guilty of extreme cruelty towards his wife; that there is sufficient corroboration; that there was no condonation.

The wife left the husband while they were living in Hasbrouck Heights and hired a small apartment in an apartment house on Bramhall Avenue, Jersey City, under her maiden name. It appears that the wife instructed a solicitor to file a Petition for Divorce, and that publication in a newspaper respecting the suit disclosed to the husband where the wife was living, whereupon the husband went to the apartment and demanded that he be admitted. The husband denies that he went to the apartment uninvited, but I believe the wife's testimony as to this. It is true that the wife got support from the husband when she could, but I find that the husband went to the apartment uninvited and against the wishes of the wife. The wife really was hiding away from the husband and desiring to prosecute her suit against him. The husband was served with a Citation while at the apartment. Subsequently, the husband at times paid the rent of the apartment. The wife testified that she asked the husband to leave and that he refused; that she and her child slept in the bedroom, the door of which she kept locked, and that the husband slept on a couch in the outer room. This living together in the apartment is relied upon as a condonation 30 40

Conclusions.

by the wife of the acts of cruelty set forth in the Petition; and the point was made that the acts set forth in the Supplemental Petition as extreme cruelty could not be relied upon for a decree because they occurred after the Petition was filed. Some of the acts set up in the Supplemental Petition are: That the husband turned on the gas in an attempt to suffocate himself and the wife and the child; that on a subsequent occasion defendant set the couch on fire with the intention of burning up the apartment and destroying himself and the wife and the child; that at this time he told the wife that he would kill them all no matter how he did it; that the husband was taken away from the apartment in an ambulance, to be treated for bruises, cuts and alcoholism.

It is to be noted that not only did the husband make an attempt at suicide, which attempt the wife might view with equanimity, and if the result were successful, even with satisfaction, but also that he made an attempt on the life of the wife and the life of the child. On one of these occasions last referred to, the husband wrote two letters in pencil, which were found by the wife alongside of the husband, one of these letters being addressed to his father and the other being addressed to his son, the child of the marriage. In the letter addressed to the son defendant used these words: "Become a man and not a bum like your father". This was defendant's own appraisalment of himself, and I am not disposed to disagree with this appraisalment.

I believe the wife's testimony with respect to these occurrences at Bramhall Avenue, but I do not rest the decree that I am advising on these acts. At the least, these acts set forth in the Supplemental Petition may be considered as throwing

Conclusions.

light on the acts of the parties in the prior period mentioned in the Petition, during which the acts of cruelty alleged in the Petition occurred.

I find that there was no condonation by the wife because of the circumstances in connection with the parties living in the same apartment on Bramhall Avenue. The wife was willing to give the husband another chance, but she was not willing to, and she did not, sexually cohabit with him. She needed and wanted support, and this made her endure more than a wife should be called upon to endure. The living of this wife with the husband in the same apartment under the circumstances was not condonation, but it is to be said that if the wife had condoned the acts set forth in the Petition, the condition that goes with a condonation was not kept. The wife did not lose her right to prosecute her suit based on the acts set forth in the Petition because of her living in the same apartment with the husband on Bramhall Avenue. Her rights were set when the alleged acts of cruelty occurred, and she had the right to bring her suit six months after the last act of cruelty set up in the Petition even if she lived in the same house with her husband thereafter. The right of action had vested, and the wife did not forfeit it by condoning the offense. She had a right to endeavor to get support from the husband for herself and her child. With this purpose the wife met the husband outside of a saloon that the husband frequented, and to which place he had referred her, and also on the street outside of defendant's place of business in New York City, and on several occasions when she received checks for support from him she and the child went to picture houses together. These things should not be held to indicate that the wife was not in fear of the hus-

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Conclusions.

band, for these places where she met him were public places, and she met him because of the urgency of the need of support for herself and the child.

What is to be said as to the future probabilities? The husband admits that he has no love for his wife, but he adds that he does not want to do her any harm. But he has done her harm. What he
 10 has done indicates what he probably will do. The testimony shows that the wife is under a reasonable apprehension of bodily hurt, no worse. The husband has made one effort to destroy himself and his wife, and he may do so again.

The husband's sullen demeanor throughout the trial impressed me most unfavorably.

The testimony shows that if this husband is allowed to retain his power over his wife, and she is
 20 compelled to remain subject to him, her life and her health will be endangered, or that the husband will render this wife's life one of such extreme discomfort and wretchedness as to incapacitate her to discharge the duties of a wife.

I will advise a decree in accordance with the Petition. And the decree will provide that the husband pay Thirty-one Dollars (\$31.) each week, from the date of the decree, for the support of the wife and the child of the marriage; and a counsel fee of
 30 Two Hundred Fifty Dollars (\$250.) is allowed to the solicitor of the wife, to be included in the costs.

(See *Black vs. Black*, V. C. Van Fleet, 30 Equity, at page 221; *Rhodes vs. Rhodes*, 92 Equity, 253; *Coe vs. Coe*, 97 Equity, 59; *Hart v. Hart*, 99 Equity, 373; *Klein vs. Klein*, 140 Atlantic, 234.)

Decree Nisi.
(Filed May 8, 1931)

IN CHANCERY OF NEW JERSEY.

75/114.

