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BILL OF COMPLAINT.

Filed January 12, 1921.

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

Complaining, shows unto your Honor, your oratrix, Maria A. Hartley, of the Town of Kearny, County of Hudson and State of New Jersey.

1. On February 17th, 1917, she was lawfully married to her present husband, Fred A. Hartley, at Kearny, N. J., by Rev. Thomas A. Conroy, a minister of the gospel;

2. After her said marriage, your oratrix and the defendant, her said husband, went to reside at No. 87 Johnston avenue, Kearny, Hudson County, N. J., and there lived together, with some interruptions as hereinafter stated, for about three years, and where they cohabited until the abandonment by the defendant of your oratrix, as hereinafter complained of;

3. There has been born to your oratrix and her said husband, as the fruit of their marriage, one child, Alfred Hartley, August 14th, 1919, now about a year old, and who is in the custody of your oratrix;

4. Defendant from the time of his marriage to your oratrix, until the latter part of the month of August, 1917, gave a meager support to your oratrix; that about the time last mentioned, defendant began to treat your oratrix harshly and unjustly to accuse your oratrix of going out and running around with other men; he complained that his meals were not properly prepared and that his two children, by a former

marriage, were not properly cared for; that in the month of September, 1917, the defendant forbid his wife, your oratrix, to order any food or other necessaries in his name and refused to give her any money to buy same, stating that he would buy the necessary food and other household supplies;

5. From said date, September 1917, until June 13, 1918, your oratrix was obliged to obtain food from her mother in order to live, and during said time the defendant repeatedly choked and beat your oratrix so that your oratrix was compelled to seek food and shelter at her mother's home. On June 12, 1918, your oratrix requested defendant to give her some money with which to buy food, or to buy the food himself and bring same into the home, at which request the defendant became abusive in his language, toward your oratrix and told her that if she did not like what he provided, she could leave the house. The next day, June 13, 1918, the defendant was forced to go to her mother's home where she remained until the latter part of August, 1918, during which time the defendant repeatedly promised your oratrix that if she would give him "another chance," he would "treat her right and give her sufficient money to run the house," and would cease finding fault and cease accusing her of running around with other men.

6. Relying on defendant's promises, your oratrix returned to the home No. 87 Johnston avenue August 27th, 1918, where she remained and cohabited with her said husband, the defendant, until the latter part of July, 1919, at which time she was about to become a mother,

and your oratrix by arrangement with her said husband left the home No. 87 Johnston avenue and went to the home of her mother, where she was confined, the boy, Alfred, being born August 14, 1919, and where she remained until about the middle of September, 1919, on which date she returned to the flat No. 87 Johnston avenue and cohabited with her husband until the final abandonment by the defendant of your oratrix, as hereinafter complained of;

7. After your oratrix returned to her said husband, the defendant, late in August, 1918, the defendant repeatedly told the petitioner that he was going to give up the produce business in which he was engaged and engage in the real estate business, and that the real estate business was to be incorporated and that your oratrix was to become a member of the corporation, and would have to sign a paper in connection therewith. Your oratrix repeatedly refused to sign any papers stating that she did not wish to engage in the real estate business but after repeated urgings and promises made to her by the defendant, your oratrix on December 10, 1918, before one Charles R. Cook, a Notary Public of New Jersey, signed a paper, which your oratrix was led to believe made her a member of "F. A. Hartley Realty Co.", a corporation. Your oratrix has since learned that instead of signing a paper to become a member of the F. A. Hartley Realty Co., she in fact, signed a deed for five valuable tracts of real estate situated in the Towns of Harrison and Kearny, Hudson County, N. J., which said deed was recorded December 11, 1918, in Book 1294, Page 280, &c., in the office of the Register of

Essex County. Your oratrix has since learned that the defendant is the owner of two hundred forty-eight shares of the capital stock of said corporation and that William Jinks and Samuel W. Smith, Jr., each hold one share of stock of said corporation, and that said corporation on May 8th, 1919, mortgaged one of said tracts to wit: 87 Johnston avenue, in the sum of eight thousand dollars, which said mortgage is recorded in Book 944, Page 538, in the office of the Register of Hudson County, and conveyed the rest of the property which belonged to this defendant, and which was transferred to said corporation by deed from the said defendant, in which deed your oratrix joined under the belief that she was signing papers of incorporation;

8. During the interval between the time your oratrix was induced by the defendant to return to him in August, 1918, and September, 1919, the defendant lived agreeably with your oratrix and gave her $20.00 weekly to buy food for the home and to support herself;

9. After the birth of the child, Alfred, August 14, 1919, your oratrix returned to the flat of the defendant at No. 87 Johnston avenue, about the middle of the month of September, 1919, and cohabited with the defendant for about one week when the defendant began to upbraid your oratrix about her alleged extravagance and told your oratrix that she would no longer receive the allowance of $20.00 per week for the support of the home, but that she could go to a certain store nearby and buy the necessary food for the family for which the defendant would pay. A week later the defend-

ant forbid your oratrix to purchase any food or household necessaries in the store, in question, or any where else stating that he would bring home whatever food was required;

10. From said last mentioned date, September, 1919, until January 15, 1920, the defendant failed and refused to provide the necessaries in life for your oratrix and her infant child, and continually nagged and abused your oratrix and accused your oratrix of running around with other men, and failed to furnish sufficient coal to heat the home or cook what little food was brought in, and permitted the gas to be shut off on January 12, 1920, by the gas company for non-payment of the gas bill, so that your oratrix was obliged to borrow kerosene oil from a relative of the defendant who resided on the third floor of the house. Your oratrix urged the defendant to pay the gas bill and have the gas turned on, and also to provide food and clothing for your oratrix and their child Alfred, to which the defendant replied that he did not intend to pay the gas bill nor to give your oratrix any money, and that since he, the defendant, could live in that manner your oratrix and their child should also be able to live in like manner. Defendant also told your oratrix at this time that if she did not like the way she was being treated and the kind of support she was receiving, she could leave the house and could go to her mother and stay there so that on January 15, 1920, your oratrix was compelled to go to her mother's home in order to obtain food and warmth for your oratrix and the infant, Alfred.

11. Your oratrix states that the defendant, by the true intent and meaning of the statute in such case made and provided, has abandoned your oratrix and separated himself from her; that your oratrix gave him no cause for his action, but has ever been a true and faithful wife to him; that the defendant since January 15th, 1920, has refused and neglected and still does refuse and neglect to provide for her and for her said infant child;

12. Your oratrix further states that she is now dependant for the support of herself and her infant child, Alfred, and has been dependent for the support of herself and said child, upon the funds which she received from her mother;

13. Your oratrix charges that the defendant is engaged in the wholesale produce business and that his income amounts to about $150.00 a week and that he is able to earn such by his personal attention to his business and that defendant is abundantly able to maintain and support your oratrix and her child in a manner suitable to their station in life.

14. Your oratrix and defendant were bona fide residents of the State of New Jersey, when the cause of action arose, and they have ever since continued to be bona fide residents of this State down to the time of the commencement of this action, residing at Kearny, Hudson County, as aforesaid;

15. Your oratrix's maiden name was Maria A. Ferris. In tender consideration whereof, and forasmuch as your oratrix can be relieved only in this Court;

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

May it please your Honor, the premises considered, to grant unto your oratrix the State's writ of subpoena, issuing out of and under the seal of this Honorable Court, to be directed to the said Fred A. Hartley, commanding him by a certain day and under a certain penalty therein to be expressed, to be and appear before your Honor in this Honorable Court, then and there to answer all and singular the said premises, and to abide by and perform such order and decree therein as to your Honor shall deem meet,

and shall be agreeable to equity and good conscience.

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

JAMES P. MYLOD,
Solicitor for and of Counsel with
Complainant.

ANSWER.

Filed February 16, 1921.

The defendant, Fred A. Hartley, of the Town of Kearny, County of Hudson and State of New Jersey, answering the Bill of Complaint, says:

1. He admits the contents of paragraph 1.

2. Answering paragraph 2 he admits that complainant and defendant lived together, with some interruptions, for about a period of three years. The remaining portions of said paragraph he denies.

3. He admits the contents of paragraph 3.

4. He denies the contents of paragraph 4.

5. He denies the contents of paragraph 5.

6. Answering paragraph 6 he admits that after complainant had been away from defendant she returned to him and remained until she went to her mother's house for her confinement. The remainder of said paragraph he denies.

7. He denies the contents of paragraph 7, except that he admits that the Fred A. Hartley Realty Company, a corporation, holds title to the property mentioned in said paragraph, and that this defendant is a stockholder thereof. He

denies absolutely that he ever told complainant that he intended to give up the produce business, although he alleges that complainant has been endeavoring to get him to give up the said produce business for sometime. He denies that he induced complainant to sign any papers by representing to her that she was signing incorporation papers, and denies that she signed papers believing that they were incorporation papers. He says that she fully understood precisely what was being done.

8. Answering paragraph 8 defendant says that there was never any certain amount provided for with respect to the support of complainant; defendant at all times paid the household expenses.

9. He denies the contents of paragraph 9 except that he says that after the return of complainant after her confinement she cohabited with this defendant.

10. He denies the contents of paragraph 10.

11. He denies the contents of paragraph 11.

12. He has no knowledge of the contents of paragraph 12.

13. He admits that he is engaged in the wholesale produce business but he denies that his income is $150.00 a week or any other such sum.

14. He admits the contents of paragraph 14.

Defendant prays that the bill may be dismissed.

MERRITT LANE,
Solicitor of Defendant.

Common form of replication.

Opening.

In Chancery of New Jersey

Between

MARIA A. HARTLEY,
Complainant,

and

FRED A. HARTLEY,
Defendant.

Transcript of testimony taken before Honorable John E. Foster, Vice-Chancellor, at the Chancery Chambers, Newark, New Jersey, on October 10th, 1921, at 10 A. M.

Appearances:

Mr. James P. Mylod, for complainant.

Mr. Merritt Lane, for defendant.

Mr. Lane. Before the cause opens, in order that our position is apparent from the very beginning, we have taken the position that Mrs. Hartley was not justified in leaving her husband; that her husband was perfectly willing and able to maintain and support her and desired her to live with him, and that irrespective of whether she thought or felt, or irrespective as to whether she was justified at that time in leaving, the conduct of the husband has been such since, and he is now in a position where he desires his wife to return to him and live with him and that whatever his conduct may have been that forced her to leave, if she were justified in leaving, it was not such conduct as would warrant her now refusing and contin-

uously refusing to live with him. That is the position that the defendant takes.

MARIA A. HARTLEY, complainant, being duly sworn according to law, on her oath says:

Direct examination by Mr. Mylod.

Q Where do you live at the present time? A 253 Chestnut street, Kearny.

Q And with whom do you live? A With my mother.

Q You are the wife of Fred A. Hartley? A Yes.

Q You were married on what date? A I was married on February 17, 1917.

Q Was your mother present at the marriage? A There wasn't anyone present at the marriage, only my witnesses. It was a secret marriage.

Q By whom were you married? A By Father Conroy, Saint Cecelia's Rectory in Kearny.

Q And where did you go to live after you were married? A I went home with my mother.

Q How long did you remain living with your mother after you were married? A I remained there a couple of months.

Q Where did your mother live at that time? A She lived on the third floor at 87 Johnston avenue, Kearny.

Q And where did Mr. Hartley live at that time? A He lived on the second floor at 87 Johnston avenue, Kearny.

Q He was a widower at the time you married him? A Yes.

Q And he had two grown sons? A Yes, sir.

Q About how old were those boys at that time? A One was eleven and the other was fourteen.

Q Who owns this house 87 Johnston avenue, if you know? A Mr. Hartley.

Q As far as you know, how long has he owned it? A He built it, when I moved in there I was ten years old.

Q Was Mr. Hartley living in this house at the time you moved in there, when you were ten years old? A Yes.

Q And he remained there continuously, did he, until the time of the marriage? A Yes.

Q And your parents remained there continuously? A Yes.

The Court. Did your mother know you were married when you went back to live with her after you were married?

The Witness. I told my mother on Sunday night, following the marriage. I was married on Saturday.

Q Was your father living at the time? A No, sir. My father died when I was three months old.

Q You remained with your mother after the marriage how long? A A couple of months.

Q Then you went to live with Mr. Hartley as man and wife? A Yes.

Q In the same house? A Yes.

Q Who was taking care of Mr. Hartley's apartment during the time you lived with your mother after the marriage? A The housekeeper, Mrs. Schwartz.

Q Did she remain after you went in the house? A She left there the night I went in there.

Q About what month was it during the year 1917 that you went to live with Mr. Hartley as man and wife? A May.

Q During the month of May, 1917? A Yes.

Q Did anything occur shortly after you went to live with him? A Shortly after I went to live with my husband, I should judge a week after, we started to receive unsigned letters and they came every week.

Q To whom were those letters addressed? A To Mr. Hartley.

Q Did you and Mr. Hartley have any talk about those letters? A Yes, we talked them over and we went to Mr. Butler in the Post Office.

Q Is he a Post Office inspector? A Yes.

Q What did Mr. Hartley have to say with reference to those letters? What was the nature of the letters?

Mr. Lane. We have them, if you want them.

Mr. Mylod. We ask for them.

Mr. Lane. I produce the letters and hand them to Mr. Mylod.

Q Will you take these letters, one postmarked Arlington, April 5, and another postmarked Newark, May 27; another postmarked Newark, June 18, 1917; another postmarked July 1st, Newark, 1917; one postmarked Arlington, New Jersey, September 21, 1917, and another not dated? Will you look at these letters, and see if they are the so-called unsigned threatening letters that you mention? A This

is not an unsigned letter. (Referring to letter postmarked September 21, 1917.) I don't remember the one postmarked July 1, 1917. I don't remember reading that. I remember the one postmarked June 18, 1917. There were more letters than those that are here.

Q Will you look at the letter undated, which I show you, without an envelope? A Yes, I identify that.

Q You identify them all except the one postmarked June 18, 1917? A Yes.

Q What is the purport of the letters? A The meaning of these letters—were, that Mr. Hartley was to divorce me, and if he didn't divorce me and go away that the party that wrote these letters, they would blind me with vitriol. That is all I remember about the letters.

Q After these letters were received, you talked them over with Mr. Hartley? Did Mr. Hartley make any suggestion as to what should be done? A No, he did not.

Q Did you or Mr. Hartley do anything after these letters arrived? Did you go any place? A Yes, we went to the Post Office with them.

Q The Post Office Department in Newark? A Yes, to see Mr. Butler.

Q And did Mr. Hartley say then how these letters could be stopped coming or make any reference as to what should be done? A Yes, Mr. Hartley talked the letters over with me and suggested a divorce, and he afterwards told me that he had seen a lawyer that told him it would be a good idea to get a mock divorce, and then after I got the divorce—I could still be friendly with him, we would still be married, and after the divorce was granted, it would be placed in Trenton and the party that was

writing the letters would naturally go and look for the divorce papers, and that is how they would catch the one that was writing unsigned letters.

Q These letters arrived very shortly after you began to live with Mr. Hartley? A Yes.

The Court. Within a week?

The Witness. Yes.

Q And continued to arrive down until June some time, or later? A Around in June.

Q What took place in June, if anything, June, 1917, the year in which you were married? A In June Mr. Hartley told me that he could never work again; that he couldn't move to his apartment in New Lawn avenue until he found out the one that was sending—that was writing these letters.

Q Was there any talk between you and Mr. Hartley with reference to living in the New Lawn avenue house? A Yes, when Mr. Hartley married me, he told me that was where we were going to live. That is why he didn't want me to live in the downstairs apartment with him, until he got his new home furnished on New Lawn avenue.

Q Did you ever object to going to live in Mr. Hartley's apartment at 87 Johnston avenue? A I never objected. I waited and I done everything that Mr. Hartley told me. I waited until he told me to come downstairs and I went down.

Q Did you go away that summer? A Yes, I went to Asbury Park.

Q And who went to Asbury Park with you? A Mr. Hartley's two boys.

Q And where did you stop in Asbury Park? A We stopped at Mrs. Tilton's on Third avenue.

Maria A. Hartley, direct.

Q How long were you there? A A month; during the month of August.

Q And what took place, if anything, at Mrs. Tilton's between you and Mr. Hartley? A Mr. Hartley accused me of going out with other men when I was in Asbury Park. He accused me of going out with Mr. Smith, which I told him that I did. Mr. Smith, as I thought, was a relation of his. His two boys called him "Uncle," and he took us out for a ride in his automobile. I told Mr. Hartley—I wrote and told him about it and I told him that over the phone.

The Court. You say he took "us"—who do you mean?

The Witness. He took Mr. Hartley's two boys and myself and Miss Elliott, a woman who was staying at the hotel.

Q How often did Mr. Hartley call at Asbury Park while you were there? A He called there every week-end.

Q When you say "called," he stayed over the week-end with you? A He stayed over the week-end.

Q Just prior to Labor Day, did he visit that week-end? A Yes, he came down Sunday before Labor Day.

Q What took place on that Sunday? A When he came down on that Sunday, he used profane language to me and told me that I had made my bed and now I had to lie on it.

Q Did he come into your room at the hotel? A He came in my room and he put me out of the room until he would search it.

Q Who was in the room when Mr. Hartley arrived besides yourself? A My sister.

Q And what did Mr. Hartley do? Tell us all that took place. A Mr. Hartley put us both out of the room and told me that he would have to search it, and after he got finished he brought me back into the room and pushed the door in my sister's face, and when he brought me in the room he choked me, and the only way that I could make him let go of me was, I scratched him on the face with my ring, and that is how he let me go.

Q Then after that, what did he do? A After that, he stayed there a little while and then he went down to his automobile with his two boys, and he drove away, and a few minutes after he came back again, and he told me to come on home with him. In the meantime my sister had sent me up two dollars for me to come home on the train because she knew I was left there alone.

Q Did you go home with Mr. Hartley? A Yes.

Q And when you reached 87 Johnston avenue what did Mr. Hartley do? A He told me to go upstairs and stay with my mother until he investigated this matter.

Q What matter did he refer to? A The matter of my going out with Mr. Smith.

Q Who had the key to Mr. Hartley's apartment at 87 Johnson avenue? A Mr. Hartley had it.

Q How long did you remain with your mother there? A I remained with my mother a couple of months, until November. It was in November 19th that I went downstairs.

The Court. Did your husband support you in the meantime?

The Witness. He did not.

Q Between Labor Day and November? A Mr. Hartley used to take me out for my suppers nights and that was all the support that I received from him from Labor Day until November.

Q Did he buy any clothes during that time? A No, sir; I never had any clothes during that time.

Q During that time you said that he was going to investigate your going out with Mr. Smith. Did Mr. Hartley take you to Mr. Smith? A Yes, he took me to Mr. Smith—in front of Mr. Smith's restaurant on Fourth street in Harrison, and he told Mr. Smith, he said: "See what you have done, she is up with her mother now and she is going to stay there."

The Court. Is that all that was said?

The Witness. That is all that was said. Mr. Smith never said a word.

Q Why do you say Mr. Smith is a relation of Mr. Hartley? A Mr. Smith's two boys called him "Uncle Sam" and they were very intimate. Mr. Hartley was always in the house.

Q About how old is Mr. Smith? A He is around fifty, I should judge.

Q You say you went back to live with Mr. Hartley November 19th, the same year that you were married? A Yes.

Q How did you happen to go back and live with him? A He told me to go downstairs, and I went down. He gave me the key and I always remember that it was my birthday, and my sister said to me, "You have got a fine present, you have got the key to your own apartment."

Maria A. Hartley, direct.

Q After November while you were living with Mr. Hartley did anything take place then? A From November until that June, Mr. Hartley every Sunday left me and went to visit his boys —his two boys that was at Rutgers College. He left me every Sunday without anything to eat until he came home at night, then he would take me to a restaurant for my supper.

Q Wasn't there any food in the house? A There was no food in the house and I had no money to buy it.

Q How was the house provisioned? How was the food provided? Did you buy it or did you order it?

The Court. Did you have credit at the stores?

The Witness. I didn't have any credit because I didn't know that I could to go and get credit. Mr. Hartley never told me to go and get credit. I knew I couldn't get credit on his name and live with him because he would have made life too uncomfortable for me.

The Court. Was there any coal in the house from November to June?

The Witness. No coal at no time.

Q Wasn't the house heated in any way? A I lighted the gas range that was in the house.

Q When Mr. Hartley would stay home, how did he keep himself warm? A The same way we all would.

Q Did he wear an overcoat? A He would sit there with his overcoat on and his cap.

Q When did the boys go to Rutgers College? A In September.

Q The defendant produced two more letters which he refers to as poisoned pen letters. Do you recognize these two letters as two letters which arrived shortly after you were married? A Yes.

(Eight letters produced and referred to, marked Exhibit C. 1.)

Q You were telling us about Mr. Hartley's two boys being sent to Rutgers. Who constituted the household after the boys went to college? A Mr. Hartley and myself.

Q Do you recall Thanksgiving? A On Thanksgiving Day, Mr. Hartley and his two boys went to Jersey City to Mr. Hartley's aunt's for dinner and he told me to get to hell upstairs and eat my silk stockings. He never came back until that night about ten o'clock and I was left there alone. This is Thanksgiving, 1917, the same year I was married.

Q Do you recall Christmas, 1917? A Christmas Day he did the same thing, he went to the same aunt's with his two boys and I stayed home.

Q Where did you go to get your Christmas dinner? A To my mother's.

Q Was there any food in the house for you to cook for Christmas dinner? A No, sir.

The Court. At the time you married your husband what was his business?

The Witness. Mr. Hartley wasn't in any business when I married him, he didn't do anything.

Q Wasn't he a member of the County Board of Election of Hudson County? A Yes, he used to go down there every day on a recount.

Q Did he tell you how much he was receiving? A Fifteen dollars a day. I seen his checks.

The Court. During this period when he supported you intermittently, what excuse did he give for not supporting you?

The Witness. He never gave me any excuse.

Q Did you ask him for money for the house? A I used to ask him for it.

Q What did he say? A He wouldn't give it to me.

Q Did he say anything in refusing to give it to you? A He told me that he wouldn't give it to me.

Q Did he say why he wouldn't give it to you? A He didn't say why, but he simply didn't give it to me.

Q Did he base his refusal to support you properly on the fact that he charged you with going with other men? A Yes, he did.

Q And what did he say about it? A He told me that he would never support me. For that whole winter he talked divorce—if I would divorce him.

Q How long had you known each other before your marriage to him in February, 1917? A Mr. Hartley knew me for eleven years. I was ten years old when I moved in his house.

Q This secret marriage—was this a suddenly suggested thing, or had it been discussed between you for some time? A Yes, it had been discussed.

Q How long had you before the marriage, actually decided upon being married privately or secretly? A About a month.

Q Why was the marriage secret? A I don't know.

Q Who suggested it? A There wasn't either one of us suggested it.

Q Why was it done as a secret marriage? Why was it secret, and who made the suggestion to keep it so? A Mr. Hartley told me not to tell anyone that I was married until we moved to our New Lawn avenue house.

Q Which you expected to do when? A Which I expected to do in May.

Q Did he tell you that the family in the New Lawn avenue house was about to move out? A Yes.

Q You knew Mr. Hartley's first wife? A Yes.

Q And had visited her during her last illness? A Yes.

Q Did Mr. Hartley tell you what she died from? A He told me she died from consumption.

Q When the boys returned from college, did they go to live with you and Mr. Hartley, in the vacation of 1918? A No, they didn't. They went upstairs to live with their aunt.

The Court. Your mother lived in the same house upstairs?

The Witness. She moved out in December of 1917.

Q And his aunt moved in? A His aunt moved in that May.

Q How had you gotten along with the boys up to that time, friendly or otherwise? A I always liked Mr. Hartley's two boys and was ex-

ceptionally fond of his younger boy. I got along very well with them.

Q With both of them? A Yes.

Q In June, 1918, what took place, if anything, after the boys went to live with the aunt, after they came from college? A In June, 1918, I went home. I left Mr. Hartley from lack of him not supporting or providing for me.

The Court. How long had that continued? How long had he failed to support and provide for you at that particular time?

The Witness. We never lived properly. We didn't live properly that whole winter. I never received any support from him, only when he would take me out and buy my supper.

The Court. How did you get your other meals?

The Witness. I never got any unless I went home for them.

The Court. You mean from November, 1917, to June, 1918, he made no provision for your support?

The Witness. No provision at all.

The Court. Gave you no money?

The Witness. He never left me any money.

Q Did he bring any groceries or food home? A He never brought anything in.

The Court. Establish any credit for you at the stores?

The Witness. Never told me that I could have any credit anywhere.

Q Did you have a butcher by the name of Reardon at any time? A Yes, I went to Reardon when I went back in August.

Q That was later on? A That was later on.

Q In June what occurred about that time to cause you to leave? A Mr. Hartley told me that he never intended to be any different. That he wouldn't change. That winter I lacked support in every way and I couldn't stand it any longer, and he told me that if I didn't like the way I was living I could go away. I got up and went home.

Q Did you return to him after June, 1918? A I returned to him in August.

Q Why did you go back to him in August? A Because Mr. Hartley came after me and told me that he intended to be different, that he would give me money to run my home, that he would entirely change, which he did.

Q Did he buy any new furniture immediately prior to your returning in August? A The day I went back with Mr. Hartley, we went over and bought a bed and an ice box.

Q What had you been sleeping on during the time you lived with Mr. Hartley? A I slept on a davenport.

Q Didn't you have a bed? A There was a bed, but I didn't care to sleep on it.

Q Did you tell Mr. Hartley why you thought you should not use that bed? A Yes, it wasn't clean, and it was so unclean that I didn't know how to start in to clean it.

Q It was the same furniture that had been in the house at the time that Mrs. Hartley died of tuberculosis? A The same furniture.

Q She had died how many years previous to your marriage to Mr. Hartley? A It was only a short time, not years. It wasn't a year.

Q Was the same furniture in the house and the same carpets that had been there during all of Mrs. Hartley's illness? A The same furniture.

Q At the time you went in? A The same furniture, yes, and the same carpets.

Q How old were you when you married Mr. Hartley? A Twenty-one.

Q How old did Mr. Hartley say he was? A He said he was thirty-six.

Q Was there any arrangement made between you and Mr. Hartley after you returned to him in August with reference to giving you a weekly allowance? A Yes, he told me that he would give me twenty dollars a week to live on. I was to clothe myself, pay the gas bill and keep the table, buy groceries and pay my butcher bill, which I did.

Q Did Mr. Hartley give you the twenty dollars a week? A Yes.

Q How long did he continue to do that? A Mr. Hartley gave me the twenty dollars a week until July, 1919, I went home.

Q You went home in July for a certain purpose? A I went home in July for my confinement.

The Court. During that period from August, 1918 to 1919, aside from making you an allowance, how did Mr. Hartley treat you, kindly, affectionately, or otherwise?

The Witness. Mr. Hartley treated me fairly well. He treated me well when I first

went back there. He was kind until he wanted me to sign a realty paper.

Q When was that? A That was in the year 1918.

Q What month about did he begin talking about this realty paper? A In September.

Q Did he tell you what the realty paper was to consist of, what did he mean? A It was a realty company.

Q Tell us what he said. A Mr. Hartley was going into the real estate business and I was to sign it. I was still in the realty company, he told me that.

The Court. He organized a real estate company?

The Witness. Organized a real estate company with Mr. Jinks and Mr. Sam Smith, Junior.

Q Is he the son of the same Mr. Smith that he accused you of being intimate with in Asbury Park? A Yes, sir.

Q What did you say when he said he had some papers to sign with reference to the realty company? A In October it came out in the paper, of Mr. Hartley's realty company, in the newspaper, and I read it and I asked Mr. Hartley why my name wasn't in the paper with the other people, Mr. Smith, Mr. Jinks and himself. He said, "Well, that is just a matter of form. Your name is in there, but it is not going to come out in the paper. Surely, you take my word on it." I said, "Yes, but I just wondered why my name wasn't there, too."

Q Did he then say anything about signing anything? A Yes, he asked me to sign it.

Q Sign what? A Sign the realty paper of the realty company.

Q What took place?

The Court. This is in September, when it came out in the newspaper, giving a list of the incorporators. What took place at that time?

The Witness. Mr. Hartley asked me to come down and sign a paper and I said that I would come and in December I signed the realty paper.

Q In whose office did you sign the so-called realty paper? A Mr. Van Duren's office, but I signed it before Mr. Cook.

Q You have since learned that it is a deed for the property? A I learned it when you told me that.

Q Did Mr. Hartley tell you that he was the owner of any property at the time he married you? A Mr. Hartley told me after I married him, I should judge a few days after I married him—or a week—I cannot be exact—

Q Tell us what he told you about his wealth. A He told me that he was the owner of the Johnston avenue property.

Q Where were you then living, with your mother? A Yes.

Q Describe it. A It is a six-family apartment.

Q What other property? A And he told me of owning the 36 New Lawn avenue house, that was a two-family house in Arlington; then he took me down and he showed me the property he owned on Seventh street in Harrison. He owned three houses and three lots.

Q Did he tell you how much he was worth? A He told me he was worth around $50,000.

The Court. I notice in a paper some reference to his being in the wholesale produce business, that you desired him to get out of that.

Judge Mylod. That is in the answer.

Q Was he in the wholesale produce business at any time? A He was in the wholesale produce business. He was in that all his life.

Q You answered to a prior question that at the time you married him he had no business. A He had no business when I married him up to the time his wife died. He retired out of that business and he was on the recount in Jersey City.

Q And after that finished he went back in the produce business? A And after that June when I went home he went into the produce business.

Q And then when you came back in the following August? A He was still in it.

Q And he wanted to get into the real estate business? A Yes.

Q Has he any large customers in his produce business that you know?

The Court. Is he in it?

The Witness. He is in it yet.

Q What are the names of these customers that you know of, that he told you about? A I never knew much about Mr. Hartley's business. He never told me very much about it, but I know that he served the General Electric and the Hyatt Roller Bearing.

Q Was he in the wholesale fish business during your married life? A Yes, he always served the General Electric with fish.

Q Did he tell you how many pounds of fish he served them every week at any time? A No, he didn't.

Q Getting down to December, 1918, at the time that you signed this deed, will you tell the Court how you came to sign the paper in Mr. Cook's office?

The Court. State all that happened. What did Mr. Hartley have to say to you at that time?

The Witness. In December I went down with Mr. Hartley and signed the realty paper.

The Court. Signed it where?

The Witness. In Mr. Cook's office, but it was Mr. Van Duren's, but I signed it before Mr. Cook.

Q What did Mr. Hartley say to you about it, if anything? A He told me that he was going into the real estate business. It was an opportunity for him to make some money, and the only way that he could get into it was for me to come down and sign this paper.

Q Did you understand that you were going to turn the property he owned over to the real estate company? A No.

Q By signing the paper? A No, sir; Mr. Hartley never told me that. On our way down the day that I signed it, Mr. Hartley stopped in the First National Bank in East Newark, and he took a thousand dollars out of the bank and he gave me that thousand dollars and he

told me that I was to put it in my name. After that the paper in Mr. Cook's office was signed. He went over to the Howard Bank with me and I put the thousand dollars in my name.

Q Did he say why he was giving you a thousand dollars at that particular time? A He never told me why he was giving me a thousand dollars, and he just gave it to me.

Q Did you ask for any explanation, in view of the fact that he hadn't given you enough to live on, or to get food, why he should suddenly be so generous as to hand you a thousand dollars? A No, I didn't; though I never stopped to think of it.

Q And he never offered any explanation? A He never gave me any explanation.

Q That was before you went to Mr. Cook's office you received this present of a thousand dollars? A Yes.

Q Before the paper was signed? A Yes.

The Court. Did he say anything about paying you that to get you to sign the paper or for your interest in the properties?

The Witness. No, he never mentioned anything like that.

Q At this time you were in the family way or were you pregnant? A I was pregnant the month I signed the realty paper.

Q Did Mr. Hartley get you any prescription with reference to your pregnancy? A Yes.

Q At that time? A Yes.

Q Did you have it filled? A I had it filled.

Q What did you do with it? A I destroyed it.

Maria A. Hartley, direct.

Q How did you destroy it? A I threw the pills away.

The Court. What do you mean by this; do you mean us to understand that he desired—

The Witness. That I wasn't to have my baby.

The Court. Did he say anything to you about that?

The Witness. Yes, he told me.

The Court. What did he say?

The Witness. He told me that he would get me a prescription and that I was to take it.

The Court. To produce a miscarriage?

The Witness. To produce a miscarriage.

The Court. Did he say why he didn't want any children?

The Witness. No, he didn't tell me why he didn't want any.

The Court. You led him to believe that you would take the medicine, but you threw it away?

The Witness. I went over with him for peace's sake and got the prescription filled and I threw them away.

The Court. Did he ask you whether you had taken them?

The Witness. He asked me.

The Court. What did you tell him?

The Witness. I told him I took them.

Q In July you went over to your mother to have your baby? A Yes, in July.

Q Did you have any talk with Mr. Hartley with reference to how you should be taken care

of at the time of your confinement? A I wanted to go to the hospital and Mr. Hartley told me that I could either stay home in my own place or go home to my mother, but I couldn't go to the hospital, so I went home to my mother.

Q Did he give any reason why he did not want you to go to the hospital? A I don't know of any, unless it was the expense.

Q Did he say anything if you went to the hospital, what would happen? A He said if I went to the hospital I would have to pay my own expenses.

The Court. Did he pay the expenses of your confinement?

The Witness. He paid the doctor for my confinement.

The Court. Did you pay the nurse?

The Witness. I had a nurse and he paid the nurse. I had a practical nurse.

Q A woman from the neighborhood? A A woman from Kearny.

Q You remained with your mother how long? A My baby wasn't born until August; I remained there until after September.

Q Did Mr. Hartley give you any money during that time while you were there with your mother? A He never gave me five cents.

Q Did he give any money to your mother from July until September while you were there? A No.

Q Did he pay your board? A No, sir, he never paid my board.

The Court. Did he visit you while you were there?

The Witness. He visited me every day.

Q Did you ask him for any money during that time? A When I was sick in bed for my confinement I asked him for five dollars, that my nurse didn't have enough clothes for the baby and that I would have to get them and he gave me five dollars.

Q Did you tell him anything about money for clothes for the baby? A I told him I needed money for clothes for the baby.

The Court. And he gave you all you asked for?

The Witness. He gave me five dollars.

Q That is what the five dollars was for? A Yes.

Q When you went home to your mother's in September did he go with you? A I went home in July and I came—

Q After the child was born? A I went back to my own apartment with Mr. Hartley.

The Court. Did he come back after you and the child and take you home?

The Witness. He came after me, yes.

Q He came in his machine and took you home and the child? A Yes.

Q Then you returned to him in September, 1919? A Yes.

Q What were the home conditions after that while you were home with your baby and Mr. Hartley? A When I came home with my baby in September I asked Mr. Hartley for my allowance to run the home, the twenty dollars a week, and he gave it to me for one week, and I asked him the next week for it and he told me that he wasn't going to give it any more that he in-

tended to run the flat himself from now on, that he would bring in the groceries and things that were needed and he wasn't going to give me any more money.

Q And did he bring in food during that time? A He brought in some food, yes.

Q Did he tell you anything about ordering food? A He never told me that I could order food.

Q Did he ever tell you that you couldn't order food? A I went and I got an account at Shilber's, the grocery and butcher store.

Q When was that about? A That was later in September, in October.

Q After the baby was born? A After the baby was born.

Q What did he say? A He told me that I was running too much of a bill, and told me that I couldn't get any more stuff down there, and I hadn't paid for the stuff, and once in awhile I sent a boy, who lived in the house, around to the store to ask Mr. Shilber for things.

Q Were you ever refused credit? A Mr. Shilber never refused me credit.

Q Was your credit limited in any way, the amounts you could buy? A I couldn't buy a large amount and live with my husband, because he—

Q He would become angry about it? A Yes.

Q During that winter, beginning in September, 1919, when you returned, did he provide coal to heat the flat? A No, he didn't, there was never any coal only what I could get by the bushel from Yates in Kearny.

Q Who is he? A He used to come around with coal by the bushel.

Q Did you pay him or charge it? A I used to charge it.

Q Did your husband ever explain to you that he couldn't afford to support you? A No, he didn't.

Q Did he ever say that he hadn't money enough and didn't have money enough to furnish you with coal and necessary food for yourself and child? A No, he did not.

Q From February, the time you were married, until you parted in January, 1920, did he buy you any clothing or wearing apparel of any kind? A I had very little clothes, only the clothes I got for myself out of the twenty dollars a week.

Q What you saved out of the twenty dollars? A Yes, and I never had very much that I could buy.

Q Aside from the twenty dollars a week, did he ever give you any other money for clothing, shoes or apparel for yourself and the child? A Never.

Q Outside of the five dollars you mentioned in your mother's home and the twenty dollars a week? A Never, he never gave me any money.

Q Did he ever buy anything himself for you and bring it home to you and make you a present of it? A Never.

Q Was there a baby carriage purchased? A I charged that in Bamberger's.

Q You had an account there? A I didn't have an account because Mr. Hartley took the coin from me. If I went in and charged anything, I couldn't take it home with me, I would have to have it sent and I never charged, only the baby carriage and the little sweater for the baby.

Maria A. Hartley, direct.

Q Do you know anything about the payment of the bill for the baby carriage? A Yes, I think some months later—Mr. Hartley called me up on the phone and told me that he had given the baby a present. He paid the confinement, he paid for his birth and he paid for the carriage which cost nearly a hundred dollars.

Q How old was the baby then, when Mr. Hartley called you on the telephone and told you that? A He was some eight, nine or ten months old, I cannot be sure.

Q That was after you separated? A Yes.

Q And while you lived home with your mother? A Yes.

The Court. Did he state why he called you at that time to remind you of the fact that he had made a present to the child?

The Witness. No.

Q Give any reason for giving you that information at that particular time? A No, he only just told me that he gave the baby a present.

The Court. Did he ever complain about your being extravagant and wasteful?

The Witness. I don't see how he could.

By the Court.

Q Did he? A Yes, he went on the outside and—

By the Court.

Q To you, I am talking about? A No.

The Court. You state as a fact that you were not extravagant?

The Witness. I was not extravagant.

The Court. Or wasteful?

The Witness. No, sir.

The Court. According to your situation you didn't have very much to be either extravagant or wasteful with.

Q During the winter of 1919 after you returned in September with the child, did you have a supply of gas in the house? A Yes, I had a gas range up until the month that I went home in January. Our gas was shut off for non-payment of a bill.

Q In January? A In January.

Q That was how long before you went home? A I stayed there three days without any light.

Q How did you light it? A I got a lamp from Mr. Hartley's aunt upstairs. Mr. Hartley's oldest boy brought the lamp down to me.