Between EVELYN MICHELS, Petitioner, and ARNOLD D. MICHELS, Defendant.	{	On Petition, &c. Decree Nisi.	10
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This cause coming on to be heard in the presence
 of Wallace P. Berkowitz, of counsel with the peti-
 tioner, and John W. Ockford, of counsel with the
 defendant, on petition, supplemental petition, an-
 swers and proofs taken in open Court, and the Court
 having duly considered the pleadings and proofs
 and having heard and considered the argument of
 counsel, from all of which it appears to the satis-
 faction of the Chancellor that the petitioner and
 the defendant were lawfully married on the 20th
 day of February, 1920, as alleged in said petition,
 and that the defendant has been guilty of extreme
 cruelty committed against the said petitioner as
 charged in the said petition, and that at the time
 the cause of action for divorce therefor arose, the
 petitioner and the defendant were bona fide resi-
 dents of this State and the parties have continued
 so to be down to the time of the commencement of
 this action; and it further appearing that jurisdic-
 tion herein has been duly acquired upon personal

Decree Nisi.

service of process upon the defendant within this State;

10 IT IS, thereupon on this 8th day of May, 1931, by his honor, Edwin Robert Walker, Chancellor of the State of New Jersey, ORDERED, ADJUDGED and DECREED that the said Chancellor by virtue of the power and authority of this Court and of the Acts of the Legislature in such cases made and provided, does hereby ORDER, ADJUDGE and DECREE that the said petitioner, Evelyn Michels, and the said defendant, Arnold D. Michels, be divorced from the bond of matrimony for the cause aforesaid, and the said parties and each of them, be freed and discharged from the obligations thereof, unless sufficient cause be shown to the Court within three months from the date hereof, why said decree should not be made
20 absolute; and

IT IS further ORDERED, ADJUDGED and DECREED, that the said defendant do pay to the said petitioner or her solicitor, her costs of this suit incurred and to be incurred, to be taxed, together with a counsel fee of \$250.00, and that the said petitioner do have execution therefor according to the practice of this Court; and

30 IT IS further ORDERED, ADJUDGED and DECREED, that the care and custody of Arnold Michels, Jr., infant child of said marriage, be and the same is hereby awarded to the petitioner until the further order of this Court; and

IT IS further ORDERED, ADJUDGED and DECREED, that the said defendant, Arnold D. Michels, do pay to

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Decree Nisi.

the said petitioner, Evelyn Michels, the sum of \$31.00 per week commencing on the date hereof and continuing each and every week thereafter, for the maintenance and support of the petitioner and the said infant child of the marriage.

Permission for the petitioner to resume her maiden name is reserved.

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E. R. WALKER,

C.

Respectfully Advised,

MARSHALL VAN WINKLE,

A. M.

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Notice of Appeal.

(Filed July 10, 1931)

IN CHANCERY OF NEW JERSEY.

10	Between EVELYN MICHELS, Petitioner, and ARNOLD D. MICHELS, Defendant.	}	On Petition for Divorce, &c., Notice of Appeal.
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Appeal From Decree Nisi, made by the Chancellor and advised by Marshall Van Winkle, Advisory Master.

20 The defendant, Arnold D. Michels, hereby appeals from the Decree Nisi made in the above entitled cause on May 8th, 1931, and from the whole and every part thereof, to the Court of Errors and Appeals in the Last Resort in all causes.

This is an appeal from a Decree Nisi made by the Chancellor upon the advice of Advisory Master, Marshall Van Winkle.

Dated, Union City, N. J., June 13, 1931.

30

JOHN W. OCKFORD,
Solicitor for and of Counsel with
Defendant Arnold D. Michels.

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

40

JOHN W. OCKFORD,
Of Counsel with Defendant,
Arnold D. Michels.

Petition of Appeal.

(Filed August 5, 1931)

NEW JERSEY COURT OF ERRORS AND
APPEALS.

Between

EVELYN MICHELS,
Petitioner-Respondent,

and

ARNOLD D. MICHELS,
Defendant-Appellant.On Appeal
from Court
of Chancery.

10

TO THE HONORABLE THE COURT OF ERRORS AND AP-
PEALS, IN THE LAST RESORT IN ALL CAUSES:

20

The petition of appeal of Arnold D. Michels, the
appellant in this case and the defendant below,
respectfully shows that:

1. You petitioner, Arnold D. Michels, finds him-
self aggrieved by a decree nisi made in the Court of
Chancery by his Honor Edwin Robert Walker,
Chancellor of the State of New Jersey, advised by
his Honor Marshall Van Winkle, Advisory Master,
bearing date the 8th day of May, 1931, in a cause
wherein Evelyn Michels was petitioner and Arnold
D. Michels was defendant, in this respect, to wit:
That the said decree ordered, adjudged and decreed
that the said Evelyn Michels and said Arnold D.
Michels be divorced unless cause be shown within
three months why said decree should not be made
absolute, and that the said Arnold D. Michels pay
costs and a counsel fee and that the custody of a
child of the marriage be awarded to the said Evelyn
Michels and that defendant, Arnold D. Michels,

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Petition of Appeal.

pay alimony in the sum of \$31.00 per week. Your petitioner further shows that he also finds himself aggrieved by Order made by the Chancellor of the State of New Jersey, advised by Vice Chancellor John J. Fallon, in the same cause, bearing date September 29, 1930, ordering the said Arnold D. Michels to pay the sum of \$400.00.

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2. Your petitioner, therefore, appeals from the said decree nisi of the said Chancellor which decrees a divorce with costs and counsel fee, the custody of the child of the marriage and alimony, upon the ground that the same is erroneous, for the following reasons:

(a) There was no sufficient legal evidence produced at the hearing of the said cause in the Court of Chancery to justify the making of said decree.

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(b) Upon the pleadings and the evidence, the Court of Chancery should have dismissed the petition for divorce of the petitioner Evelyn Michels.

(c) The petitioner failed to establish extreme cruelty within the legal definition of the same as committed against her on the part of the defendant below, and her petition for divorce should have been dismissed.

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(d) The petition for divorce should have been dismissed for the reason that the alleged acts of cruelty complained of were within six months from the time of the filing of the petition.

(e) Such acts of cruelty as were shown were also shown to have been condoned and forgiven by the petitioner below.

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Petition of Appeal.

(f) The action abated by reason of a reconciliation between the parties and a resumption of the marital relationship.

(g) The petition for divorce below should have been dismissed because there was a lack of corroborating evidence as required by law.

(h) The petition for divorce below should have been dismissed upon the merits of the case and upon the law and facts. 10

Your petitioner, therefore, appeals from the said Order upon the ground that the same is erroneous for the following reasons:

(a) The action in which the order was made abated before the making of the Order and the Order should therefore not have been made. 20

(b) The said Order should not have been made because upon the evidence produced the said sum of \$400.00 was not due and payable by the defendant below to the petitioner below.

(c) Because the sum of \$400.00 or any part thereof, if due, was only a debt and not the subject of an order to pay.

(d) Because the Order was contrary to sound public policy. 30

Your petitioner, therefore, prays that the said decree nisi of the said Chancellor may be reversed and set aside and that the Court of Chancery be directed to enter a decree dismissing the petition for divorce below; and

Your petitioner further prays that the aforesaid Order be reversed and set aside and the Court of 40

Petition of Appeal.

Chancery directed to enter an order dismissing the application of the petitioner below for the payment of the said sum of \$400.00; and

Your petitioner further prays that he may have such other and further relief as to this Honorable Court shall be deemed just and proper.

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JOHN W. OCKFORD,
Solicitor for Petitioner, who
is the Defendant-Appellant.

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New Jersey Court of Errors and Appeals

Between

EVELYN MICHELS,
Petitioner-Respondent,
and

ARNOLD D. MICHELS,
Defendant-Appellant.

BRIEF FOR DEFENDANT-APPELLANT.

In the Court below, the petitioner-respondent was awarded a decree of divorce. The defendant-husband appeals.

The cause alleged was extreme cruelty. Defendant contends that there were no acts of extreme cruelty and that the petitioner-wife wholly failed to make out a case for divorce.

In this case dates are of particular importance. The petition for divorce was filed August 27, 1929, and the citation was served September 6, 1929, while the parties were living together at an apartment on Bramhall Avenue, Jersey City. After service of the citation the parties separated for a time, but again lived together at the Jersey City apartment during the months of November and December, 1929, and January, 1930. Defendant says that this resumption occurred in the middle of October. Petitioner says that it occurred in the middle of November. It is not disputed, however, that the parties did live together at least in November and December, 1929 and January, 1930.

They again separated and on November 21, 1930, a supplemental petition was filed alleging acts of cruelty in December, 1929.

The prayer of the supplemental petition is as follows:

"Petitioner, therefore, prays that she may have the same relief as if the facts stated in the supplemental petition had been stated in the original petition and that the marriage between petitioner and the defendant may be dissolved for the causes aforesaid as well as the causes alleged in her original petition."
(Case, p. 11, ll. 10 to 20.)

In the original petition, the wife stated that she and the defendant lived together as man and wife at Hasbrouck Heights, Bergen County, until July 29, 1929, and on this date she was obliged to leave her home in order to protect her own life.

She then alleges specific acts of cruelty in February, 1928, and "that more than six months have elapsed since the last acts of cruelty hereinabove stated".

It would seem that the alleged acts of cruelty in July, 1929 (although none were proved) could not furnish the basis of any cause of action because of the filing of the petition in the following month. Certainly the alleged acts of December, 1929, could not furnish basis for a cause of action commenced August, 1929.

It is true that there was some proof to support the allegation of a striking of the petitioner by the defendant in February, 1928. This resulted in a Police Court complaint. This complaint, however, was withdrawn in November, 1929 (Case, p. 251).

The petitioner testified to a complete reconciliation in July, 1928 (Case, pp. 52, 53). It would, therefore, appear that the alleged acts of February,

1928, were fully condoned and should not furnish the basis of a decree.

After the episode of February, 1928, the parties separated but came together again in the following July and continued to live together for a year.

The petition is wholly silent as to any specific acts of cruelty subsequent to February, 1928. The petitioner makes no complaint of any hitting after the February, 1928 episode, except a general statement that he hit her several times after, but that it "didn't amount to anything" (Case, p. 64, l. 30).

It clearly appears from the testimony that there were no specific acts of physical violence complained of or established after the reconciliation of July, 1928.

The petitioner charges the defendant with habitual drunkardness, although it is admitted that the defendant never lost a day from work in all of the years he was married. It is also charged that the defendant was sullen and morose and was an unpleasant person to live with and was careless in his personal habits. It is further charged that the defendant attempted suicide although there is not the slightest legal proof of this. ~~TP~~In a note on a scrap of paper the defendant wrote to his young son that he did not want him to become a bum like his father (Case, p. 249).

These charges are disputed and there is a great lack of corroboration to support the petitioner's story, and even assuming them to be true does not establish extreme cruelty toward the wife in the legal sense to justify a decree in her favor.

If there was any cruelty, it was by the defendant toward himself and not toward his wife.

When the parties were first married, the defendant had an inheritance of some \$15,000.00 or more. While the money lasted there was no complaint.

The wife was provided with automobiles, fur coats, expensive clothing, diamonds, furniture, radio and other luxuries. She did as she pleased. She spent as she pleased. She went as she pleased and with whom she pleased. It is evident that when the money was gone she tired of the defendant and desired her freedom, with the defendant supporting her.

The petition for divorce presents about as flimsy a case as can be imagined. The supplemental petition is an abortive effort to patch up the case. The testimony offered utterly fails to make out a case and the facts and circumstances are so unusual as to require a more extended discussion of the facts than ordinarily would be needed.

While the parties were living together at Hasbrouck Heights in July, 1929, the wife made up her mind to move. She rented the Bramhall Avenue apartment. She hired a man to do the moving. She did not tell her husband that she was going to move. She moved all in one day (Case, pp. 58, 59). After she moved she did not immediately notify her husband where she had gone. She testified that nothing particular happened between her husband and herself during the time that she was making these arrangements to move and at the time she actually moved (Case, p. 63, l. 7). She says that after she moved she did not call upon her husband for any support and that she did not see him again until September 15th (Case, p. 60, ll. 18 and 23).