Q Did you get any oil for the lamp? A Yes, I got the oil next door, from the woman that lived next door to Mr. Hartley.

Q You borrowed the oil? A I borrowed the oil.

Q Did you have any heat during these three months? A Only the heat that I bought by the bushel, the coal.

Q Where did you get the coal? A I charged it.

Q After the gas was shut off you used this kerosene oil lamp; did you have a talk with Mr. Hartley? A Yes, I told Mr. Hartley that I couldn't stand living that way any longer. I asked wouldn't he give me the money to go over and pay for the gas. He told me that he would live like that for the rest of his life and I told

him that I couldn't live that way, I couldn't live that way any longer.

Q And what day did you return to your mother? A I returned there on the fifteenth of January, 1920.

Q Did Mr. Hartley pay anything from that time until the time the Court made the order? A He never gave me—he never even gave the baby a pair of shoes, for thirteen months, until the Court ordered him to pay that alimony.

Q Did he give you anything? A He never gave me a nickel.

Q Did he pay anything for the food for this child? A Never.

Q Or any clothing? A No.

Q Or anything toward the support of either of you? A Never. He never sent a present.

Q Did he call to see you? A Yes, a few times he called to see the baby.

Q Did you speak to him about supporting you and the child when he called? A I used to speak to him about supporting me.

Q What did he say? A He said I would only get about three dollars a week.

Q Did he give you any reason for not even giving you the three dollars a week? A No, no answer.

Q What explanation did he give for not supporting you? A He never gave any explanation. There was an explanation.

Q State it. A He didn't want to support me because he wanted to divorce me. He wanted to get rid of me and go home.

The Court. He wanted you to go home?

The Witness. He didn't want to provide any means for me or support.

Q For what reason? A The reason was he wanted to get a divorce.

Q Why did he want the divorce? A I don't know.

Q Was he jealous of you? A No, he never had any cause.

Q Did he ever express any feeling of jealousy? A No, he didn't.

Q Did he ever express any dissatisfaction with you and give any reason why he wanted a divorce from you? A No, he didn't.

Q Can you give me any explanation from what he said for his conduct? A Merely that he didn't want to support me because he wanted to get rid of me so he could get a divorce; that is the only explanation I can give.

Q He had taken you around a number of years before he married you, hadn't he? A No, he hadn't.

Q You were a little ten-year-old child in the house and he was a full grown man? A I knew him from the time I was ten years old. I always went in and out of his house and was friendly with him and his wife.

Q He was your landlord for about eleven years before you married him? A Yes.

Q Did he take you and the boys away at different times while you were all children together? A Yes, I often went out with him.

Q Before he married you was he attentive to you? A He was; very.

Q Did he then take you out and entertain you? A Yes.

Q Since your marriage has he ever made you any presents? A Never.

Q Did he ever take you to a theater? A I often used to go to the theater when I first married him.

The Court. Did he take you?

The Witness. He took me.

Q When did he stop taking you? A He stopped doing that after I came home from Asbury Park.

Q After the trouble over Mr. Smith? A Yes.

Q That was September, 1917? A Yes.

The Court. Did you and he have any trouble over Mr. Smith after that time?

The Witness. Yes, he continually talked about it to me and nagged about it.

The Court. Because he accused you of having improper relations with Mr. Smith?

The Witness. He accused me of going out with him and he said it wasn't the right thing to do.

The Court. Did he ever accuse you of infidelity?

The Witness. No, he never did.

Q During the thirteen months, from the time you left him in September, 1919, until the Court made an order, how many times in all would you say that Mr. Hartley called to see you and the child? A He called at the house about three or four times.

Q Not over four times would you say? A Not over.

Q Since the Court made the order?

The Court. When was the order made?

The Witness. February 16, 1921.

Maria A. Hartley, direct.

Q Since the order was made of February, 1921, how often has Mr. Hartley requested to see his baby and how often has he seen his baby? A Three times a week.

Q And just how did you arrange—how does he see his baby three times a week? A He arranged with Mr. Lane that he couldn't call at my home because there was always trouble for him when he called.

The Court. Trouble with whom, you?

The Witness. Trouble with my people. That is why he couldn't call. That statement isn't so.

Q And then at my request you arranged to show Mr. Hartley the baby or have him visit the baby where and how? A At your request I went to the Day Nursery in Kearny.

Q What did they tell you there? A They told me at the Day Nursery that Mr. Hartley couldn't come there with his child, nor neither could I, that that wasn't a public place for people to meet with their children.

Q And when he couldn't see the baby at the Day Nursery, how did you arrange for him to see it? A I took it three times a week in front of Number Six School on Belleville drive.

Q How long would he keep the baby three times a week? A I have stood as long as four hours with the baby for Mr. Hartley to see it.

Q What would he be doing? A Mr. Hartley every time, with the exception of yesterday, called me out of my name and abused me scandalously, when I went there.

Q Will you tell the Court some of the things Mr. Hartley called you when you brought the baby down to him to visit him on the street, when

he wouldn't go to the house? A When I brought the baby to Mr. Hartley, he used to tell me that I wasn't fit to be the mother of a slut. I am only a human being—he used to call me a whore, a son of a bitch, and a bastard every time I ever went to see him with that baby.

Q And what would he do with the baby, why wouldn't you leave him and go home, when he called you those names? A Because I knew that he was calling me those names to get me out of patience.

Q Where was the baby during the time he would call you these names? A Sitting in his automobile with him.

Q Where were you? A I was standing on the street or sitting on the school steps.

Q All during the summer, during the warm weather in July, did you take your baby out on the street to meet Mr. Hartley? A Yes, I did.

Q How long a time would he keep you waiting with the baby? A I would stand as long as four hours some days.

The Court. What was the shortest time he kept you there?

The Witness. Never shorter than two and a half or three hours.

Q Did he ever talk with you about being reconciled, and about coming back and remaking a home? A He never talked to me about that, no.

Q Did he ever offer to support you and the child if you would come back and make up with him? A No.

Q At any of these times, or at any other occasion since you parted—since January, 1920? A Yes, he did, several times, asked me about com-

ing back and told me that he would change, but he never made any effort or bother about me to come back.

Q What do you mean, make an effort? A He never told me that he would change, and I was really afraid to go back.

Q Why were you afraid of him? A Because he threatened my life and abused me so.

Q You told me on one occasion that he choked you? A Yes.

Q Did he ever do anything like that on any other occasion? A Yes.

Q How frequently? A About three or four times.

Q He actually assaulted you? A Yes.

Q Did anyone ever treat any of your bruises or marks at any time? A No, not until I went home to my mother one day and she sent out for arnica and witch hazel.

Q Where were the marks on your body then? A On my throat.

Q When was that? A October, 1919.

Q Why did he assault you then? A Because I told him that I didn't think I would sign the realty paper, since my name wasn't in the newspaper, and I think he must have got angry about that and that is what the cause of it was.

Q When were the other occasions you say he assaulted you? A One night when I went up to see my mother, when she first moved.

Q When? A December 1st, 1917.

Q What happened then? A He pushed me up against the tubs and he choked me.

Q Why, what was the trouble? A Because I had gone up to see my mother.

Q Any other time that he assaulted you? A No, I cannot recall any other time.

Q When did he last ask you to come back and make up with him and re-establish your home? A He has never asked me. I cannot name when he last asked me.

Q I understood you to say that on several occasions in January 1920 he sought a reconciliation, but hadn't made any real effort. A The way he would ask me about coming back, he would say if I didn't come back he would have to get a housekeeper. I don't know whether I was to take it for granted that I was asked to come back.

Q Was that the only way he ever asked you? A Yes, the only way.

Q Is that the only way he ever spoke to you about supporting the child? A He said he would never support me unless I lived with him.

Q When he told you he would never support you unless you lived with him, what did you say? A I said that I couldn't live with him.

Q Why couldn't you live with him, what reason did you give, if any? A I couldn't live with him after what he had done to me.

Q What had he done to you that you had in mind at that time when you made that statement? A He let me get out of there in January, he didn't support me for thirteen months or my baby, and he abused me while I lived with him and I couldn't think of going back to do the same thing.

Q How many letters did Mr. Hartley write you, if any, since you have been away from him, since January 1920? A One.

Q Is that the letter typewritten dated October 22, 1920? A Yes.

Maria A. Hartley, cross.

Mr. Mylod. I offer it in evidence.

Marked Exhibit C. 2.

Q Had you taken legal advice at the time this letter was written? A Yes.

Q And had Mr. Hartley also retained counsel? A Yes.

Q Before this letter was written? A Yes.

Mr. Mylod. The letter reads as follows: "October 12, 1920. Mrs. Maria A. Hartley, 322 Kearny avenue, Kearny, New Jersey. My dear Maria: I have made several offers for you to return and live with me and thus far you have not kept your word to come back to me. I now ask you to return and live with me in our former home, where everything has been kept in readiness for your return for many month past. Kindly let me know what the trouble is and why you have not returned. Yours, Fred."

Q That was sent by registered mail? A Yes.

Q That is the only communication you received from Mr. Hartley? A That is the only one.

Q Did you answer it? A No, sir.

Q What did you do with the letter? A I brought it over to you.

Q What is the child's name? A Alfred Hartley.

Cross examination by Mr. Lane.

Q When did you first retain counsel after you left in January? A In April of that year.

Q 1920? A 1920.

Q How do you know that your husband had retained counsel in October, 1920? A He told me so.

Q Who did he say that he had retained? A Mr. Archibald.

Q What was the delay? Why did you delay if you retained counsel in 1920 in taking proceedings until 1921? A Because I wanted Mr. Hartley to settle the matter out of court.

Q What did you want him to settle, out of court; how did you want him to settle it out of court? A I wanted him to support the baby—or do at least something for him.

Q What specifically was it that you wanted? A I wanted him to support the baby.

Q How about yourself? A And myself.

Q Did you want him to support yourself? A Yes.

Q What? A Yes, sir.

Q Why didn't you say so first off, instead of saying simply the baby? A I don't know, there is no reason.

The Court. During the thirteen months that elapsed between the time you parted and the date of the order of allowance here, how did you support yourself?

The Witness. I supported myself through my sister and brother. They helped to take care of me the best they could.

Q Did you do any work yourself? A No, I didn't because I was sick and nursing my baby.

Q Your family supported you and your child? A Yes.

Q Did you specify any amount that you wanted from Mr. Hartley? A No, I didn't.

Q He merely told you that he wouldn't support either you or the baby so long as you lived away from him, didn't he? A Yes, he did.

Q He told you that when the thing was first talked about, after you left in January 1920, didn't he? A No, he didn't.

Q When did he first tell you that? A I never seen Mr. Hartley for three months after I left in January.

Q When did you first get word that that was his position? A When I seen counsel.

Q That was April, 1920? A Yes.

Q And he never took that position, did he? A No, he didn't.

Q Then why did you wait from April, 1920 to 1921 before you brought your suit? A I waited to see if he would support us without taking the matter into court.

Q And without your going back to him? A Yes, without my going back to him.

Q How old is the baby now? A Two years and two month.

Q Are you a Catholic? A Yes.

Q Your husband is a Protestant? A Yes.

Q Any agreement between you with respect as to whether the baby should be brought up a Catholic or Protestant? A When we were married there was.

Q What was the agreement? A That the baby would be baptized in my faith.

Q You were married by a priest? A Yes.

Q You say your mother knew nothing about your marriage? A No one knew about it.

Q Your mother didn't know you were going to be married? A No, sir.

Q She had no knowledge that anything like that was being thought of? A Not that I know of.

Q Didn't you discuss it with her? A I never discussed it with anyone, or my mother either.

Q You knew in January 1920 that Mr. Hartley with respect to this gas episode—you knew that he was having a dispute with the gas company, didn't you? A Yes, I did. I tried to settle it my own way with the gas man.

Q They had given him an estimated bill for a sum that he considered exorbitant, hadn't they? A Eighteen dollars.

Q What he considered an exorbitant amount? A Yes.

Q It was an estimated bill, wasn't it? A Yes.

Q And he said that he knew as a matter of fact the gas hadn't been used? A Yes.

Q And you wanted him to pay the gas bill? A I wanted him to pay the gas bill along with the other bills we owed of the gas company's.

Q And he said that he would not pay anything until that was arranged? A Yes.

Q And it was because of the quarrel that he had with the gas company as to whether these bills should be paid, that the gas was shut off? A Yes.

Q And it was because the gas was shut off that you left the house, wasn't it? A No, it wasn't exactly it; that wasn't the cause of it.

Q You stayed in the house until the gas was shut off? A Yes.

Q And you were after him to pay that gas bill? A Yes.

Q And if he paid the gas bill, the gas wouldn't have been shut off? A No.

Q And you would have stayed in the house? A Yes.

Q Did you know that within two days after you left, the gas bill was settled?

Mr. Lane. I withdraw that.

Q He said that he would not permit and wouldn't have the gas company put anything over him, didn't he? A I don't remember that.

Q Words to that effect? A I don't remember anything like that.

Q He was stubborn about it anyhow? A Yes, very.

Q Did you know, as a matter of fact, when that gas bill was settled? A No, I didn't.

Q You didn't try to find out? A Yes, I called up the gas company a week later and it wasn't settled then, from what they told me over the phone.

Q Why did you call up the gas company a week later? A To see if he settled it, after I got out of there, or whether he wouldn't settle it to get me out of there.

Q Your thought was that he wouldn't settle the gas bill in order that you might be forced to leave, is that your theory? A Yes.

Q You called up the gas company a week later and what did they tell you? A They told me there was nothing settled as yet.

Q Did you make any further inquiry as to whether that bill was settled or not? A No, I didn't.

Q Did you make any attempt to communicate with your husband? A No, I didn't.

Maria A. Hartley, cross.

Q Did you hear from him between January and April? A Yes.

Q How? A He came to see the baby.

Q How often? A About three or four times to the house.

Q When did he first come to see the baby after you left in January? A I cannot say exactly.

The Court. About some weeks or days?

The Witness. Some days.

Q About how many days? A I should judge about sixty.

Q About what? A Sixty.

Q Can you tell me what month it was in? A No, I cannot.

Q Was it in the winter time or in the spring? A In the spring.

Q Before you saw Mr. Mylod or afterwards? A I seen Mr. Mylod first.

Q Then it wasn't until after April? A It was after April.

Q That you first saw Mr. Hartley? A Yes.

The Court. Or that he first called to see the child.

The Witness. I saw Mr. Mylod on one day and the next day Mr. Hartley called.

Q Where did he call? A At my mother's home.

Q What did he say? A He said he came to see the baby.

Q What did you say? A I let him see him.

Q How frequently did he call after that? A A few days after that.

Maria A. Hartley, cross.

Q What do you mean by a few? A Three or four.

Q Didn't he call three or four times a week? A No.

Q Didn't he call three or four times until there was a row at the house? A Yes.

Q There was a row at the house? A Yes, he caused it.

The Court. When did that occur?

The Witness. In July, 1920.

Q How many times had he been at your house before July, 1920? A Three or four.

The Court. Between January and July?

The Witness. Yes.

Q How many times did you meet him on the street? A I have often seen him.

Q Between January and July? A I have often seen Mr. Hartley on the street, very often when I had my baby out. Just the time I cannot tell you, how many times.

Q He would see you then, wouldn't he? A Yes.

Q He would stop and talk to you? A Yes.

Q When did that start after January, how soon after January did that meeting him on the street start? A I cannot tell you.

Q Right away, didn't it? A No, not right away.

Q Before he called at the house to see the child in April? A No, after he called at the house.

Q Then you began to meet him on the street? A I didn't meet him. I was out with the baby,

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and he would see the baby on the street. I would always stop if he stopped me.

Q And that didn't happen before April? A No, that didn't happen before April.

Q How many times did it happen after April and before there was the row in the house in July? A Several times.

Q Once a week? A Twice a week perhaps, at any time he was up around in that section.

Q You would stop and he would stop and talk to you on the street? A Yes.

Q And see the baby? A Yes.

Q And you mean to say that he never saw you on the street before April—between January and April? A He never saw me before April.

Q Were you on the street before April with the baby? A Yes.

Q Did you ever see him on the street before April? A Never.

Q Can you give me any reason—you lived in the same neighborhood? A Quite a distance.

Q Can't you give any reason why you should happen to meet after April, but never met before April? A No, I cannot.

Q That just happened so? A Yes, just happened that way.

Q You didn't meet him after April by any appointment or anything of that kind, did you? A No.

Q It was in July that this trouble took place at your house? A Yes.

Q After that where did he see the baby? A He came a couple of times after that.

Q At the house? A Yes, I think he did.

Q Sure of that? A Yes, positive.

Q That he came to the house after that row? A Yes, after that he came to the house.

The Court. When was the last time he came to the house?

The Witness. He came to the house in May.

The Court. You say the quarrel occurred in July. Mr. Lane is directing your attention to the fact that your husband called at the home after this trouble with you in July.

The Witness. Yes, he did.

The Court. When was the first time, he asked you, or the last? You say he called about twice after that, fix the time.

The Witness. I cannot fix it, I cannot remember.

The Court. A month or two after, or a week?

The Witness. About a week or so after, or maybe two weeks at the house, after the trouble in July.

Q And was that the last time? A That was the last.

Q After that you continued to meet him on the street? A Yes.

Q Right down until this suit was started? A Yes.

Q He very often called you up on the telephone? A Very often, yes.

Q When did he start to call you on the telephone? A In April.

The Court. Before you had seen Mr. Mylod or after?

The Witness. No, after I had seen Mr. Mylod.

Q Did he call you on the telephone? A Yes. He called me three days after I went home in January.

Q What did he say to you then? A He asked me how the baby was, how he was getting along, and I told him. That is all he said to me.

Q What else? A Nothing else.

Q When did he next telephone to you? A I don't remember.

Q Within a very short time after that? A No, about three months after that.

Q And not until April then? A No, not until April.

Q He called you once three days after you went home to your mother and asked how the baby was and then didn't telephone you again until after you had seen Mr. Mylod? A That is right.

Q After April, 1920, how often would he telephone you? A Not very often.

The Court. About once a week or twice a week?

The Witness. About once every three weeks or so.

Q Didn't he telephone forty or fifty times a month? A Oh, no.

Q Sure about that? A No.

Q Didn't he telephone you more than once a day upon occasions for days in succession? A No, sir.

Q Sure of that? A No, sir; he did not.

Q It may sound unusual and I won't depend only upon Mr. Hartley's testimony. Would you say that between April, 1920, and December, 1920, he called you a hundred times? A No, I wouldn't say.

Maria A. Hartley, cross.

Q Seventy-five times? A No.

Q Fifty times? A No.

Q What did he say when he did telephone? A He would ask about the baby.

Q Is that all? A That is all.

The Court. Ever ask about yourself?

The Witness. No, he never cared much about me.

Q Did he ask to make an appointment with you? A No.

Q Sure of that? A Positive.

Q Ever ask you to meet him at any place? A No.

Q Are you sure that these meetings that you had on the street, were not some of them, the result of telephone conversations? A No, sir.

Q Each one accidental? A Each one.

Q And never an appointment made by telephone? A Never.

Q The only thing he said on the telephone was about the baby? A Yes.

Q Did you ever during any of these telephone conversations ask him whether he was going to support you? A No, I didn't.

Q Or whether he would send you some money for the baby? A No, I didn't.

Q Or anything of that kind? A No, sir.

Q And he never told you over the telephone that he wouldn't support you while you were living away from him? A No, he didn't. He told me that to my face.

Q And he told you that to your face a great many times, didn't he? A Yes, he did.

Q He told you that to your face last night, didn't he? A Yes.

Maria A. Hartley, cross.

Q How long were you with him last night? A I was there from half-past three in the afternoon until half-past six last night.

The Court. What do you mean by "there"?

The Witness. Where I took the baby.

Q (*By the Court.*) Where? A On Belleville Drive, in front of Public School No. 6.

Q During most of that time he was trying to get you to come back and live with him? A Yes, he was.

The Court. Last night? What was said between you last night?

The Witness. He asked me about coming home.

The Court. What did he say?

The Witness. He told me that he would like to have me come home and I of course wondered at the sudden change and why he wanted me to come home.

Examination by the Court.

Q What did you say? A I said to him, no, that I couldn't.

Q How long did he talk on this topic about your returning home? A He told me that there were several things he could do for me.

Q What did he say? A He told me that he could have went in business and been making well if it wasn't for me, and that he would like very much if I would consider and would not be the cause of robbing a baby from its father, and he would like very much to have me to come home and sit down and think, and think of what I

had done by not having that baby with its father. I had robbed him of his baby's prattle, that he never had the enjoyment like other fathers have, and of course to every answer that he made I had one for him.

Q To every statement he made? A Yes, I had an answer.

Q What were you answers when he said "you robbed him of all these things"? A I told him it was very odd to me, why he should just come now, that he would like the baby's prattle and the baby home with him. He never bothered much before about it and why did he want it now.

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

Q Had he ever talked to you on the same line in any of your former interviews with him? A No, he never spoke that way to me before.

Q Until last night? A Until last night.

Q Did you discuss the fact that this case was coming on for hearing this morning? A Yes.

Q What did you say to each other about that? A He hoped that I would consider it.

Q What did you tell him then? A I never answered.

Q Have you told me everything else that was said about making up and going home? A That is all there was to it.

Examination by Mr. Lane.

Q When you left him, you kissed him, didn't you? A No, no. That is so silly I hate to answer it.

Q Why is it silly? A Because it is so out of the ordinary, why should it happen last night?

The Court. It would be out of the ordinary if it did happen last night. But did you kiss him last night?

The Witness. No.

Q You mean that that is the first intimation you had that he wanted you to come back and live with him? A That is the first.

Q Sure of that? A Positive. Only the other times after I went to Mr. Mylod, but all this summer, when I was taking the baby out, that was the first time; other times than last night, he told me that he would never live with me.

Q I am talking about the time that preceded the— A Are you talking about from when I left him?

Q Yes, from the time you left him. Is that the first time that he has ever suggested that you should come back and live with him? A No, it is not.

Q When was the first time? A The first time was after I went to Mr. Mylod.

Q How long after that? A That was in April, about a week after when he got Mr. Mylod's letter.

Q And then he saw you? A He saw me.

Q And he asked you to come back and live with him then? A Yes.

Q What did he say then? A He asked me to come back and live with him.

Q What language did he use? A He just simply asked me would I come back and live with him.

The Court. What did you say?

The Witness. I said no.

Q Did you give any reason? A Yes.

Q What did you say? A I gave him the reason because what I stood from him before, that I couldn't stand it again.

Q Did you mention what you had stood from him? A Yes.

Q What did you say? A I mentioned of him not properly providing for me, not giving me money enough to take care of my baby, not even having food enough for my home.

Q And when you reminded him of all those things, what did he say? A He never answered me.

Q Didn't he say that he would support you? A He never said he would support me.

Q In the April conversation did he say he would properly support you? A He said that he wouldn't support me while I was living away from him.

Q Did he say he would support you if you came back and lived with him? A Yes, those were the chances I had to take.

Q When was the last time he asked you to come back and live with him? A I cannot say.

Q How long after the first? A Maybe a month or so.

Q Being a repetition of the April conversation? A Yes.

Q On both sides? A On both sides.

Q Did he say anything more with respect to the reason why he wanted you to come back and live with him? A No. He always did say that he would have to get a housekeeper if I didn't come back.

Q And he also said that he wanted his child, didn't he? A Yes, he wanted him then.

Q Did he say in this conversation of April, May, June, July, August and September of 1920,

when he said he wanted you to come back and live with him, didn't he say, among other things, that he wanted his child? A Yes, he said he wanted his child.

Q Didn't he say practically the same thing that he said to you last night? A No, he didn't. He didn't even ask me.

Q What did he say last night that he didn't say before? A He was very pathetic about it last night.

Q Hadn't he ever been pathetic about it before? A No, just asked me.

Q Didn't he refer to the child before? A Yes, that he wanted him.

Q Did he say he wanted him with a shrug of his shoulder as you just said it or was it apparently sincere? A No, he just said that he wanted him.

Q What language did he use when he said he wanted him? A He wanted his boy home with him.

Q And what did you say to that? A I didn't say anything.

Q Had he ever referred to the baby's prattle before? A No, he didn't.

The Court. Before last night?

The Witness. No, he didn't.

Q So that when he said on these other occasions that he wanted his baby, you said nothing? A Never said anything.

Q You, during the summer of 1920, permitted Mr. Hartley upon occasions to take the baby away, didn't you? A No, if he rode him up and down in his automobile, I let him do that, right in front of me. I was never a block away from where he would take him.

Q Didn't he take the baby with your consent down to his home? A He took the baby this summer, yes, but not with my consent.

Q This summer? A This summer when I took the baby up to see him. I believe he had him twice.

Q You knew or were told, were you not, when this case came up in court before on an application for alimony, that Mr. Hartley had stated in open court through his counsel that he desired you to come back? A I didn't understand that.

Q You mean you don't understand it? A I don't understand what Mr. Lane said then.

Q (Repeated.) You knew or were told, were you not, when this case came up in court before an application for alimony, that Mr. Hartley had stated in open court through his counsel that he desired you to come back? A Yes, I did.

Q And you refused to come back then, didn't you? A Yes, I did.

Q And after the hearing in open court when the order for temporary alimony was made, and when Mr. Hartley met you, there were many occasions upon which he asked you to come back and live with him, were there not, before last night? A No, he never asked him.

The Court. She said on these occasions he always abused her by using profane language and calling her vile and indecent names.

Witness. Yes.

The Court. On every occasion that he saw you?

The Witness. Yes, every occasion except last night.

Q So that after the hearing in court of February of this year, there was a change in Mr. Hartley's attitude, was there? A I don't know of any change.

Q You have testified that from April 1920, during the summer and fall of that year when he met you, he very many times asked you to come back and live with him. Now, you say that after February, 1920, when the order was made he never asked you to come back and live with him until last night? A He never did.

Q That was a complete change, wasn't it? A Yes, a complete change.

Q I mean that he changed apparently from wanting you back previous to the making of the order in court and after the order of the court? A Yes.

Q And he never abused you or called you names before the making of the order in February of this year? A No, he didn't.

Q He never used any language of that kind toward you? A No, he didn't.

Q Apparently when he met you he was sincerely desirous that you should come back and live with him? A Yes.

The Court. Had he used that language before you had separated, any such langauge?

The Witness. Yes.

The Court. So your answer to Mr. Lane's first question is that he never used this abusive language between February, 1920, and February, 1921?

The Witness. That is right.

Q But he began to indulge in it after the order was made of February, 1921? A That is right.

Maria A. Hartley, cross.

Q You were rather astonished, weren't you, when he began to use this vile language to you after February? A I was quite used to it when I lived with him, but I was astonished after.

Q But you had been free from it for a year, and he had been asking you during that time to come back and live with him and then suddenly he proceeds to call you almost every name in the catalog. You were astonished at that? A Yes, very.

Q What? A Very.

Q Did you ask him how it was that he had changed that way? A No, I didn't.

Q Why not? A I just thought he would change because he was paying me alimony.

The Court. How much did the order compell him to pay?

The Witness. Twenty-five dollars a week.

The Court. And a counsel fee?

Mr. Mylod. Seventy-five dollars.

Q What did you say? A I realized that the change was because he was paying me the alimony, because he continually insulted me about the "blood money."

Q Insulted you about what? A The blood money.

Q And complaining most bitterly that you were living away from him? A No, he didn't.

Q Why did he call it blood money? A I don't know. I don't understand that at all.

Q Did you ask him? A Yes, I did.

The Court. What did you say to him?

The Witness. I asked him what was the reason it was blood money.

Maria A. Hartley, cross.

Q What did he say? A He didn't tell me.

Q You mean to say that he just gave free vent to this language and you stood there and took it and never said anything in reply? A Yes, I used to say a lot of things.

Q Let ns hear some of the things. A I used to ask him what was the reason of him calling me out of my name, now that he knew that he was lying when he done those things. He said he could prove it. Every time he called me out of my name he said he could prove it.

Q What do you mean by calling you out of your name? What did he call you? A He called me a whore and a son of a bitch and a bastard and a slut. He called me everything that men like that use.

Q Each time? A Each time. Every time I went over there.

Q Three times a week; every time you met him? A I stood that three times a week with the child.

Q You never said anything about it or complained about it? A I never said anything about it.

Q Never complained about it? A No.

Q You still continued to take the child to him? A Yes, every time he called me up and asked me to take him. Every time he called me up to make the appointment I went to him.

The Court. To take the child to meet him, she said.

Q Without complaint? A Without complaint.

Maria A. Hartley, cross.

Q Was the appointment last night made by telephone? A No, it wasn't. Mr. Hartley made it with me on last Wednesday when I took the baby out.

Q This appointment last night had nothing to do with the baby? A Yes, I took the baby yesterday afternoon at half-past three.

The Court. And she was there until half-past six?

The Witness. Yes.

The Court. With the child?

The Witness. Yes.

The Court. Was anyone else present?

The Witness. No, I never took anyone else.

The Court. Last Wednesday when he asked you to have the child meet him on Sunday, did he say anything about talking to you about settling your differences or making up?

The Witness. No, he didn't. When I was walking away from him he called me a son of a bitch.

The Court. Last Wednesday?

The Witness. Yes.

The Court. And still you went there last night?

The Witness. I went Sunday.

Q What had occurred that induced him to call you a son of a bitch, just as you were leaving on last Wednesday, what led to it? A That was the usual way he would talk to me.

The Court. Had you angered him or provoked him?

The Witness. I never angered him because I never answered him and I would have went there and never spoke to him if he didn't speak to me.

The Court. I suppose that angered him because you didn't speak to him.

Q Nothing was said at any time that induced any of these terrible insults? A Nothing at all.

Q And nothing was said during all this period of time with respect to your coming back and living with him? A Never; he told me that he wouldn't live with me.

Q He told you that he wouldn't live with you and told you that he wouldn't support you if you didn't live with him? A He told me that he wouldn't live with me. He didn't want anything to do with me.

Q Getting back to these poisoned pen letters, your husband was considerably worried about those letters, wasn't he? A I guess he was, yes.

Q He appeared to be anyhow? A He appeared to be.

Q And those letters were taken to the post office authorities? A Yes.

Q With your knowledge? A I was the first one took them.

Q Did you take them or did you suggest their being taken? A No, I went with them myself.

Q You went with Mr. Hartley? A No, I went alone the first time.

Q You took the papers? A Yes.

Q And then you and your husband went later? A Yes.

Q And you took the letters and delivered them to the post office authorities with your husband, didn't you? A Yes.

Q And afterwards you knew that this letter was received from the post office people with respect to the letters, didn't you? A Yes, I did.

(Witness shown letter marked Exhibit D. 1 for identification.)

Mr. Mylod. I have no objection to it.

(Letter read.)

Q Mr. Hartley didn't raise any objection to these letters being taken to the post office inspector for investigation, did he? A Oh, no.

Q And he seemed to be sincerely desirous of finding out who wrote those letters, didn't he? A Yes, he did.

Q And was considerably worried about that? A Yes, sir.

Q Did you ever find out who did write them? A No.

Q You think that your husband wrote them himself, don't you? A The reason why I think that, from things that is in these letters, I have heard them so often from him. That is what makes me think that way.

Q You now think that your husband wrote those letters himself, do you? A I wouldn't outright accuse him.

Q You wouldn't? A No.

Q You do accuse him in your affidavit or your bill, don't you?

Mr. Mylod. I am responsible for the bill. I don't think the petitioner is chargeable with every statement in the bill.

The Court. Counsel may have made a great many accusations against him.

Mr. Mylod. I don't think that is in the bill.

Q Well, is it a fact that some time after these poisoned pen letters were received you accused your husband of having written the letters himself? A Yes.

Q And what did he say? A I asked him if he knew who wrote them. He said, "Yes." I said, "Was it you?" and he didn't answer me.

Q Therefore you came to the conclusion that it was he who wrote them? A I kind of imagined that.

Q As a matter of fact you both of you thought at one stage of the proceedings that you knew who wrote them? A Yes.

Q And you were mistaken with respect to the identity of the party? A Yes.

Q And Mr. Hartley, when the name of this person was under discussion, sincerely—or appeared to sincerely believe that it was that person who had written those letters? A Yes.

Q And it was the subject of very intense conversation between you and your husband? A Yes.

Q And it was a matter which you and your husband consulted upon, wasn't it? A Yes.

Q And acted upon? A Yes.

Q There was no dissension between you with respect to these letters, was there? A Oh, no, not at all.

Maria A. Hartley, cross.

Q You said something about your not having food in the house or what not during the Sundays that the boys were at Rutgers. Mr. Hartley went to Rutgers every Sunday to see his boys, didn't he? A Every Sunday.

Q And he asked you to go down with him? A He never asked me once.

Q Sure of that? A Positive.

Q You went to your mother's on Sunday? A I used to go up there after he went out.

Q He knew you were going there, didn't he? A I don't know; I was always home when he came home.

The Court. When he came home from Rutgers? A Yes.

Q Sure you were always home when he came home? A Yes.

Q Didn't you meet him every Sunday or almost every Sunday at the Market street station of the Pennsylvania Railroad? A Once I met him there, one Sunday night.

Q Didn't you meet him upon almost every occasion if not all at the Market street station of the Pennsylvania Railroad and from there go to some restaurant? A How could I meet him there?

Q Did you? A No, I didn't, because he was in his automobile.

Q He didn't go by train? A He didn't go by train every Sunday.

Q This was during the winter, wasn't it? Yes.

Q Did he go down to Rutgers in the machine during the winter? A Yes, he did.

Q Every Sunday he went during the winter time to New Brunswick? A Yes.

Q In his car? A Very nearly every Sunday. I only remember once meeting him at the Market street depot.

Q Every Sunday did you go out to dinner with him after he came home? A Yes, I went to a restaurant.

The Court. Every Sunday?

The Witness. Every Sunday.

Q With him? A With him.

Q What restaurant did you go to? A We used to go to Thomas' Restaurant on Washington street and to the Presto sometimes on Market street.

Q Where else? Achtel-Setter's? A No, I don't ever remember being at Achtel-Stetter's. Before I was married, but not after.

Q During this winter I am talking about, what other restaurants did you go to? A Those are the two restaurants.

Q And after you got through, where would you go? A Sometimes to the moving pictures or to Proctor's.

Q And other theatres besides Proctor's? A Never.

Q Haven't you been, as a matter of fact, or weren't you during that winter, in every single theatre in Newark except the burlesque house? A I remember going once to see Hitchcock in a show, and that is all. Mr. Hartley didn't like other theatres.

Q The one you are now talking about wasn't Sunday night? A No.

Q I am talking about Sunday night. A There isn't any other theatre open Sunday night.

Maria A. Hartley, cross.

Q All the moving picture houses are open in Newark on Sunday? A Yes, I said the moving pictures.

Q That would happen every single Sunday that Hartley went down to Rutgers and came back? A Yes, every Sunday I went out to meet him.

Q Did you object to going out with your husband for the evening meal on Sunday and thereafter going to a place of entertainment? A I never objected.

Q You rather liked it, didn't you? A I went.

Q You knew when he left in the morning on Sunday that this was going to happen? A Why, of course.

Q By arrangement between you, wasn't it? A I never had to arrange anything.

Q You didn't object to it, did you? A Why, it never would have done me any good.

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

The Court. Where would you meet him when he came back?

The Witness. At my own flat.

Q Are you sure that you met him at home—bear in mind the fact that these restaurants are in Newark and that the theatres are in Newark—are you sure that he went home to Kearny and then came back to Newark? A We used to go in his automobile.

Q Then he would go all the way home in his automobile and get you and then come back to Newark? A He would go home and get washed and then he would come back to Newark.

Q And he knew, didn't he, that you were going to your mother's for the day? A I don't know; I suppose he knew it.

Q Did you tell him? A I never told him.

Q Wasn't it understood between the two of you that you were going to your mother's during the day and he was going to see the boys and you would both go out at night? A Never understood.

Q It never was understood, but it just happened that way? A No.

Q Did you ever ask him to take you down and see the boys? A No.

Q You mean that you liked to see your mother, didn't you? A I used to like to go to see my mother.

Q You didn't object to seeing your mother once a week? A No.

Q You saw your mother more than once a week? A I used to see her, yes.

Q Didn't you see her every day? A Not every day.

Q Almost every day? A Almost every day.

Q Most of the time, as a matter of fact, that Mr. Hartley wasn't home, was spent by you with your mother, wasn't it? A I had to spend a good deal of my time—

Q Most of it, the major part of it, while Mr. Hartley was not home was spent by you with your mother, is not that so? A I used to spend a good deal of my time there.

Q And don't you know, as a matter of fact, that you went and saw your mother two or three times a week at night when Mr. Hartley was home? A I never went unless Mr. Hartley told me I could go, and I never went unless he went out.

Maria A. Hartley, cross.

Q I am asking you the fact whether it is not a fact that you did go to see your mother two or three times a week at night when Mr. Hartley was home, no matter whether he asked you or didn't? A When he was home?

Q Yes. A No, sir.

Q Never? A Never.

The Court. Leaving him home?

The Witness. No, sir.

Q You never left him at home and went to see your mother? A I wouldn't say I never did, but I never went two or three times a week.

Q Once a week? A Maybe once a week.

Q And maybe twice a week? A It was always agreeable; maybe twice a week.

Q It may not have been three times a week? A No, sir.

Q It could have been twice, but not three times? A Yes.

Q And when you did go to see your mother, be it once or twice a week at night, you would stay there until what hour? A I would maybe stay half an hour.

Q What time did you return? A About nine o'clock.

Q Did you stay there all night on a great many occasions? A All night when Mr. Hartley told me to.

The Court. Did you stay on a number of occasions?

The Witness. Yes.

Q Once or twice a week? A Not then; not that year you are talking about.

Q Any year? A Yes.

Maria A. Hartley, cross.

Q What year? A The year before the baby was born—not the year the baby was born. After it was born; 1919 that was. The baby was born in 1919, in August.

Q Was it during that year? A During that period.

Q Before and after the birth of the child? A Not before, but after.

Q When did your mother move out of the same house that you were living in? A December, 1917.

Q Isn't it a fact that immediately after your mother went out of the house in December, 1917, you started to go to your mother's once or twice a week and stay there all night? A No, sir; I never stayed all night.

Q That is during the year 1918? A That is right.

Q During the year 1919 you did go there once or twice a week and stay all night? A After my baby was born.

Q And you took your baby with you? A Yes.

Q And Mr. Hartley wanted you to go, do I understand? A When he used to go out I always went up in the car with him, when he would go up to the Elks.

The Court. And he took you to your mother's?

The Witness. Yes.