It is undisputed, however, that the defendant was served with the citation at the Bramhall Avenue place on September 6th and that he had been there for sometime previous. She does not explain how her husband located her, although his testimony in this regard is very plain, simple and clear (Case, pp. 144, 145, 146). He says that about

August 15th, his wife called him up and asked him to meet her in Jersey City. He told her that if she wanted to see him she would have to meet him at Hasbrouck Heights. He went to Hasbrouck Heights and met her. She had her automobile and after the meeting she drove him to the Bramhall Avenue place and they then lived there together until the 6th of September, when he was served with divorce papers. This made him angry and he left, but he again returned, as he says, October 15th, and as she says, November 15th.

After the last separation, she met him from time to time and he and she and the child went to the movies together on a number of occasions (Case, pp. 54, 55). The defendant paid the rent of the apartment and other expenses while they lived together after they made up in October or November. Defendant's exhibit (Case, p. 250) is an instance of this.

While the parties were living together in August, 1929, and a day or two before the petition for divorce was sworn to, the defendant was found in the hall in front of the apartment and it may reasonably be inferred that he had been drinking, and he had fallen asleep. An ambulance doctor was called and found it unnecessary to take him to the hospital. The time of this occurrence was definitely fixed by the hospital record (Case, p. 246). Defendant says, and he is not contradicted, that after this, his wife told him that the ambulance doctor had told her that he, the defendant, had not long to live. Shortly thereafter the defendant says that he felt very ill and thought he was going to die and that it was because of this fear that he wrote the notes (Petitioners' Exs. 1 and 2, Case, p. 249), together with a third note that calls for especial notice (Case, p. 221). There is nothing in the lan-

guage of the notes that indicate an intended suicide. The wife testified that the gas was left on on one occasion and the couch was on fire on another. In this she is not at all corroborated and the circumstances of her actions clearly indicate that if these things occurred they were accidental (Case, p. 81).

On direct examination the two notes were produced and offered in evidence. No mention of a third note was made nor was it produced or referred to. It was first injected into the case by petitioner's counsel, who brought it out on cross examination of the defendant. It is evident that there was a third note and that it was addressed to the wife and it was not produced by her, although the other two were produced (Case, pp. 225, 226). In it the defendant complained of a boy friend that his wife had and it is very significant that the defendant's state of mind could better have been shown by the production of all of the notes instead of only two of them. The man thought he was going to die and he left three notes, one of which was addressed to his son, one to his father and one to his wife. It is quite evident that his depression was largely caused by his wife's conduct, and although he was not actively complaining he was nevertheless deeply affected by the situation which had arisen.

Later on he found out that the hospital doctor had not said anything of the kind and from that time on his courage revived somewhat. There is no adequate proof in this case that the wife suffered any extreme discomfort or lived a life of wretchedness or was incapacitated in her performance of her duties as a wife or that her health or safety was endangered. In fact it appears that the wife thrived on the conditions and the discomforts and wretch-

edness were those of the husband. It is not at all a case of a husband forcing his attentions upon his wife and abusing her. In fact, it appears that he did well by her and indeed too well and never bothered her or annoyed her or interfered with her and provided her with an automobile and with every luxury while his money lasted. He worked steadily and faithfully and never lost a day, and if he was able to secure some consolation in his domestic situation by the use of liquor, the wife should not be heard to complain.

The rules of law applicable are so well known as to hardly require citation of authorities.

The principles were recently restated in the case of

Sachse vs. Sachse, 107 N. J. E. 41, S. C. 151 Atl. 744.

In

Brinkerhoff vs. Brinkerhoff, 106 N. J. E. 331, S. C. 150 Atl. 679,

the Chancery Court dismissed a petition by a wife against her husband, and among other things it was claimed that the husband had intentionally let gas escape, presumably for the purpose of destroying her and her child. She continued, however, to live with the defendant and the Court found from this and other circumstances that it was evident that she was not at all afraid of the defendant and that her grievances were largely fancied.

In

Dodge vs. Dodge, 103 N. J. E. 45, S. C. 142 Atl. 178

the Court of Chancery held that an attempted suicide did not constitute extreme cruelty.

In

O'Brien vs. O'Brien, 105 N. J. E. 250, S. C. 147 Atl. 911

this Court affirmed the Chancery Court,

103 N. J. E. 214, 142 Atl. 198,

in its definition of "extreme cruelty". The definition therein given is that extreme cruelty is such cruelty as endangers safety of person or health of aggrieved party either actually afflicted or reasonably apprehended.

In the case of

Arnaboldi vs. Arnaboldi, 104 N. J. E. 194, S. C. 144 Atl. 917,

this Court affirmed the Chancery decision recorded in

101 N. J. E. 126, 138 Atl. 116,

where the Chancery Court distinguished between marital ills and ill conduct and the extreme cruelty which entitles a husband or wife to a divorce.

See also:

Cavileer vs. Cavileer, 94 N. J. E. 160, S. C. 119 Atl. 101;

McElnea vs. McElnea, 103 N. J. E. 304, S. C. 143 Atl. 324.

The charges made by the wife against the husband such as they were, did not find support in the testimony of the witnesses called ostensibly to corroborate the petitioner. The witness, Ann Hamilton, testified only to certain remote occasions and said that the man and his wife argued and that she ran away from him and locked herself in her room (Case, p. 95). She was asked if she ever saw any-

thing which would cause the wife to run upstairs and she answered, "No, I can't state that I did" (Case, p. 95, l. 25). She was then asked:

"Q. Mrs. Hamilton, did you ever see Mr. Michels hit or attempt to hit Mrs. Michels?

The Master: I think she said that she didn't.