Q You never stayed at your mother's over night before the baby was born? A With the exception of one night I stayed there, when Mr. Hartley told me he would call for me and I waited until two o'clock in the morning and he

never called and then I went to bed. That was the only night.

Q When was it that Mr. Hartley got this medicine for you? A He got that the first month I was pregnant.

Q Do you remember what month that was? A Yes, December.

Q How did he come to get it? A He got the prescription for me and I got it filled.

Q How did it come about that that was gotten; what led up to it? A He didn't want me to be pregnant.

Q What led up to it; what was said; how did it come about? A He said he didn't want me to be pregnant.

Q When did he say that? A When I started to be pregnant.

The Court. When you told him of your condition?

The Witness. Yes.

Q Give us the conversation. A I cannot give you any conversation; that is all there is.

The Court. You told him of your condition and he made that remark?

The Witness. Yes.

Q How long was that before he got the prescription? A I cannot say.

Q A week or month? A A week or month, some time after.

Q How long after you got the prescription was it before you had it filled? A I had it filled that day, that night.

Q When did you tell him you had done it? A I told him I had it; I didn't tell him just when.

The Court. Right after you got the prescription filled did you tell him you had taken the medicine?

The Witness. Yes.

Q Then what happened, what did he say or do? A He didn't say anything.

Q You continued to be pregnant? A Yes.

Q What happened; what was said about the fact that this thing didn't work? A There wasn't anything said, only that he just annoyed me at times about being pregnant, but there wasn't anything said.

Q Didn't he say, "How is it, are you still taking these things?" or what or how? A Yes, and I said they didn't do me any good.

Q When did he ask you about that; when did he first ask you about that? A About three days later.

Q When was the next time he spoke to you about it? A Four months after.

Q Then he didn't say anything about it until between a period of three days after you first told him you had done it and four months after? A Yes.

The Court. What did he say four months later?

The Witness. He asked me if I still intended that I was going to have my baby, and I told him yes.

The Court. What did he say to that?

The Witness. He didn't say anything.

Q But nothing was said in the meantime? A Nothing.

Q About this medicine? A Not that I can recall; nothing was said.

Q Did he see the medicine? A He saw it, yes.

Q Did you show it to him when you brought it home? A Yes, I did.

Q When did you first know that he had a box of this medicine? A He didn't have it, I went and got it.

Q When did you first know that he did have it? A The day he got it.

Q About six weeks ago he told you that he had the box in which this medicine was contained, didn't he? A Yes, he did.

Q And what did he say when he told you that he had the box in which this medicine was contained? A He told me that he was going to give it to you.

The Court. What did he say about it?

The Witness. He said that he was going to give that box to Mr. Lane to show that I didn't want children.

Q What did you say? A I told him that he lied, that I never said that I didn't want children.

Q What else did you say? A That is all I said.

Q That was the first time you knew that he had the box? A Oh, no, I knew the box was there.

Q Was where? A The box was left in my house where I left it.

Q Wasn't that the first time that he had this box, to your knowledge? A No, he mentioned it other times to me.

Q And he mentioned it other times to you? A Yes.

Q When did he first mention it to you? A He mentioned it in the early part of the summer.

Q What year? A This year, 1920. He mentioned it when I started to take the baby up for him to see it.

Q In the summer of this year he mentioned the fact that he had this box? A Yes, he did.

Q Did you tell anybody that he had told you this? A No, I didn't.

Q You didn't tell your counsel that? A No.

Q And never have told your counsel? A No.

Q So your counsel didn't know anything about it until you went on the stand? A That is right. I beg your pardon, I told my counsel last week.

Q When did you first tell your counsel about the fact that he had this box? A I told my counsel last week, Friday, when I went into his office.

Q That he had this box? A That Mr. Hartley had a box and I told him about the box and what it contained.

Q And you didn't tell your counsel anything about that before? A I never told my counsel before.

Q You told your counsel when you first went to him everything that you could think of that you had against Mr. Hartley, didn't you? A Yes, I did.

Q But you never told him anything about this medicine business until last week, did you? A No, I didn't. I had forgotten all about it.

Q I show you— A I remember it, you don't have to show it to me.

Q I show you a box and ask you whether that is the box about which we have been talking? A Yes, that is the box.

Mr. Lane. I ask that it be marked for identification.

(Marked Exhibit D. 2 for identification.)

Mr. Mylod. I have no objection to its going in.

Mr. Mylod. There is December 10, 1918, on the box.

Q When did you move from the house; when did you leave your husband's house? A In January of last year.

Q What time of the month? A The fifteenth.

Q What time of the day? A In the morning.

Q Did you tell him that morning that you were going to leave? A Yes.

Q Was he there when you went away? A No, he wasn't home; he had gone to New York.

Q What did you say to him? A I told him that if the gas didn't get turned on, if he wouldn't give me the money to get the gas turned on and wouldn't give me money to support myself and my baby while I lived there, and not having me sending children out to charge this and charge that in stores, that I couldn't stand it any longer. I asked him, I begged him to change that morning.

Q What did he say? A He said no, he would never change.

Q Did you tell him what would happen if he didn't? A I went back there at five o'clock with the key to him and I told him that I had taken the baby and wouldn't he change, and he

said, "No, don't bother me with my fish on the wagon."

Q So you didn't make up your mind to go until the fifteenth? A No; I had my mind made up; he knew I was going before.

Q When did you make up your mind? A The day they shut the gas off I made up my mind.

Q What day was that? A That was on the twelfth of the month, twelfth of January.

Q Then you didn't make up your mind until the twelfth that you were going? A I knew I would have to go in the end, but that was the day I made up my mind, and I told him.

Q You had already on the twelfth sent your trunks out of the house, hadn't you? A Yes, I did. He knew I sent them.

Q So that it wasn't on the twelfth that you made up your mind that you were going? A Yes, it was.

Q What did you send your trunk for? A A On the twelfth?

Q I didn't say on the twelfth, I said before the twelfth. A You told me I sent the trunk on the twelfth.

Q If I did I didn't mean that. My question was, I think, you had already on the twelfth sent your trunk. I mean that prior to the twelfth you had sent your trunk. A A week before.

Q You had sent it on January 8th, hadn't you? A I cannot tell you the date.

Q So that you had made up your mind you were going to go before the twelfth? A Mr. Hartley had made up his mind that I was going to go. He had asked me when I was going to send my trunk.

Maria A. Hartley, cross.

Q And you, after sending your trunk on the eighth stayed there until the fifteenth before you actually went? A Yes.

Q And on the fifteenth you shipped out some more stuff? A That belonged to me. I took everything that belonged to me.

Q You shipped out some more stuff on the fifteenth? A Yes.

Q Where did you ship it to? A To my mother's home.

Q When did you go home with your baby from your mother's house? In September, I cannot tell you the date.

Q Can't you tell me about the date? A I can tell you the day.

Q How did you happen to come back to your own house, your husband went up there for you? A Yes, he did.

Q And he urged you to come back and live with him? A He didn't have to urge me, I had intentions of going, after my baby.

Q He wanted you to come back? A Why, of course.

Q And he never suggested at that time that you should not come back, did he? A No.

Q Never had suggested it up to that time, had he? A No.

Q There hadn't been any suggestion of that kind from him up to that time? A No.

Q And when was it that you first began to make up your mind that you were going to leave, between September and January when you did leave, after you returned in September? A When he treated me the way he did, when I brought my baby home. When he didn't support me or give me money to live on.

Q When? A The second week in September that I come home.

Q He began this course of conduct? A Yes.

The Court. When, as a result of that, did you first make up your mind to leave him and go away from him?

The Witness. The second week in September when I came back with my baby.

Q You made up your mind that you would leave? A I made up my mind if he didn't support me properly I was going to leave him.

Q What did you say to him? A I asked him for the money.

Q What did you say to him? A I asked him for my allowance to run the house and he wouldn't give it to me.

The Court. He gave it to you one week?

The Witness. He gave it to me one week and the second week I was there he refused it and wouldn't give it to me and told me he would buy the things himself.

Q What did you say to that? A I said that I wasn't going to live that way.

Q What did he say? A He said he didn't care whether I did or not.

Q That was after September? A That was in September.

Q What occurred next? A I lived all those months like that until I couldn't live any longer.

Q And nothing happened during those months except this difficulty over money matters? A Nothing happened, no.

Q You have said several times that Mr. Hartley wanted you to leave? A Well, he did.

Q That was the first time that he had indicated a desire on his part that you should leave, wasn't it? A Oh, yes, that is why he wouldn't give me my allowance to run the house, because he decided that I should go.

Q When did he first indicate to you that he wanted you to leave? A He indicated it the day I asked him for my allowance to run the home.

Q What did he say? A He said that he wouldn't give it to me, that if I didn't like that way of living I could go.

Q You considered that as an indication on his part that he didn't want you to live with him any longer? A Positively.

Q What else did he say that indicated that? A Insulted me and abused me all the time.

Q How insulted you and how abused you? A Called me out of my name.

Q Then he called you out of your name then, did he? A Yes.

Q What did he say to you? A On one occasion I came in with the baby and he asked me, "Where's the supper?" and I said, "Where is there anything to eat, where will I get it from?" He said, "You son of a bitch, did your people tell you to say that?" That was one occasion in October. My baby was two months old then.

Q Any other occasion? A No, not that I can remember.

Q He said that your people told you to say that? A Yes.

Q That isn't the first time that he had complained about the influence of your people? A Yes, he has complained.

Q And he complained and started to complain right from the very beginning almost of your married life? A No, not from the very beginning.

Q From how close to the very beginning? A The first time that I remember him complaining was before the baby was born, because I went home. I never went any other place but home and I used to have to have something for diversion.

Q I am only trying to fix the time. How soon after your married life began was it that he commenced to complain about the influence of your family upon you? A About the year 1918.

Q Then his complaints with respect to that continued, didn't they? A Yes.

Q And notwithstanding that, you say that during that very time you were going to your mother's house with his consent and at his insistence practically? A Yes, he told me every time I could go.

Q Although he was complaining about the influence of your family upon you? A Yes.

Q Or on your married life, rather, that is what he was complaining about? A Yes, he told me that when I come back, but he told me I could go.

Q He complained about it, but at the same time said you could go? A Yes.

Q After your marriage you lived with your mother for a period of two months, wasn't it? A Yes, I should judge it was two months.

Q Your mother knew you were married? A When I was living there, yes.

Q You hadn't lived or didn't live with Mr. Hartley at all, did you? A Not until—

Q For a period of some three months? A About two months.

Q Don't you know that it was your mother who prevented you from going downstairs—you were living in the same house with Mr. Hartley? A Yes.

Q Don't you know that it was your mother who prevented you from going downstairs and living with Mr. Hartley? A No, it wasn't my mother, because no one could have prevented me.

Q You didn't go, did you? A Because he didn't want me to go.

Q Are you sure of that? A I am positive.

Q Don't you know that he came up finally at the end of two months and said that you either had to come down or else something was going to happen? A No, I don't.

Q What? A The day he told me to come down I came down.

The Court. Did he say this that Mr. Lane is quoting?

The Witness. No.

Q Didn't you come down under a threat? A No.

Q How did you happen to go down? A He asked me to come down. He told me that the housekeeper was an expense and for me to come down there until he got his home ready up in Arlington and I told him I would come.

Q Hadn't he told you that right along from the time you were married? A No, never told me.

Q Do you mean to say that that was the first time he asked you to come downstairs? A That was the very first time.

Q How long was it after you lived with him that you went back to your mother again? A From April until the following June.

Q The same year or next year? A From April, 1917, until June, 1918.

Q Have you ever tried to figure out how many months you were married, and how many months during that married period you lived home with your mother? A No, I never did, because it wasn't my fault.

Q As a matter of fact you never did figure, did you? A No.

Q Taking you back to this time when you were in Asbury Park during the summer of 1917 when this choking episode took place, what time of the day did he get there? A I wouldn't be exact, but it was between eleven and twelve on Sunday.

Q Do you remember what day it was? A The day before Labor Day.

Q What did he say when he first came in? A He came right upstairs and he told me to get out of the room, that he was going to search it.

Q And then what happened? A I got out. He locked the door.

Q Did you ever see this fan? A Yes, it is my sister's. That was lying on my dresser.

Q I didn't ask any explanation yet. Did you ever see this fan? A Yes.

Mr. Lane. I offer it in evidence.

The Court. She says it is her sister's fan.

Q You saw that that day? A I never took notice of it.

Maria A. Hartley, cross.

Q Don't you know that when he walked in your room on that Sunday at noon time this fan, whether it was your sister's or no matter whose it was, was lying on your bureau or on a bureau in the room? A I never took notice to that fan.

Q Do you know how it is that Mr. Hartley happens to have this fan? Do you know the circumstances under which he got it? A Yes, he told me he took a fan off of there.

Q Off the bureau? A Yes.

Q That day? A That day.

Q When did he tell you that? A He told me that day when I went in the room. I seen him with it.

Q You saw the fan that day; when you came in the room or when Hartley went in the room, Hartley saw the fan lying on the bureau, didn't he? A How do I know, I wasn't in the room.

Q When did you first see the fan? A When he had it; when I went back in the room.

The Court. In his hand?

The Witness. In his hand.

Q What did he say? A He said, "I have got this fan."

Q What else did he say? A "Where did you get it?"

Q What did you say? A I said it wasn't mine.

Q What else did you say? A I said it was my sister's.

Q What did he say? A He said, "Well, I will hold on to it anyway for evidence."

Q He was insanely jealous then, wasn't he? A I don't think so.

Q Didn't he then get hot and didn't he then assault you? A Yes, he assaulted me.

Q And that was after he found this fan, wasn't it? A I don't know, I didn't see the fan then.

Q Didn't he say, "I have got this fan. Where did you get it?" and didn't you say, "It is none of your business," and didn't he get mad then and actually assault you? A No, sir.

Q What did he do, did he say in a pleasant manner, "I have got this fan," and put it in his pocket? A He pulled it out of his pocket after he assaulted me and held it in his hand and said, "I will hold on to this for evidence."

Q Didn't he point to the fact that the fan is marked "Clayton's"? A My sister told me about it.

Q Didn't he ask you when you were at Clayton's? A No, he didn't.

Q Are you sure that you cut him with the ring that day? A Positive.

Q Wasn't it upon another occasion that you cut him with the ring? A No, he has got mixed up on that, it was on that occasion.

Q How do you know he is mixed up on it? A Because I told him so.

Q When did you tell him so? A I told him last summer when he told me, when I read his affidavit.

Q You have read his affidavits? A Yes.

Q You did read them last summer? A Yes.

Q He took his grips and everything and left the house at Asbury Park? A Yes.

Q How long did he stay away? A He went around the corner and he came right back again.

Q When he came back he was cooled off? A Yes, he was cooled down.

Q And what did he say then? A He asked me to go right home.

Q And tried to be as pleasant as he could be after what had happened, didn't he? A Yes, sir.

Q Rather a shame-faced individual, wasn't he? A I don't know.

Q Did he act as if he were ashamed of what he had done? A Did he act as though he was ashamed—no, he didn't.

Q Didn't you get the idea that he was sorry for what had happened? A No.

Q Why did you ever go home with him? A He went out in a rage.

Q And he came back cooled down? A Yes.

Q And rather shame-faced? A Yes.

Q And he then said, "Let us go home," or "Come on home"? A Yes.

Q And you went home? A Yes.

Q And that was over? A No.

Q It still rankled in your mind? A No, it did with him.

Q You think that he still had some lingering— A He put me out when we come home.

Q What did he do? A He put me out of his apartment.

Q What happened? State what occurred. A When I got home, he told me I wasn't to live there. I was to go upstairs with my mother until he investigated the matter.

Q How long did this investigation take, how long did you stay with your mother? A From September.

Q From that Sunday night until November 19th, that is you were living upstairs above him? A Yes.

Q Are you sure of that? A I am positive.

Maria A. Hartley, cross.

Q Did you sleep with your husband at night? A No, I wasn't sleeping downstairs.

Q You were away from your husband from September until November? A Yes.

Q I show you seven letters and ask you if they are in your handwriting? A Yes, they are my letters I wrote to him when I was in Asbury Park. They are all mine.

Mr. Lane. I ask to have them marked as one exhibit.

(Marked Exhibit D. 3.)

Q You didn't of course write these letters or any part of them or didn't say anything in them for the purpose of making your husband jealous, did you? A No, I didn't.

The Court. Were these letters written while you were in Asbury Park?

The Witness. Yes.

The Court. Before this trouble on Labor Day?

The Witness. Yes.

Q That wasn't your purpose, was it? A No, sir.

Q Did you realize when you wrote the letters that there might be something in them that might possibly make your husband jealous? A No, because I knew he wasn't jealous of me.

Q If he wasn't jealous what in the world accounts for that quarrel down there on Labor Day? A Just to create a scene and trouble. Pure cussedness. Just out of a desire to create trouble, that is all.

Q Not jealousy at all? A Not at all.

Q In your letter of August 7th you wrote him: "Just a line to tell you all I know. Well,

Maria A. Hartley, cross.

I told you about the Doc. He has a wild crush on me. He came around today and asked Emer where I was, and I saw him coming and I ran, but he is married, and Mrs. O'Neill told me he was married. He married the belle of Washington. So he asked me and Emer to go out for a ride. That was today. We didn't go, so were a faithful wife. Hope you are the same and don't look at any chickens. So he made a date with Emer for tomorrow, but she isn't going. He is some Doc."

Q Of course it didn't enter your mind that that letter might arouse some jealousy on his part? A No.

AFTER RECESS.

Q What was your husband's business when you married him? A He wasn't in any business when I married him.

Q You knew he had been in the peddling business? A Yes.

Q He had been in the peddling business all his life as far as you knew? A Yes.

Q What do you mean by peddling business? A The kind that you go out on a wagon.

The Court. Peddling produce?

The Witness. Yes.

Q Vegetables? A Vegetables and fruits.

Q Do you know when it was that he gave up that business? A No, I cannot say.

Q You mean to say that he did give that business up before your marriage? A Yes.

Q How do you know? A I know he wasn't in that business. He was down in the Hudson County Court House on a recount.

Q I know, but that was only temporary, wasn't it? A I don't know how long it lasted.

Q Don't you know that a recount acting as an election officer is only a temporary thing? A Yes.

Q What was his business, aside from peddling and recount? A His business was the produce business, but he didn't work at it when I married him.

Q How do you know he didn't work at it when you married him? A He didn't work at it.

Q You mean that he had temporarily discontinued it because he was recounting? A Yes.

Q You didn't like the peddling business, did you? A Of course I did.

Q You did? A I never had anything to say about it.

Q Didn't you object to your husband being in the produce business? A No, sir.

Q Didn't you object to your husband working at that business? A No, sir.

Q Didn't you object to your husband working so hard? A I never objected to him working so hard, no.

Q Didn't you want him to give up working at that business? A If he would stay out long, working at it for his ownself, but not particularly for myself; no, sir.

Q Did you call him a lemon at all? A No, sir; not that I can remember.

Q What do you mean in this letter of August 4, 1917— A Just as I explained it there.

Q Which is in evidence, "When I said don't be a lemon and work so hard, you said you know you are a lemon. I hope that it is not I who is making the lemon out of you." What did

you mean by that expression? A I meant I hoped he wasn't working so hard on account of me.

Q Don't you know you had reference there to a conversation which you had in the spring of 1917, at which you bitterly objected to his continuing the peddling business? A No, sir.

Q I show you a letter dated August 16, 1917. By the way, this Sam Smith we have referred to was a waiter, wasn't he? A Yes, sir.

Q You wrote this to your husband on August 16, 1917: "I had a great time last night over in Scotti's. Hope you don't mind my going out with some of his waiters. I am all classed up tonight for the event"? A For the event we were having at the house—a card party that was given for the church.

Q "Well, dear, be careful and don't get sick again. Sam has gone out alone tonight. I think he has something on." What is that (indicating), "Hope I get someone to dance with me"; what is the word, "clue"? A Yes.

Q "I hope I get a clue to dance with me." I don't suppose you thought when you were writing that about Sam Smith, that it might have the effect of arousing jealousy on the part of your husband? A No, because they were such good friends.

Q And it wasn't for that purpose? A No, sir.

Q Do you remember in July, 1920, this disturbance which took place at your house? A Yes.

Q Tell me how that happened. A Mr. Hartley called me on the 'phone that evening, I should judge about six-thirty or seven o'clock at night, and he told me that he wanted to bring

someone the next day to see the baby at two o'clock and I told him it was all right, he could bring them, and a little while after, I had just put the baby to sleep, when the bell rang. I went downstairs to answer the door, I should judge about half an hour or three-quarters of an hour later. When I went down and answered the door, it was Mr. Hartley, and I opened the door for him and he was intoxicated and he came in and sat down on the chair, and Mr. Abselont, from the General Electric, was with him in his automobile, and Mr. Abselont was sitting outside in his automobile, and I went out to Mr. Abselont after trying to persuade him for some minutes to go on home, because I knew the condition he was in and I went out and asked Mr. Abselont that was with him, and of course he couldn't move to do anything for me.

The Court. Why?

The Witness. He was intoxicated, too.

The Court. Then what happened?

The Witness. So I just stood there because I was afraid to go back in. In the meantime my uncle went across the street for a cigar to the drug store; he came down and he has got poor eyesight. I cannot account for that, for I don't know whether he saw Mr. Hartley in the hall or not or knew who he was, I cannot say, and he went across the street, and when he came down Mr. Hartley came out of the hall and I was still standing alongside of Mr. Hartley's automobile, and he went to go and start the car and get into it and when he did he called my uncle several names out of his name and

by that time he was back across the street from the store, and he turned around to Mr. Hartley and he turned around and he said to Mr. Hartley, "I wish you would keep me out of your family affairs, I haven't anything to do with them." When he said that Mr. Hartley went back at him and ran back from the automobile. He then had his back turned, going in the vestibule, when Mr. Hartley hit my uncle on the jaw and knocked his glasses off and broke his hat and in the meantime I came back and went in between them and I pushed Mr. Hartley out the door and shut the door on him. That is all there was to that.

Q You had quite a conversation there with Mr. Abselont, didn't you? A Mr. Abselont couldn't talk to me.

Q What?

The Court. He was too intoxicated?

The Witness. He was too intoxicated. Mr. Hartley told me that himself. He said, "I am bad, but you go out there and he is worse."

Q Mr. Hartley was intoxicated and Abselont was intoxicated? A Yes.

Q So much so that they couldn't talk? A I said to Mr. Abselont, "I wish you would go in and try and take him home," and he never paid any attention to me. He just sat there and in the meantime while I stood there and he said to me, "Well, that is because you are not home living with him." Mr. Abselont said this to me, but Mr. Abselont couldn't understand anything that I ever said to him, for I didn't say anything to him.

Maria A. Hartley, cross.

Q What did Abselont say about that, because you were not living with him? A I said, "Will you go in and take him home?" I said, "Look at the condition he is in." He said, "That is because you are not living home."

Q What else did you say to that? A I never answered him, I merely stood on the street because I didn't want to go back in.

Q Are you sure you didn't answer him? A Yes.

Q Why didn't you answer him? A Because I knew he was in no condition to talk.

Q He was in sufficient condition to say to you that Hartley's condition was due to the fact that you were not living with him? A Yes, he got that out.

Q And you say you had gone out there for the purpose of getting him to help you with Hartley who was inside intoxicated? A Yes.

Q But when he said his condition was due to the fact that you were not living with him you didn't say a word? How long did you stand there? A I didn't say anything, only just asked him would he go in and take him home.

Q Had you known Abselont before? A I hadn't met Mr. Abselont but once or twice.

Q You knew who he was? A Yes.

Q He had been at your house? A Yes.

Q And had dinner with you? A Mr. Hartley brought him in one Sunday to dinner.

Q You were acquainted with him and you knew your husband was acquainted with him? A Yes, I knew that.

Q And did he say that you were foolish in not living with your husband? A No, he just said what I told you, that that was the cause

of his being in that condition, that was the cause of Mr. Hartley's condition through my not living with him.

Q Did you think it was the cause? A No.

Q What was the cause in your opinion? A I cannot say; I don't know.

Q You had no idea in your own mind as to what was the cause of his condition that night to say the least? A No.

The Court. Was that the only time he had been intoxicated since you married him?

The Witness. No.

The Court. Was he frequently intoxicated?

The Witness. Not frequently, but he was intoxicated.

Q At times? A Yes.

The Court. When you were living home with him?

The Witness. Yes.

Q Not frequently? A Yes.

Q You cannot assign any other cause for that intoxication? A No, I cannot.

Q Was this Mr. Abselont the one that wanted to see the child the following day at 2 o'clock? A I cannot say how that was.

Q Hartley was in a very excited condition, wasn't he? A Hartley was intoxicated.

The Court. Was he excited there?

The Witness. Yes.

Q What did he say he had him up there for? A He came up to see the baby. He just said he came up to see me.

Q What for? A He didn't say.

Q What did you think he was coming around there to see you for? A I don't know.

Q This was in July, 1920? A Yes.

Q Didn't he say he came around there to see you because he wanted you to come home with him? A He couldn't say that.

The Court. Did he?

The Witness. No, he didn't say that.

Q Have you any idea as to why he came there? A No, I haven't.

Q Didn't you think in your own mind at that time that his condition was due to the fact that you wouldn't live with him? A No, sir.

Q Why didn't you tell Mr. Abselont then when he said that that was the reason, "Why, that isn't the reason at all," or words to that effect? A I don't know why, but I didn't tell him.

Q Didn't you refuse to answer or fail to answer him because you knew it was the truth? A No, sir.

Q Didn't Mr. Abselont say to you that you were foolish in refusing to live with Hartley, and didn't you say that you realized it, and that you were going back to live with him? A No, sir; I never said that.

Q Do you recognize Mr. Abselont? A Yes, I see him.

Q And did you at the time you talked with him—who was driving the car? A Mr. Hartley.

Q What kind of a car was it? A A Ford car.

Q An old Ford, isn't it? A It is a Ford car, I don't know how old.

Maria A. Hartley, cross.

Q Did you at that time complain at all to Mr. Abselont about any treatment which Mr. Hartley had given you? A No, sir.

Q You are sure that you didn't say then that you had come to the conclusion that you were foolish, and that you were going to go back and live with him? A I am positive I didn't say that.

Q Did you ever say that to anybody? A No, sir.

Q After you left Mr. Hartley? A No, sir.

Q Did you ever say it to Mr. Hartley himself? A No, sir.

Q Your uncle made a complaint in the Criminal Court against Mr. Hartley for that assault, didn't he? A Yes, he did.

Q Mr. Hartley was tried before the Court of Quarter Sessions in the County of Hudson, wasn't he? A Yes.

Q You were there? A No, I wasn't.

Q Your uncle went down and your sister went down? A Yes.

Q Your mother went down? A Yes.

Q And they testified? A I don't know; I don't know what took place.

Q You knew what the result of the trial was? A He was found not guilty.

Q Do you remember that you had a diamond cluster ring? A I have it on me.

The Court. Are you wearing it now?

The Witness. Yes (producing same).

Q Who gave it to you? A Mr. Hartley.

Q After your marriage or before? A Before.

Q How long before? A I really cannot say, maybe two months.

Q Do you remember a quarrel which you had after you were married in which that ring figured? A No, I don't remember it.

Q Do you remember a quarrel in which your wedding ring figured? A No, sir.

Q Do you remember your throwing that diamond cluster ring at him? A No, sir; I never threw it at him.

Q Did anything of that kind take place? A No, sir.

Q Do you remember your throwing your wedding ring at him in the spring of 1917 or in the summer of 1917? A Why, no.

Q Before you went downstairs to live with him, during the two months that you lived with your mother? A No, I never had any quarrel with him like that, where I should do that.

Q Was there any occasion in which you had a quarrel and in which there was some discussion with respect to either your wedding ring or this diamond cluster ring? A No, sir.

Q Do you remember before you went down to this place in Asbury Park in the summer of 1917, do you remember going down there and looking for a place with Mr. Hartley on different occasions? A Yes, I do.

Q How did you used to go; you went down by car, didn't you? A In his automobile.

Q Do you remember going down one Sunday to Ocean Grove? A Yes, sir; I didn't go to Ocean Grove, Asbury Park.

Q Do you remember Mr. Hartley suggested Ocean Grove? A No, sir.

Q There was some talk about Ocean Grove? A There was no talk about Ocean Grove, it was Asbury Park.

Maria A. Hartley, cross.

Q Don't you remember stating that you wanted to go to Asbury Park, and that you didn't want to go to Ocean Grove? A No, sir; I didn't.

Q Do you remember that this night, upon one of these nights when you got home, there was some trouble after you got home with respect to money? A No, sir. I remember that day. On that day, going down, Mr. Hartley's two boys were with me and Mr. Hartley was driving the car and I was sitting in front. When we got on the road towards Asbury Park, I cannot just remember just where it was, Mr. Hartley's machine stalled and he got out to fix it, and he got out of the automobile and his oldest son said to me—I don't know what remark he made, but "Why don't we hurry up?" or "Why don't we go?" and when he said that, Mr. Hartley got angry. He got in the car and he never spoke all the way down until we got in Asbury Park, and we went in and had our dinner in a restaurant in Asbury Park and at the table Mr. Hartley said to his oldest boy, "Haven't I explained everything to you?" and when we come out of the restaurant I said to him, "What was there to explain?" He said, "Oh, there wasn't anything." That day he was all excited by what his boy had said to him, and we walked up to the boardwalk and I sat down and he said to me, "Now I want you to go to Asbury Park for the month of August," and I said to him, "I would just as leave go for two weeks, that suits me, or not at all." He said, "No, I want you to go for the month of August." I said, "I think I will go." He said to me, "Well, we will walk up and look at the place now." I said, "No, that isn't necessary," and there was some

discussion over my saying why did I want to go the last two weeks in August and not the first two weeks, and I cannot explain to you why I said it, for I had no reason. With that he jumped up off his chair on the boardwalk and he said to me, "Why, damn you, you are lucky if you go at all." We got up then and we went on home and on my way home I was so excited, from all he had done to me for nothing, because I wasn't at fault that day. I went to jump out of the automobile on my way from Long Branch because I didn't know why he was arguing with me, I had said nothing, but because he was excited that day he just put it right over on me to get out of it, and that night when we come home he took his two boys to a woman in Newark, out of the house. He told them on the way up in the automobile, he said, "Have you two boys got suit cases," and they said, "Yes." He didn't say any more. I said to him, "Why do you want them to have suit cases?" So when he came in the house and went upstairs with them, and he sent his two boys back in their bedroom to pack up their clothes, put them in the suit case and he took them away to Newark and when he come back—I really didn't know what it was all about. I knew I had done nothing to either of his boys that he should take them out. Then he said to me, "I don't want them to be listening to this fighting going on," and the next day he brought them home and that is all there was to that.

Q He said, "I don't want them to be listening to this fighting, and seeing this fighting"? A Yes, but he caused the fighting.

Q There hadn't been any fighting to see, had there? A No, only him just cursing at me.

Maria A. Hartley, cross.

Q There hadn't been anything to see, had there? A There hadn't been anything at all.

Q You cannot think of any reason for what he did? A No, I cannot.

Q It was out of a clear sky? A Only about that remark of the boy's.

Q That was hours before? A That was in the afternoon or morning.

Q And that quarrel was with the boy, not with you, wasn't it? A It wasn't with me, only my saying that I wanted to go to Asbury Park the last two weeks in August.

Q Your mother and yourself prevailed upon Mr. Hartley to bring the boys back, didn't you? A I asked Mr. Hartley to bring them back.

Q Both your mother and yourself? A I don't know about my mother.

Q Don't you know that you did go the very next day with your mother, that your mother saw Mr. Hartley with you and asked him to bring the boys back and he finally said he would? A No, I asked him to bring them back that night when he came in.

Q What did you say? A I asked him why he took them away.

Q What did he say? A He told me, he said, "I didn't want them to be listening to the fighting."

Q What did you say? A I said, "I didn't cause any fighting," I wasn't in the wrong that day.

Q What did he say? A And I explained to him about the boy and what he said.

Q What did he say? A I cannot remember what he said.

Maria A. Hartley, cross.

Q Didn't he say that he wasn't going to bring those boys back if that thing was going to happen again? A What thing?

Q Never mind "what thing." A The fighting?

The Court. No, did he use that expression?

The Witness. No, he didn't.

Q What did he say when he said he wouldn't bring them back? A He simply brought them back.

Q When you asked him to bring them back? A When I asked him to bring them back the next day he went after them and got them.

The Court. Before he went did he say anything?

The Witness. No, he didn't.

Q Didn't you say, "Bring them back," without saying anything? "Go out and bring them back." Is that the way it happened? A I asked him to bring the boys back. I don't know whether he saw his mistake, but he brought them back.

Q He didn't say he saw his mistake? A No.

Q Don't you remember when you got home that night, you made a grab at him for some money that he had? A No, sir.

Q And that you tried to prevent him from getting it? A No, sir.

Q And that there was a rough and tumble fight in the presence of the boys? A They were not in the room—

Q Wait until I get through. And there was a rough and tumble affair, whether in the pres-

ence of the boys, and it was then that you cut him with this ring by accident?

Mr. Lane. We don't claim that she did this ring business; if she did in fact it was unintentional.

The Court. She said she did it on one occasion and you say another.

Mr. Lane. It was done accidentally whenever it was.

The Court. Then it is not material.

Mr. Lane. It is material as giving an excuse for what he may have done.

The Court. She says that he assaulted her on the occasion when she used the ring.

The Witness. That was the day before Labor Day.

Q Don't you remember that it was upon that occasion that you in the scuffle cut his face with the ring, and when you cut him, he went up in the air and said he wouldn't have his boys around where that thing was taking place, and walked out and cooled down again after twenty-four hours and brought them back? A No, sir; I never cut him on the face with my ring that day.

Q Did you cut him with anything that day? A No, sir; he wasn't cut that day.

Q Did you come to the point where there was any assault either by you or by him? A No, sir.

Q Between the time that you came back after your baby was born in September, 1919, and January, when you left, 1920, between those two dates, you went back to your mother on one occasion? A No, I went back the first night I

came down with the baby. Mr. Hartley came to me on a Friday night and I went down with him and it was near ten o'clock at night, and I had all my baby clothes packed in the basinet and things that belonged to him, and he carried them down for me in his automobile and I took the baby and went down with him, and I was just after coming out of a bed of confinement, and I was sick and nervous and Mr. Hartley went in to bed, and I had no way that I could undress the baby unless I unpacked all those things myself, and that night I said to him, "I think I will go back home with the baby and stay over night and come down in the next day and sort these things out, so I will get them in readiness," and I went home.

The Court. Did he object to that?

The Witness. He didn't object to that. He took me out to the hall.

The Court. How did you get home?

The Witness. I took the baby up on the trolley car.

Q When did you come home? A I came down the next day, that was Saturday.

Q Didn't he come to your mother's house before you came down? A No, I came down in the morning to him to the barn where he was, and I asked him for the key, and he gave me the key and I went back up to my flat on Johnson avenue and he said to me, "Don't bother and wait for me to come up. You go home and you stay now until tomorrow night and I will come up and get you and take you out for an automobile ride." He didn't object to that at all.

Maria A. Hartley, cross.

Q How long, then, did you stay at your mother's house? A I sorted the baby's things out that morning while I was there, and I emptied the basinet out, all of the clothes and then I went back up again, and Mr. Hartley came up for me Sunday night.

Q He came up for you the next night? A Yes, and he took me out for an automobile ride.

Q Did you go out for an automobile ride—you went out to supper? A On our way for an automobile ride he stopped in the Elizabeth Elks.

Q You had supper? A And I had a sandwich or something to eat.

Q Then you went back to your mother's? A He took me back home and he told me not to come down until tomorrow morning and I went back then on Monday.

Q And you had quite a talk going back to your mother's that night on Frelinghuysen avenue, didn't you? A No talk at all.

Q Then how long did you stay? Did you stay that night at your mother's also? A I stayed that night and came down with the baby the next morning; Monday morning.

Q What time did you leave your house that night to go back to your mother's house? A I guess it was about half-past ten.

Q What time had you gotten there? A About quarter to ten.

Q How far is your mother's house from this house? A That is about three minutes' ride on the trolley car.

Q Did you take a trolley to go back? A Yes.

Maria A. Hartley, cross.

Q Hartley had come up to your mother's house for you, hadn't he? A That night?

Q Yes. A He came up and brought me down.

Q What time? A About half-part nine or quarter to ten, twenty minutes to ten.

Q Why didn't you tell him when he came up there for you that you preferred to stay at your mother's house that night? A Because I promised him that I would come down, and I was already to come down early in the evening, when he said he would come for me and he never came after me until that time.

Q When you got home you immediately almost turned around and walked out again? A Because I was nervous and sick.

Q Then it wasn't so much about the baby's clothes as it was that you were nervous and sick and didn't want to stay there? A I was too nervous and sick to start in unpacking those clothes.

Q And do you mean to say that Mr. Hartley consented to your going back that night to your mother's house? A He did; he wanted to take me up in his automobile.

Q Why didn't you let him? A He was in bed and he got up and I said, "No, don't bother, because I will go up on the trolley car."

Q The next day he came up and saw you at your mother's house? A He never came that day; no, sir.

Q He didn't come the next day at all? A No.

Q He came the next day? A Sunday night he came.

Maria A. Hartley, re-direct.

Q Don't you remember that that night you went out to supper with him? That you said you wanted him to let you stay with your mother and support the baby and let it go at that? A How could I? I didn't say that.

Q Did you say it? A No, sir.

Q Or words to that effect? A No, sir.

Q And did he tell you? A No, sir.

Q Wait a minute—that he wouldn't agree to anything of the kind and did you then say that you supposed you would have to come back and live with him? A No, sir. I never said that.

Re-direct examination by Judge Mylod.

Q Mr. Lane asked you on cross examination as to whether or not there was any agreement between you and your husband as to the religion in which the child should be brought up and you said there was, before you were married, and that he did not object to the child being brought up in that faith? Did he object to the child being brought up in your faith? A After the child was born? Yes.

Q And what was the nature of his objection? A He told me he didn't want him to be brought up a Mick.

Q Was there anything said with reference to the baptizing of the child? A Yes. He said he would choke him before he would let him be baptized a Catholic.

Q Did you have the child baptized in the Catholic faith? A I took him myself to East Orange and had him baptized there.

Q Mr. Lane asked you whether or not—

The Court. Did your husband know that you had him baptized?

The Witness. I told him afterwards.

The Court. How long after?

The Witness. I told him maybe a month after.

The Court. What did he say about it?

The Witness. He told me that he was going to take him up now and have him baptized in his faith and I told him to go ahead and do it.

The Court. Was he connected with any particular church?

The Witness. He wasn't then, not that I know of.

Q Mr. Lane also asked you as to whether or not you complained to anyone after Mr. Hartley called you the abusive names that you have testified to and I think you said that you made no complaint. Did you tell anyone at all as to the nature of the names Mr. Hartley called you, when you took the child to see him in the street after the order was made? A Yes, I told you.

The Court. You told Mr. Mylod.

The Witness. Yes.

Q Did I say I would speak to anyone about what Mr. Hartley was doing when you brought the child to visit him? A You told me you would speak to Mr. Lane.

Q Mr. Lane has also asked you about who went to the post office with these threatening letters.

The Court. She said that she did.

Q You went first with the letters? A Yes.

The Court. And later both went.

Mr. Lane. She didn't say with the letters.

The Witness. Yes, I did, I went first with the letters.

Q Did you take the letters with you when you went to the post office inspector? A Yes.

Q The first time you called how many did you have? A One.

Q During what period was it that you have testified Mr. Hartley brought you to the Presto Lunch on Market street, Newark, for the purpose of having supper, during what period? A The year of 1917 and 1918, when his boys were at Rutgers College.

Q And where would you have your breakfast and your dinner? A Upstairs with my mother before she moved.

Q After your mother moved what did you do for breakfast and dinner, during the time that Mr. Hartley was taking you to the Presto Lunch for supper? A I wouldn't have any.

Q What would Mr. Hartley do for his meals? A He would stay there, we might have coffee, and that is all.

Q Mr. Lane also asked you, Mrs. Hartley, as to what Mr. Hartley said when you told him you had taken the pills which were purchased in Petty's and that they didn't prevent your condition and I think you said, "He didn't say anything." Is that right? Did he make any other suggestion when you told him the pills—that you had taken the pills?

Maria A. Hartley, re-direct.

The Court. She said they were no good, didn't you?

The Witness. I told him that they wasn't any good.

Q Did he make any suggstion at that time as to what should be done with the expected baby? A He told me that he would take me to a midwife on Mulberry street.

Q And was there anything else said with reference to anyone else he could appeal to? A Yes, he told me that he could appeal to another doctor.

Q Did he say where he got the name of the other doctor? A Yes, he told me.

Q What did you say to this suggestion? A I told him that I was going to have my baby.

Q Just what did you say to him—to one of Mr. Lane's question I understood you to answer that your husband said to you, "Don't bother me, when I got the fish on the wagon." What question did you ask him then? A I asked him if he didn't want me to bring the baby back home that night, that I went back there.

The Court. January 15th, when they parted, that is right?

The Witness. Yes.

Q You were asking for money? A I asked him if he would give me some money, some carfare up home, and he wouldn't give it to me.

Q You also suggested in answer to one of Mr. Lane's questions, that you sent your trunks to your mother's house about a week before you went to your mother's house. Just why were those trunks sent and what did Mr. Hartley know about it, if anything? A Mr. Hartley

knew the trunks were gone. He continually before that, came in every day and asked me when my trunks were going and if the expressman had called yet.

Q Were the trunks packed at Mr. Hartley's suggestion or at his request? A Yes, they were.

The Court. What do you mean, when did he ask you or request you to pack them?

The Witness. He told me that he wanted me to go.

Q How long before the eighth of January when you sent the trunks? A He had told me every day, from the day that I came back home with my baby.

Q You mean in September? A In September.

Q Every day? A Every day he would ask me if the expressman came to take my trunks.

Q When you returned from your mother's home in September, 1919, with your baby was Mr. Hartley's flat a completely furnished flat? A No, it wasn't.

Q Describe the condition of the furniture. What rooms were furnished, and what were not?

The Court. How many rooms did you have?

The Witness. Six.

The Court. How many were furnished?

The Witness. Four of them were partly furnished.

Q Is there a front room in that flat? A Yes.

Q Was there any furniture in that? A There was no furniture in that room.

Maria A. Hartley, re-direct.

Q Any carpet on the floor? A There was no carpet on it until three months after I went back to him.

The Court. After you went back in September?

The Witness. No, August when I went back there, before the baby was born. For three months there were no carpets on the floor, and he went up on Belleville avenue and he bought three second-hand carpets.

Q Where did you use those carpets he got up on Belleville avenue? A In his bedroom, his dining room, and his living room.

Q Was there any furniture in this front room at that time? A No, sir, not any.

Q Did you put carpet on the room without furniture in it? A I didn't put it on, he put it on.

The Court. How many bedrooms did you have furnished?

The Witness. One.

The Court. And a kitchen and a dining room?

The Witness. Yes.

The Court. Were they the only rooms furnished?

The Witness. Yes.

The Court. Were they fully furnished?

The Witness. That furniture was always in there, a dresser, and a bed in the bedroom.

Q In what room was the davenport you slept on? A In the dining room.

The Court. Where did he sleep; in this bed you said was so dirty?

The Witness. No, he slept on the davenport.

Q Did you say that you told your husband that inasmuch as his first wife had died on that bed, and died from tuberculosis— A That I was afraid.

Q Did you tell him that? A Yes.

Q Tell the Court what talk you had with your husband with reference to changing the furniture. A I asked him would he change the furniture because I was afraid of germs on account of the first Mrs. Hartley dying with consumption.

Q And what did he say? A He said that he would never change it, that that was good enough for him and it ought to be good enough for me.

Q Was this bed in the bedroom in good condition or broken? A It was in fairly good condition, but the davenport was broken.

Q In answer to one of Mr. Lane's questions you said that Mr. Hartley came in the room and I understood you to say, picked up the fan—

The Court. She didn't say that. She said when she came back in the room he took it out of his pocket.

The Witness. Yes, and he had it in his hand.

Q Was there any discussion when Mr. Hartley came in the room in Asbury Park with reference to a letter he had received? A No, there was not.

Maria A. Hartley, re-cross.

The Court. He ordered her and her sister out and said he was going to search the room.

The Witness. That is correct.

Re-cross examination by Mr. Lane.

Q Don't you know that the first Mrs. Hartley did not die on that bed at all? A She slept on that bed but she didn't die on it.

Q She had slept on that bed not earlier than a period of four years. A Oh, yes she had.

Q Sure of that? A Yes.

Q Do you know that she slept in a hall bedroom on an iron bed for four years before her death? She never slept with Mr. Hartley during that period of four years? A No.

Q Most of the furniture in the house was sold because of your insistence that you didn't want any of the furniture there of Mrs. Hartley's? A Mr. Hartley gave it away. It was taken away.

The Court. Because you insisted on having it done?

The Witness. No, sir.

Q Whether it was your insistence or wasn't, the furniture that was there, or most of it, at the time of Mrs. Hartley's death, the first Mrs. Hartley, was disposed of in some way or another? A It was all broken and Mr. Hartley wanted to get rid of it.

Q It was disposed of, wasn't it? A Yes.

Q Did he buy new furniture then? A No.

Q Some new furniture was bought? A Never a new piece of furniture outside of the bed that I went back there and slept on in August.

Maria A. Hartley, re-cross.

Q Was there a piano there? A No, sir.

Q No piano in the house? A No, sir; that was upstairs with his boys.

The Court. Where his aunt lived?

The Witness. Yes.

Q When did you first tell the story with reference to this midwife to Mr. Mylod? A I told him when I told him about the box.

Q And that was how long ago; five or six weeks, wasn't it? A I cannot say, I don't remember.

Q You didn't tell anything about the midwife or what your husband said in respect to that when you first went to him? A No, sir.

Q Although he asked you for a complete history of your married life? A Yes.

Q And all the trouble that there was between your husband and yourself? A Yes.

Q And why was it that you didn't tell him about this midwife business? A I had forgotten.

Q It wasn't because you didn't like to tell about it, was it? A No, it wasn't.

Q If you had thought of it you would have told him? A Yes.

Q You realized, of course, that it was a cruel suggestion, didn't you? A Yes.

Q And it horrified you at the time the suggestion was made? A Terribly.

Q And it has affected you ever since, hasn't it? A No, I had forgotten about it; after my baby was born I let it go out of my mind.

Q It went out of your mind completely after the baby was born? A Entirely.

Q It was about the most cruel thing in your opinion that Mr. Hartley had done to you? A At the time it was.

Q Much worse in your mind than any physical violence that he had perpetrated on you, wasn't it? A Yes.

Q And yet you didn't tell Mr. Mylod in telling your story anything about it? A No, I had forgotten.

Q You never thought of it until I suggested that he had this box? A No, that isn't it.

Q He told you that he knew that unbeknown to him you were taking medicine to prevent pregnancy? A Who told me that?

Q Mr. Hartley, six weeks ago. A No, sir.

Q What did he say with respect to the box? A He said that he had this box and Mr. Lane wanted it for evidence, and "I am going to give it to him;" that is what he told me.

Q Did he say how it could be used as evidence? A No, he never told me how.

Q You had no idea in your mind as to what that might be used as evidence of? A No, sir; I didn't.

Q Did he say that Mr. Lane wanted it or that he was going to give it to Mr. Lane? A He said he mentioned it to him and Mr. Lane demanded it.

Q That he mentioned it to me? A Yes.

Q Did he tell you that six weeks ago? A Yes.

Q This agreement of your husband, with respect to the religious faith and so forth, did that apply to all of the children who would be the issue of the marriage? A Yes.

Q Whether boys or girls? A Yes.

Q And was there anybody present when that agreement was made? A Yes.

Q Who? A Mr. Headley, Miss O'Neill and Father Conroy.

Q What is Miss O'Neill's first name? A Her name is Mrs. Werline, she is married.

Q Is she the Miss O'Neill you mentioned in some of these letters? A Yes.

Q They were all present when this agreement was made? A Yes.

Q Where was this made? A In the rectory in Saint Cecelia's church.

Q At the time of the marriage? A At the time of the marriage.

Q Had it been discussed before that? A No, sir.

Q You mean up to the time you went to the rectory for the purpose of being married you had no discussion as to the religious faith of the children? A No, sir.

Q It hadn't been questioned between you two people? A No.

Q How did it come about that that agreement was made? A Every Catholic that is married in the Catholic church that marries a non-Catholic, before they can be married the non-Catholic party has to sign a paper that the children are brought up in the Catholic faith.

The Court. Was such a paper signed?

The Witness. Yes.

Q When did you first know that? A I always knew that.

The Court. Was your trouble with your husband after that due to the fact that you

and he quarreled over the religious training of the child?

The Witness. No, sir.

Q Did you ever quarrel about it after the child was born and baptized? A We never had a quarrel about it.

Q Is that quite true that you never had a quarrel about that? A We never had a quarrel over religion.

The Court. Over the religious training of the child or in what faith he should be brought up?

The Witness. No, he merely said he didn't want him to be brought up a Catholic.

Q But did you have any quarrel afterwards, was that any cause of all this difference between you and your husband? A No, sir.

Q You had it baptized without the knowledge of your husband, didn't you? A Yes.

Q Why? A Because he signed a paper that he should be baptized.

Q Why didn't you tell him that you were going to have that done? A For peace's sake in my home I didn't tell him.

Q Why, for peace's sake, why did you think there would be any question about peace? A Because he told me he didn't want him baptized a Catholic.

Q He was a Methodist, wasn't he? A Yes.

The Court. Was he a church man at all?

The Witness. No, sir.

Q You came back to him the day after you left in January and asked him whether he wanted you back? A No, the same day.

Miss Sadie E. Ferris, direct.

Q And asked him whether he wanted you back? A Yes.

Q If he had said yes, you would have gone back? A Yes.

Q On this poison pen business you called in a fortune teller to find out who wrote these poison pen letters, didn't you? A No, I didn't, I never knew anything about it.

Q You know a woman named Smith? A Mrs. Smith.

Q She does that sort of work— A She doesn't do that for a living, but she can do that stuff and out of a mere joke to Mr. Hartley I let her sit down and tell it.

Q Seeking her aid was a mere joke? A Yes, I didn't go to seek her aid.

Q Availing yourself of it when it was offered. At least she didn't discover who it was? A No, that is impossible.

Further direct examination by Mr. Mylod.

Q Mr. Lane on his cross examination, Mrs. Hartley, intimated or stated that most of the furniture had been used by Mr. Hartley's first wife, and had been abandoned for other furniture. Will you enumerate every article of furniture that Mr. Hartley purchased from the day he married you? A Yes, I will. Three rugs—

Q Were they new? A Second-hand ones. Bed and an ice box.

MISS SADIE E. FERRIS, sworn for complainant.

Direct examination by Mr. Mylod.

Q You are a sister of Mrs. Hartley? A I am.

Q You reside with your mother in Kearny? A Yes.

Q And your brother? A Yes.

Q Are you older than Mrs. Hartley? A Yes, I am.

Q There are three children in the family, you and Mrs. Hartley and your brother? A Yes, sir.

Q And your father is dead? A Yes.

Q You know Mr. Hartley? A I have known him for some years. In fact since my sister was ten years old. I have known him I should judge about fifteen years.

Q You formerly lived in Mr. Hartley's house? A I did.

Q You moved there when the complainant was how old? A Ten years old.

Q And Mr. Hartley's first wife was alive then? A Yes.

Q Do you recall about the time that your sister married Mr. Hartley? A Yes.

Q Did you know that she was to be married to him? A I never thought of such a thing. I never knew it or thought of it. I knew it about three days after she was married.

Q After she was married where did your sister continue to live? A In the apartment with my mother and I.

Q How long did she remain with your mother? A Two or three months after she was married.

Q And after that she went to live with Mr. Hartley? A She did.

Q Do you know anything about any letters being received by Mr. Hartley threatening his life or threatening your sister's life and threatening to throw vitriol in her face if he didn't

divorce her? A Yes, Mr. Hartley showed me several letters, called me in on my way from business and showed me letters and they spoke of divorce and throwing vitriol in her face and burning the house if he didn't divorce her, and of our moving from the upper apartment, that we must move from the upper apartment.

Q These threatening letters said that? A Yes.

Q Do you recognize these letters marked Exhibit C. 1? A Yes; they are the letters.

Q Did Mr. Hartley make a suggestion as to what should be done in order to prevent these letters being written? A I knew my sister went to the post office with the first letter, and I knew that she and Mr. Hartley went on several occasions to the post office, then he called me one evening and told me that he had consulted a lawyer about that and the lawyer advised that he divorce my sister, and we move from the apartment, and he said, "Naturally the writer will come forward."

Q Do you recall being down in Asbury Park during August, 1917? A Yes, I went week-ends to visit my sister during that month.

Q You were there the week-end immediately preceding Labor Day? A I was.

Q Do you recall Mr. Hartley's arriving at the hotel on a Sunday before Labor Day? A I do. He came in and took his winter overcoat and threw it on the bed and ordered us from the room.

Q Who was in the room? A Mrs. Hartley and I were in the room at the time.

Q Didn't he say anything except order you from the room? What did he say first? A He

said he wanted to search the room, that we would have to get out. My sister went out and he pushed the door and shoved me out of the room and I went down the hall, and when I come back my sister was in the room and the door was locked and I heard sounds in the room and then I heard her scream and I rattled the door knob and demanded that he let me in the room.

Q Did you get in? A Yes, I got in.

Q What was the condition of the room? A My sister's hair was disheveled and Mr. Hartley was pale and he had a mark of blood on his face. I asked what was the matter. She said she scratched it with her ring.

Q Did he say what he was going to do with Maria? A He used very profane language in the room that morning. He told me that I could go home, take her home, called us out of our names and told me I could go to hell and do as I liked with her.

Q What did you do? A I took my bag and clothes out of the room and I went downstairs, and I met the maid in the hall and I gave her two dollars. I asked her to give it to my sister for her carfare home and I immediately left the hotel.

Q When did you next see Maria and Mr. Hartley? A I saw them drive into the yard.

Q That same night? A Yes.

Q You mean in the yard 87 Johnston avenue where they lived? A Yes, where we all lived at the time.

Q Mrs. and Mr. Hartley lived on the second floor? A Yes.

Q You and your mother and brother lived on the third floor? A Yes.

Miss Sadie E. Ferris, direct.

Q Tell us what happened after you heard them drive in the yard that night. A After I heard them drive in the yard, Mrs. Hartley went into their own apartment. I heard a lot of damning and finally he called my mother down and I waited until she came up and when she came up Maria came with her. She stayed with us then until the nineteenth of November.

Q How do you know she stayed until the nineteenth of November, how do you fix that date? A That was her birthday, I remember it vividly.

Q Did you say anything to her? A Yes, I recall the fact that she had a birthday present, a key to their apartment.

Q On the eighteenth she went to live with Mr. Hartley? A Yes.

Q You moved out of the house immediately after that? A We moved out of the house December first.

The Court. Did you move at Mr. Hartley's request?

The Witness. No, we moved because my mother wasn't well and I thought it better to get out.

Q It wasn't due to their differences? A I have never seen him to talk to from that Sunday I came home.

Q From Sunday before Labor Day? A Yes. In fact I haven't spoken to him since.

Q Did you ever go to see your sister Maria? A No, I never did. The night before I moved out of that apartment I knocked at her dining room door and that was the only time I ever saw the bed she was sleeping on.

Q Did you see the bed that night? A It was a davenport and it was broken down and I recall the words I said, "My God, Maria, is this how you are living?"

Q Do you know whether or not there was any food in the house, have you any way of knowing that? A I never knew while I lived there, after we came home Labor Day. I never knew her having anything in the house. I recall her going out in the evening. That was when she went to the lunch room.

Q Do you recall the fact of the baby being born? A Yes.

Q Maria was at your home at the time? A Yes.

Q That was August? A August, 1919.

Q Did you ever see any black and blue marks on Maria prior to the birth of the baby? A In October, 1918, I was home sick at the time and Maria came up one day and she had black and blue marks on her chest and neck and she was badly swollen and my mother sent me out to the drug store for arnica and witch hazel and rubbed it on her neck and chest.

Q Did you ever on any other occasion see any black and blue marks or injuries on your sister's body? A Before she left Mr. Hartley in 1918, that Decoration Day she came up the morning after Decoration Day and she had a lump on her wrist which remained on her wrist until the time the baby was born.

Q Did she say how she got it? A She said that Mr. Hartley came home, and I recall that Decoration Day was a damp day, they didn't have any coal in their cellar and he wanted to know whether there was any fire. She didn't

have anything to make it or any coal. I always knew she didn't have any money.

Q Do you recall the fact that Mr. Hartley's two boys who lived in the same house were sent to Rutgers in September, 1918? A Yes, September, 1917, that was.

Q Do you recall where Maria had her Thanksgiving dinner that day? A Yes, she had her dinner with us, because I was coming upstairs to our apartment that day and she and Mr. Hartley came out their door and I said to wait for her. I knew she was coming up and he turned to her and he said, "You can get to hell upstairs and eat your silk stockings."

Q Did you hear him say that? A Yes.

Q Christmas time where did Maria have dinner? A She came to our apartment on Kearny avenue that day.

Q That was the first Christmas after her marriage? A Yes.

Q Do you know where Hartley was that day? A At his aunt's house in Jersey City with his boys.

Q Do you know when Maria finally left Mr. Hartley's flat at 87 Johnston avenue? A This last time?

Q Yes. A January fifteenth, 1920.

Q Did you ever see Mr. Hartley at your mother's home to visit his child or his wife from that time until the court order was made in February of this year? A He was there one noon time when I came in to lunch. He didn't see me or I didn't see him, but I knew he was in the house.

Q Did you ever see any presents he ever made to the baby during the thirteen months? A He never gave the baby a present.

Miss Sadie E. Ferris, cross.

Q Did you ever have any argument with Mr. Hartley yourself? A No. I never had words with him.

Cross examination by Mr. Lane.

Q Are you sure that after they came home from Asbury Park in the summer of 1917 and September of 1917 that Mrs. Hartley left her husband and remained living with you until November nineteenth? A I am positive she didn't leave him. He ordered her out.

Q Are you sure whether she left, whether he ordered her or if she left of her own volition? A She lived in the apartment with me, positively.

Q She lived there continuously for what period of time? A Until November 19, 1917.

Q Every night? A Every night in the week, she was up with us.

Q You are sure of that? A Positive.

Q In your affidavit which you swore to upon the 10th of January, 1921, you said: "After my sister's return from Asbury Park during the latter part of 1917, as aforesaid, she continued to reside with her husband, the defendant, on the second floor of the house number 87 Johnston avenue Kearny, New Jersey." How do you reconcile your testimony today with that affidavit? A I put in my affidavit that she got the key to her apartment on the nineteenth of November, I remember that distinctly.

Q You swore to that statement. How do you reconcile the two. Is it a mistake or what? A It is not a mistake on my part. I know when she got the key to her apartment.

Miss Sadie E. Ferris, cross.

The Court. That isn't the question. Mr. Lane directs your attention to your present testimony in which you say that from September to November 19th she continuously resided with you or her mother and did not go down to her husband's apartment at night. The affidavit to which he has directed your attention, in that you swear that she continued to reside with her husband from some time in September. The two statements are inconsistent. Can you reconcile them?

The Witness. I cannot reconcile them. I don't remember ever saying that she lived with him until the nineteenth of November, because it was I who called her attention to the key on that day.

Q We will pass that for a moment then. You are now positive that she slept every night in your apartment. Are you right with respect to that? A Yes, I am.

Q Following the statement which I read to you, you swore to this, "At this time (that is during the period from September and two months thereafter) I resided with my mother on third floor of said house. For two or three months following my sister's return from Asbury Park, the defendant would put her out of the house in the morning and lock the door, taking the key with him and my sister would go into my mother's rooms where she would remain until her husband returned in the evening to unlock the door to their apartment." Which of your statements is true? A He was in habit of calling her when he got out of bed. He called at the back stairs, and Maria would go down and stay until he left. I was home very often and

Maria during this time she would go down and when he would go he would send her upstairs and when he returned at night he would call her to come and go to the lunch rooms with him.

Q And she came back then after he came up and unlocked the door and took her out at night —she came up to your apartment after that? A That is right. That was his arrangement.

Q And stayed over night? A Yes.

Q Why didn't you say that in your affidavit? A That is what I said.

Q You didn't say it as a matter of fact? A I certainly meant that.

Q Did you sign these affidavits in Mr. Mylod's office? A I did.

Q Did you tell Mr. Mylod at the time this affidavit was being prepared the facts as you have testified to them here? A I told him just what I am telling you.

Q Did you tell him that you remembered the date specifically when she went back because it was November nineteenth, your sister's birthday? A Yes.

Q You told him that? A Yes.

Q Did you read this affidavit, which was sworn to on January tenth, over before you signed it? A I did in Mr. Mylod's office.

Q You said that Mr. Hartley said to you in September, when you were down there at Asbury Park, that—using some profane language—that he didn't care what happened to Maria, that you could take her home or words to that effect? A Yes.

Q Did you think he meant what he said? A Yes, I thought he meant what he said.

Miss Sadie E. Ferris, cross.

Q You did think when he made that statement to you that he meant exactly what he said, that he didn't care what happened to her, and that you could take her home? A Yes.

Q And yet you turned on your heel and walked off? A I left her the money to come home myself.

Q Leaving two dollars with someone else? A The woman gave her the money while I was in the house, I knew she had it.

Q When Mr. Hartley said, "I don't care anything about her, you can take her home." why in the world didn't you take her? A She wasn't my wife and I didn't bring her there.

Q Did she say, "I don't want to go, I want to stay with him?" A She didn't say anything.

Q Did she say, "What are you going to do or words to that effect?" A I didn't have any conversation with her. I didn't want to disturb her any more than she had been.

Q You were a silent spectator? A Any words I had, they were with Mr. Hartley. I asked him what he meant by acting like that.

Q What did he say? A He started in cursing and using that profane language.

Q What did he say? A He called my sister a son of a bitch and a God damn bum and cursed this man Mr. Smith and said that he would break the sanctity of any man's home. I said, "Isn't he related to you? What do you mean by talking about that man in that manner?" He said he would break the sanctity of any man's home.

Q Mr. Smith would? A Yes.

Q What else did he say? A And he told me about taking her home or doing as I pleased.

Miss Sadie E. Ferris, cross.

Q He was wild, wasn't he? A He looked it.

Q And he wasn't responsible in your opinion for what he was saying? A He was more than responsible in my opinion.

Q Who was with your sister when you left her with this man? A She was alone in the room.

Q In this room? A Yes.

Q With this man? A Yes.

Q Who had called her all of the names in the catalog that you can think of? A He ordered me from the room that is why I left.

Q And had he used physical violence on your sister? A Yes, he had.

Q And appeared to be in a condition where he might use more physical violence on her, is that right? A I didn't know what he intended doing. I didn't think of it at the time. I was excited. I didn't understand that going on.

Q And how old are you now? A I was twenty three when this trouble occurred.

Q Older than your sister? A Yes, she was twenty-one.

Q You rather grew up in this sense that she was entitled to some protection from you, the elder sister? A Naturally.

Q Did you think when you left, that Mr. Hartley was in a condition where he might use further physical violence on your sister? A I was so excited I don't remember what I thought.

Q How long did you excitement continue? A Until I got home.

Q Did you come up by train? A Yes.

Q How far from the station was this house? A About twenty minutes' ride.

Q Down at Asbury Park? A Yes.

Miss Sadie E. Ferris, cross.

Q It took you twenty minutes to get to the station? A I thought you meant from the station in Newark to my home.

Q No, the station at Asbury Park. A About five minutes on the street car.

Q You took the street car did you and went to the station? A Yes.

Q How long did you wait for a train? A I didn't have to wait any time at all. I was there a few minutes when the train pulled in.

Q You didn't think during that interval as to what might be happening to your sister back in that house in that room, with this man who had already physically abused her, and who had used the language toward her that you have described, and who has said, "I don't want to have anything more to do with her, you take her home"? A Yes, I did, and I telephoned to the hotel when I got to Newark.

Q You waited until you got to Newark? A I couldn't telephone while I was on the train.

Q You weren't very much afraid that night as to what was going to happen to your sister, were you? A I don't understand your question.

The Court. This was the afternoon?

The Witness. Yes.

Q Were you afraid that afternoon for you sister's safety? A Yes, I was afraid. I never thought that Mr. Hartley would slaughter her or anything like that. I didn't expect he would do that.

Q You have described a pretty wild man? A He was pretty wild from what I saw.

Q And a man who was calling Smith all kinds of names? A Yes, he did.

Miss Sadie E. Ferris, cross.

Q Did Hartley when he was acting this way, impress you as if he believed what he was saying or did you think he was posing? A I have always thought he posed; I don't know whether I believed he was posing that day or not.

Q Had you thought of that before I suggested it? A Yes, I always thought it.

Q Did you tell Mr. Mylod that? A No.

Q You didn't like this marriage, did you? A I didn't know anything about it until it was over.

Q When you learned of it when it was an accomplished fact, you didn't like it? A After I learned of it I thought there was nothing for me to say. It wasn't my affair.

Q But you didn't like it, did you? A I was friendly with Mr. Hartley until that day in Asbury Park. In fact I was out with him.

The Court. Did you like the marriage?

The Witness. I don't understand what you mean, what that has to do with us.

Q It hasn't anything to do with you. We are trying to get the fact whether you did or did not like the marriage. A I never thought of the marriage. To tell you the truth I never thought of it.

Q Why the hesitation in saying that you didn't think of it? A Because I didn't know what you meant.

Q You know the significance of the word "like"? A Yes.

Q Did you like this marriage? A I am telling you it meant nothing to me.

Q Didn't you and your mother both object very seriously to this marriage? A No.

Mary F. Kerr, direct.

Q Are you the sister who testified before the Hudson County Orphans' Court of Special Sessions? A I am.

Q In the case of State *v.* Hartley? A I am.

Q Do you know how much rent you paid for the apartment that you occupied in the house in which the Hartleys lived? A We paid eighteen dollars when we left; fifteen dollars for about a year, at Mr. Hartley's suggestion.

MARY F. KERR, sworn for complainant.

Direct examination by Mr. Mylod.

Q You are a relation of Mr. Hartley's? A His aunt.

Q How are you related? A His aunt.

Q Did you live at 87 Johnston avenue, Kearny? A Yes.

Q How long did you live there? A From April until June of the next; from April of one year until June of the next.

Q What year? A 1920 I think. I moved a year ago last June.

Q Do you recall when Mr. Hartley's wife lived there with him, his second wife? A Yes.

Q Were you in their apartment at all? A Not at all.

Q Did you ever go in and look at their apartment? A Not while his wife was there.

Q Did you go in after his wife left? A Yes.

Q How were the rooms furnished? A Very comfortably.

Q What was in the rooms, what furniture? A I don't know that I can specify, bedroom suite, dining room suite and the parlor was not well furnished. There were chairs, piano, and so forth.

Q The parlor was not furnished? A Not wholly, but there were rocking chairs, some of them.

Q Did you ever assist Mrs. Hartley in any way, did you ever give Mrs. Hartley anything toward helping to keep the house? A I don't know anything about that.

Q Did you loan a lamp to her? A Yes.

Q How did you come to give her the lamp? A The gas was shut off and he sent up to borrow the lamp because they had no light.

Q Who came up to get the lamp? A The son Freddy.

Q Do you know anything about the supply of food that Mrs. Hartley received or anything? A Nothing at all.

MRS. FERRIS, sworn for complainant.

Direct examination by Mr. Mylod.

Q You are the mother of Mrs. Hartley? A Yes.

Q Your daughter was married to Mr. Hartley for how long a time before you knew it? A One day.

Q You heard it the second day? A Yes.

Q You were living in Mr. Hartley's house then? A Yes.

Q How old was Maria when she married Mr. Hartley? A Twenty-one years old.

Q How old was she when she came in to live in this house of Mr. Hartley's? A Ten.

Q After Maria was married, Mrs. Ferris, February, 1917, I believe, with whom did she live? A She stayed upstairs with me for a couple of months.

Q And during that time did Mr. Hartley come upstairs and ask Maria to come down and live with him as far as you know? A No, sir.

Q When did Maria leave your home and go to live with her husband after she was married; after a couple of months? A Yes.

Q Shortly after Maria went to live with Mr. Hartley was there any trouble between them in any way? A Not until those letters started to come.

Q What were those letters about generally, do you recall? A They were about divorcing Mrs. Hartley and throwing vitriol on her and my moving from the apartment, would make it appear that they would find out who was writing those letters.

Q Did you have a talk with Mr. Hartley regarding those letters? A Well, Mr. Hartley went to his lodge one night and I was sitting downstairs with Maria and I remember him coming in and he said to me, "Mrs. Ferris, I have an attorney, a friend of mine up in the Elks, and he told me that if Maria would agree to a divorce, we would then find out who was writing those letters."

Q How long had they been married at that time? A About going on the third month.

Q Do you recall the fact that your daughter went to Asbury Park with Mr. Hartley's two boys during August of that year? A Yes.

Q And do you recall what happened when they returned on Labor Day, on Sunday before Labor Day? A That night they came home and went in their apartment and I heard loud talking, and Mr. Hartley called me downstairs. He said that Mr. Smith would break the sanctity of anybody's home, and he went in the dining

room and brought a book out which I thought was the Bible, and had his hand on it, but when I went to look at it again it was the telephone book.

Q What did he say? A He said, "You take your daughter upstairs. Maria, you go upstairs with your mother until I investigate this."

Q Did he say what he was going to investigate? A This affair about Smith.

The Court. Did he give any reason for having the telephone book in his hand?

The Witness. I thought it was a Bible because he had his hand on it.

Q Did he say anything about swearing on it? A Yes.

Q What did he say? A He would take an oath with the Bible.

Q Was he sober or intoxicated? A I cannot tell whether he was sober or not.

Q Did he appear to be under the influence of liquor? A No, sir, he did not appear to me to be under the influence of liquor.

Q You left that house on the first of December, 1917? A Yes.

Q Did you visit your daughter after she married Mr. Hartley? A No, sir.

Q Before the baby was born? A Only when I took her meals to her on different occasions.

Q Will you describe the furniture in the house? A She had nothing in her living room to sit on; there were no chairs, and her dining room—in her bedroom there was a bed and a rug on the floor. Her dining room had a few chairs in it, and table, and the kitchen had a gas range and a little oil cloth on the floor.

Q You knew Mr. Hartley's first wife? A Yes.

Q You lived in the same house with Hartley while his first wife lived there? A Yes.

Q For how many years? A Eleven years.

Q And his wife was living about ten years or eleven? A Yes.

Q And you frequently went into her apartment? A Yes, we were very neighborly.

Q Was that the same furniture that had been there practically all the time? A Yes.

Q Did you ever see any marks on your daughter's body? A One time she came up real early in the morning.

Q Since the marriage? A Yes, and her neck was all black under her chin and I sent my other daughter out for witch hazel and arnica to bathe it. I wanted her to call a doctor in because she was really sick, but she wouldn't have it.

Q I understand that your daughter came home when she was about to have a baby, she came home in July? A Yes.

Q And she remained there from the middle of July until some time in November, is that correct? A September.

Q Did Mr. Hartley pay anything for her support or for the support of the practical nurse that was there? A No, sir, I never received a penny from him.

Q Did you ever speak to him about it? A No, sir.

The Court. Did he say anything to you about paying her board?

The Witness. No.

Q Getting back to the time of the marriage Mrs. Ferris, did Mr. Hartley pay you anything during the time she remained with you before she went with him? A Yes, on two occasions he sent me four dollars a week.

Q To pay her board the first two weeks? A Yes.

Q And he paid nothing for the time she was there being confined? A No, sir, he never gave me nothing.

The Court. Since your daughter left in January 1920 have you seen Mr. Hartley to talk with him?

The Witness. No, sir. When he would come up to see the baby I never bothered or interfered. I never had an angry word with him in my life.

Q Did you talk with him when he came to see the child? A No, sir.

Q Didn't you have any conversation about the child? A No, he sat in the living room, and Mrs. Hartley and the baby would be in there and I always stayed in the kitchen.

Q You never spoke to him? A No.

Q Ever make any effort to have him and his wife reconciled? A No, sir, I never interfered.

The Court. From the time that Mrs. Hartley came home to you the last time, January, 1920, down to the date that she began to receive payment under an order of this court in February, did Mr. Hartley pay anything for her support to you?

The Witness. No, he never paid me any money.

Mrs. Ferris, cross.

Q Pay anything for the support of the baby? A No.

Q Have you supported your daughter? A I have, and my daughter never came to my house only when she came for food. I always had to have something prepared for her.

Q Did you ever bring food to your daughter? A Yes, when the weather was snowy and damp after her baby was born, on different occasions I carried stuff to her.

Q When she couldn't get out you mean, get out to buy food. A When she couldn't get out to come up home.

Q Had she been in the habit of coming home to you for her meals before the baby was born? A She did.

The Court. When the child was born did she have an outfit for it?

The Witness. She just had little things. She didn't have very much, nothing very elaborate, I will assure you.

Q Did she have all that was necessary? A Yes.

Q You don't know where the money came from to get the baby clothes? A Yes, Mr. Hartley was providing her with twenty dollars a week and out of that she saved money to buy her baby's outfit.

Cross examination by Mr. Lane.

Q You didn't know that this marriage was going to take place until after it had taken place? A She was married on Saturday and I knew it Sunday morning.

Q Was that the first you knew of it? A Yes.

Mrs. Ferris, cross.

Q Did you know that she was going to get married? A No, I knew that Mr. Hartley and her was very good friends and I knew he always treated her just as he did his own boys, that is how I always felt toward it, because they went in and out there very much.

The Court. Did you know that they were engaged to be married?

The Witness. No, I never knew nothing about that.

Q Did you know that he was going out with her and intended to marry her? A No, I never dreamed of such a thing.

Q So the marriage was an absolute shock to you, was it? A It certainly was.

Q You never liked it, did you? A Yes. I never bothered about it after it was done. I felt that what is done is done. I knew I couldn't have undone it when it was done.

Q Didn't your daughter ever tell you after she started to live with you in January that Mr. Hartley had asked her to come back and live with him? A No, she very rarely consulted with me in any of her business. I never bothered or asked her anything.

Q You were supporting this daughter of yours? A Yes.

Q And you felt that it was Mr. Hartley's duty to support her, didn't you? A Well, the way how I felt about it, from the day she was married, I felt as though I practically took care of her anyhow so it didn't bother me. It seemed very natural for me to do it.

Q From the time she was married? A Yes, I never remember him supporting her right, like anyone else should be supported.

Q You at least felt that there was some obligation on the part of her husband to support his baby if not his wife? A I certainly did. I thought he ought to do it.

Q Did you make any inquiry? A No, sir, I never interfered.

Q Did you make any effort to find out why it was that he wouldn't support either his wife or his baby? A No, I did not.

Q Did you ask your daughter? A No, sir.

Q You had no discussion whatever with your daughter at all with respect to her relations with her husband? A No, sir, I didn't think it was any of my business to interfere.

Q You never asked her during more than a year whether her husband had asked her to come back and live with him, or whether she would go back and live with him or anything of that kind? A No.

Q She never told you of any talk she had with her husband? A No, sir.

Q She never told you up to this time? A No, the only thing that she ever told me is how he used to abuse her and call her names.

Q When did she start to tell you that? A When she started to take the baby out to meet him. She never come home unless she was crying.

The Court. When?

The Witness. Every night that she took the baby.

The Court. When did it begin?

The Witness. I cannot remember dates.

The Court. How long back can you remember that it happened?

The Witness. After she started to get her alimony.

The Court. How long can you remember it, some weeks or some months?

The Witness. Maybe two or three months, four months, I cannot think, really.

Q She never complained about that before? A Oh, yes.

Q When did she start to complain about it? A I don't think he ever treated her as a wife, positively.

Q I am talking about a specific thing, his abusing her and calling her all kinds of names, when did she start to complain about that? A I cannot tell because I never was there to hear it.

Q When did she come home and tell you that he had called her these names, when did she first tell you that? A Shortly after those letters started to come.

Q Then I understand that shortly after those letters started to come, that is before the summer of 1917, before she went to Asbury Park, is that right? A Yes.

Q She started to tell you that he had called her what kind of names? A In Asbury Park he called her offensive names.

Q I am confining your attention to the time before she went to Asbury Park. Did she tell you before she went to Asbury Park that he had called her names? A Yes.

Q What did she say with respect to the kind of names he called her? A He called her a son of a bitch.

Q What else? A Bastard.

Q What else? A That is all.

Q You are sure? A Yes, I am positive.

Q You are sure that before she went to Asbury Park in the summer of 1917 she told you that her husband was accustomed on occasions to call her a son of a bitch and a bastard and whore and words of that kind. Is that right? A Yes.

Q And did she say that disturbed her very much? A Yes.

Q And did she say after she came back from Asbury Park that her husband continued to call her all these different kinds of names? A Yes. He argued about that Smith affair and cursed and fought about that.

Q I am speaking about after they came home from Asbury Park, did she tell you that he continued to call her these names at different times? A Yes.