A. I can't say that I did. I saw what might turn to that, but I never saw him strike Mrs. Michels.

Q. In your presence, did Mr. Michels ever threaten to strike Mrs. Michels? A. I don't recall" (Case, p. 95, l. 30).

The janitress at the Bramhall Avenue place, Niemi, was called. Her testimony only related to occurrences after this suit was started and after the parties had apparently made up. She testified (Case, p. 102, l. 15):

"Q. What did Mr. Michels do at any time he came around to that apartment in that ten or eleven months you were superintendent there? A. He wouldn't do anything, only a couple of times—one time I see only he was laying out there in the hall, one or two times."

She thought this was in January, 1930, and she was not very sure about it (Case, p. 104, l. 10). She was quite positive that it was only once that he was laying out in the hall. Evidently this was the occasion when the ambulance was called and the time is fixed by the hospital records as being the latter part of August, 1929. She testified that she did not know what was the matter with him and that she saw Mrs. Michels let her husband in the premises and then she went downstairs (Case, p. 106, l. 25, and p. 107, l. 8). She also corroborated the defendant in his testimony about paying the rent (Case, p. 109, l. 35). She testified that Mrs.

Michels would go out and leave the boy alone and that on occasions she gave the boy a meal or two (Case, p. 112, l. 30).

The petitioner's mother, Elizabeth Taylor, was called to corroborated her story, but it appeared that she knew nothing about any episode, except the one of February, 1928 (Case, p. 130, l. 12). The petitioner's father, Frank Taylor, was called and it appeared that he knew nothing about any occurrences except one away back in 1926. There were no other witnesses called by the petitioner to corroborate her story.

Defendant's testimony is plain, clear and straightforward and although the petitioner was recalled (Case, p. 257) she did not offer any evidence in rebuttal, even by her own testimony and she had not contradicted the defendant as to any of the matters of explanation given by him in his testimony. The defendant's story stands uncontradicted and it is supported by its own reasonableness and by the probabilities of the case.

The defendant-appellant contends that the petitioner wholly failed to make out a case. The defendant-appellant also contends that the conclusions are in many respects contrary to the facts. These conclusions are found in the case at pages 252 to 256, inclusive.

The acts of violence first referred to occurred in 1928, and were, as above pointed out, fully forgiven. There was no proof of either scanty or precarious support of the wife and child. It is true that the wife testified generally to arguments over bills, but from her own testimony it is evident that she had charge accounts with local dealers and at no time was it necessary for her to take action for non-support or even complain of non-support.

In the conclusions it is stated, "His acts while they lived at Hasbrouck Heights made the wife's

life one of wretchedness and extreme discomfort" (Case, p. 252, l. 30). The wife, however, made no such complaint nor was there any proof that she suffered or was even annoyed. It is said, "His course of conduct is difficult to put on paper. Much, if not all, of the husband's misconduct may be attributed to the influence coming from the excessive use of strong liquor over a long period."

It is apparent, however, from the testimony that the husband was a very methodical person. He went to work regularly at a certain hour. He came home regularly at a certain hour. He never missed a day from work. His recreation appeared to be reading the paper and indulging in liquor regularly, but in all the period of time there is proof only of two or three occasions when he might properly be called drunk.

The court then discusses defendant's personal habits. As to this there is nothing at all to indicate that the petitioner was in any way harmed by it either as to health or safety or otherwise. There is a reference to the last act of cruelty set forth in the petition (Case, p. 253, l. 6). An examination of the petition, however, discloses that this last *act* of cruelty was in February, 1928. This act, however, was an isolated one and was fully forgiven. There is no specific act of extreme cruelty within the meaning of the law cited or referred to in the conclusions.

It is conceded that failure to support is not extreme cruelty and that drunkardness is not extreme cruelty. The conclusions go on to say (Case, p. 253, l. 15):

"The wife left the husband while they were living in Hasbrouck Heights and hired a small apartment in an apartment house on Bramhall Avenue, Jersey City, in her maiden name."

This was so, but the statement following:

"It appears that the wife instructed a solicitor to file a petition for divorce and that publication in a newspaper respecting the suit disclosed to the husband where the wife was living. Whereupon, the husband went to the apartment and demanded that he be admitted."

is not in accord with the facts.

The petition was filed August 27th. The citation was served September 6th. At the time of such service, defendant was living with his wife at Bramhall Avenue and had been there for several days before (Case, pp. 72 and 73). The petitioner testified that when she signed the affidavit to the divorce petition in August, she told her lawyers that her husband could be served at 47 Vesey Street (Case, p. 73, l. 1). She then said that when her husband appeared at the Bramhall Avenue apartment she called her lawyers and told them that he was there (Case, p. 73, l. 18), and that three days later papers were served upon him at the Bramhall Avenue address (Case, p. 73, l. 20). She then testified that after the papers were served, the defendant went right out and did not come back. It also appears from the hospital record that the defendant was at the Bramhall Avenue place before the filing of the petition for divorce.

The newspaper notice respecting the suit was after September 6th and related to an alimony order and it was this that woke up the defendant and caused him to go back to the Bramhall Avenue place in October, as he says, and in November, as she says.

The conclusion as to the attempted suicide (Case, p. 234, l. 20) appears to be not only contrary to the facts, but misinterpretation of the language of the penciled notes.

Apparently the Court considered the supplemental petition only "as throwing light on the acts of the parties in the prior period mentioned in the petition, during which the acts of cruelty alleged in the petition occurred" (Case, p. 251, l. 40). How these acts throw any such light is not made clear. On the contrary the defendant's explanation, which was not contradicted, indicates a distressed mind on the part of the defendant due to actions by his wife and there is not even a contention made that anything could ever occur similar to the episode of February, 1928, which ended up in a Police Court.

The conclusions with respect to the husband and wife living together after the commencement of the suit indicates that the wife put up with her husband being under the same roof because of need for support. The fact is, however, that she had filed a petition and had obtained an order for alimony. The Chancery Court was open to her as well as the Domestic Relations Court. There was no need at all of her putting up with her husband's presence. She was entitled to be supported *pendente lite*. Certainly the Courts had sufficient power to compel support in these circumstances.

Is it not much more reasonable to suppose that the true story is the one the husband has told? The Court suggests that the wife should not be held not to have been in fear of her husband because she met him in public places (Case, pp. 255, 256). There is no suggestion, however, that there was affirmative proof of any fear at any time, either in public or in private. Certainly there was no urgency of need for support requiring these friendly meetings even up to the eve of the trial of the case, because the testimony is that from the

time he agreed to pay a weekly allowance he did so voluntarily and without becoming in arrears.

The story as gathered from the testimony and record in this aspect of the case may be summarized as follows:

The original order for alimony went by the board when the husband and wife became reconciled in October, as he says, or November, as she says. From that time on until the following January, 1930, the action which had been pending was forgotten. After the separation in January, 1930, which according to the testimony was due to the wife's fault and not the husband's, the parties met voluntarily and the husband agreed to pay \$31.00 a week for the support of his wife and child and agreed to pay \$5.00 a week on account of some installment purchase theretofore made by the wife. At this time, there was no thought of the action which had been commenced in the previous year. From that time on the husband paid the agreed allowance regularly and without interruption. Later the wife made an application for the alimony which had accrued between September 15th and November 15th. The husband disputed the duration of this period and said that it was only between September 15th and October 15th. The dispute was as to whether the husband and wife made up their differences, were reconciled and again lived together on October 15th or November 15th.

There was a proceeding which resulted in a Master's Report finding that the period of separation ended November 15th and that eight weeks of alimony at \$50.00 a week had accrued between the date of the order and the date of the reconciliation. In this proceeding the defendant contended that the action had abated and it was not until then that there was an attempt to revive the suit and it was not until November 21st, 1930, that the sup-

plemental petition was filed. The application for alimony was never renewed and from January, 1930, on, the wife and child had been supported by the voluntary action of the husband. This support has continued notwithstanding the appeal, and the wife was not compelled to apply to this Court for alimony pending the appeal.

The contention that the wife had to put up with the presence of her husband to secure support is without foundation in fact, and is directly contrary to the situation presented by this case. The wife surreptitiously left her husband while they were living at Hasbrouck Heights in a home owned by them by the entirety. She was not compelled to go. She went of her own volition and for her own purposes. It is clear that she intended to try to get a divorce. Apparently she found out, however, that she was in no good position to sue for divorce, she having left her husband, and that it would be wiser to again live with her husband and have him leave her. That she called him at his New York place of business is the obvious explanation of her conduct and of his. The circumstances of his rejoining her at Hasbrouck Heights upon his insistence before going to Jersey City shows that he felt that he had a right to consider the Hasbrouck Heights place as still being the home. What suggestion she made or what inducements there may have been to cause the husband to go with his wife to the Bramhall Avenue apartment and live there are not shown, but can easily be inferred.

Apparently the wife then found out that if she proceeded with her proposed divorce proceeding there would be a considerable delay. Thereupon, she swore to this petition basing it on extreme cruelty and alleging as the only specific acts, occurrences of February, 1928. When the citation was served the husband left. Evidently he believed that

he had been tricked into going to Bramhall Avenue, but stayed away, however, only until such time as he realized that he would be required to pay alimony, and apparently he felt this was unfair as he had not deserted his wife and had not failed to provide for her. She had left him and had persuaded him to rejoin her and then had him served with a citation for divorce. He then rejoined his wife in either October or November and if the date be important the indication is that the reunion was prior to November 4th at least. Evidently the wife desired to obtain a divorce without a contest and finding she could not do so, she was satisfied to let the matter drop. The action was only revived at a later time after a subsequent separation and in the circumstances above set forth.

Undoubtedly the defendant left his wife in January, 1930, and he has not so far made any serious effort to bring about a further reconciliation. If this desertion continues it may furnish the basis for a suit for divorce upon the ground of desertion. Then again, it may not and it may be that the defendant may have a cause of action which he may or may not proceed with. All of this has nothing to do with the present case which must stand or fall, it would seem, upon the pleadings and proofs and the law as laid down by the Courts interpreting the provisions of the Blackwell Act so called.

In the light of the unusual circumstances of this case and upon the pleadings and the proofs ^{and} of the law, it is respectfully submitted that the Decree Nisi appealed from should be reversed and the petition dismissed.

JOHN W. OCKFORD,
Solicitor for and of Counsel
with Defendant-Appellant.

Service of a copy of the under
Brief acknowledged this
Day Feb 1932

New Jersey Court of Errors and Appeals 10

Between

EVELYN MICHELS,
Petitioner-Respondent,

and

ARNOLD D. MICHELS,
Defendant-Appellant.

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BRIEF FOR PETITIONER-RESPONDENT.

This is an action brought in the Court of Chancery by the wife against the husband for divorce on the grounds of extreme cruelty under what is commonly called the Blackwell Act.

The original petition was filed by the former solicitors of petitioner on August 27th, 1929 while petitioner was residing in an apartment house on Bramhall Avenue, Jersey City, New Jersey. From the testimony it appears that through a newspaper item, regarding the filing of the petition, the defendant went to his wife's apartment some time in the month of September (Case, p. 37, line 38, and p. 38, lines 1-10). It also appears from the testimony that when defendant came there, petitioner then telephoned her former so-

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10 licitor, Mr. Fienberg and told him that the defendant was at the apartment (Case, p. 67, line 23). Petitioner was instructed by her former solicitor that he would have a Deputy Sheriff make service upon him forthwith. The defendant was accordingly served with copy of citation and petition on September 6th, 1929, but not while the parties were living together as appellant would have it appear. The fact is, as indicated by the testimony (Case, p. 38, lines 1-10), that defendant virtually forced his way into petitioner's apartment and the evidence is quite positive that they were not living together as man and wife as has been suggested in appellant's brief.