Q And that continued until she left in January, 1921? A Yes.

Q Do you remember the time that you went down to see her lawyer, Mr. Mylod, when she first retained counsel? A I cannot really tell you just when it was.

Q Do you remember the occasion when she did go down and consult counsel? A Yes.

Q After that she started to see Mr. Hartley on the street? A I will tell you, after her baby was born every day of her life she took her baby out for the air and as a rule she would meet him on the street, because he used to come up that way with his automobile.

Q Did she tell you that she had commenced to see her husband on the street with her baby after she went down to see Mr. Mylod? A No, she never told me that.

Mrs. Ferris, re-direct.

Q Didn't she tell you that she was meeting him on the street? A Yes, she told me that she seen him on the street with the baby, sure.

Q Did she tell you that he called her names when he met her on the street that way? A Yes, on different occasions.

Q Right along? A Yes.

Q When she left the house on January sixteenth, do you remember the day she came to your house for the last time? A Yes.

Q Do you remember the next day? A Yes.

Q Do you remember her coming home? A Yes, she went down that evening to ask Mr. Hartley if he would do different and said she would bring the baby back home again.

Q Do you remember her going down to her own home again? A Yes.

Q Did she tell you before she went that she was going down there to see whether or not Mr. Hartley wanted her to stay there and that if he did, she would stay, or words to that effect? A Yes.

Q And when she came back I suppose she told you that Hartley didn't want her? A Yes.

Q And did she tell you that that was the reason why she didn't go back to live with him? A No, she never said.

Q She didn't give that as a reason? A No.

Q But when she left to go downstairs she said she was going to stay if he wanted her? A Yes.

Re-direct examination by Mr. Mylod.

Q Mr. Lane asked you when you first learned that Mr. Hartley began calling your daughter

vile names. I direct your attention to the fact that they were married in February, 1917, and that they went to Asbury Park in August. A Yes.

Q Between that time before they went to Asbury Park did Mr. Hartley call her any names during that time? A There wasn't any trouble then.

MRS. ELIZABETH SEE, sworn for complainant.

Direct examination by Mr. Mylod.

Q You live where? A 74 New Lawn avenue, Arlington, New Jersey.

Q You know Mr. Hartley? A Not personally.

Q By sight you know Mr. Hartley? A Yes, very well.

Q Do you know they have a baby? A Yes.

Q Did you ever see Mrs. Hartley on the street with the baby? A Yes, I have been out with her.

Q Did you ever see Mrs. Hartley on the street with the baby while Mr. Hartley was present? A Yes, I recall one afternoon the latter part of May, this year, that Mrs. Hartley and her son Alfred called to see me, I should judge about two o'clock, and she remained for about fifteen minutes. I asked her why she didn't stay longer.

Mr. Lane. I object.

The Court. Strike that out.

Q After she left your home did you see where she went? A No, I did not. After she left my

house I happened to glance out of my kitchen window and saw a red truck on the opposite side of the street. I didn't recognize the truck but I did recognize the baby.

Q Who had the baby? A Mr. Hartley was sitting on the seat with the baby.

Q Where was Mrs. Hartley? A Standing on the curb and she appeared to be crying.

Q How long had she been standing on the curb, of your own knowledge? A She left my house about twenty minutes after two, when I looked at the clock it was three o'clock then.

Q Did you notice when she left there? A Yes, the whistle blew at half-past four.

Q Did you see Mr. Hartley take the baby? A Yes, Mrs. Hartley seemed to ask for the baby to take it home and Mr. Hartley took him out of his seat, took him down and was ready to put him in the carriage, when he picked him up again and brought him back on the seat, and tooted the horn several times.

Q Did Mrs. Hartley follow him? A She was standing right there at the truck and they created a scene, different people passing by would turn around and one man stood there fifteen minutes watching them. Mr. Hartley saw a youngster run across the street. He said, "Hurry kid, go get me a pack of cigarettes on the corner," and he waited until he came back.

Q Did you see her standing on the street on any other occasion? A No. I was with Mrs. Hartley, yes. I don't know just when it was, when they went to pay their rent to Mr. Cooney, and walking down Mr. Hartley came along on Thursday afternoon, and he hollered, "Hey,

come back, I want you," but I walked on, I didn't stop.

Q Did Mrs. Hartley go back with the baby? A The baby wasn't with her, we were alone.

Q How long ago was this, what month? A Not the last month, the month previous.

Cross examination by Mr. Lane.

Q Where were you during the fifteen minutes there was a scene on the public street? A In my house, 75 New Lawn avenue.

Q Watching? A Yes.

Q How many people were around there? A Only one person stood, but different people were passing by, and would turn around.

Q And stop, I suppose, to look at the scene and go on? A Yes.

Q That continued fifteen minutes? A Certainly not; from twenty minutes after two until half-past four.

Q You said something about fifteen minutes, what was that? A The tooting of the horn to attract the baby's attention.

Q How do you know it was to attract the baby's attention? A It seemed to amuse the baby.

Q You didn't mean to give the inference that it appeared as if he was going off with the baby on the truck? A No.

Q That is not what you meant? A No, I didn't mean it. I meant to attract people's attention that were passing by.

Q That is a familiar way of attracting a baby's attention if you have a car? A It seems to be.

Mrs. Elizabeth See, cross.

Q When was it that you were with her on the street and Mrs. Hartley went back and talked with him? A Not this month, the month previous.

Q What did he say? A "Hey, come back here, I want you." He hollered it two or three times; I walked on and waited on the corner.

Q Where was he? A On a truck on Fourth street.

Q How far away from you? A We walked right by the truck, I didn't even recognize him.

Q How far beyond had you got when he said, "Hey come here"? A About twenty-five feet.

Q Did she turn right around and go back and talk with him? A Yes.

Q When she started to talk with him did you leave? A I did.

Q You don't know how long she was there? A Not more than five minutes because I waited down the street for her.

Q Then she came along? A Yes.

Continued to March 1st, 1922, at 10:00 A. M.

SECOND DAY.

Continuation of testimony in the above-entitled cause, before Hon. John E. Foster, Vice-Chancellor, at the Chancery Chambers, Newark, New Jersey, on March 1, 1922, at 10 A. M.

Appearances:

Mr. James P. Mylod, for complainant.

Mr. Merritt Lane, for defendant.

MRS. MARY MURRAY, sworn for complainant.

Direct examination by Mr. Mylod.

Q Where do you reside? A Kearny, New Jersey.

Q You know Mr. Hartley and Mrs. Hartley, of course? A Yes, I do.

Q You have known them since they have been married? A Yes.

Q Did you ever call at Mrs. Hartley's home? A Yes, I had occasion to call at her home once as I was called on the phone.

Q Where was that; what number; what street? A Johnston avenue.

Q Did you observe how that place was furnished and equipped? A It wasn't well furnished.

Q And did you observe anything that took place between Mr. Hartley and Mrs. Hartley? A No—Mr. Hartley wasn't there at the time I called.

Q When was that call? A Quite a while ago; I just cannot say how long; it was just a phone call.

Q Did you have a talk with Mr. Hartley? A No, I didn't.

Q Did you at any time talk to Mr. Hartley regarding his wife, or did he talk to you? A One time Mr. Hartley had spoken—

The Court. Fix the time, please.

The Witness. I cannot exactly.

Q About how long ago? A About one year ago.

Q Where was it? A That was on the bridge crossing Kearny avenue and Fourth street, and he said that I was to be there; I had made reference to how his wife—I didn't know then that I was to be subpoenaed, but I said if I was, I couldn't—well, speak in favor of him, because I knew that he hadn't treated her just right.

Q What did he say to that? A We had just a social talk in that way; I tried to convince him that it was best for him to take up with his wife.

Q What did he say as to your efforts to convince him? A I said that I thought it was best for him to take up with Maria; that she was a good girl and it would be much better for them to live together than the way they were living, because I didn't see no reason why there should be a separation.

Q What did he say, if anything, to that? A Mr. Hartley didn't approve of what I was saying.

Q Tell me as nearly as you recall what he said, to show he didn't approve. A He said he didn't think that Maria was doing the right thing that she should do.

Q Did he say in what respect she was not doing the right thing? A He said her people influenced her, but I knew it to be a fact it wasn't so.

Mr. Lane. I move to strike that out.

The Court. Yes.

Examination by the Court.

Q Tell me all that Mr. Hartley said to you and you said to him, as nearly as you recall it. A That is about all; I didn't give him no thought.

Q What else did he say that would indicate that he didn't think that she was doing the right thing? A That she was influenced by her people.

Q What did she do as a result of being influenced by her people? A Nothing, because I couldn't see anything to it.

Q What did he say? A That was all; I cannot recall all he did say; I didn't give it much thought at all, because I didn't expect to be here; I just spoke as I did to a neighbor.

Further examination by Mr. Mylod.

Q Did he stop you on the bridge? A No, Mr. Hartley stopped me.

Q Who did he say was going to subpoena you in court? A Mrs. Hartley.

Q When you met Mr. Hartley did he say he was going to have you subpoenaed in court or Mrs. Hartley would? A Mrs. Hartley.

Q Did you tell Mr. Hartley that you knew for a fact that Mrs. Hartley's people did not influence her? A I did, because I know that for a fact.

Q What did he say when you told him that? A He didn't approve of it. No, he wouldn't have it so, but I know for a positive fact that they never did.

Maria A. Hartley, direct.

Q Did you live near this couple? A Yes, I did I lived beside Mr. Hartley ever since he come to live beside us.

Q When was that? A I just cannot count the years.

Q A number of years? A Yes, it is quite a few years.

Q Did you know his first wife? A Yes, I knew Mrs. Hartley well.

Q You lived next door to Mr. and Mrs. Hartley during the time they lived at the Johnston avenue address? A Yes. All the time while they lived there I kept a store right there.

Q Do you keep a store there? A No, I did at the time.

Q What kind of a store? A Grocery store and confectionery.

Q Did Mrs. Hartley run any bills in your store? A No, she didn't.

Q Did Mr. Hartley? A No.

Q Did she pay cash for what she purchased? A Yes, for the little she got, she paid for it.

Q Did Mr. Hartley ever tell you not to give his wife credit? A No, he never did.

Q Neither party ever asked for credit? A No.

MARIA A. HARTLEY, recalled for

Further direct examination by Mr. Mylod.

Q How often have you seen Mr. Hartley, your husband, since the last hearing? A I have seen him since October twice every week, except one month, from November until December.

Q Where did you see him? A He called for the baby.

Q And prior to his calling for the baby did you take the baby any place to see his father? A You settled that I was to take the baby to Mrs. Seeley or Mrs. Roamer's house.

Q Did you take the baby to Mrs. Roamer's house? A I took the baby to Mrs. Seeley's house first.

Q Once or twice? A I took him there twice. On the first day that I took him, that was on October 15th, on a Saturday, Mr. Hartley wasn't there; I asked Mrs. Seeley's daughter if she knew that I was to come there with the baby for his father to see him for two hours, and she said no, that she didn't know anything about it; that she hadn't heard about it. I came away from there and I tried to get Mr. Hartley on the telephone and I couldn't get no answer; that was on Saturday afternoon; I tried three or four times and no one answered the phone, so the following day, that was Sunday morning, I called him on the phone and told him that I had been up to Mrs. Seeley's, and that I would be there on Tuesday at two o'clock, and he said "All right", and on Tuesday I went there at two o'clock, and Mrs. Seeley's daughter came down to the door, and I asked her if the baby's father was there, and she said yes, that he was there. She said to me, "I will take him." I said, "I will take him up; that is all right"; she said, "Well, you are not supposed to come up; he isn't supposed to see the baby in your presence." I said, "You better go up and—" she said, "I will go up and find out about it," and she went up and she came down and she said to me, "You can go up," and I went up with Mrs. Seeley and the baby, and I sat in their dining room, and

Mrs. Seeley's daughter went out in the kitchen, and I saw Mr. Hartley sitting at the table reading a paper and she closed the door in between the dining room and kitchen. What was said out there, of course, I didn't know; she came back again and she brought the baby back to his father, and he sent him back in less than three or four minutes, and said that he didn't want—that it wasn't satisfactory under those conditions.

Q Did Mr. Hartley speak to you on that occasion? A No, he never looked at me.

Q When did you next see him? A The next time I told him about it, and I arranged to go to Mrs. Roamer's.

Q You took the child there? A Yes.

Q Who is she; is she related to Mr. Hartley? A She is Mr. Hartley's son's mother-in-law.

Q And does his son live there at that house —his married son? A He did at that time.

Q Did you take the baby there? A I did.

Q What happened between you and Mr. Hartley there? A I went there on October 29th; that was on a Saturday afternoon, and Mr. Hartley was standing down the street talking to some men that were talking in the street—the street was being raised and it was in an awful condition, and I pushed the baby carriage; I took the baby in the carriage down to where he was standing—that baby's father, and I thought he was standing in front of the house; when I got down to him, I said, "Do you want to see the boy?" He said to me, "Go back and find the house; go back and find the house; this is all your arrangement; you started this; go back, now, and find the house"; lifted his fist up to me like that (indicating) on the street.

The Court. "Go back and find the house?"

The Witness. Get back and find the house.

Q Referring to what house? A Mrs. Roamer's, so I pushed the baby back again and I finally found the number of the house, and I went up there and there was an elderly woman answered—Mrs. Wood her name was, and I asked Mrs. Wood if she knew that I was to come there with the baby, and I introduced myself; she said no, she hadn't known anything about it, but she would go upstairs and find out; so she went upstairs, and I don't know who she asked, and she came down and said yes, it was all right, go right in. In the meantime Mr. Hartley was still standing down the street, about three houses down, and his son Freddie came along, and he pulled out a letter and started to show it to him, and then the two of them walked up the street and up the stoop, and I went down and I got the baby—he was down in the carriage—and I brought him upstairs, and Mr. Hartley took him from me, and he said to me, "I have got him now, you had better kiss him good-bye, because you are never going to see him again." The nurse came down and said that the young Mr. Hartley's wife was sick and I told Freddie that I was sorry I came there under those conditions; had I known there was sickness I wouldn't have came.

Q Freddie is Mr. Hartley's son? A Yes. Freddie told his father to keep quiet, and he said, "You are a liar, you know it." So finally he went in the door with the baby, and I went in after him, and I sat down in their living room beside him, and he had the baby, and I

don't know how Mrs. See got in, but she got in there.

Q She was with you—Mrs. See; she came with you? A Yes, she came with me. So I asked the baby's father if I should take his sweater and hat off, and he said, "Don't touch him; don't you put your hands on him; he is in my custody now, and don't you touch him." So finally I had to go in the next room, and they closed the folding doors, and at four o'clock they brought the baby down—I don't know just which one brought him down, because the doors were closed—and I went home.

Q And on going home did Mr. Hartley leave the house about the same time that you left? A Yes, he came right out when I did, and he went one direction and I went another, and I got to Kearny avenue—the baby was crying to go back to his father; he wanted to go back again, and I quieted him down on my way, and Mr. Hartley got on the car—

Q You say Mr. Hartley went one way and you another; did he turn around and then come back and follow you? A No, he went on up the street right to the car, and then I had to pass down the street where the car goes down on Kearny avenue, and I seen him get on the car—just what street he got on, I have forgotten now—and he rode about three blocks and he got off the car again, and by that time I was near Midland avenue in Kearny, when he got off the car again, and he crossed over to the side of the street that I was coming down on with the baby, so I crossed over to the opposite side, because I didn't want to have any trouble on the street, and when I crossed over to the opposite side of

the street, he crossed over after me and he stands right in the center of the flag, and I had to go around to get by him.

Q Did he speak to you as he stood there in the center of the sidewalk? A He never looked at me. On the following Tuesday I went again, and I got there about quarter to two, at two o'clock Mr. Hartley phoned and asked if I was there; Mrs. Roamer answered the phone and told him that I was, and he said he would be up in a little while; he came in shortly after that and he took the baby upstairs, and he stayed up there for two hours; at four o'clock he and Mrs. Roamer came down the stairs together with the baby, and I took the baby; I started to get him ready to bring him out; the baby was crying to go back up the stairs again. I had to carry him that day. I could never tell you the condition the street was in that I had to walk over, because they were raising it. It was all lumps and stones and everything else, and I carried him about two blocks down, and I had to stand him on the stoop, and all the time Mr. Hartley was following me down the street and the baby was crying to go back to him. He never made no offer to help me carry him, or anything.

Q Did he make any remarks at all to you while you were carrying the baby? A No, all he did was just grin and laugh at me, and when I got to the corner, I sat the baby on the stoop and he said to me, "What did you say?" I said, "I wasn't talking to you." He said, "I can walk any place I please and don't you aggravate me." So with that I picked the baby up again and he went across the street and stood, and he laughed like anything at the trouble I was

having trying to get the baby to the car. So I finally got to the car and I couldn't stand to go there any longer under those conditions.

Q Then new arrangements were made for Mr. Hartley seeing the child? A Yes. After that a month passed and Mr. Hartley didn't see the baby, and then I said that I was willing for Mr. Hartley to come after the baby and take him for two hours, but I couldn't come with him; so he agreed to that, but he said he wouldn't come up on the stoop; he wouldn't come into the house to get him, so every day I dressed the baby and was out with the baby ten minutes or five minutes before the time and I carried the baby—he come in his automobile truck and he would stop in the center of the street and I carried the baby, with an automobile robe wrapped around him out into the street, all the way around the automobile, and he never even offered once through all the snow and ice to even reach out to take that baby, and on one occasion I had to get up on his truck, and he said to me, "Get off of here, and don't you never get up here again." That was twice a week, except the times that the baby took sick; then I called the doctor; every time the baby got a cold I always called the doctor before I called the baby's father to tell him that he couldn't go, to find out for sure if he couldn't go out, and every time that I had the doctor he said to me, "Don't let him out today, because you are giving him medicine and his pores are open."

Q Your doctor would say that? A Yes. So then I would call Mr. Hartley on the telephone around noon time—twelve o'clock, one o'clock, whatever time I could get him on the

phone, and I would tell him about it. Many times, Henry, the son—that was the young boy—I would tell him, and then on one occasion Mr. Hartley called up and said that he didn't believe either my doctor or me, and he didn't want to have anything to do with us, that he would send his own doctor down.

Q Did he send the doctor down to examine the child? A Yes.

Q And the next time you told him the child was sick and couldn't go out to meet him, did he send a doctor down upon a second occasion? A He sent the doctor on the second occasion, but he didn't tell me he was sending him on that day; he came in unexpected.

Q On one Saturday Mr. Hartley was supposed to see the child, did you suggest any other day? A The baby had a cold and it was damp and rainy; I called him on the phone and told him, "Don't you think it is too damp and nasty to take the baby out today; if it will be convenient for you, I would rather come tomorrow, and that would be on Sunday, or any time that you would like him; it don't make any difference, I will always have him ready, if you will let me know," and he said, "All right, he would have Henry call me up and let me know," but he never let me know.

Q Did he come to see the child that Sunday? A No, he never came.

Q While you lived with Mr. Hartley at 87 Johnston avenue, was there any part of that house to which you had no access or admittance? A Yes, one closet in the bedroom that was always kept locked.

Maria A. Hartley, cross.

Q Did he tell you what he had in that closet? A Yes, he had his bank books and all his personal belongings.

Cross examination by Mr. Lane.

Q Dr. Bellenger is the same doctor who prescribed for you this prescription which is in evidence? A He is.

Q You were present in court at the last hearing when I advised that in view of your testimony that Mr. Hartley every time he met you cursed and swore at you, that I would advise him not to see you again during the progress of this suit or to meet you personally?

The Court. Do you remember that being said?

The Witness. Yes, I remember that.

Q And notwithstanding that, when you first took the baby up to Mrs. Seeley's house by arrangement between counsel, you insisted upon taking Mrs. See into the house and being present yourself when your husband saw the baby, didn't you? A Yes, that was what I understood.

Q You knew that Mrs. See was personally distasteful to Mr. Hartley? A I did not.

Q Didn't your counsel tell you that I had communicated with him and had stated that so far as you being accompanied by anybody was concerned, we didn't care who it was, as long as it wasn't Mrs. See? A No.

Q Did Mr. Mylod tell you that Mr. Lane had said that? A Mr. Mylod wrote me a letter and told me that Mrs. Seeley objected to Mrs. See in her home, but not Mr. Hartley.

Maria A. Hartley, cross.

Q You knew that someone objected to Mrs. See being present? A Yes.

Q You knew there wasn't any objection to anybody else? A No, I did not.

Q The time that you went to Mrs. Seeley's house, your husband, when you got there, was in the kitchen? A Yes, he was—not the first time, no, he wasn't there.

Q I am talking about the first time you got there, when he was there, he was in the kitchen? A Yes, he was.

Q And he sent word to you that he desired to see the child in the kitchen, didn't he? A No, he didn't.

Q What did he say? A He said that it wasn't satisfactory under those conditions that I be there.

Q Didn't he send word that he wanted to see the child in the kitchen? A He seen him in the kitchen.

The Court. Did he send you any such message?

The Witness. No.

Q You didn't talk to him, did you? A I saw him, but I didn't talk to him.

Q He didn't talk to you that day at all? A No.

The Court. How did you learn that he said he didn't want you there, or it wasn't satisfactory?

The Witness. Mrs. Seeley's daughter came back and told me.

Q Mrs. Seeley's daughter came back and told you that Mr. Hartley would not see you? A He didn't want to see me.

Q And you knew that Mr. Hartley had been advised not to see you under those conditions, or circumstances, didn't you? A I didn't know it; in the letter that I received I was supposed to take the baby there.

Q You heard it said in open court that Mr. Hartley was advised not to see you, under the circumstances?

The Court. Had you heard that in open court?

The Witness. I cannot be positive that I heard it.

Q And Mrs. See was there in the house at the time? A Yes.

Q And you expected Mr. Hartley to come in and see the child in your presence, in the presence of Mrs. See? A No.

Q What did you expect? A I expected that he would take him in the kitchen and I set in another room; he had the door closed.

Q Didn't he do that? A He did not; he sent him back to me after I got his clothes off, and he said he didn't want to see him under those conditions. I wasn't in the room with Mr. Hartley.

Q Didn't you insist that you would not let the child remain in that other room with Mr. Hartley, and that you then took the child away after the child was there less than five minutes? A I did not.

Q How long were you in the house? A About three minutes—three or four minutes in the house altogether.

Q Did you let the child go into the kitchen? A. I sent the baby back to his father in the kitchen.

Maria A. Hartley, cross.

Q Then what did you do? A I stayed there in the other room, in the dining-room.

Q Doing what? A Nothing; standing there.

Q How close to the door of the kitchen? A I was standing near their folding doors, in the front room, in their living-room.

Q Where was Mrs. See? A Sitting down.

Q What were you standing there for? A I stood there and took the baby's clothes off; I hadn't had time to sit down.

Q Did you intend to stay there in the other room? A Yes, I did; I was going to sit down.

The Court. By whom did you send the child into the kitchen?

The Witness. I sent the baby back with Mrs. Seeley's daughter.

Q How long did I understand the child remained in the kitchen before it came back to you? A About two minutes, or two seconds it didn't seem to me.

Q Mrs. Seeley's daughter brought the child back? A Yes. Then the door wasn't shut; the baby's father just picked him up and kissed him and then the baby was sent back to me; that is how long he was there.

Q The door between the kitchen and dining-room was open? A Yes, at the time I sent the baby back to him, it was open.

Q Didn't Mrs. Seeley say to you that he understood—Mr. Hartley understood that the arrangements between counsel was that you were to leave the child there for two hours, and then come back for the child? A Yes, she did, and I didn't understand that.

Q He said that that was his understanding? A Yes.

Q And that because that was the understanding, he wasn't going to have it any other way, didn't he, or words to that effect?

The Court. He said he wasn't going to have it under such circumstances.

Q You understood he was objecting to that method because it wasn't what he understood to be the arrangement between counsel? A Yes, sir.

Q On the twenty-ninth of October, when you went to Mrs. Roamer's house, you first saw your husband on the street, do I understand? A Yes.

Q You were also accompanied on that occasion by Mrs. See? A Yes.

Q And when Mr. Hartley met you on the street, he was talking with some other gentlemen? A Yes, he was.

Q You approached him and interrupted and started to talk to him, didn't you? A I asked him if he wanted to see the boy.

Q You started to talk to him, didn't you? A No, I didn't start to talk to him.

Q You knew that the arrangement was that you should go to Mrs. Roamer's house, not in the street? A I thought he was standing in front of Mrs. Roamer's. I didn't know where Mrs. Roamer's house was; I never was in that direction before.

Q Did you know whether Mr. Hartley knew where Mrs. Roamer's house was? A No, I didn't.

Q He then said, when you interrupted and tried to talk to him, he said at that time that he would not talk to you, to go to the house? A He said to me, "Go find the house; go find the house; this is your arrangement."

Q The manner in which he told you to go and find the house is what you objected to? A No, I didn't object to anything; I went and found the house.

Q And then you went in with Mrs. See? A We didn't go in with Mrs. See. We finally went in after some commotion.

Q First off they objected to Mrs. See coming in at all? A They didn't know Mrs. See; they didn't even see Mrs. See.

Q What was the commotion? A Mr. Hartley went in the hall and said something, I don't know what he said. Then he came out and they objected to both of us coming in; we were both to stay out on the stoop.

Q When you say "they," whom do you mean? A Mrs. See and myself; there were a lot of people there; I don't know who they all were.

Q You know Mrs. Wood? A No, I don't know any of them.

Q You know Mrs. Roamer? A I know her from that day.

Q Mr. Hartley objected to Mrs. See coming in, didn't he? A Mr. Hartley objected to my coming in.

Q Did he object to Mrs. See coming in? A Yes.

Q He finally withdrew his objection? A No.

Q You got in, didn't you? A Yes, one of the other ladies let us in.

Q Both of you went in; both you and Mrs. See finally went in? A We both went in.

Q Over Mr. Hartley's objection; he still objected? A Yes, he still objected.

Q And then Mr. Hartley took the baby upstairs and remained there for a couple of hours? A Yes.

Q And then the child was brought down? A Yes.

Q And you went your way? A Yes.

Q On the second occasion that you went to Mrs. Roamer's house what time did you get there? A I got there about quarter to two.

Q It was 1:30, wasn't it? A I don't know; I cannot say. It was between 1:30 and quarter of two.

Q And the arrangement was to be there at two o'clock? A Yes.

Q And Mr. Hartley came about two o'clock? A No, it was after two; twenty minutes after two; he phoned at two o'clock.

Q What did he phone? A He phoned to Mrs. Roamer's house.

Q Do you know what was said to you as to what the phone was? A She told me that it was Mr. Hartley and he wanted to know if I was there.

Q And then the baby was again taken upstairs and kept by him for a couple of hours? A Yes.

Q Did you have Mrs. See with you upon that occasion? A Yes.

Mrs. Elizabeth See, direct.

MRS. ELIZABETH SEE, recalled for complainant.

Direct examination by Mr. Mylod.

Q You accompanied Mrs. Hartley to the home of Mrs. Seeley? A I did.

Q And did you see Mr. Hartley there? A On the first occasion, no.

Q On the second occasion did you see him? A Yes, Mr. Hartley was sitting in the kitchen reading the paper and he had his hat on.

Q Was any message conveyed to Mrs. Hartley in your hearing as to whether or not Mr. Hartley wanted to see the child? A He said he wouldn't see him under those conditions.

Q Who said that? A Mrs. Seeley's daughter.

Q Did you go to Mrs. Roemer's with Mrs. Hartley? A Yes, I did.

Q On the first occasion did you see Mr. Hartley? A He was talking to a gentleman on the street.

Q And what happened when Mrs. Hartley came back to him? A Mrs. Hartley walked up and said, "Do you want to see the boy?" He said, "Don't talk to me; you find the house; you made this arrangement; you find it, and anyway, I object to seeing my boy in front of that woman."

The Court. Referring to you?

The Witness. Yes; I said, "What are your objections to me?" He said, "Never mind, I don't talk to you." I said, "If you have any objections, I will find out what they are." He never recognized the boy and didn't pay any attention to him; we

walked down to the house and I stayed out with the boy while she went up on the porch and made arrangements with Mrs. Seeley. Mr. Hartley's son came along and showed him a letter, and stood on the porch, and the nurse came down and said she had a sick patient, and didn't want any trouble. Mrs. Hartley said if she had known that, she wouldn't have called. He said, "You are a liar; you know all about it." He kept shaking his finger in my face. I said, "Don't shake your finger at me, Mr. Hartley."

Q Did he finally take you up? A He said that these folks there objected to me. I said, "What are their objections?" He said, "They have your record." "Just what record do you mean?" "The one you swore to in court." I said, "These people don't know me." They treated me very nicely when we went there, and it was the nurse who invited me in the hall; so then finally we got in and Mrs. Hartley and I sat in the dining-room and Mrs. Wood sat with us for quite some time, and Mr. Hartley's son came in, and we congratulated him on the birth of his boy, and when she went out, after they had taken the boy upstairs, Mr. Hartley's son's mother-in-law came downstairs and wanted to know what the idea was of closing the doors; she said, "That is the law."

Q Before closing the folding doors you and Mrs. Hartley were in the room all by yourselves? A Yes.

Q Who said that was the law? A The grandmother.

Mrs. Elizabeth See, cross.

Q On leaving that evening, on the occasion of your first visit, did anything happen? A We left that day shortly after four o'clock and Mr. Hartley came right on out after us, and we had to wheel the baby down in the carriage and he went up in the car and about three or four blocks down he got out and crossed on the side of the street that we were on, and to avoid any scene we crossed over, and as we did, Mr. Hartley crossed, too, and stood on the corner; we had to go around in order to get by.

Q Did Mrs. Hartley have a free, unobstructed way of pushing the carriage? A No, she had to go all around Mr. Hartley; he was standing right in the middle of the walk.

Q Did he do or say anything at the time? A No, he was standing there grinning.

Cross examination by Mr. Lane.

Q When did you first become acquainted with Mrs. Hartley? A We went to school together.

Q And when did you first become acquainted with Mr. Hartley? A I visited Mrs. Hartley when she was a child, and we were going to school together, and he lived in the same house; other than that, I never knew him.

Q You never were in Mr. Hartley's home, were you? A No, I was not.

Q Either while his first wife was living or since, the present Mrs. Hartley? A I remember being as far as the kitchen when his first wife was living; I have never been in the home since he married the present Mrs. Hartley.

Q When did you become so friendly with Mrs. Hartley that you went around with her from place to place? A I met her very often

when she lived with Mr. Hartley and I used to stop and look at the baby, and she invited me down there one time, and she was out; she was sick that day and had to go to the doctor, and after she left Mr. Hartley she was away a year before I knew about it. I stopped to see her mother and sister.

Q How closely acquainted are you with them? A I am not any relative, but we have known one another since we have been children.

Q Very great friends? A Yes, indeed.

Q You knew when you went up to Mrs. Seeley's house the first time with Mrs. Hartley, that Mr. Hartley did not want to meet his wife or to see his son in your presence? A No, I did not.

Q You knew it the first time you went to Mrs. Roemer's house? A No, it wasn't Mr. Hartley that objected to me; he said it was Mrs. Seeley.

Q Why, on the street I thought you said that Mr. Hartley said he wouldn't talk to you? A That was when we went to Mrs. Roemer's.

Q I said the first time you went to Mrs. Roemer's house, you knew you were objectionable to him? A Yes; I asked what his objections were and he wouldn't tell me.

Q You knew that you were objectionable to Mr. Hartley the first time you went to Mrs. Roemer's? A Yes, so he said.

Q You went there the second time? A Yes, I understood I was to accompany Mrs. Hartley and her son.

FRED A. HARTLEY, defendant, called by complainant, sworn.

Direct examination by Mr. Mylod.

Q You are the president of the F. A. Hartley Realty Company? A Yes.

Q And the owner of how many shares of stock of that company? A 248.

Q And the total number of shares is what? A 250.

Q Who holds the other two shares? A Sam Smith, Jr., and E. Jinks.

Q Just enough to make up the corporation? A Yes.

Q You are the sole owner of the corporation? A Yes.

Q On or about September, 1918, you transferred certain real estate to the F. A. Hartley Realty Company? A No, I wouldn't say it was around that time.

Q During the year 1918? A Yes.

Q What parcels of real estate did you transfer? A A six-family apartment house on Johnston avenue, Kearny, known as 87 Johnston avenue.

Q What were the rents from that six-family apartment? A $82 a month, beside my own place, $100 a month.

Q What other tract did you transfer? A Two-family house on New Lawn avenue.

Q That is Mr. McAviney? A Yes, I sold it to him.

Q In addition to the 87 Johnston avenue, the six-family house, and the house you sold to McAviney, what other? A Three houses, detached house, three lots on Seventh street, Harrison.

Fred A. Hartley, direct.

Q I notice on the deed to Mr. McAviney there are $8 in revenue stamps; was the purchase price $8,000? A $8,150.

Q You received that in cash? A Yes, with the exception that they were to pay taxes and water rent.

Q You transferred that to Mr. McAviney after you put title in the name of the realty company, did you not? A Yes.

Q How many rooms in the 87 Johnston avenue house? A There are four apartments, five rooms and bath, and two apartments, six rooms and bath.

Examination by the Court.

Q What is its value? A It stood me $11,200 when I built it.

Q How long ago? A About fifteen years ago.

Q What was its value in 1918? A I should judge about $12,000, or $12,500; two lots 50x100.

Q The property purchased by Mr. McAviney was purchased for $8,000? A I thought that was a very good price for it. I was getting $62 a month for the property I sold for $8,000.

Q What was the value of the three detached houses? A The three detached houses, I bought them for $4,500 for the three.

And the three lots, I invested in them $1,100; there was a mortgage of $3,400 on it; my reason in selling them was—

Q When you sold, what were they worth? A I thought I got a very good price when I lost money.

Q What was the price? A $5,500.

Q Was the mortgage on those? A No.

Q Had it been reduced? A No.

Q Still $3,400? A Yes.

Q You lost money in selling it for $5,500? A Yes.

Q How much did you lose? A The roofs were in a terrible condition all the way through; there were water closets in the yard which the Board of Health had notified me that it would be demanded to put them in the cellar; there was a street improvement of an asphalt pavement, and fully five lots there, which ran into over a thousand dollar assessment; I have the records of those in my grip, if you desire them?

Q By reason of improvements and repairs and expenses, your investment went beyond the $5,500? A Yes, I lost three or four hundred dollars on it.

Further examination by Mr. Mylod.

Q Shortly after you placed title to these four or five tracts of land in the F. A. Hartley Realty Company, you disposed of them? A Not shortly after.

Q Within two years after? A Yes.

Q In less than that, you sold all the property, except 87 Johnston avenue? A Yes.

Q What did you do with the money? A I will show you; I put it in the name of the F. S. Hartley Realty Company and the First National Bank in Arlington; I deposited six thousand and some odd dollars.

Q You have continued in the same business since you made these real estate transfers as you did before? A Oh, no.

Q You never retired from the fish business? A From the peddling business, I retired from that; I have not peddled in two years, and could not and keep my home.

Q Do you serve the Hyatt Roller Bearing Company? A No.

Q Do you serve the Worthington Pump Works? A No.

Q What customers have you there? A The General Electric Company in Harrison.

Q How many pounds do you sell them every week? A Last week I think they had about 150 pounds.

Q You are a wholesale fish dealer; you buy at wholesale? A No.

Q Where do you buy your fish? A New York.

The Court. What is your business now?

The Witness. I am in the real estate and in the fish business.

Q Are you still a member of the Hudson County Board of Election? A No, sir.

Q Do you hold any official position? A No, sir; glad to get off of it.

Q When did you quit your official position? A When my term expired; that is about four years ago.

Q You were glad to get off because it wasn't profitable? A No, sir.

Q You can make more in your business than as a member of the Board? A I want to be straight and not pull any stuff such as she has referred to about the famous recount.

The Court. Is there any occasion for going into this, unless it involves his income?

I don't know whether this has any bearing on his income.

Mr. Lane. It was $500.

The Witness. At that time it was the salary.

The Court. That ended four years ago?

The Witness. Yes.

Q You purchased Liberty Bonds? A I did.

Q Still have them, I suppose? A Yes.

Q How many thousand dollars worth? A I have about $2,200 altogether; at least I did have, but I sold some since; I have about $200 just now.

Q You had $2,200 and sold $2,000 and have $200? A I transferred them back to a friend of mine, Mr. Jinks.

Q Is he going to transfer them back to you some time? A No, sir.

Q When did you sell them? A About a year and a half ago.

Q What did you do with that cash? A Put it in the bank.

Q Still in the bank? A Yes.

Q In the name of the F. A. Hartley Realty Company? A No, my own name.

Q What bank? A I wouldn't say positively —the First National of East Newark.

Q How many accounts do you keep personally?

The Witness. Can I get my records?

The Court. If you don't remember.

A In the First National Bank of Arlington, one in East Newark, Hudson County Trust Company and Howard Savings Institution.

Fred A. Hartley, direct.

Q In your own name? A Yes.

Q How many accounts has the corporation? A One.

Q Where? A In the First National Bank of Arlington.

Q And in all these accounts which you hold in your individual capacity, how much is on deposit? These four or five accounts which you have mentioned? A Maybe eight or ten thousand dollars.

Q And the F. A. Hartley Realty Company, what cash balance do they carry? A I do not know.

Q Approximately? A Maybe $4,000.

Mr. Mylod. We rest.

FRED A. HARTLEY, recalled in his own behalf.

Direct examination by Mr. Lane.

Q How old are you? A Forty-four.

Q How old is your wife? A She is twenty-eight.

Q When were you married? A February 16, 1917.

Q Where were you living at that time? A 87 Johnston avenue, Kearny.

Q Where was she living? A 87 Johnston avenue.

Q What part of the house? A The upper apartment, over me.

Q With whom? A Her mother.

Q Anyone else in their family? A Yes, her sister, her brother, her uncle and her aunt, and a boarder that they had, Mr. Walsh.

Q Who were living with you? A At that time my son, Fred, and son, Henry, and housekeeper by the name of Mrs. Schwartz, when I married her, who had been working there about a month.

Q How old were the two boys at the time you were married? A One ten and the other about fourteen, going on fifteen.

Q Was there another boy older? A No.

The Court. One got married?

The Witness. Since.

The Court. Is he under twenty-one?

The Witness. Yes, he is.

Q How long had you known your present wife before you married her? A About ten or eleven years.

Q Did your present wife's mother know of the fact that you were going to be married? A Yes.

Q Where did the marriage take place? A In St. Cecelia's Rectory, Father Conroy was pastor.

Q For how long a time before the marriage was it talked about? A Possibly six weeks, something like that. Maria had always been around me ever since she was a little girl, and the night that the first Mrs. Hartley died, Mrs. Ferris sat in my home all night long.

The Court. Your mother-in-law?

The Witness. Yes.

Q How long before the marriage took place was it that your mother-in-law knew that it was contemplated? A I would say to that, at

least ten weeks or three months from the time the first Mrs. Hartley died.

Q Did she know the day that it was fixed for? A Yes.

Q Who were present at the marriage ceremony? A George Headley, Mrs. Emily O'Neill, myself and Mrs. Hartley.

The Court. How long after the death of the first Mrs. Hartley was it before this marriage?

The Witness. Three months.

Q The first Mrs. Hartley died when? A November 16, 1916.

Q How long had she been ill? A For at least eight to ten years.

Q Where did Mrs. Hartley go to live after the ceremony? A She went upstairs with her mother.

Q How did that come about? A She thought that—here is what she wanted to do; she was a telephone operator here in the Prudential Building; she wanted to continue on working for a few weeks—that is what she told me, but on Monday morning I noticed that she didn't go to work, and she stayed up with her mother; there was no special arrangement.

Examination by the Court.

Q The Monday after the wedding? A Yes.

Q Why didn't she take up housekeeping in your apartment? A She didn't want to come down to my apartment.

Q Give any reason for it? A Yes.

Q What was said? A Her intention was to go to New Lawn avenue, move up there; have me fix the home for her there.

Q Was that agreed upon between you? A Yes.

Q When was that to be done? A As soon as I could get rid of the people who were living on the second floor of the New Lawn house.

Q That is part of the explanation of why you didn't go housekeeping in your own apartment. Why didn't you pending the removal to New Lawn avenue, after the marriage? A She was living with her mother; I had a housekeeper; I was satisfied to continue in that manner until I fixed up my New Lawn avenue house.

Q What was the purpose of getting married, if she wasn't going to make a home for you? A She wanted to continue working in the Prudential as a telephone operator.

Q What reason did she give for wishing to do that? A She said being married to me after Mrs. Hartley died about three months, it would look rather queer, and how would it look to the public?

Q The marriage was known to the public? A It became known right away.

The Court. I don't get any satisfactory explanation yet. It is probably the best you can give.

The Witness. She wanted me to fix up a home in New Lawn avenue, Arlington, which I was trying to do.

Q If you married so soon after the death of the first Mrs. Hartley, why didn't you live together and have your own apartment; that is what I cannot understand. I don't know whether it is very material.

Further examination by Mr. Lane.

Q At any rate, her originally going to her mother's house was not against your will? A No, sir.

Q How long did that continue? A That continued until June 15.

The Court. From February?

The Witness. Yes.

Q Was the New Lawn avenue house vacated? A It was vacated on May 30, when a party named Barton moved out of the house. I had a painter and decorator go through that flat and fix it up. The screens of the upper porch were too large to go down the cellar door of that New Lawn avenue apartment house, and was brought down to my own home at 87 Johnston avenue; I was fixing them screens down in the cellar, and at noon time I came up to get my dinner, and she came down and I walked into the front room, and she came downstairs after me, and she threw both her wedding ring and her cluster ring at me, and said, "I am through with this kind of living; I am through with married life." That happened June 15, 1917.

Examination by the Court.

Q Before that time had anything been said about her coming down to live with you? A No, not before that time.

Q Had there been any dispute between you on any subject? A No, sir.

Q What explanation did she give as to why she was through with married life at that particular time? A I don't know.

Fred A. Hartley, direct.

Q What else did she say when she threw the rings at you? A She threw them at me upstairs and her mother came down in the cellar to me and Mrs. Schwartz said, "You are a fool to stand it;" I said, "I cannot stand it; get your grips together and all the stuff that belongs to you and go away; she has either got to come downstairs here or I am done."

Q Who is she? A The housekeeper I had.

Q You told her to leave? A Yes.

Q Did she leave? A Yes, right away.

Q Then what happened? A Mrs. Ferris came down the cellar to me and said, "What is the matter?" I said, "Go upstairs and ask Maria," and the only satisfaction was that she said, "Well, it is too bad;" that was all I could get out of her, and she went upstairs, and Maria came down and stayed there with me.

Q Lived in the apartment with you? A Yes.

Q After throwing the rings at you? A Yes, that very day.

Q Did she take the rings back and begin to wear them again? A I gave them to her.

Q Did she give any explanation as to why she had thrown them at you? A No; my only statement in reference to that would be that she is very temperamental.

Q Did she express any regret for having thrown them at you? A She showed it.

Q In what way? A Her affection.

Further direct examination by Mr. Lane.

Q Before that time in June had there been anything said by either of you with respect to

taking up housekeeping at 87 Johnston avenue? A No.

Q What had you been waiting for? A To move to New Lawn avenue.

The Court. Had she objected to the continuation of Mrs. Schwartz as your housekeeper?

The Witness. No, she couldn't, because it was her mother who engaged her.

Q She didn't? A No, sir.

Q You went to live together in June what year? A June 15, 1918.

Q Who continued to live with you? A We lived that way for about two weeks.

Q Who was your family? A My sons, Fred and Henry.

Q And Mrs. Hartley and yourself? A Yes, and she then suggested about going down to Asbury Park, and either the third or fourth of July we went down to select a place for her, and stayed down there for the month of August, or a couple of weeks in August, and I suggested to her "why not go down and go over to Ocean Grove where Fred and Henry has been more accustomed to going, as you know what that place is where you stayed the last time; it is a little too wild," she said, "I don't want to lose my reputation by going to Ocean Grove." I said to her, "Go any place you desire."

Q Did she suggest how she could lose it by going to Ocean Grove? A No, she did not.

Q What happened? A So on our way we had dinner there alongside of the lake separating Asbury Park and Ocean Grove, and after we had dinner there we came out, and Freddie and

Fred A. Hartley, direct.

Henry went on down on the sand and stayed there; my wife and I sat down on the bench, one of the benches there; she excused herself for a few minutes—I don't know where she went, but she came back and was all excited and upset, and I said, "Well, do you want to go ahead and get a hotel now, or make arrangements to stay down here on your vacation;" she said, "No, I think we had better go on home," and on our way, coming up from Long Branch, right in the center of the town, when I was held up there, she jumped out of the machine, right in the, street, and wanted to go home on the train. I had to bring her back in the car. In Perth Amboy and South Amboy I had a puncture in my machine; I was so nervous and upset that I had to stop at a garage and have them fix it for me, and getting up in front of the Elks' Home in Elizabeth, I ran into another machine, I was so upset; something that I have never had happen to me in all my life as a driver of a machine for twelve years. When we got home she started a rumpus; I was getting a drink of water at the sink; she made a grab for my pocket, to grab a roll of bills out of my pocket, and tore my pants, and as she was doing this, she accidentally caught me on the side of the face and scratched my face and drew blood; my two boys stood there. I said, "Boys, you never saw any of that stuff between me and your mother, and you are not going to see any more of it. Pack your grips and I will take you away," and I did it.

Examination by the Court.

Q Did she make any explanation of her conduct? A No, she is very temperamental, as I said.

Fred A. Hartley, direct.

Q Was it anything that had occurred to cause her to be in that temper? A No, she didn't want to ride with my two boys.

Q When did she say that? A Down in Long Branch.

Q When she attempted to leave the car? A Yes.

Q Did she say why she didn't want to ride with them? A No.

Q Prior to that how had she gotten along with them? A No good at all.

Q They had had trouble? A She didn't treat them as she did prior to my marrying her.

Further direct examination by Mr. Lane.

Q She says that you reprimanded one of your boys on this trip that caused the trouble? A Yes.

Q Do you remember any such occasion? A No, sir.

Q Do you remember whether you had any trouble with one of your boys? A No, sir.

Q In which you made some remark about your boy which she objected to? A No.

Q Was there any trouble between you and the boys on that trip? A No, sir.

Q You took the boys out of the house that night? A Yes.

Q Where did you take them? A Mrs. Larkin's in Newark.

Q How long did you leave them there? A Over night; my wife and mother pleaded with me the next day to bring them back home, which I did.

Q Where did they plead with you? A In the house at 87 Johnston avenue.

Q You stayed there all night? A Yes.

Q Did your wife stay in your apartment? A She stayed in my apartment with me.

Q Bringing your attention to the fact—your wife says that this ring business, in which she cut you, didn't occur on this occasion, but occurred on Labor Day; have you got those two occasions in your mind? A Yes.

Q Are you sure as to which time that ring episode took place? A Yes, I can produce the pants which were torn.

The Court. That wouldn't fix the time.

Q You brought the boys back when? A The following day.

Q What time do you fix that; was that August or September? A No, sir; July, about the third or fourth of July.

Q You received some threatening letters? A I did.

Q During the month of April, May and June? A Yes.

Q Which have been offered in evidence? A Yes.

Q When you got these letters what did you do? A I sent Mrs. Hartley over with the first one to the post office authorities.

Q Did you and Mrs. Hartley discuss these letters? A We did. I suspected a party. Prior to that I had received two threatening letters before I married her, and I threw them in the stove, because they reflected on the people upstairs, and I would not permit either her mother or her to read them, which they wanted to do.

Q Did you discuss with your wife as to who had written them? A Yes.

Q You had in mind a certain person? A Yes.

Q You were wrong? A I took a sample of their handwriting over there, and the only explanation I got from the postal authorities was that this woman was—she was one of Mrs. Hartley's witnesses here.

Q I don't want the identify of the person. It was never proven as to who wrote the letters? A No.

Q Did you have anything to do with writing these letters? A No, sir; I did not.

Q Did anybody ever suggest that you had anything to do with writing these letters, until you heard the suggestion in court? A No.

Q Did you suggest to your wife that you go through the form of a mock divorce? A No, sir; absolutely not.

Q In order to stop these letters? A No, sir; absolutely not.

Q Was there any discussion between you and your wife with respect to a divorce for that reason? A No, sir; I mentioned divorce to Mrs. Hartley once.

Q When was it? A That was when I received a telephone call and also a letter from her about this doctor, which was telling me they wanted to date her up in Asbury Park; I told her and advised her that was silly stuff, that kind of stuff leads to the divorce courts, "You are a foolish girl, and you should know better." That is the only time I mentioned anything in connection with any divorce or anything else.

Fred A. Hartley, direct.

Q Is that one of the letters which has been offered in evidence here? A Yes.

Q After you had this affair, after your return from Asbury Park and the boys were brought back, how long did you remain; how long was it that you lived together before she went to Asbury Park for the summer? A About six weeks.

Q Then what happened? A She went down to Asbury Park and I went down there; the first Sunday I went down there she was sleeping in Emily O'Neill's room—the girl I forbade her to go around with. I went down the second time, everything was all right; I took her out. I went the third time; everything was all right, and the fourth time, I found a fan, which was there on the dresser. I asked her to give me an explanation about it; she said it was none of my business, and I slapped her in the face that day.

Q What time was that? A I should judge maybe around twelve o'clock, at noon.

Q Tell us what happened after you got to Asbury Park until the end of the trip. A I drove down to Asbury Park and went up to the room there and found the fan on the dresser, and I asked for an explanation.

Q Where was she; what was she doing? A In the room.

Q You asked for an explanation; what did she say? A She said it was none of my business, and I slapped her in the face.

Q What effect did that have on you? A I thought it wasn't very nice.

Q Did you lose your temper? A I slapped her.

Q (Last question repeated.) A I was very much excited. I had arranged with her and Mrs. Tilton to attend the Elks' Convention at Long Branch. I was a delegate of my own local lodge and was to stay down there.

Q Is this the fan (indicating)? A Yes.

Mr. Lane. I offer it in evidence.

The Court. It is from some resort?

The Witness. Yes, Clayton's roadhouse.

(Marked Exhibit D. 1.)

Q What happened after you slapped her with that fan? A I went and got my two boys and told them to go ahead in their room and pack their grips and get ready, as I was upset to see her acting in the manner in which she had done.

Q What did you do? A I told them to pack their grips, and started for home.

Q Who did? A Me and the two boys, and Freddie and Henry begged me to come back, and I did.

Q You started for home? A Yes.

Q How far did you get? A I don't think I got over two or three blocks.

Q You turned around and came back? A Yes.

Q In the car? A Yes.

Q What happened after you got back? A I persuaded her to come home.

Q Where did you meet her? A In her room.

Q Did you become reconciled? A Positively.

Q Did you stay there that night? A No, I came home. I was sorry for what I had done.

Q Did Mrs. Hartley come with you and the boys? A Yes.

Q Did you all come home that night? A Yes.

Q Was that Labor Day? A No, sir; that was the same Sunday that I drove down, about a day or so before Labor Day.

Q Did you see her sister there that day? A Sadie come knocking at the door to get her clothes; she put up over Saturday in my room.

Q Did you see her about the time you struck her with the fan? A No, she was out with some young man whom she was acquainted with down there.

Q During the time that this affair was taking place in the room, did you lock your wife out; your wife says you locked her out of the room and you searched the room? A No, she was in the room with me.

Q Did you search the room? A I did not.

Q How long a time were you in this room that this was going on? A Not over ten or fifteen minutes at the most.

Q Did I understand you to say that during the time that Mrs. Hartley—or that you were having this trouble with Mrs. Hartley, you didn't see her sister Sadie at all? A No, she came and knocked at the door and got her clothes.

Q I show you three letters, one dated August 14, 1917; another dated August 16, 1917, and the other dated August 23, and another, apparently part of it has been lost, without date, and ask you whether those letters are in your wife's handwriting? A They are.

Q And were those letters received by you during the time that your wife was away? A Yes.

Mr. Lane. I offer them in evidence.

The Court. What do the contents show?

Mr. Lane. An affectionate disposition of this lady toward Mr. Hartley, but a reference to how good a time she is having with this man and that man and the other man. We make no charges.

The Court. Do they show a harmonious relationship?

Mr. Lane. Yes, and I say they also show that she, like many other women, was trying to make him jealous to a certain extent, not indicating that she was doing anything wrong, but she was going out with Doc.

The Court. I think it would be best to have the letters read.

(Letters marked Exhibits D. 2, D. 3, D. 4 and D. 5.)

Q How long a time did she stay down at Asbury Park? A One month.

Q Did you bring her home? A Yes.

Q Do you remember when it was? A About the day before Labor Day.

The Court. Were the boys boarding in the same house with her?

The Witness. Yes, in the same room.

Q She says that you made some statement with respect to a Mr. Smith— A That don't amount to anything at all.

Q And that you continually nagged her. Although making no charges against her, did you nag her about Mr. Smith or talk about him? A No, I did not.

Q When was Smith's name mentioned, if it was mentioned at all? A I don't know as I

ever mentioned it to amount to anything; I don't recall ever bothering about Mr. Smith; I would not accuse my wife of infidelity.

Q I didn't ask you that; did you talk to her about going out with Smith? A I told her, no doubt, but I never made anything like any accusations of that kind.

The Court. Make any complaint about her going with him?

The Witness. No, sir.

Q There was something to which you referred about Doc? A Yes.

Q What was that? A In one of her letters or telephone conversation she tells me about this doctor wanting to take her and Emma O'Neill out; I said "Maria, you want to cut that stuff out; that leads up to the divorce courts. Don't be silly; that is foolish to do that."

Q After you came back in September, how long did you remain at 87 Johnston avenue, the two of you together? A Not long, until June 13, 1918, of the following year.

Q During that winter was there any trouble? A No.

Q Between you and your wife? A No.

Q When was the baby born? A August 12, 1919.

Q Between September, 1917, and June, 1919, where were your boys? A They were down to Rutgers Prep School.

Q When did you send them down to Rutgers? A The day we came back from Asbury Park—it was always my intention to send my oldest boy, but not my youngest boy; the day we came back from Asbury Park, when we got up to our house, Mrs. Ferris, Sadie Ferris and the aunt

started in bawling at my boys, calling them tattlers. I said there was enough of this, "I will not stand for any more of this." I took my boys back; I took them down to Mrs. Seeley's, and went down to Rutgers a day or two after and made arrangements to have them go down and stay there.

Q So they went there sometime about the first part of September? A Yes, and remained until June the following year.

Q During that interval did you go down and see them? A Yes.

Q How often? A Every Sunday.

Q How did you go? A The majority right up to about March I went by train.

Q Did Mrs. Hartley go with you at all? A I asked her many times.

Q Did she go? A No, sir.

Q What time did you go down? A I used to leave the house around maybe ten o'clock in the morning.

Q What time did you get back? A Around half-past seven; I sometimes had to wait; the trains were always late.

Q Where did you get your dinner? A In Achtel-Stetters.

Q Alone or with your wife? A No, she would go and get theatre tickets in the afternoon for Sunday evening, and we would go to Proctor's; if she couldn't get tickets, we would go to some other theatre or moving picture house.

Q Did you go home before you went to the theatre and have dinner with your wife? A No, she met me at the Market street depot.

Q She says that you went home first? A Oh, no.

Q And then got your car and went out? A The roads was impassable that month; it was impossible to drive a car.

Q Did you meet her at the house—go after her at the house or did she meet you at the Market street station? A She met me at the Market street station; she complained many a time on account of the train being so late.

Q That is because you were late? A Yes.

Q Did you have any regular train you arrived on? A I was supposed to arrive on the five-something train, but I waited as long as an hour or hour and a half for that train to get into New Brunswick.

Q How often did you meet your wife during the winter and take her somewhere Sunday night? A Every Sunday night.

Q Was there any exception? A No.

Q Did she make any objection to your going down to see your boys on Sunday? A No; she always wanted to go up home to her mother.

Q Did you ask her to go with you on any occasion? A Yes.

Q What was her answer? A She would rather go home.

Q Where was her mother's home then? A 372 Kearny avenue. They moved about the first of July, 1917.

Q Did she go when you were away during those Sundays; did she go, in fact to her mother's? A Yes.

Q Was there any trouble between you during that winter with respect to your going down, or any trouble you can recall? A No, sir; not one bit.

Q Then in January, 1917, what happened? A The day my boys came home, Henry was

in the elementary school there, he came home Wednesday, and Freddie came home Thursday, and Mrs. Hartley packed her grip and went home; the boys had no place to go to; I had to board them with Mrs. Keer.

Q When was this? A June 13, 1917, when my boys came home from New Brunswick, from the Prep School.

Q At the close of the school year? A Yes.

Q Did Mrs. Hartley leave before they arrived home or after? A No, the youngest boy came home on Wednesday and stayed in the house all Wednesday night, and Mrs. Keer wanted to go down to the examinations, and Mrs. Hartley begged Henry to go down to the examination, and he didn't want to go, as he just come up, and he went with Mrs. Keer; she told me she had to go to Newark, and when I came home from work that day, she had gone home and taken her things, and my oldest boy came down the street; there was no one there to receive him.

Q Who was Mrs. Keer? A She lived up over us.

Q Did Mrs. Hartley leave any message for you? A None whatever.

Q What did you do when you got home? A That was Thursday; I attended to my business, went to work the next day and went right along with my business and did the best I could; I put my boys upstairs with Mrs. Keer, and on the Fourth of July I was going down Kearny avenue, and my wife was sitting in the window of her mother's home and she called me and I turned around and came back, and we sat talking on the front stairs of the hallway, and her aunt came down and came around the alley-

way and said, "Why don't you be a man and why don't you go up in the house?" I said, "I am a man; I will go up in the house." I went up in the house and as I did, my wife followed me, and she took the key in the door, with her hand to the back, and snapped the lock; her mother, her sister, her brother and her aunt started at me, all talking at one time; I said, "I cannot listen to you; if you will talk one at a time, I will answer anything you say." Mrs. Ferris was the quietest and most decent and respectable of the whole business. My wife had nothing to say. I said, "Maria, I want you to go with me," and she did, and her brother said, "Are you going to live with that man?" She came with me and took a ride. We went up near Paterson, between Passaic and Paterson, and sat in a tea room, and I brought her home that night.

The Court. Why did she say she had left; did she give any explanation?

The Witness. No, sir; none whatsoever.

The Court. After you brought her home that night, how long did she remain?

The Witness. I mean to her mother's house.

The Court. Did you ask her to go back to your home?

The Witness. She said she would; she said, "Let me straighten it out with my people."

The Court. How long did that take her?

The Witness. Until September, until the latter part of August, just before school opened.

New Jersey State Library

The Court. This was about the Fourth of July?

The Witness. Yes.

The Court. And she didn't return to your home then for months?

The Witness. No.

Q Were the boys still there when she came back? A No, my boys was upstairs, living with with Mrs. Keer.

Q They were sent up immediately after she left? A Yes; they were still with Mrs. Keer.

Q Were they still living up with Mrs. Keer when your wife came back in the latter part of August? A No. Freddie went back again to Prep School.

The Court. In August?

The Witness. No.

The Court. He asked you if the boys continued to live from the time of the departure of Mrs. Hartley in June until she returned in August—if they continued to live with Mrs. Keer?

The Witness. Yes.

Q Were they living there when she actually came back? A Yes.

Q How long did she remain home then after August, 1918? A She remained home then with me, until the fifteenth of January, 1920.

Q You have your dates twisted, haven't you? The child was born in 1919. A She asked me about going when she became pregnant.

Q She came back in the latter part of August, 1918, and the boys then later went back to school? A Yes.

Q How long did she continue to live there? A Right along until when she was about due to be sick she wanted to go home to her mother.

Q What date? A That must have been about the first of July, 1919.

Q During that winter was there any difficulty between your wife and yourself? A None whatever.

Q Were your boys at Rutgers? A One was; my son Freddie was at Rutgers Prep School.

Q Where was the other one? A Living with Mrs. Keer upstairs.

Q In the same house? A Yes.

Q Why didn't he live downstairs? A Mrs. Hartley didn't want him.

Q Did she object to him? A She did not want to be bothered with my boys.

Q How old was he then? A Henry would be about between twelve and thirteen.

Q Did you return to Rutgers during that winter and visit your son who was there? A That winter I did not go, only once or twice a month.

Q When you did go did you have dinner with your wife in Newark? A I had it home.

Q On your return? A On my return, oh, yes.

Q Did you have the same practice as you did during the winter of 1917, going to dinner and theatre? A Yes, we would occasionally go, but not as much. She was pregnant, of course, at that time.

Q Was there any trouble between you? A None whatever.

Q How did she come to go back to her mother when she was about to be delivered? A She wanted to go.

Q Did she suggest that she should go to a hospital and you refused to send her there; did anything of that kind take place? A She could have went to a maternity hospital.

The Court. Did she suggest it?

The Witness. No, never.

Q Was there any talk with respect to going to a hospital? A No, sir.

Q When did she go to her mother's? A The first part of July.

Q Was the child born at her mother's? A Yes.

Q During the time she was at her mother's did you visit her? A Every day.

Q Before she left to go to her mother's did she have a physician in attendance? A Yes, Dr. Ballinger.

Q Did you have any trouble with her while she was at her mother's? A No, sir.

Q When was the child born? A About August 12, 1919.

Q After the child was born did you visit her? A Every day.

The Court. Did you give her money for her necessities?

The Witness. She never asked for any.

The Court. Whether she asked or not, did you give her any?

The Witness. No; she said I gave her $5; that is not so.

The Court. Was anything said about an outfit for the child?

The Witness. There was an outfit; it was prepared before she left my home.

The Court. Did you give her money to make the necessary preparations for the birth of the child?

The Witness. Yes, prior to her leaving my home.

Q Was there anything that the child should have had that she did not have? A No.

Q Had she asked for things, or money to buy them? A She had a charge account in Bamberger's, and she always got her $20 every month.

Q When you say you didn't give her any money, you didn't pay any board at her mother's house? A I did not pay any board.

Q I was asking about preparation for the birth of the child. A That was all attended to, yes.

Q Did she make any complaint about the lack of money? A None whatever, no.

Q While at her mother's? A No, she didn't ask for it.

Q When did she come home? A I went up about—the baby was about five or six weeks old; I drove up my old Ford on Friday night.

Q Had there been any arrangements made to come home? A Yes, that was the understanding.

Q Go ahead? A I went up to her mother's home and brought her down—I should judge it must have been around quarter to nine or nine o'clock; I brought her down home; I brought her in the house and I put the baby in the bassinet in the bedroom; I sent upstairs for Freddie and Henry, who was home at that time; I brought them down and wanted to let them see the new baby. She hadn't been in the house

one hour before she was crying; she wanted her mother; would I be mad at her if she went home to her mother; I said to her, "Maria, don't be foolish; how do you think I am going to manage? I have been over ten or eleven weeks alone; I have to go to work in a few hours"—it was then around ten o'clock; I had to go to work at two or three o'clock in the morning—I said, "Don't be foolish." She said, "Will you be mad at me if I take the baby home; I am nervous and upset;" I couldn't do anything with her, and she went up home to her mother.

Q Did you take her? A No, she went home that night.

Q How did she get home? A On the trolley car. She had the big cover all over the baby, and I recall it as well as if it was yesterday. And the following morning—I made a mistake in my affidavit, I want to correct here—the following morning she came down to the barn to me and she said, "I am awfully sorry; will I go up in the house and get coffee for you?" I said, "No, I had my breakfast in the market." She said, "Will you meet me tomorrow night?" I said, "I will." I drove up to her house and met her that night. I took her down to the Elks Home in Elizabeth and we had supper there. On my way up, at Frelinghuysen avenue, she said, "Let me stay home with the baby, I am afraid to go back; I don't want to have any more children."

The Court. She meant with her mother?

The Witness. Yes. I said, "I married you, Maria, in your own faith, and I love that baby; it is my boy and you must come home. I will not agree to anything of the

kind." She said, "I want to stay home." I said, "You come and stay with me; it is where you belong," and she came home, a day or two after—I am not sure which; I took her back to her mother's that night.

Q She came home a day or two after just for a day? A No, sir; to stay.

Q You took her back to her mother's you mean the night you had dinner at the Elks Home? A Yes.

Q A day or two later she came to your home? A Yes, that was the understanding that she would be down the following day or day after.

Q That was in September? A September or October, 1919, when the baby was born.

Q How long did she stay? A Until January 15, 1920.

Q And then she left? A Yes.

Q Was that the final separation? A Yes, that is when she went to her mother's.

The Court. Why did she leave then?

The Witness. I don't know; I was in New York City at the time. I was over after fish and when I came back home that day—I drove over—I had a horse and wagon at that time—I drove over and when I came back it was always my custom to get a cup of coffee; on my way down to the barn I stopped at the house and went in, and Maria was standing in the kitchen and she gave me a cup of coffee and said, "I have got my things on, I am going home; I am tired of married life, and done with it."

The Court. Did she make any complaint about your treatment of her?

The Witness. No, sir.

The Court. Did she complain that you were not giving her proper allowance or supporting her?

The Witness. No, sir; she did not.

The Court. Did she go home then?

The Witness. She did.

Q And take her effects with her? A Yes.

Q Had she said anything about going before January 15? A No, not to me.

The Court. You say she said she was tired of married life?

The Witness. That was the Sunday night I took her down to the Elks Home in Elizabeth.

Q You say on the fifteenth of January you came in, she gave you the coffee and said she had her things packed and was going home, she was tired of married life? A Yes.

Q Did you see her after that? A I called up her home.

Q On the telephone? A Yes, the following Saturday; her mother answered it and hung up on me.

Q When she found out it was you, she wouldn't talk with you? A Yes. I then called up again on Sunday, and her sister, Miss Sadie, I think it was, answered the 'phone, and she hung up. I called up on several occasions. That was until I eventually got my wife of a Thursday, I called from New York, and then I met her on Kearny avenue, at the corner of Kearny avenue and Jones avenue.

Q How long after January 15th? A I should judge two weeks after.

Q What did you talk about? A I asked her why she went home; I said, "I want to see my boy."

Q What did she say? A She said, "My people want me home; leave it to me, I will take care of it; I will straighten it out;" that was always the cry.

Q What did she say about you seeing the child? A She said, "If you come to the house there will be trouble; they have no use for you."

Q Was that the first time that you had it intimated or you knew that they had no use for you? A No, sir.

Q You had known that before? A Yes.

Q How long before? A By their attitude toward me and my children.

Q How long before January 15? A Right after I married my wife they began to manifest that; they had lived in my house for ten or eleven years, and right after I married my wife they moved out in December.

Q Why did they move? A I don't know.

Q Because they were dissatisfied with the marriage? A I do not know. Because right after they moved, my wife bought a trunk.

Q What did that have to do in connection with their removal? A She took the trunk home the first time she went away on June 13th.

Q And brought it back again? A Yes.

Q During your married life how much did you allow your wife for household expenses, if you made a regular allowance? A $20 a week; she had no rent to pay, she had no vegetables to buy, she had no coal to buy, and the gas bills

I have always assumed as long as I have been married.

Q The $20 was in excess of the running expenses—did it cost that much? A No; the majority of my meals I took down town.

The Court. Did you in addition to the twenty dollars make any allowance for her apparel and outfit?

The Witness. Yes, she had a charge account in Bamberger's.

Q She could buy what clothing she needed? A Yes.

Q Did you ever object to her expenditures? A No.

Q Did she ever complain that you were not making an allowance enough to her? A No, I maintain she was the best dressed woman in the town of Kearny.

Q Did she ever complain that you didn't give her any spending money? A She had her $20 a week; she never complained to me.

Q Do you know what surplus she had left out of the $20 each week? A No.

Q Did you ever ask her? A No.

Q Didn't you ever ask her if she needed any spending money? A No.

Q Did it never occur to you? A I thought the $20 a week was ample; I was on a peddling wagon and working like a slave; I never had a meal home on Thursday.

Q How about other days? A Friday—I never had breakfast on Friday mornings home in twenty-five years.

Q Except those two days you would have your meals home regularly? A Yes.

Q You think there was enough from the $20 to provide her with the spending money she needed? A She never asked for any. She had a charge account; she could get what she wanted.

Q She couldn't get spending money on a charge account. A No, she never asked for any.

Q Did she ever ask for money for spending purposes? A No.

Examination by the Court.

Q Did she ever complain that you didn't give her pocket money? A No, none whatever.

Q Did she object to the home you had over in Johnston avenue? A No, she did not; it was my intention to move to New Lawn avenue; I had my home all decorated.

Q Why didn't you move there? A She wanted me to take her whole family with her.

Q You interrupted yourself after telling about the decoration of the apartment. What occurred that prevented you from moving there? A She wanted me to take her whole family, her mother, her sister, her brother and her aunt.

Q Up to this New Lawn avenue house? A And her Aunt Maggie was going to be the servant.

Q You didn't have any maid? A No.

Q Was she to give her services without pay? A Nothing said; I put my foot down on that.

Q That you didn't want the family? A I didn't marry the whole family.

Further direct examination by Mr. Lane.

Q Is that why the New Lawn avenue business was given up? A Yes.

Q And the only reason? A Yes.

Fred A. Hartley, direct.

Q Did she object to your business? A She did object to my business—peddler; she said, "You are a better man than that."

Q What was your business? A I have been a peddler all my life, for thirty years.

Q What did you do; peddle what? A Peddling produce.

Examination by the Court.

Q Retail with a wagon? A Yes.

Q Buy wholesale and retail on the street? A Yes.

Q Crying your wares? A No, not for the last twenty years I didn't cry them; I had a steady retail route.

Q Did Mrs. Hartley object to your business? A She did.

Q When? A Right after I married her; she thought I was going to get a political job because I happened to be on the County Board of Election at that time.

Q This peddling business, what hours did it require you to keep? A I worked twenty-two to twenty-four hours many times.

Q What was your week's schedule? A Monday morning would be the late morning, six o'clock, until maybe noon time; Tuesday, get up at three or four and work until five, six or seven in the afternoon; Wednesday would be a light day; I would get up around four or five o'clock and work until about four; Thursday would be my New York trip. I would consider that a late morning, and get up around half-past six and drive to New York with a wagon and get through my work around half-past seven or eight. Friday I would go out early in the morning and get through two o'clock in the afternoon. Sat-

urday during the summer time—Friday afternoon it would be necessary to go down—the market is closed in the afternoon, with the exception of a choice, and go down again on Friday. Saturday I got up twelve or one o'clock and worked until ten or eleven at night.

Q That was your heavy day? A Yes.

Q You didn't work Sunday? A I had to go down and clean the stable and horse on Sunday.

Q You didn't do any peddling? A No.

Further direct examination by Mr. Lane.

Q Was that the business from which you have accumulated your property? A Every penny I earned myself.

Q Did you ever have any other business from which you made any money? A Yes, I bought and sold real estate all my life.

Q Was the peddling business the backbone of your existence? A Yes.

Q When did she start to object to that business? A Right after I married her.

The Court. How long after?

The Witness. I should judge eight to ten weeks.

Q What did she say about it? A She said, "You should not peddle, you are a better man; Jews and Italians just do that; why don't you do some different work?"

Q What did you say? A I said, "I have done it all my life; what else can I do?" Then she got a newspaper and she picked out advertisements for me, and she said, "Why don't you try and see what that is; it looks good." I wrote a letter to a concern, a package concern,

where it was a case of buying stock, and that firm since then went out of business, and showed my judgment was right.

Q Did you ever overcome her prejudice for the peddling business? A She never strenuously objected to it after I went in it again; it was always my business for life.

Q What is your explanation of her leaving? A Her mother and she doesn't want to have children; I state that nobody could tell me that my wife is wrong or anything immoral about her. Her own pastor has admitted that I never had any trouble with her in reference to religion; her own pastor, if he thought—

Q I don't care what he said; what did you and Mrs. Hartley say about the trouble? A That is the whole trouble, too much mother-in-law, too much on the other side.

Q Too much family? A Yes. I would be living today in New Lawn avenue—

Q While we are on this business question, do you peddle with a truck? A I have a second-hand Ford.

Q Is this a photograph of the car? A Yes.

Q And are those pictures of the place where you conduct your business? A Yes; I have no business at present.

Q Where are they located? A John street and Johnston ave, Kearny, within half a block.

Q While we are on the subject, your wife has said that during the time that you lived with her, you got her to get a prescription from a doctor to prevent pregnancy? A That is not so.

Q What are the facts with respect to that? A I found that box.

Q That box you refer to is Exhibit D. 2 for identification; where did you find it? A In the dresser, in the bedroom.

Q In the bedroom of yourself and Mrs. Hartley? A Yes.

Q When? A I found that possibly maybe a year after she left.

Q What do you mean, a year after she left the house? A Yes.

Q A year after January, 1920? A Yes.

Q That would be just about a year ago? A Yes.

Q January, 1921? A Yes, somewhere about that time.

Q How soon after you found it did you draw my attention to it? A I cannot state; I don't just remember.

Q Did you draw my attention to it comparatively soon after you found it? A Yes.

Q Was this suit started at the time you found it? A No, this suit—I was served with papers in this suit, I guess—

The Court. You say you found this about a year after she left, and she left in January, 1920, so that would be finding it in January, 1921?

The Witness. It was around ten or twelve months after.

Q After the papers in this suit had been served on you, or had this suit been started prior to the finding of this box? A No.

Q Or had you already been served with the papers when you found this? The bill is filed on January 12, 1921. How long after you were served, can you remember that, did you find

the box? A It might have been maybe a month or so, but I just wouldn't say positively.

Q Can you place it by determining the date of the last hearing in this case, which was October 10, 1921; how long before that was it that you found it? A Maybe two months or so.

Q Now, can you tell me about how long after you found it, it was that you first told me about it? A I think I told you right away.

Q I am trying to fix a date if I can; did you tell me about it as soon as you had in fact found it? A A few days after.

The Court. Hadn't the dresser been in use all the time?

The Witness. I have been living alone.

Q Do you use the dresser? A No, sir.

Q How did you come to search through it on this particular occasion? A I don't know; I went through everything in the house.

Q Why? A Cleaning up the place.

Q Hadn't you cleaned up before? A Yes, but possibly not the dresser.

Q What do you say? A Not the dresser.

Q After you found this, did you see your wife? A I saw my wife two or three times a week from the time she left—

Q Did you speak to her about this box? A I told her I found the box.

Q What did she say? A She said, "What are you going to do with it?"

Q What did you say? A "Give it to Mr. Lane and let him use it."

Q What did she say? A She said, "Don't do it; don't do that, please."

The Court. Do I understand that from the time she left in January, 1920, up to the finding of this box somewhere in July or August last, and possibly September, you and Mrs. Hartley had been meeting two or three times a week?

The Witness. Yes.

Q This Dr. Ballinger, was he your physician? A He was, but I didn't like his attitude toward Mrs. Hartley.

Q Was he your physician before you married Mrs. Hartley? A He attended to the first Mrs. Hartley once or twice.

Q Was he the regular physician of your family? A No.

Q Was he the regular physician of Mrs. Hartley's family? A No.

Q Did he attend Mrs. Hartley in her confinement? A Yes.

Q Did you pay the bill? A I did.

Q And has attended her since? A Yes.

Q Did you ever suggest to your wife that she should get any medicine to prevent pregnancy? A Absolutely not.

Q Did you know as a matter of fact that she had been taking medicine to prevent pregnancy? A No, sir; absolutely not.

Q Was there some trouble in January, 1920, in reference to some bill of the Public Service Gas Company? A Yes.

Q Was the gas shut off? A The gas was shut off on the twelfth of January; it was the Monday I wanted Mrs. Hartley to go on Thursday and pay the bill; on Thursday morning when she left, I wanted her to pay that bill; that was the disputed subject, a bill which I

received from them during the time when Mrs. Hartley was home to her mother in 1918, for the three months I did not burn any gas; I got a bill in January for those last three months, and I refused to pay it; it was an $18 or $19 bill, and I settled it for $6.

Q As a result of your refusal, was the gas cut off? A It must have been cut off on account of my refusing to pay.

Q Was Mrs. Hartley deprived of any heat in the house? A No.

Q Was she deprived of light from gas in the house? A Three days.

Q How long had this dispute between you and the Public Service Gas Company been on? A I had only been notified about it.

Q She says something about some kerosene light; what are the facts with respect to that? A I went up and borrowed a lamp from Mrs. Keer.

Q She was a witness here? A Yes.

Q When was that? A As soon as it was turned off; she wasn't there when the light was turned off.

Q Did Mrs. Hartley say she would leave if you didn't have the gas restored? A No.

Q I show you a bill dated January 31, 1921, which purports to show your account with the Gas Company from April 23, 1918, to January 19, 1920, and ask you whether that is a correct itemization of your bills during that period? A That is correct because I went to the Public Service and got it from them.

Q Was this bill the one that the fight was over, this estimated bill of $12.90? A It must have been.

Q When did you settle the gas bill, by reference to this bill of receipt? A January 19, 1920.

Q Four days after Mrs. Hartley left? A Yes.

Q And when that bill was finally paid did you pay $12.90? A No, I did not, I paid $6.

Q They gave you a credit allowance? A Of $12.90.