20 The evening that service was made, defendant departed. He again returned on or about November 15th, 1929 and remained until some time in January, 1930, when he again left.

Much is made of the fact that the parties were under the same roof at the time of instituting the action and its pendency. Appellant has apparently overlooked what was said by Vice-Chancellor Backes, in *Kline vs. Kline*, 140 Atl., 233; syllabus:

30 "Wife's attitude toward husband after leaving and what she did may reflect conduct of the parties and her state of mind during cohabitation; but mere fact that she met her husband afterwards, several times on apparently friendly terms claimed to indicate absence of fear is no bar to right of divorce a vinculo for extreme cruelty, if right of action existed and she did not forfeit it by condoning the offense."

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At page 234 the Court said:

"It has not been argued, as it sometimes is, that the wife, after submitting to numerous acts of cruelty, continue to live with her husband, and that that is evidence of forgiveness. A wife, continuing after brutal conduct on the part of the husband, does so in most cases, not in a spirit of forgiveness, but in the hope that he may mend his ways, or that she is constrained to do so because of children or her own necessities."

There is no evidence in the case that petitioning wife condoned the defendant's acts, on the contrary, it appears that she acquiesced in his remaining in the apartment, in the hope, that he would stop his drinking and accord such treatment, as common decency dictates, should be accorded a wife. It appears that defendant instead of mending his ways not only did not do so, but became even more nasty and dangerous.

The apartment in which petitioner resided on Bramhall Avenue, Jersey City was occupied by twenty families (Case, p. 103, line 30). One Sunday evening defendant came there intoxicated and in the public hallway said to the petitioner: "You are a whore anyhow" (Case, p. 103, line 20).

Again on December 8th, 1930, while defendant was in the apartment, he told petitioner that he was going to kill all of them (Case, p. 42, line 10). The following morning, about one o'clock, petitioner smelled gas and got up to investigate and found all the gas burners of the gas stove open and gas escaping (Case, p. 42, line 20). It was then that petitioner discovered beside defendant note marked Exhibit "P-2" (Case, p. 44, line 22). The Court in its conclusion said:

"The husband has made one effort to destroy himself and his wife, and he may do so again. The husband's sullen demeanor throughout the trial impressed me most unfavorably" (Case, p. 256, lines 12-16).

10 This note reflects unmistakably the attitude of defendant toward his wife. In this note he says: "When I am dead bury me next to Liberta." Liberta, it seems, was defendant's first wife. Even in death he did not want to be near petitioner. Again on December 10th 1930, at about two o'clock in the morning, petitioner smelled smoke and went out to the living room and found the couch on fire (Case, p. 45, line 10, and p. 46, lines 1-20).

20 The testimony is freighted with instances where petitioner had to run upstairs or into another room, to escape defendant's blows. Surely, in this enlightened age, no one expects a wife to live a marathon existence and lie awake half the night for fear of being asphyxiated or burned to death. No person, no matter how powerful, would be able to withstand the strain, incident, in running to escape blows and from lack of sleep on threats of being killed. We have been unable to find any rule which requires a person to tolerate such things to the point of collapse.

30 Let us consider for a moment the habits of defendant. The testimony is that defendant used his bed for a lavatory (Case, p. 31, line 15; p. 97, line 13; p. 98, line 26).

40 What more revolting and disgusting thing than this? Would not a condition of this kind ultimately affect a wife's health, obliged as she is to clean it? It might not be amiss to consider at this point the names defendant called his wife.

The names, dirty bastard, stinking whore and son-of-a-bitch, were often used by defendant in talking to his wife before her friends and relatives (Case, p. 119, line 24). In fact, defendant had the effrontery to charge his wife with being immoral while testifying in this case (Case, p. 185, line 19). Surely, if this was so, would not a man of defendant's caliber have filed a cross petition. See *Smith vs. Smith* in this Court, 40 Equity, 566. 10

There is no doubt that the defendant is addicted to the use of strong liquor. At first defendant denied that he was a drinking man, but on being admonished by the Court (Case, p. 166, line 31), defendant admitted that he did drink, and there is no room for doubt that defendant was intoxicated almost nightly. This is corroborated by the testimony of all of the witnesses. 20

The case of *Dodge vs. Dodge*, 103 N. J. Equity, 45, may be distinguished from the instant case in that here, defendant not only attempted to destroy himself, but his wife and child as well; while in the *Dodge* case, the husband attempted only to destroy himself.

In this case defendant's acts of cruelty, cannot perhaps be, with particularity, set down as to dates. It requires a reading of the entire testimony to gain an idea of his attitude, treatment and actions. With him, his drunkenness, filth and abuse of petitioner was a continuous affair, occurring as the testimony indicates, almost nightly. Petitioner says: "And the fighting and threatening and hitting me all the time" (Case, p. 64, line 23). 30

Appellant argues the point that acts of cruelty in July, 1929 cannot furnish a basis for a suit filed the following month. We agree and con- 40

cede this, but wish to say that the petition alleges no acts of cruelty in July, 1929, as appellant himself says; but simply says that petitioner became ill and she no longer was able to endure the abuse (Case, p. 2, lines 21 to 39). The law of this State does not require a wife to leave her home upon an act of extreme cruelty, it postpones the right of action for six months, although the cause of action is fixed on the day of the extreme cruelty. *Kline vs. Kline*, 140 Atl., 233.

In the case of *Hart vs. Hart*, 99 N. J. Equity, 373, Mr. Justice Kalish speaking for the Court, on page 375, said:

“The statute fixes the right of a petitioner to file a petition for divorce six months from the date of the last act of cruelty complained of. This manifestly for the benefit of the injured party. It is left entirely up to the free determination of the injured party whether or not to submit to a continuation of the domestic relation or to sever it. The right to divorce, however, is complete and fixed at the time of the last act of cruelty.”