Q I misspoke, the estimated bill was $19.40, and there was paid on account of that estimated bill $6.50, and they gave you credit for $12.90? A Yes.

Mr. Lane. I offer that.

Mr. Mylod. The bill was made up for the purpose of producing in court?

The Witness. Yes.

Q You haven't the bill you received at the time? A No, I have not.

Mr. Mylod. I have no objection.

Q Something was said by Mrs. Hartley that there was no coal in the house. A That is not so. There is always coal in my cellar.

Q Was there coal there then? A Yes.

Q How much? A I don't know how much, but there must have been coal there.

Q Do you buy it by the ton? A A ton, two or three tons.

Q Was there a time that she had to buy coal by a small measure? A None.

Q Bag full? A No, sir.

Q She says it was charged. A I have never paid the bill; I have been to Mr. Yates; "Do I owe you anything, or my wife?" He said, "You don't owe me anything."

The Court. Strike it out.

Q How did you get your coal; who ordered it? A She could order it; I could.

Q Who did? A She could.

Q Who did? A Sometimes she would and sometimes I would.

Q Whom did you buy it from? A The S. Smith Coal Company.

Q Are they coal dealers? A Yes.

Q Was there any time during that winter that there wasn't coal enough in the house to keep you warm? A No, sir.

Q Your wife left on January 15th and you telephoned her; when was the first time you met her after that? A I think about a week.

Q After that when did you meet her again? A A few days.

Q How many days? A Maybe three or four.

The Court. Did you meet by appointment?

The Witness. Yes.

Q What would occur? A The same old stuff—her people; she wanted to come back home with me.

Q When did you meet her next? A Three or four days after.

Q Did that continue? A Absolutely, yes.

Q Did you see the baby? A No.

Q How long did that meeting her continue that way on the street? A Before I saw the baby maybe a couple of weeks.

Q When was it you first saw the baby? A She wanted me to come up to the house; I said, "It will be better for you to bring it out."

Q When was that, about? A After she left my home, a month maybe.

Q Where did you see the baby? A On the street.

Q How often did you see the baby on the street after that? A At least twice a week.

Q Where? A I met her all around the town, on Kearny avenue; mostly on Belgrove Drive.

Q How long did that continue? A I continued meeting her right along.

Q Up to what time? A October 9th of last year.

Q October 9, 1921? A Yes.

Q Kept meeting her while this law suit was on? A Yes, met her in Newark and down at Clinton avenue and Broad street, and corner of State and Broad.

Q We had the hearing on October 10th? A Yes.

Q Did you see her the night before? A Yes, in front of No. 6 School that night.

The Court. By appointment?

The Witness. I was to meet the baby, that was the arrangement which was made between Judge Mylod and Mr. Lane.

The Court. Independent of that, when did you last meet your wife, without any arrangement being made about seeing the baby?

The Witness. I cannot state.

The Court. How long before October?

The Witness. That was in June.

The Court. She started her suit in January?

The Witness. Yes.

The Court. After that and while that suit was pending did you and she meet by appointment?

The Witness. Yes.

The Court. And talk things over?

The Witness. Yes.

The Court. Did you ask her why she sued you for maintenance instead of divorce?

The Witness. Her people.

The Court. Later on did she say how much she wanted for maintenance?

The Witness. No, she wanted me to settle out of court.

The Court. If there was any trouble she wanted you to settle out of court, what amount did she suggest?

The Witness. No amount, and then she wanted to come back home and wanted me to move away with her.

The Court. Why didn't she come back home with you?

The Witness. Her people.

The Court. There is no counter charge?

Mr. Lane. No, sir.

Q During the time between January, 1920, and January, 1921, before the commencement of this suit, you met your wife on an average of how many times a week? A Two or three, sometimes more; I would call her up on the 'phone.

Q Did you always meet on the street? A I called her on the telephone.

Q When you did meet, was it always on the street? A Yes.

Q She says that you didn't meet her—I think April of 1920, between January and April, there was a period there that you did not meet her? A I didn't meet her.

Q But that you commenced to meet her in April? A I telephoned her about four or five days after she went away.

Q Did you meet her? A Yes, about a week or so after.

Q During the time that you met her, did you ask her to come home and live with you? A I asked her a hundred times.

Q What was her reply? A "My people"; I got so tired of asking her to come home, that in October—

Q I am down to January, 1921, the commencement of this suit; up to that time had you asked her to come back? A At least a hundred times; she promised me not once but one hundred, to leave the key, and I left it on the hall rack. In October I became so discouraged—she promised me to come home on Columbus Day, and I 'phoned up, I said, "Maria, what are you doing; making a fool out of me? I have left the key for you." She said, "It looks like as though it is raining." I went down to Judge Archibald, and I said, "Judge, I am tired of being made a fool of by that wife of mine; what shall I do?" He said, "You have made a fool of yourself; send her a letter and don't bother with her any more."

Q It was a result of having a conference with counsel that you sent your letter? A Yes.

Q That was the letter which I think has been offered in evidence and in which she was asked to come home? A Yes.

Q Did you meet Mrs. Hartley after sending that letter? A Yes.

Q Didn't she send you a reply. A No reply.

Q There was no reply? A No.

Q When you met her, what did she say? A She said, "You thought you were smart."

Q Tell what took place. A I came up and sat down on the steps and talked; I always brought up a box of chocolates with me—not always, these hard chocolates for the baby and sat down there and ate them, and she told me that she had three witnesses; she said, "How many have you got?" I said, "I don't know, maybe eighteen or twenty," and so on and so forth; she kissed me good-night; she said it was so out of the ordinary; it was a custom with her.

Q What was out of the ordinary?

The Court. She didn't say it that night?

The Witness. Yes.

The Court. What?

The Witness. For her to kiss me as she left me.

The Court. How did you come to discuss the case?

The Witness. She asked me how many witnesses I had, I said about eighteen or twenty, and she said she had three.

The Court. You didn't have eighteen or twenty?

The Witness. I did. I have got them now.

The Court. Did you meet her after the hearing on October 10th?

The Witness. No, sir.

The Court. After that did you meet her?

The Witness. No, I was told not to, and I didn't.

Q On October 10th you were here in court and heard her testimony with respect to what names you had called her the night before; did you hear what was said in open court with respect to the advice I should give you about meeting her again? A Yes, you and Judge Mylod said I could see my baby twice a week, and if there was to be a third—

Q Did you get advice from me that after that you were not to see your wife under circumstances where that same kind of testimony could be given again? A Yes.

Q And whatever your conduct has been since with respect to a refusal to see your wife, or to see your child, was that due to following out the advice of counsel? A Yes.

Q Has there been any change in your attitude as to a desire to see your child? A None whatever; I wish he was here.

Q When did you last see him? A Yesterday afternoon.

Q Where? A At my home. I have been going up and getting him in my automobile.

Q Coming down to the first attempt to see the child after—

The Court. Go back a moment; since Mrs. Hartley left in January, 1920, have you contributed anything to her support and the baby's support?

The Witness. I have been paying $25 a week.

The Court. I don't mean under the order of the court; prior to that.

The Witness. No, because I believed she was coming home.

The Court. Did she ever ask you for any money?

The Witness. No; I offered her money for the support of my baby but not for the support of her. She said, "If you start doing that, they won't allow me to come home; they want me to live there all the time."

The Court. By "they," you mean whom?

The Witness. Her people.

Q After the October session do you remember the first time that arrangements were made for you to see your child? A Yes.

Q Where were you to see it? A At either Mrs. Seeley's on Cleveland avenue, or Mrs. Roemer's in Chestnut street, Arlington.

Q She said she went to Mrs. Seeley's and you were not there; was that intentional on your part? A No, I didn't know it.

Q The second occasion what happened? A I got down there possibly quarter of two; Mrs. Stockton, Mrs. Seeley's daughter was there; Mrs. Seeley wasn't there, and Maria and Mrs. See came along and I was under the impression that Maria was to leave the baby there, or if there was a third party, with the third party, if agreeable to me, I told Mrs. Stockton. The baby came running through the rooms to me in the kitchen, and I said, "I certainly will not want to meet Maria with that Mrs. See there; as far as seeing my baby, I want to see my baby," and

they had hard work to get the baby—the baby wouldn't go to Mrs. Stockton, and he cried and screamed and he was given back to my wife, and her and Mrs. See went out. Maria went over to Judge Mylod and told him—

The Court. You don't know that.

Q There was some discussion between counsel, was there not, reported to you? A Yes.

Q Which resulted in your going to Mrs. Roemer's house? A Yes.

Q What happened the first time you went there? A I didn't know where Mrs. Roemer lived, and I went up there, and Pat Mahr, the contractor, was standing on the street and we got talking, and by that time Mrs. Hartley and Mrs. See came along, and she came up to me and said, "Where does Mrs. Roemer live?" I said, "I don't know." Anyhow, I put up my hand; I said, "Anyhow, I should not talk to you, not while that Mrs. See is with you. She is certainly one fine woman after what she has testified to in the Court of Chancery; you will have to find Mrs. Roemer; I don't know where they are." She walked directly to Mrs. Roemer's home, and by that time along come my son, Freddie, who was living there at that time and working in New York, and Mr. Roemer, and I took your letter out of my pocket and apologized that a thing of that kind had happened, when his wife was lying up there sick in bed. They went on down and went on inside; I told Mrs. Woods or Mrs. Roemer, I am not sure—I said, "I don't want to bother with Mrs. See." I went inside and took my baby upstairs, and I

went down and the baby didn't want to go back to them.

Q How did you know where Mrs. Roemer lived? A I saw them go in.

Q How did you know it was her house? A I didn't.

Q She was the mother-in-law of your son; didn't you know where she lived? A No, I never met her.

Q Did you know where your son lived? A No, sir.

The Court. She was your son's mother-in-law?

The Witness. Yes.

Q Was that place picked out because there was no particular close connection between you and she? A I knew nothing about her.

Q After that was there any trouble there? A None whatever.

Q You said you showed a letter to your son; that was the letter which I wrote you stating that the baby would be at Mrs. Roemer's house? A Yes.

Q The second time you saw her what happened? A She was there when I got there.

Q Was there any trouble on that occasion? A None whatever.

Q One, Mrs. See, testifies and also your wife, with respect to your following here on one occasion. A That is not so. I got on the car; I was talking to a man named Tom; I met a fellow on the corner and I talked to him and along comes the Harrison car and I got on it and went up home.

Q Did you get off the car after three or four blocks? A No, I was down home in less than five minutes; and the second time I cut across the lots and took a jitney at the Arlington station.

Q After your return from Asbury Park in 1917, did you order your wife to go upstairs and stay with her mother until you investigated this matter of her going out with Smith? A No.

Q Or did anything of that kind take place? A No, sir.

Q During that winter was there any occasion during which there wasn't sufficient coal in the house to heat it? A No, sir.

Q Did you sit around that winter with your overcoat on and your cap on? A No, sir; I am always working.

Q And with your cap on? A No, sir.

Q On Thanksgiving Day did you and your two boys go to Jersey City? A No, sir; not on Thanksgiving Day.

Q To your aunt's for dinner? A Not on Thanksgiving Day; no, sir.

Q Was there an occasion on which you went to your aunt's for dinner? A Christmas; yes, sir.

The Court. Where was Mrs. Hartley?

The Witness. She was invited, but she wouldn't go.

Q Why not? A Because she didn't like this woman; she had no use for her; after she lived here in the house she wouldn't speak to her.

Q Is that Mrs. Keer? A Yes.

Q Is she a relative of yours? A She was taking care of my boys, prior to my first wife dying, a couple of weeks.

Q Did you tell her to get to hell upstairs and eat her silk stockings, or words to that effect? A No, sir.

Q How did Mrs. Hartley come to sign the deed surrendering this property? A She wanted me to go in the real estate business; she said I wasn't the sort of a person to be in that business.

Q Was there any pressure bought to bear? A No, sir; this was suggested to me by her on Washington avenue, Nutley; we went up in my old Ford prior to her coming home, and she suggested to me going in the real estate business. She said, "You have always been lucky."

The Court. Was any promise made that if she signed the deed she would be compensated for her interest in the property?

The Witness. No, sir.

Q What is the fact? A She wanted me to get into the real estate business, buy and sell property, and eventually get out of the peddling business.

Q Was she told that she would be a member of the corporation? A No, sir.

Q Did she ask you, after she read in the newspaper, why her name was not in the corporation, and did you say, "Well, that is a matter of form; your name is in there, but it is not going to come out in the paper; surely you will take my word for that?" A No, sir.

Q No such conversation ever took place? A Yes, sir.

Examination by the Court.

Q When did you organize the Hartley Company? A I think prior to her going home.

Q How long prior? A Maybe a month.

Q You mean her going home in September or October, 1919? A Yes.

Q And where was it that you met her when she made the suggestion that you organize and go into business? A Washington avenue, Nutley; we sat there one whole afternoon.

Q How long after the child was born? A The child wasn't born then. 1918 the company was formed.

Q And she made the suggestion to form it? A Yes.

Q Did you go into the real estate business exclusively and drop the peddling business? A No. What real estate dealings I ever had has been through my going around town on the peddling wagon, and seeing little different places and buying and selling.

Q Aside from putting the property which you had in your own name, you didn't engage in it? A Yes.

Q You bought and sold as broker? A Yes, in a way I have interested people; in fact, I tried to do business with Judge Mylod's personal friends, George Gleason in South Orange.

Q Have you actually done a brokerage business? A Yes. Only for selling.

Q When was it? A In 1918.

Q How much was it? A $4,000 proposition; two and one-half per cent. commission.

Q How much is the amount you made in brokerage? A About $105.

Q Does that represent the amount of your real estate business in the four years? A In the brokerage end.

Further direct examination by Mr. Lane.

Q When did you give your wife the thousand dollars? A I don't remember the date.

Q About when? A The day we went down and she signed a deed in Van Doren's office.

Q What did she do with that thousand dollars? A Bought a fur coat; she put it in the Howard Bank.

Q Why did you give her a thousand dollars? A She always wanted a fur coat.

Q How long after she got the thousand dollars before she bought the fur coat? A After she went home to her mother.

Q How long? A Maybe a year or year and a half.

Q You gave her the thousand dollars because she wanted a fur coat? Can you explain why she didn't buy it when she got the money? A No, I cannot explain that; she was pregnant at the time, and I suggested to her that it would be better for her to buy a maternity coat, and I gave her more money to buy the maternity coat.

Q In addition to the thousand dollars? A Yes.

Q How much? A $50; she is wearing it today yet.

Q Do you remember when she was sick in bed for her confinement she asked for $5? A No.

Q That she asked you for $5, because the nurse didn't have enough clothes for the baby;

did something of that kind take place? A No, sir; that is not so.

Q Do you remember calling her up and telling her some months after the separation, that you had given a present to baby? A No, I might have talked to her on the telephone or told her on the street that I paid the doctor's bill or things of that kind; I don't remember calling her up on the telephone.

Q Did you tell her about giving a present to the baby? A No. Oh, yes, I have told her. I told her that I was buying ten shares in the Building and Loan for him; she knows that; she knows that I gave a present to the baby, yes. I started a bank account for the baby when he was born, and only about four months old, in 1919. I gave her $20 and $2 in pennies to take to the First National Bank and put in my baby's name; I have the day and date. She wanted that money after she went home to her mother's. Since then I have started another bank account. I also paid ten shares in the Building and Loan; also a thousand dollars on a life insurance policy; I also carry a $2,000 life insurance policy for my wife, taken out at this time that I am supposed to be abusing her.

Q When did you take that policy out? A November 16, 1917.

Mr. Lane. The record shows that Mrs. Hartley testified on page 33: "Yes, I had a gas range up until the month that I went home; our gas was shut off for non-payment of bill.

Q In January? A In January.

Fred A. Hartley, direct.

Q That was how long before you went home? A "I stayed there three nights without any light."

The Witness. That should be three days.

Q Was there any occasion when you refused to talk with your wife? A No, sir.

Q After she returned home from a vacation in August, 1917? A No, never at no time.

Q Did you ever tell your wife when she brought the baby to see you, that she wasn't fit to be the mother of a slut? A No, sir.

Q Or words to that effect? A No.

Q Did you ever call her a whore? A No.

Q Or son of a bitch? A No, sir.

Q Or a bastard? A No, sir.

Mr. Lane. I made a mistake in one of questions; I indicated that Mrs. Hartley had testified that he had called her these names each time and including the night before the trial; I am mistaken; she said that he did it every time with that exception.

Examination by the Court.

Q Why did you meet your wife so peacefully and harmoniously after she charged you with failure to support and provide for her? A Because I knew this was not her doing; it is not her doings. My wife has met me all over the city. I met her down in Clinton avenue; it is her people, it is not my wife; my wife's people couldn't pay $18 a month's rent in my house, but after I married their daughter they could move out and pay $35 or $45 and put in a telephone.

Q Did you help them to do it? A I don't know; it was very mytesrious.

Q What did you mean by that; did they get any of your money to pay any of the additional rent? A It is very mysterious; I have had money disappear out of my home.

Q Your wife has stolen money? A No, sir.

Q Who has done it? A I don't know.

The Court. I don't see any sense in the statement you make.

The Witness. It is a fact nevertheless.

Q Where did they get the money from? A I don't know.

Q Did you give it to them? A No, sir; I am paying $100 and have been doing it for thirteen months.

Q You think any of it comes from the alimony that your wife is receiving? A I don't know; I didn't say that.

Mr. Lane. Did she tell you in April, 1921, on the occasions when you would meet her, that the reason why she left you was because you didn't support her properly?

The Witness. No, sir.

Mr. Lane. And that she couldn't stand it again, and that was the reason why she wouldn't come back to you, or words to that effect?

The Witness. No, sir.

Q How did you come to fix on the sum of $20 a week as the allowance which you gave Mrs. Hartley? A That is the amount she asked for.

Q The amount you gave her for the maintenance of the home and for her own spending money, how was that sum arrived at? A That was all she asked for.

Q What did she say? A I don't remember that.

Q How much had you been accustomed to allow your former wife? A $20; that is all she ever asked for.

Q Was anything said between you and your present wife as to the amount of your present allowance, or did you continue it? A Nothing was said; we never had no words.

Q I don't mean a quarrel, but was there any understanding reached or any discussion as to the amount of money that would be required? A No.

Q Your wife when you married her had no experience in housekeeping? A No, but she became one of the best housekeepers there was.

Q When you started to keep house was there any talk between you as to how much would be required to run the house and for spending money? A No.

Q You gave her $20? A No, the first two weeks when she started to come down and keep house, she would say, "Let me have five or ten dollars."

Q Eventually how did you reach the stage when you gave her $20? A She said, "You give me $20," and she kept the figures and showed me the amounts that she had expended; that was the first two or three weeks.

Q That was done at your request? A No, sir.

Fred A. Hartley, direct.

Q As a result of your talk you could tell if she had any surplus out of the $20? A No, sir; I laughed over that.

Further direct examination by Mr. Lane.

Q At the time you told her that you had this box that has been referred to, and that she didn't want any children, did she tell you that you lied and that she never had said that she didn't want any children, or words to that effect? A No, sir.

Q You have five children by your former marriage? A I did have.

Q How many are living? A Two.

Q Just before she left in January, on January 15, did she tell you that if the gas didn't get turned on, or if you didn't give her the money to get the gas turned on, and wouldn't give her money to support herself and the baby, that she couldn't stand it any longer, and she would go, or words to that effect? A No, sir.

Q Did she say that to you? A No, sir.

Q Did she on that occasion beg you to change in any way? A No, sir.

The Court. You refer to the final rupture in January, 1920?

The Witness. Yes.

Q Do you remember an occasion when during this winter—I think it is, it must have been—she coming in with the baby and your asking her, "Where is the supper?" And she saying, "Where is there anything to eat; where will I get it from?" And you said, "You son of a bitch; did your people tell you to say that?" A No, sir; that is not so.

Fred A. Hartley, direct.

Q One other incident, and that is the visit you made to your wife's house, which resulted in the charge against you for atrocious assault; that was in July, 1920; will you tell what happened on that occasion? A Me and Mr. Absolent had gone to Vailsburgh to see one of his men—Mr. Absolent is connected with the General Electric Company and one of his men was hurt, and we went up to see him; on our way home there was a terrible thunder storm; we pulled in the Terminal Building, and while there I said to Mr. Absolent, "I guess I will telephone my wife;" I called my wife up on the telephone and asked how she was and how the baby was; she said, "Where are you, down in Newark?" I said, "Yes." She said "What are you doing down there?" I said, "I am in my working clothes anyhow." So she said, "Why don't you stop in on your way past here, if you have got Mr. Absolent with you?" I said, "I will providing I don't get my usual insult." On my way up Kearny avenue after the thunder storm was over, my wife was sitting in the window; I went in the hall with her and sat upon the bottom step; after a few minutes I heard the old familiar walk around upstairs—

Q Never mind that. A Then she said, "I guess I will go out and say 'Hello' to Mr. Absolent"; I said, "All right", and just as she went out, he said, "Hello, May," and she had been out there a few minutes when her uncle came past me.

Q Tell us what he said. A "You dirty lousy bastard, are you here again?" I said, "I know what you are; I know the likes of you." I walked out to the machine then; my

wife was talking to Mr. Absolent, and I said, "Well, Maria, I have got my usual insult;" she said, "Who, Uncle?" I said, "Yes, Uncle; he ought to be ashamed of himself, the friend that I have been to him."

Q What happened that night? A And by that he came across the street, and he said to me, "You dirty lousy bastard, you keep my name out of your mouth." I said, "You keep away from me, I know you and the likes of you;" he went into the hall and he came out again; as I thought he went upstairs; he came out again and came toward me, using worse language than that, "You lazy son of this and son of that," and wound up by saying, "I will shoot you," and as he did, I grabbed him and backed him into the hall and pelted him again.

Q How old a man is he? A I don't know his age.

Q Older than you? A Yes.

Q Is he an old man? A No.

Q He made a complaint against you, did he not? A Yes.

Q You were tried at Special Sessions?

Mr. Mylod. I object as not material to this case what happened.

The Court. I don't see that it makes any difference.

Mr. Lane. He was tried; it is a circumstance.

Q Notwithstanding that you still continued to see your wife in the same way? A Yes.

The Court. At the same place?

The Witness. Yes.

Q Did you meet the uncle after that? A No, he kept out of my way.

RECESS.

Q On the occasion that you and Mr. Absolent were at the house and this episode with respect to the uncle took place, were you intoxicated? A No, sir.

Q Was Mr. Absolent intoxicated? A No, sir.

Q Did you at the time that this August episode in going to Asbury Park and Ocean Grove, etc., took place, refuse to speak all the way down on the trip? A No, sir.

Q When you came back from the trip was there any discussion about your wife saying that she didn't want to go the last two weeks in August—didn't want to go the first two weeks? A She wanted to go the last two weeks.

Q Was there a discussion with respect to that? A There was not.

Q Did you raise any objection to it? A No, sir. I said she could go for the month.

Q Did you say to her, "Damn you, you are lucky if you go at all," or words to that effect? A No, sir; it has been my custom every year—

The Court. Strike it out.

Q You said with respect to the medicine there was no talk between you and your wife at all? A No, sir.

Q At the time, I mean, it was supposed to have been taken? A Not until I found out.

Fred A. Hartley, cross.

Cross examination by Mr. Mylod.

Q You discovered this box, Exhibit D. 6, about a year after your wife had left you the last time? A I should judge just about that time or a little after.

Q What did you ascertain about the box at that time?

The Court. What did you learn about it?

The Witness. I found out that it was—some medicine used to get rid of a baby.

Q To commit an abortion? A Yes.

Q From whom did you ascertain that that prescription was to bring on an abortion? A I went over to Petty's and got the prescription refilled.

The Court. Did you learn the purpose of it?

The Witness. I had that idea.

The Court. Do you know anything about it today?

The Witness. No, sir.

Q You had the prescription refilled? A Yes.

Q Did you have the medicine analyzed? A No.

The Court. He doesn't know anything more about it today than his own wife that that is the purpose of it.

Q Mrs. Hartley never told you that was the purpose of it? A No, sir. She asked me not to use it.

Q You told her you were going to use it? A Yes.

Q You did give it to Mr. Lane to use—you don't mean use the medicine, you mean use it in the trial? A Yes.

Q I understood you to say, Mr. Hartley, that from the time your wife left you the last time, January, 1920, down to the time the Court made an order that you were willing to support her and had offered her money; is that correct? A No, sir.

Q You never offered her money? A I offered her money to support the baby, but not to support her.

Q How much did you offer her? A I didn't specify any amount, because her answer was, "Then they will never want me to come home, you start in doing that."

Q She didn't want to take any money from you? A No, sir.

Q This offer to support your baby while your wife was living separate from you continued from January, 1920, until this Court made an order requiring you to support the baby?

The Court. Did you continue your offer to do so, or express a willingness to do so?

The Witness. Yes, at least ten or a dozen or fifteen times.

Q But you never sent any money? A No.

Q You know I wrote you a letter almost right before this Court made an order asking for support, don't you? A I think it was on May 4, 1920.

Q And you then conferred with Judge Archibald? A Yes.

Q You paid no support from that time on? A No, sir.

Q Although I had written two letters to you, asking you to send some money to your wife? A I did receive two letters from Judge Mylod.

Q And both letters suggested that you try and make some arrangement for paying some money to your wife? A Yes, they did.

Q Have you the letters? A Yes, I have.

Q Then why didn't you pay some money? A Because my wife wanted me to come down to you and get the $50 back which she gave you as a retainer.

Q Did you go? A No, sir; I said, "What a fat chance you got of getting it after a lawyer gets his hands on it."

Q You had not retained counsel then? A No, but I went down to Judge Archibald.

Q But you were always willing to pay your wife money and she would not take it? A No, sir.

Q The one reason, or one of the principal reasons why your wife refused to live with you, in your opinion, is that she refused to have any more children? A Yes, that and her people.

Q What had her people to do with that? A They wanted me to support the whole family and take them up to New Lawn avenue.

Q Did you ever support any of the family outside of your wife? A No.

Q Your wife wanted you to support them? A She wanted me to have them come up to New Lawn avenue.

Q Did you promise your wife to live there? A Yes, but not with her family.

Fred A. Hartley, cross.

Q Did you ever ask your wife to come and live in the New Lawn house with you alone? A Yes.

Q And she refused? A She wouldn't without I took the whole family and have her aunt as a servant.

Q She preferred to remain in the flat at 87 Johnston avenue rather than go to New Lawn avenue with you alone? A She stayed there.

The Court. Did she say so?

The Witness. No, sir.

Q As a matter of fact, you never asked her to go up and live at New Lawn avenue with you alone? A Yes.

Q Did you ever furnish the New Lawn avenue house? A I decorated it all the way through.

Q You rented it? A No, it was idle for over three months.

Q You didn't furnish it? A No.

Q How did you know that your wife's mother knew that you were going to marry her daughter? A She knew it; I told her.

Q Did you ever talk to Mrs. Ferris? A Yes.

Q Before the wedding? A Yes.

Q How long before? A The night that my first wife died Mrs. Ferris sat in my home in the rocking chair, and I was sitting on the other chair waiting for my boys to come from Jersey City, and her line of talk was: "I suppose you will be getting married again; who is the girl; do I know the girl; who is she; is she a light-haired girl or dark girl; it is my Maria?" "Yes, it is your Maria. I believe your daughter is a pure girl, a girl that loves her church."

Fred A. Hartley, cross.

Q Had you been keeping company with your present wife before your first wife died? A No, she was around me since she was a little girl.

Q The first time you told Mrs. Ferris that you were going to marry her daughter was the night that your first wife died? A If I ever got married again, I said it would be Maria.

Q Did you ever tell Mrs. Ferris after your first wife was buried, that you were going to marry her daughter? A Yes.

Q How long after? A A couple of weeks after.

Q Had you spoken in the presence of Mrs. Hartley about marrying her at that time? A No, I wouldn't say that.

Q When did you and Mrs. Hartley become engaged? A I gave her a cluster ring.

Q When did you propose to her? A About three weeks after my first wife died, and we set a date.

Q You say it was two weeks after, that you informed the mother that you were about to marry her? A Her mother knew it two weeks after.

Q How could she know it before you had proposed to the daughter? A Because she wanted me to marry her.

Q How do you know that she knew that the daughter would marry you? A She was on my trail all the time; she followed me around ever since she has been a little girl.

Q With the idea of marrying? A No, sir; I don't know; I wouldn't say that; she followed me around ever since she has been a little girl.

Q You told Mrs. Hartley's mother that you

were going to marry her daughter before you asked the daughter to marry you? A I said if I ever did marry.

The Court. You proposed to her three weeks after your first wife's funeral and told her mother two weeks after the funeral that you would marry her; is that right?

The Witness. About three weeks after, we set a date. I am not sure about the time I told Mrs. Ferris I would marry her daughter.

Q Mrs. Ferris wasn't at the wedding? A No; no one was at the marriage but the principals and two witnesses.

Q Any reason for not having Mrs. Ferris there? A None whatever. I met Maria and Miss O'Neill down here at the corner of William street and Broad.

Q What time of the day did you meet them? A About half-past six.

Q You took them in your car? A No, I engaged a limousine.

Q You had hired a machine? A Yes.

Q Who was with you? A George Headley.

Q He was your best man? A Yes.

Q Then you drove to St. Cecelia's Church in Kearny? A Yes.

The Court. How long before the ceremony had you actually arranged for it?

The Witness. Two weeks, I think Mrs. Hartley went up there. I went to see Father Conroy myself.

Q Why do you say it is two weeks; wasn't it two days? A No, I know it was about a week before that when I went up to Father Conroy

with Mrs. Hartley, and I know she had been there before that.

Q You were there two days before you got married? A About a week.

Q Then Mrs. Hartley lived with her mother upstairs from February 17, the day on which you were married, down to June 15, 1917? A Yes.

Q And without any reason or provocation whatsoever she came downstairs into your apartment and threw her ring at you? A Yes.

Q And said she was through with married life? A Yes.

Q No reason whatsoever for that? A Not as I could see; she was very temperamental.

Q Hadn't she asked you to please take her housekeeping prior to that time? A No, sir.

Q She hadn't done any work between those dates? A No, I was paying her board upstairs with her mother.

Q How much? A $10 a week with her mother.

Q How many weeks did you pay that? A All the time.

Q Until June? A Until June; from February until June.

Q What reason did Mrs. Hartley give that she wouldn't come downstairs and live with you? A The understanding that I had with her prior to that, it was so soon after Mrs. Hartley died, and she wanted to continue on working in the Prudential as a telephone operator, but she quit her job that Monday morning.

Q After you found out that she wasn't going back to work, what reason did she give for stay-

ing home and having you support her upstairs with her mother? A She gave no reason.

Q Did you ask why she didn't come down? A No.

Q You were satisfied to have her live upstairs? A No, I was making arrangements to move away to New Lawn avenue; she had been there and cleaned up that very flat herself.

Q Scrubbed it and cleaned it? A Yes, and I went up with her.

Q When had you completed your arrangements for moving and starting housekeeping there in the New Lawn avenue house? A That place was finished about the end of June.

Q She never went up there, did she? A No. I took her to New York and looked around at furniture; I went over to Gimbel's and different places.

Q You never bought any furniture since you married her? A Oh, yes.

Q Except a second-hand bed and some second-hand carpets? A Bomberger's don't sell second-hand goods.

The Court. What did you buy?

The Witness. A new brass bed, a new mattress, and bed clothes, which was all purchased in Bamberger's.

Q When did you buy those? A The day that she came home to me.

Q In June, 1917? A That was the first time she went away; a new ice-box down on Broad street.

Q You say your wife had a charge account in Bamberger's? A Yes.

Q Who kept the coin that goes with the charge? A She lost it.

Fred A. Hartley, cross.

Q How many bills did you pay that your wife contracted in Bamberger's? A I cannot recall.

Q Did you ever pay $50 during the entire time that your wife had a charge account there? A Yes.

Q You haven't any of those bills? A No.

Q How did you come to save these letters and this box and the fan? A I don't know; it is a custom, I guess. I can hunt up anything you ask me to.

Q You think you have the bills from Barberger's? A Yes.

Q You saved all these things? A Yes.

Q How long did Mrs. Hartley have a charge account in Bamberger's before the coin disappeared? A That I don't know. The account was only stopped the following April after Mrs. Hartley went away.

Q April, 1920? A Yes. I went down there and stopped the account.

The Court. When was it opened?

The Witness. That has been opened, I guess, for maybe ten or fifteen years.

The Court. The present Mrs. Hartley, when was the account opened?

The Witness. It was never closed.

The Court. You mean your former wife had the account?

The Witness. Yes.

The Court. And continued it?

The Witness. And continued it, yes.

Q Did you give the coin to Mrs. Hartley? A I did.

Q Did you ever find fault with anything she charged there at Bamberger's? A No, sir.

Q You did pay the doctor's bill for the care of your wife at the confinement? A Yes.

Q How long after the baby was born did you pay that bill? A A considerable time.

Q How long would you say? A I cannot say offhand; the baby was possibly nine months.

Q What was the delay that caused it? A Dr. Ballinger in my opinion didn't need to have that man doctor for my wife; I was dissatisfied from the beginning, and at the present time he owes me money.

Q Did he owe you money at that time? A Yes.

Q A baby carriage was also purchased for the baby? A Yes, Mrs. Hartley purchased it.

Q At Bamberger's? A I believe so.

Q And charged for? A Yes.

Q And the day you paid Dr. Ballinger you paid for the baby carriage? A I don't remember; I guess I did.

Q And that was eight or nine months after the baby was born? A Yes.

Q Why the delay in paying for the baby carriage? A I wouldn't say offhand why the delay.

Q Bamberger didn't owe you any money? A No.

Q You say you gave your wife $50 to buy a maternity coat? A Yes, sir.

Q Did you give her any money to buy the necessary equipment for the baby? A Yes.

Q How much? A I cannot recall; whenever she would want any extra money she got it.

The Court. You told me today that she had a credit at Bamberger's and had bought

the outfit before she left in July to go to her mother's for the confinement, and you had not given her any money except the $20?

The Witness. I didn't mean to—

Q What is the fact; did you give her any money for the child's outfit and the confinement? A Yes, I did.

Q When? A I cannot recall just when.

Q Prior to the confinement? A Yes.

Q How much? A Maybe $10 one time, maybe $20 another.

Q If you gave it to her, state it. A I cannot specify any amount.

Q You say you gave her money? A Yes.

Q You cannot recall the amount? A No.

Q To whom did the bassinet belong? You didn't buy it? A No. When the baby would have been brought home, he would have had everything.

Q Did you ever buy a crib for the baby? A He was never in my home.

The Court. He returned to your home in June and remained a year.

The Witness. In September.

The Court. And remained there how long?

The Witness. Until January 15; but during the meantime he would be up to her mother's two or three nights a week.

The Court. Was there any reason why the child should not have a crib?

The Witness. No.

The Court. Why didn't you get it?

The Witness. That was up to her to get it.

The Court. She had the privilege of doing it if she wished to?

The Witness. Yes.

Q At Bamberger's? A Yes, or any place.

Q You knew the account was closed and that no credit could be obtained there? A Yes, because when I went down there I explained when I stopped the credit; I stopped it in April after she left.

Q April, 1920? A Yes.

Q Then your wife and baby did live at your house 87 Johnston avenue from September, 1919, until the final parting in January, 1920? A Yes.

Q That is correct? A Yes.

Q Mrs. Hartley simply walked out in January, 1920, without giving any reason? A She didn't say anything to me; when I came home every night and went in to get my coffee, and Mrs. Hartley was standing in the kitchen.

The Court. Did she leave without giving you any reason?

The Witness. Yes.

Q Didn't she state that she was through with married life? A Yes.

Q That was the reason she gave? A Yes.

Q And was it the only reason she gave? A She didn't want to have any more children.

Q Did she say that in January, 1920? A No, not January.

Q How many times did she say that she didn't want any more children? A On numerous occasions before that and since.

Q You wouldn't say she said it that morning when she left in January, 1920? A I was in New York when she left; it was five o'clock in the afternoon when I got home.

Q She wasn't at the house then? A Yes, and gave me the key and said she was done with married life; I followed her half way up the street and told her to come back and bring the baby home.

Q Going back to your first visit to Asbury Park, that was in June or July, 1917? A That was in July.

Q Is that the time you say you slapped her in the face with the fan? A No.

Q When was that occasion? A When I slapped her in the face with the fan, that was just before Labor Day.

The Court. 1918, wasn't it?

The Witness. No, 1917.

Q When did your first wife mention any dislike for your two boys? A After I had married her.

Q Before she came home to live with you at all? A I wouldn't say that; no, after she came down to live with me.

Q What was the first occasion that your wife said that she liked them? A She never said that; it was her duty.

Q What was the first thing that she did say that indicated to you that she was averse to living with your two boys? A Acted distant toward them and didn't treat them any too cordial.

Q Did she scold them? A No.

Q She didn't complain about them? A Petty little things.

Q When did she first complain to you about your two boys, the first time? A I cannot just state the time.

Q It wasn't at the time of the Asbury Park trip, was it? A No, she had complained before that.

Q Is that the day that you started away from Asbury Park with your two boys and left your wife at the hotel in July? A Yes—no, that was August, not July.

Q In August it was your boy that asked you to go back and get Maria? A Freddie and Henry, both of them.

Q On what occasion did your wife grab the roll of bills? A That was on the occasion of going down—when we went down to make arrangements to get rooms down in Asbury Park.

Q That was when you returned after the trip to Asbury Park, on or about July 3rd or 4th? A Yes.

Q That night at your house? A Yes.

Q She made a grab for your roll of bills? A Yes.

Q What did she say when she tried to take your money? A I said, "This is about enough;" I said to my two boys, "Pack your grips; you never saw anything like that between me and your mother and you are not going to see it."

Q What were you doing with the money? A I had a roll of bills in my pocket.

Q She put her hand in your pocket? A Yes.

Q You testified that her people couldn't pay $18 a month rent to you, but now they can pay $30 or $40? A Yes.

Q And you missed money in your house? A Yes.

Q Did you think that Mrs. Hartley's people robbed you? A I wouldn't say that.

Q Why do you connect the two things together? A It looks peculiar that they could never do it before I married her.

Q You don't think that your wife ever stole a roll of bills from you? A No.

Q Did she say she wanted money? A No, she wanted to go back to Asbury Park right then and there; her mother was standing there and saw the whole thing. I have the pants here, if you desire to see them.

Q Is that the time you were cut on the face with the ring? A Yes. That was an accident; she did not do that intentionally.

Q Miss O'Neill that you say you forbid her to go with, is she the Miss O'Neill that was a witness at the marriage? A Yes.