There are specific acts of extreme cruelty testified to by petitioner (Case, p. 27, lines 10-20). Also that petitioner became ill and had to call a doctor (Case, p. 26, lines 20-30). Again the wife testified that she was taken ill in the middle of the night and requested the defendant to call a doctor. He refused. Petitioner was taken to a hospital and operated on a few hours later (Case, p. 36, lines 16 to 20, and lines 30 to 40). Throughout the entire testimony, petitioner tells

a story of horror, ill-treatment, being hit and continuously being threatened, receiving not enough food and no money, plus defendant's filthy habits and habitual drunkenness.

Appellant attempts to show a condonation but no proof has been offered to establish this. The law of this State is clear for in the case of *Todd vs. Todd*, 37 Atl., 766, we read: 10

"The law undoubtedly is that the party setting up condonation of an offense of this character, must, asserting the affirmative of an issue establish it by carrying the burden of the proof."

Again in the case of *Apgar vs. Apgar*, 59 Atl., 230, the Court said: 20

"Condonation or forgiveness to be effective, requires the subsequent good conduct of the one forgiven."

Again in the case of *Warner vs. Warner*, 31 N. J. Equity, 227, we find:

"Condonation is also conditional, the condition being that the pardoned party shall in the future treat the other with conjugal kindness and by this is meant, that he shall not only refrain from a repetition of the offense forgiven, but shall also refrain from committing any other offense which falls within the cognizance of a matrimonial court." 30

See also *Bravo vs. Bravo*, 93 N. J. Equity, 56 and 19 Corpus Juris, pages 86-87. 40

10 The testimony in this case does not indicate that there was a condonation of the offense, on the contrary, it appears that defendant forced his way into petitioner's apartment. For the sake of argument, let us concede the condonation. On examination of the testimony, it quite conclusively appears that defendant's subsequent conduct did not fall within the rulings of the above mentioned cases. Surely, a wife should not be condemned for trying to maintain the matrimonial status, by giving the husband another chance.

20 No reason seems to suggest itself why the husband should defeat his wife's cause of action by forcing himself into her home. To approve such conduct on the part of the offending spouse would result in leaving the injured party without a remedy.

In *Coe vs. Coe*, 97 N. J. Equity, 57, Vice-Chancellor Backes said:

30 "The postponement for six months of the right to sue, is to give the injured party time to calm down and reflect, put the offender on probation and to forgive, if pardon is deserved. Condonation rests exclusively with the offended party."

The *Coe* case was affirmed by this Court in 99 N. J. Equity, 422.

40 Petitioner is corroborated in nearly everything she alleges by her witnesses and also by defendant's attitude as shown by the note which defendant had written on the morning he decided to kill himself and his family, as well as his attitude while on the witness stand. The law of this State is that petitioner need not be corroborated in

every detail, but that witnesses testifying to such facts in evidence, as have already been testified to by petitioner or such circumstances tending to establish them as render petitioner's testimony so much more probable as to be legally acceptable. *Orens vs. Orens*, 88 N. J. Equity, 29.

In the case of *Foote vs. Foote*, 71 N. J. Equity, 273, this Court held that: 10

"3. Under a statute requiring corroborative evidence of desertion in order to obtain a divorce, testimony of other witnesses is not required; but it is sufficient if the circumstances, as shown by the expressions and conduct of the defendant, together with the letters of the parties, corroborate the testimony of the complainant." 20

And in the case of *Young vs. Young*, 146 Atl., 467, we read:

"The rule of corroboration does not require categorical corroboration; the rule is satisfied if the attending proof satisfies the Chancellor that the petitioner's testimony on the whole is true." 30

In the case at bar, the trial Court had ample evidence from which it could find that the petitioner's testimony as a whole was true.

In the case of *Olt vs. Olt*, 122 Atl., 607, it was held:

"Though there was not specific corroboration of the last act of cruelty to which defendant testified, held there was sufficient corroboration in the corroboration of much 40

if not all of the rest of her tale of ill-treatment."

10 A case of extreme cruelty has been established beyond a doubt. In the case at bar, there is a stronger case of extreme cruelty than in the cases which this Court on many occasions has affirmed and allowed decrees of divorce.

In the case of Hill vs. Hill, 127 Atl., 584, the Court said:

20 "I take it to be established now by the Court of last resort, that no physical assault is necessary, whereby the conduct of the husband, if (in the language of Vice-Chancellor Van Fleet) he is allowed to retain his power over his wife, her life or health will be in danger or he will render her life one of such extreme discomfort and wretchedness as to incapacitate her to discharge the duties of a wife."

30 The case of Brinkerhoff vs. Brinkerhoff, 106 Equity, 331, 150 Atl., 679, may readily be distinguished from the instant case in that, the Court found there was no corroboration of the attempted destruction of petitioner and her children, in fact, there was no testimony that he turned on the gas. All that appears, is that she found the pilot light extinguished. In the case at bar, the testimony is that all the gas jets were opened and gas escaping from them. The gas stove in this case was located in a room adjoining the bedroom and not in the cellar as in the Brinkerhoff case. And it must be remembered that in the instant case, this
40 condition was discovered at about one o'clock in the morning. The fact that defendant here had

in mind destruction is borne out by the note Exhibit "P-2" (Case, p. 44, line 20). What other construction can be placed on the words "When I am dead, bury me next to Liberta"?

In conclusion, may we point out there were three hearings on different occasions in this case and the Court had before it all the parties and an opportunity of observing their demeanor and very fully and carefully considered the cause, after setting a special day for hearing argument of counsel. 10

It is respectfully submitted that the decree under review should be affirmed for the very excellent reasons advanced by the Advisory Master.

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Solicitor of Petitioner-Respondent.

JULIUS A. KEPSEL,
of Counsel.

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