Q You didn't think she was a fit companion? A According to what she told me about her; I didn't know her myself.

Q The night that you slapped your wife in the face, her sister Sadie was pounding on the door to get her clothing? A No, sir; that isn't so.

Q On what occasion did Sadie pound on the door and want to get her clothing out of her room? A She came in the door and took her grip or whatever she had and went.

Q Was that at the trip you made to Asbury Park in July or the one in August or Labor Day? A In August; we didn't stay any place when we went down in July; we drove down and drove back.

Q Why did you start away from Asbury Park without your wife? A I was upset and I was sorry, and I hadn't gone a block before I was sorry I struck her.

Q When you reached Kearny did any trouble occur that night? A Yes, when we got to Johnston avenue, Miss Sadie Ferris and her mother and Maggie started in and accused my boys of being dirty little tattlers and brats.

Q You got excited again? A I said, "This is a fine how-do-you-do. Boys, pack your grips," and I took them down to Mrs. Seeley's in Harrison; they had never been accustomed to that, and I didn't want them to ever see it.

Q It is true that you had your Christmas dinner in 1917 and your Thanksgiving dinner during that year—1917— A No, I had my Christmas dinner with Mrs. ———— over in Jersey City—not my Thanksgiving dinner.

Q I didn't finish the question before you answered it. How do you know I wanted to ask you as to whether you had Christmas dinner with your wife? A I remember reading through her testimony, the questions and answers.

Q Did your wife ever object to your boys being in 87 Johnston avenue, and said they should leave? A No, sir.

Q Do you recall your wife's leaving the house on June 13, 1918? A Yes.

Q You told her to get out that night? A No, I was in New York when she did get out; how could I tell her that?

Q This is June. A June 13, 1918.

Q That night, or the argument that ensued about that time, Mrs. Ferris you say was the

guilty one of the whole crowd? A On the fourth of July.

Q You never had anything against Mrs. Ferris? A Personally, no.

Q She never found any fault with you? A No, I was the finest fellow in the world.

Q She lived in that house which you owned? A Yes.

Q For ten years before your first wife died? A Yes.

Q Has she changed recently? A Positively, a whole lot.

Q How has she shown that to you? A In various ways.

Q Name the ways. A Calling me a son of a bitch and everything else.

Q Did Mrs. Ferris, this girl's mother, ever call you that name? A Yes, and when I went back to get my wife after hitting her uncle, she raised the middle window of the bay window where they were living, and said, "If you come here, I will kill you." Out in the street I went half way up the hill and the lights went out, and I said, "Watch your step," and back I went.

Q That was the night that Mr. Absolent was with you? A Yes.

Q That was the night you punched her uncle? A Yes.

Q You know he is over sixty years of age? A I don't know how old he is, and I would do it again tomorrow, under the same conditions.

Q In your opinion is the man that you punched that night over sixty years of age? A No, sir.

Q You don't think so? A No, I don't know.

Q Have you any opinion? A Possibly fifty-two or fifty-four, but not sixty.

Q When you came back from Asbury Park in September of 1917, your wife continued to live with you until when? A She stayed with me right along until June 13.

Q And you did the buying of the supplies? A No, she had an account at Reardon's butcher store.

Q You were not making any weekly allowance at that time? A I was.

Q Do we understand this, that from the time that you and your wife began housekeeping, you gave her $20 every week? A Every week; never missed one week.

Q When she returned to your home in September, 1919, did you make any new arrangement for her support? A No, no new arrangement whatsoever.

The Court. Did you realize that the child would involve additional expense when it would come?

The Witness. Yes.

Q After the child was born? A Oh, no; I did not.

Q You didn't realize that it would make more expense or you didn't make any allowance? A No, he wasn't there hardly enough; she wanted to go home.

Q She stayed until January? A No, I didn't make any; I wasn't asked to.

Q Will you tell us what clothes you ever purchased for your wife and paid for? A I never kept track, but I say there wasn't a better

dressed woman in the Town of Kearny; she had clothes.

Q What clothes did you pay for? A All her clothes; and she had clothes from Hahne's, Bamberger's, the Bee Hive, the French Shop, shoes from the Queen Quality.

Q Did you buy them? A No, I gave extra money every time she asked me for money.

Q Then you did give her money in addition to the $20? A Every time she wanted it, she could have it.

Q I thought you said to the Court that you thought that she could get along with $20? A For the running of the house; I didn't say for clothes.

The Court. I understood it was with the exception of the credit she had at Bamberger's.

The Witness. Then I didn't mean that, because she often had money from me.

Q Do you recall your wife buying a $19 dress at Bamberger's? A No.

Q How much have you given her for her outfit since you married her, aside from the thousand dollars and fifty dollars? A I never kept no track.

Q Give me a general idea? A Right after she was married, I remember her going to New York and buying a tailor made suit. I don't know whether it was $50 or $60—she got a fox fur, a pair of suede shoes, and every little while it would be that kind of stuff.

Q Did you pay for it? A I gave her money; yes, sir.

Q In addition to the $20 a week? A Yes.

Q Any things come to the house charged to you? A No, sir.

Q Therefore you haven't any bills to show what bills you paid for clothes? A No.

Q As a matter of fact, didn't the $20 a week arrangement take place in September, 1918, when your wife returned from her mother? A Not from the beginning of my married life, but within a few weeks, she always had what she asked for.

Q The first time Mrs. Hartley went to her mother was June 13, 1918? A Yes.

Q And returned to your home when? A The latter part of August or first part of September, 1918, the same year as she went away.

Q Did you make any promises to her then? A No, there was nothing for me to promise.

Q Under what circumstances did she come back? A After July 4th when I met her we went up to Passaic; I took her riding; I was meeting her right along, and the day that she really did come back home, I met her on Sunday afternoon down at Branford place and Broad street, and drove down to Midland Beach; we came through Staten Island and stopped at the Elks' Club in Elizabeth and had our supper. She came home with me and stayed with me that night; I had to get up early; it was Monday morning; I had to pay my bills in the market, and any little odd jobs, and I had made arrangement with her to be at her mother's home, and meet her; she was to be ready, and that day we went down to Perth Amboy to the Elks' Convention; we stayed at the Packer House over night, and I brought her back the next day, which was Tuesday.

Q To your home 87 Johnston avenue? A No, I made arrangements with her to go home to her mother, and I met her on Wednesday and we went to Bamberger's, and went down here on Broad street and she wanted an ice-box, and we bought it, and went up to Belleville avenue and bought three nice rugs.

Q And the next day she came home? A That day she came home.

Q Leading up to the final separation in January, 1920, had you continued to pay her the $20 every week? A Every week.

Q Never defaulted? A Not one week.

Q On what day did Mrs. Hartley sign the deed for all your real estate to the F. A. Hartley Realty Company? A I don't remember the date.

Q How long after you gave her the thousand dollars did she sign the deed? A The same day.

Q And after she signed the deed placing all the real estate in the F. A. Hartley Realty Company, didn't you ask her to buy stock in the realty company? A No, sir.

Q Did you have stock for sale in the realty company? A No, I did not.

Q You never said to your wife, "You ought to put that thousand dollars in the stock of the realty company"? A I gave it to her.

Q Did the fact of giving your wife this thousand dollars on this day have anything to do with signing the deed? A Not a particle.

Q You didn't tell your wife when she signed it, that you were going in the real estate business? A She knew it.

Q Then you did tell her that? A No, she knew it; it was at her suggestion.

Q Did you tell her on the day you took her down to the real estate man to have her sign the deed for all your real estate, that you were going in that business? A No.

Q Did such a conversation ever take place? A No, sir.

Q Mrs. Hartley knew you were in the peddling business and fish business long before she married you? A Yes.

Q She never objected to it before you were married? A No.

Q But as soon as you got married, she wanted you to get out of the business? A Yes, eventually; she didn't just state when. I haven't peddled in two years since she left me, because I couldn't do that and keep my home together.

Q Did you tell your wife that she was going to be a member of the corporation? A No, sir.

Q Did you tell your wife that there were certain corporation papers to be signed? A No, sir, I did not.

The Court. Did she in fact sign the certificate of incorporation?

The Witness. No, sir.

Q She knew nothing about the corporation? A No, sir; she knew it was being formed.

Q When did you first tell your wife that you were forming a real estate corporation? A She suggested it to me up on Washington avenue.

Q (Last question repeated.) A At that time. At the time we spoke about me going into the real estate business, I said, "Do you want me to form a company; everything I have is tied

up"; she said, "I will do anything you want me to do."

Q After that, when you finally decided to form a company, did you tell her? A We decided it then.

Q And she knew it in that way? A Yes.

Q You told her she would be one of the owners in the company? A No.

Q You told her she would be one of the incorporators? A No.

The Court. Did you know that she had an inchoate right of dower in your property at the time you incorporated the company?

The Witness. Yes.

Q Do you know if she knew that? A Yes.

Q How do you know that? A From her conversation.

Q What did she say? A She said, "Will I be all right afterwards?" I said, "Maria, can't you trust me?" She said, "I trust you with anything." I said, "If I want to fool you, I would have done it before I married you." She said, "I don't care about that." Judge Mylod, this is a matter of principle; wrong accusations have been made against me, which is not so. My name is as good as any man's in the State of New Jersey, and there isn't a statement of truth in those affidavits.

Q At the time this real estate company was organized, it was organized for the sole purpose of acquiring title to your real estate? A And doing business.

Q And the only business the F. A. Hartley Realty Company ever did was to take title to your real estate? A Oh, no.

Fred A. Hartley, cross.

Q On transactions of the F. A. Hartley Realty Company? A I said I did collecting.

Q One commission? A Yes, and tried to work others.

Q You were incorporated in September, 1918? A Yes.

Q And at the time you filed the papers of incorporation, your wife was living with her mother? A It was at her suggestion; I guess she was, yes, sir.

Q Then you brought her back home? A Yes.

Q And was home for a couple of months and you were very kind to her and lived very happily together until the deed was signed? A We lived happily together all the time.

Q And the time the deed was signed you made her a present of a thousand dollars? A I did.

Examination by the Court.

Q Why did you select that particular day to give her the thousand dollars? A I thought if she was good enough to do that for me, I was good enough to give her a thousand dollars.

Q What had she done that day particularly for you? A She signed that, and I thought that anyone that was good enough to do that—

Q What was there about her signing that was good enough in any way; how did you regard it as good to you? A I thought it was fair she should do it.

Q You realized she was giving up her dower? A No, I thought she had complete faith in me.

Q To do what? A To do what she did do.

Q Faith in you to do what? A To sign that I go into the real estate business. I don't care about it now.

Q About what? A About everything; this is a matter of principle; I have been accused of something that is not so.

The Court. I don't want a speech from you; I only want the facts.

Q You say your wife had been at you for months for a fur coat? A Yes.

Q You selected a particular time when she assigns all her interest in your real estate, so to hand her a thousand dollars, which she was to use for a fur coat and which she did not use for nearly ten months after to buy the coat? A No, not for ten months or a year.

The Court. I cannot reconcile your statement with her interest to have a fur coat and the payment of a thousand dollars on the day she assigned away her interest in the property, with your explanation.

The Witness. She could have it that day or before or after.

Q She hadn't anything to show about it; you had the money, why didn't you give it to her before? A I gave it to her, yes.

Q Did you give her a present of any other large sum of money at any time, either before or after? A No, I don't say I did.

Q Why didn't you? A She never asked me.

Q Hadn't she wanted other things beside the fur coat? A No, sir.

Q Never wanted anything else but the fur coat? A Not a thing; everything she wanted she got.

Fred A. Hartley, cross.

Q How much did she spend for the coat? A I don't know.

Q Didn't she tell you? A No, she didn't tell me she had it.

Further cross examination by Mr. Mylod.

Q Did you ever go to Dr. Ballinger? A No, sir.

Q You never spoke to him in your life? A Yes.

The Court. Tell the truth; when you give these hesitating answers, you are not telling the truth.

Q Did you ever go to him and get a prescription that you brought home to your wife and asked her to have filled? A No, sir.

Q Did you ever go to Dr. Ballinger and talk to him after your wife became pregnant regarding your wife's condition? A No, sir.

Q Did you make your wife go to Sam Smith, in your presence, and ask Sam if there was anything between herself and Mr. Smith? A No, I wouldn't believe that.

Q Did you ask her to do that? A No, sir.

Q Do you recall compelling your wife to call up a party named Wolff shortly after you were married? A No.

Q Do you know a man named Wolff? A Yes.

Q Were you present in your home any night when your wife telephoned to New York to a Mr. Wolff? A No, I was in my home when someone by the name of Wolff telephoned to my home and wanted to make an appointment with my wife, but I do not remember her calling up Mr. Wolff.

Fred A. Hartley, cross.

Q Do you recall shortly after you were marrier, your wife saying that someone telephoned to her from the Robert Treat? A Yes.

Q And said, "I am a friend of your friend Mr. Wolff, and I would like to meet you at the Robert Treat Hotel"? A Yes.

Q And she told you that when you came home? A Yes.

Q And after that you said, "You must call up Mr. Wolff, in my presence"? A. No, sir, I did not.

Q But she did call him from New York and ask him if he had anyone call her up? A I don't remember that.

Q Were you suspicious of your wife? A No, no.

Q Were you suspicious that your wife was misconducting herself at Asbury Park? A No, sir.

Q When you saw this fan that is marked "Clayton, Sea Girt", didn't you have suspicions of your wife? A No.

Q Why did you slap her in the face? A Because she would not give me any explanation.

Q Is that the only time you ever slapped her? A Yes, the only time I ever lost my temper with her.

Q You never choked her? A No, sir; never laid my hands on her.

Q Did you tell her, only a few weeks ago, up at Mrs. Roemer's when she went there with the baby, in the presence of Mrs. See, that she was a liar? A No, I did not.

Q Did she say, "I am sorry," to your son Freddie, "I am sorry, Freddie, I didn't know your wife was sick; I didn't know anything about it;" she said that? A Yes.

Q And didn't you say that she was a liar, that she knew all about it? A No, sir.

Q When you come to get the baby down in front of Mrs. Ferris' house, you stopped your machine out in the center of the street? A I have at times.

Q All the time? A No, sir.

Q Why didn't you pull over to the sidewalk so your wife would hand you the baby? A I have done it; I did it yesterday.

Q Why did you stop in the center of the street? A There has been snow and ice which has been thrown in the gutter.

Q You know as a matter of fact you had stopped in the center of the street as a rule and your wife carried the baby? A She has done that.

Q And when she put her foot on the step to help put the baby on the seat, you told her to get to hell off the truck? A No, sir; I have always taken the baby and lifted him.

The Court. Why didn't you get off the truck and go on the sidewalk and take the child?

The Witness. Judge Mylod, when he told me to go there—they wanted me to go into the home, and I said I would not go into the home, because I was afraid they would frame me up in some manner, and Judge Mylod said, "You take someone with you, and the baby will be brought right down to the truck and placed in the truck," and I did that for three or four weeks. I took a man with me; and that has continued ever since my wife brought the baby down and set him on the truck, and I took him off her hands.

Q Why couldn't you walk from the truck to the sidewalk and get the baby? A I don't know; no particular reason. I didn't want to leave my truck standing there, because I was afraid of going there because something might happen.

Q When there was snow and ice on the sidewalk you let your wife carry the two-year-old child with an automobile robe from the door right out to the center of the street over the snow and ice? A Yes. My wife stood in the middle of the street waiting for me when I came up there.

Q You say your wife kept books of account for a time covering the $20 that you gave her? A That was for a couple of weeks.

Q You provided the book? A No.

Q You told her that she should keep a record of what she did with the $20 a week? A No.

Q You say you always gave your first wife $20 a week? A Yes.

Q How many years had you been giving her $20 a week? A All my life.

Q From the time you were married? A Yes, practically.

Q How long were you married to your first wife? A About twenty years.

Q You began giving her $20 a week, and the week she died she got it? A Oh, no.

Q Did you ever vary the amount? A No, never.

Q You can recall now that for twenty years you gave your first wife $20 a week? A At all times.

Q And never gave her first ten, and then fifteen, as the price of living went up? A No, sir.

Q You always did it and never missed a week? A No.

Q You never missed a week giving your present wife $20 a week? A No.

Q Not a single week? A No.

Q Why didn't you give it to her from January, 1920, when she went to her mother's, until the Court made an order January, 1921? A I didn't think I should.

Q Why didn't you send something for the support of your child? A Because she asked me not to. She said, "If you start in doing that, they will never want me to come back home to you."

Q You knew that she was offering to come back home? A No, I was believing that she was coming back and kept my home for that reason.

Q For a year? A Two years.

Q You still believed that after this suit was started? A You asked me to take her home.

Q Do you believe that now? A I have done everything I could do.

The Court. Did you say Mr. Mylod asked you to take your wife home?

The Witness. Yes.

Q What did you say? A I said, "My home is there." She wanted me to move up to Arlington and move there with her. He asked me that about the fifteenth or sixteenth of October.

Q Did you very sincerely ask your wife to return to you since January, 1920? A Not only once, but at least fifty times.

Q You wrote her this letter of October 12, 1920? A Yes, after becoming discouraged at her actions.

Q That letter was written by a lawyer and you signed it? A Yes, I went down to Judge Archibald.

Q Did he write the letter for you? A He dictated it to the stenographer.

Q You signed it? A Yes.

Q Did he express in the letter your feelings at the time? A Yes.

(Exhibit C. 2 read to the witness.)

Q Prior to sending that letter you had received letters from me? A I had.

Mr. Lane. Where are those letters?

The Witness. They are in my grip.

Q May 4th is the first one; did you really mean what you said? A Yes.

Q May 4, 1920 (letter read)? A I received that letter.

(Letters marked Exhibits D. 9 and D. 10.)

Q What did you do after receiving it? A I followed my wife's advice to a degree.

Q What was that? A Pay no attention to it, that I could go down and get the $50 that Judge Mylod got from her as a retainer.

Q On May 29 another letter was sent to you; "I wrote you under date of May 4th regarding the proposed separate support and maintenance suit, &c." What did you do after you got the second letter from me? A I went down to see Judge Archibald, and he went over and saw you, I believe, in your office.

Q But you didn't see me; I wasn't in the office when you came in? A I wasn't there.

Fred A. Hartley, re-direct.

Q After the child was born, how often would you say that you went down to see the child while it was down at Mrs. Hartley's mother's? A Every day.

Q How long a time did that continue every day? A Until she came home.

Q She was there from the day the child was born, February, 1919, until when? A In August; I went there about four or five weeks.

Re-direct examination by Mr. Lane.

Q Was anything said by your wife after her return from her mother's with respect to having a crib for the baby? A No, sir.

Q How often was she at her mother's house between September, 1919, and January, 1920, when she finally left? A All the time; every day in the week.

Q Were there any nights during that period of time when she stayed at her mother's all night? A Two or three nights a week; that was her custom.

The Court. What did she do during that period from September to January?

The Witness. She would go home two or three times a week and stay home.

Q What was her reason given for going home? A She wouldn't give no particular reason; she wanted to go to her mother's; she would take the baby in the afternoon and when she would come down to get my supper, she would say, "Do you care if I go back; do you care if I stay home tonight?"

Q With respect to this last meeting, the last arrangement with respect to the getting of the

child or your seeing the child, were those arrangements made directly between you and Mr. Mylod? A Judge Mylod called me up.

Q Were they made directly between you and Mr. Mylod? A Yes.

Q I didn't intervene in that at all? A No.

Q The arrangement, whatever that was, was made between you and him? A Yes.

Q And when you stopped in the middle of the street, or stayed on your truck, did you do it, assuming that you were carrying out the arrangement which had been made? A Oh, no; when I would get to the corner of Bergen avenue, as yesterday—Mrs. Hartley lives 400 feet from the corner of Bergen avenue and Chestnut street, on Chestnut street—when I got to the corner of Bergen avenue, she was out in the middle of the street and I pulled up alongside of her and took the baby.

Q Did the arrangement contemplate that the baby was to be delivered to your truck? A Judge Mylod said the baby would be brought from the stoop to me, or anyone I would send. I said I would not even go up on their stoop.

Q Did you adopt that course in order to put your wife out? A No.

Q Was there any desire on your part, or was the purpose of the incorporation of this Hartley Company, to cut out your wife's dower? A None whatever, Mr. Lane.

Q Was that the purpose of the incorporation? A No, sir.

Q Did she demand the thousand dollars? A No.

Fred A. Hartley, re-direct.

Q When she was going to sign the deed, was there any talk of any thousand dollars? A No, sir.

Q Did she accept the thousand dollars as a consideration for her dower? A No, sir; there was nothing said about it.

The Court. Did she get the thousand dollars before she signed the deed or after?

The Witness. I think it was before.

Q In cash or check? A In cash. I went into the First National Bank—

Q Who drew the deed and took the acknowledgment? A Charlie Cook.

Q And was the money paid in the presence of Mr. Cook? A I gave it to her on our way down, on Fourth street.

Q Between your home and office, when the papers were signed? A I don't know whether Mr. Cook is here; we can get him here.

Q Was there any idea that she was surrendering her dower? A Absolutely not; no, sir.

Q You said to the Vice-Chancellor that one of the reasons that induced you to make that present then at the time was because you thought that she was doing something for you? A Yes.

Q What do you mean? A Having faith in me.

Q Faith in what? A By signing the deed.

Q Faith that you would do what? A That I would do right.

Q What did you mean? A Not attempt to do her out of her dower. Maria has always claimed that every dollar I got I worked hard for and earned; no one can deny that.

Fred A. Hartley, re-cross.

Re-cross examination by Mr. Mylod.

Q You did do her out of her dower? A She can have it this minute, Judge Mylod, as far as I am concerned, but let her come up here and tell the truth.

Q But you have sold all the property except one house? A Yes.

Q And shortly after the realty company took title to the house, you put an $8,000 mortgage on it? A Yes.

Q Did you put a second mortgage on it, too? A No.

Q What do you mean that she can have her dower right? A Anything within reason with me she can have; I have kept a $2,000 life insurance policy in her name, which I can produce, if my intentions have been wrong toward her.

Q Where is the policy? A Right here (producing same).

The Court. What is the date of it?

Mr. Mylod. December 26, 1917, New York Life Insurance Company.

The Court. $2,000, she is the beneficiary, assured Fred A. Hartley, to Maria A. Hartley, wife of the insured, with the right on the part of the insured to change the beneficiary in the manner provided.

The Witness. Yes, sir.

Q Didn't you, as a matter of fact, when this policy was taken out, in the presence of your wife, ask the agent if you didn't have the right to change the name of the beneficiary? A Certainly not.

Q But you know that you do have the right? A It tells me on the back of the policy.

Q You knew it at the time you got this form of policy? A I have had this kind of policy all my life.

Q Have you changed it? A No, sir.

Mr. Lane. I offer it in evidence.

(Marked Exhibit D. 10a.)

Q But you intended to change this beneficiary? A No, sir; I did not.

Q Don't you know any time you feel so disposed, without any action on the part of your wife, you can change it? A Yes.

Q Without her consent you can put your son's name in, or anyone else? A Yes, or my baby's name.

Q Yet you have no intention of doing so? A No, sir. If I do, it will be to my baby—her baby.

Q You say she went to her mother's and stayed all night? A Yes.

Q Did she ever go and stay at her mother's at your request? A No.

Q During part of the time you lived with her, you were exalted ruler of the Elks? A No, sir.

Q But you were out a great deal nights in connection with politics or fraternal organizations? A No, sir.

Q Did you ever tell your wife that you would be out very late and you thought it would be better for herself and the baby to stay with her mother all night? A No.

Q Every time she stayed at her mother's, she stayed against your will and without your consent? A I wouldn't say that.

FRED S. ABSELON, sworn for defendant.

Direct examination by Mr. Lane.

Q Where do you live? A 19 Burnett street, Newark.

Q What is your business? A Steward, General Electric Company.

Q What was your business in July, 1920? A The same.

Q Do you know Mr. Hartley? A Yes.

Q And Mrs. Hartley? A Yes.

Q When did you first meet Mrs. Hartley? A About two and a half years ago.

Q Under what circumstances? A I called at his house one Sunday, we were going out to see about getting lobsters; I went to him to make arrangements for them.

Q Did you have dinner there? A Yes.

Q Had you met Mrs. Hartley after that, between that and July, 1920? A I was to the house two or three times.

Q So that you knew her? A When I saw her, yes, sir.

Q On July 12, 1920, were you with Mr. Hartley in the Terminal Building in Newark? A Yes.

Q What happened there? A I had one of my cooks in the factory who was sick, and Mr. Hartley and I went out to get another cook, and one of my men made an appointment to meet me at the corner of Park Place, and the storm came up, and we went into the Terminal. We were stuck there for an hour, and Mr. Hartley said he would telephone to his wife. I lived up in Kearny avenue, and when I went home, we stopped at his home.

Q What time of the day was this? A After seven o'clock at night; it was dark.

Q When you got up to their home, what did you do? A I sat outside in Mr. Hartley's car.

Q Where did Mr. Hartley go? A Into the house.

Q Did you see Mrs. Hartley there? A Not at that time; not until some little time after that, because his car was there and he was in the hallway.

Q When did you see Mrs. Hartley? A She came out to speak to me in the car.

Q Where was Mr. Hartley when Mrs. Hartley came out? A Still in the hall.

Q Can you tell me what the conversation was in that car between you and Mrs. Hartley? A Unfortunately, about two months before that I lost my wife, and I felt sorry for both of them; Mrs. Hartley always seemed very good, and I said why didn't they make up and live together again; I had been a widower for two months, and I know it is darn blue being alone, and I thought they could make it up.

Q Did you tell Mrs. Hartley this? A In the conversation, yes; I think Mrs. Hartley knew about it.

Q Did you tell her what you are telling us now? A Yes.

Q What did she say? A I took from her remarks that she was going back to him.

Q Tell us what she said. A It was just a general conversation, the way I explained it to you.

Q Whatever she did say, left you with the impression that she was going back and make up with him? A Yes.

Fred S. Abselon, direct.

Q Did she make any complaint about her husband to you, upon that occasion? A I never heard her complain.

Q Did she then? A No, sir. I cannot recall that.

Q You cannot recall any complaints? A No.

Q When you were at the house, did you observe their conduct? A I did. I never seen Mr. Hartley leave the house yet he didn't kiss her good-bye when he went out; I always thought it was very nice of him, and gave him credit; he never left the house he didn't act as a man to her.

Q Were you there when the episode of the uncle took place? A Yes.

Q What happened with respect to that? A I sat in the car; I didn't see it take place, but I heard the crash.

Q What do you know about it? A Mrs. Hartley and I were talking; Mr. Hartley came out and said about getting some insult, and a gentleman walked across the street I never saw before, and never seen him, and they came back again, and while Mr. Hartley and I was talking this gentleman passed some remark, and Mr. Hartley went up to the doorway at him, and the car was this side of him; I didn't see Mr. Hartley hit him.

Q Did you hear the remark that the uncle made as he passed by? A Some words were said.

Q Did you hear what the words were? A Not that I can recall.

The Court. What caused the crash?

The Witness. I was told afterwards.

Fred S. Abselon, cross.

Q You didn't see what it was? A No.

Q Where was this man, whoever he was, at the time the remarks were passed? A He had come from back across the street and stood in the passage-way or doorway.

Q Where was Hartley? A Standing at the car, out in the gutter, probably ten feet from him.

Q And these remarks were made by this man as he passed? A No, he stood in the doorway.

Q Didn't he make them loud enough for you to hear what they were? A He did, yes.

Q What were they? A About a son of a bitch, keep my name out of it, or I will show you.

Q As a matter of fact was anything said in your presence that drew any such provocation that you know of; was anything said that induced this man to make these remarks? A No, sir.

The Court. So far as you heard?

The Witness. Yes.

Q You were busy with your conversation with Mrs. Hartley? A Yes.

Q Did this crash interrupt your conversation, or did it put an end to the conversation? A Yes.

Q You left Mrs. Hartley? A She went in and went upstairs.

Q You left Mrs. Hartley with the impression she was going to return to her husband? A Yes.

Cross examination by Mr. Mylod.

Q You had seen Mrs. Hartley twice before that night in your life? A Two or three times; it might have been four.

Q You went with Mr. Hartley twice to his home while he lived with his wife? A I cannot say as I did; I went up unexpectedly one day.

Q Were you sober that night? A I certainly am, under the Volstead Act; I would like to get anything.

Q That is the best answer you can give me? A I was sober.

Q Where were you looking for this cook? A I made an appointment for a man to meet me at the corner of Park Place, and have him come down to see me.

Q You are doing business with Mr. Hartley now? A Yes.

Q You are still the steward of the General Electric Company? A Yes.

Q You were doing business during all these years you have been testifying about; he was selling fish to the General Electric? A He did that for years, before even I went with the General Electric; he dealt there years before I went there.

Q How is it Mr. Hartley happened to think of calling up his wife that night; did he say? A No more than he had a car and I happened to live a half a mile beyond that.

Q Did he give any reason why he called his wife? A No.

Q Did you say to Mrs. Hartley that night, "You may think I am drunk, but you ought to see Hartley"? A I should say certainly there was nothing of the sort.

Q Did you or Mr. Hartley have a drink at all that night before you went there? A No.

Q Not a single drink anywhere? A No.

Q I mean intoxicating liquors? A No.

Q Mr. Hartley, of course, was perfectly sober? A I am not a doctor. To the best of my knowledge, certainly.

Mr. Lane. Have you ever seen Mr. Hartley under the influence of liquor?

The Witness. No, sir.

Mr. Mylod. I have Dr. Ballinger here, and would like to call him out of order, in rebuttal.

The Court. Call him at this time.

DR. REEVE LESLIE BALLINGER, sworn in rebuttal for complainant.

Direct examination by Mr. Mylod.

Q Mr. Hartley has testified, doctor—I think you were here when he testified—that he never went to you for a prescription for his wife. Did Mr. Hartley ever come to you for a prescription for his wife? A He did.

Q And did you give him a prescription? A I gave him a prescription.

Q When was it; on what date? A In December, 1917, I should say.

Q By looking at this box from Petty's, will that refresh your recollection as the date (D. 6)? A Yes.

Q Will you tell us what the date is? Will you tell us the date on which you gave him the prescription? A This prescription is dated the tenth of December, 1918; he called at my office in the evening, if I remember rightly; previously he telephoned to me. Do you want this?

Mr. Mylod. Yes.

A (Continuing.) He telephoned me and told me about his wife's condition, and asked me what to do; I told him that I would give him a prescription and he came in for it. He told me that his wife had a cold, and that she had not—she was a week over her menstruation; I prescribed this medicine, which anybody can go in a drug store and get. This proprietary article, there is nothing secret about it. Anyone can purchase it without a prescription.

Q Did you on or about that time, during December, 1918, or thereabouts, give Mrs. Hartley any prescription? A I did not.

Q That is the only prescription which you gave? A Yes.

Q Mr. Hartley has also denied that he conferred with you during his wife's pregnancy; is it true that Mr. Hartley conferred with you while his wife was pregnant? A He most certainly did.

Q What did he confer with you about? A I will say it was after this time, he came in and told me that his wife was pregnant, which I didn't know, and no one could tell at that time.

Q In December? A Yes. After that time he came in and told me that his wife was pregnant, and asked me to perform an abortion on her; I told him I could not do it. I said, "You know, Fred, that I have a family; in the first place, it is against the law; outside of the moral side of it, it is against the law. It might mean for me that I would lose my license. I have studied all my life for it, and without a license I cannot even make a living; I am a married man with a family, and without my license I would have nothing." He said, "Don't matter

about that; you need not be afraid. I can commit murder in this county and get away with it."

Q Did you attend his first wife? A I did.

Q For how long a period were you the physician for Mr. Hartley's first wife? A I attended the first Mrs. Hartley from 1914 up until the time she died; I was there the night she died.

Q Mr. Hartley has also testified that you owed him some money at the time that this child was born; do you now owe Mr. Hartley any money? A Not five cents.

Q Did you ever attend Mrs. Hartley before she became Mrs. Hartley? A I attended her family; I don't recall having ever attended her.

Q But you attended Mrs. Ferris' family? A Yes, Mrs. Ferris and the family.

Cross examination by Mr. Lane.

Q How old are you? A I was born in 1887; I was thirty-four last October.

Q How long have you been practising medicine? A Since 1914; July 16, 1914.

Q Where? A East Newark.

Q How long have you been attending the Ferris family? A I attended them—I cannot answer that exactly.

The Court. Some years?

The Witness. Yes; it was before Maria was married.

Q You not only attended Maria, but you attended the others? A I don't recall attending Maria; I had come to see the mother, and I attended Sadie, her sister.

Q You have been their family physician? A If that is what you call it, yes.

Q And you are still? A I have attended them, yes.

Q When were you first informed that you were going to be asked to testify in this case? A I was called up today by Judge Mylod.

Q Was that the first knowledge that you had that you were going to be called as a witness? A I came over of my own free will.

Q When did you first know that you were going to be called here to testify? A I would say about a quarter after one, if I remember rightly, this afternoon; I didn't know that the case was even on.

Q Why did you come over? A Because my name was dragged into this, as I say.

Q Your name has been dragged into it when? A Today.

Q Your name was dragged into it in October, wasn't it? A Yes, it was.

Q Did you consult with anybody? A Nobody at all.

Q How did you know the case was on? A Judge Mylod called me up.

Q When? A Quarter after one, while I was in my office.

Q Then you came over at Judge Mylod's request at quarter after one today? A Yes.

Q Did you talk with Judge Mylod? A Never saw him before.

Q Had you ever talked with any members of the Ferris family before that? A Maria told me.

The Court. Had you ever talked with any members of the Ferris family before that?

The Witness. I had.

Q What did she tell you? A She told me that this prescription that I gave her at the time, was brought up.

Q When? A Last October, when this case came up before.

Q What did she tell you? A She told me that they tried to say that I gave her that to produce an abortion.

Q What did you tell her? A I didn't say anything, any more than that.

Q Did you try to find out from someone who knew more than she did, as to what had actually been said? A I did not.

Q You say the whole conversation between Mylod and you was with respect to this box? A Nothing more than that; this box of Smith's capsules was brought up, and was here in testimony; that is all.

Q When was this conversation? A If this case came up in October, it was the day after, or that same day, probably, in October last; whenever this case came up before.

Q Where was it? A She called me on the telephone.

Q Can't you remember any more of the conversation? A That is all the conversation there was.

Q Did she tell you anything about—what was the first thing she said over the phone?

Mr. Mylod. I don't see that it is material.

The Court. I think I will allow it.

Q As near as you can recall, state what she said. A She merely told me as an ordinary conversation, that her case had come up before Vice-Chancellor Foster, and that Fred had

brought a box in, a prescription that I had given them back in 1918, and said what I have told you, that I attempted, or that medicine was to produce an abortion.

Q Was that all she said? A Yes, and she used my name as being doctor, and so on.

Q You said nothing? A Nothing more than that; she said it is postponed until the first of March; that is all the conversation there was.

Q You haven't talked about it since? A No, sir.

Q Yo uhaven't talked to any of the Ferris family since? A Not about this; I have attended the family since.

Q You haven't talked to any of the Ferris family since about this box or case? A No, sir.

Q You haven't talked to Judge Mylod about it? A I never saw him until today at two o'clock.

Q You haven't talked on the telephone? A No, not until quarter after one.

Q What is that medicine? A That medicine is Smith's ergo-apiol capsules.

Q What is its purpose? A It is for suppressed menstruation; it can be bought in any drug store.

The Court. Is it designed to produce an abortion?

The Witness. It is not.

The Court. Was it prescribed by you for that purpose?

The Witness. No, sir.

Q Did you tell Hartley that it would produce an abortion? A Absolutely no.

Q Did you tell Hartley that it would prevent conception? A No, that is ridiculous.

Q Sometimes doctors do say ridiculous things? A To say that would prevent conception, that is a ridiculous term.

Q Did you tell him that it would prevent conception? A No, sir.

The Court. Hartley merely surmised that is the purpose.

Q So that its purpose was merely to bring about the menstruation, if in fact menstruation had been suppressed? A Suppressed, due to cold or nervousness or shock or anything of that sort; the mere fact of its being a prescription—the mere fact that he testified a while ago that he went in and had that renewed—had that been so fatal the law would never allow him to have it renewed.

Q So when he left your office, after talking to you, he didn't leave with any impression that that would prevent conception or produce an abortion? A No, sir.

Q From what you told him, that would be impossible, wouldn't it? A As far as medicine was concerned.

Q As far as what you told him, it would be impossible for him think that? A I think it would.

Q Was that the first time that Hartley had spoken to you about anything with respect to his wife's menstruation? A It was.

Q Did he see you at your office the same day you gave him the medicine? A I didn't give him the medicine.

Q The prescription? A The prescription.

Q Did he telephone you the same day? A Yes, and then he came up.

Q The same day? A Yes.

Q And was that the last you heard of it? A Of what?

Q Of the box—as far as this particular prescription was concerned? A As far as that prescription was concerned, that was the last I heard of it.

Q How soon after you gave this prescription was it that you saw Mrs. Hartley, do you know? A I don't recall I ever saw her professionally.

The Court. You attended her in her confinement?

The Witness. Yes, but he means right after that.

The Court. Answer the question; when did you first begin to attend her in her confinement; how long after December, 1918?

The Witness. I should say she was probably five or six months.

Q Did you ever talk to her about this medicine? A Other than what I have testified, no.

Q When was it that Mr. Hartley first suggested to you that you perform an abortion? A It was after this affair; she was two or three months pregnant; I don't remember how much longer.

Q How did it come about? A He came to my office.

Q What did he say? A He told me that Maria was pregnant and he wanted me to perform an abortion on her.

Q What did he say? A That is what he said; he asked me to do it.

Q He didn't say, "I want you to perform an abortion"? A He said he wanted me to produce an abortion on her, which is the same thing.

Q Did he use that language, to "produce an abortion"? A I cannot say that he did.

Q Can't you recall more definitely what he did say?

The Court. Recall his language.

A I cannot recall his exact words, other than that she was pregnant and in other words, she wanted to get rid of it—they wanted to get rid of the baby.

Q Was that the only conversation you ever had with him about it, about the abortion? A That is all that I recall.

Q Did he say that they wanted to get rid of it? A I don't know whether he said "they" or not, but he came to me to do it.

Q I am trying to get at what took place at your office at that time. A That is what took place; that is just what took place; he came in and asked me to produce this abortion—to perform this abortion on her.

Q Did he say that they wanted to get rid of it, or was it an idea of his own as distinct from both of them?

Mr. Mylod. The doctor has answered that.

The Court. He said he doesn't remember.

Q Do you want to change your answer? A No.

Q Did he say anything which would indicate that he and Mrs. Hartley had talked this thing over? A I don't recall.

Q Did he say anything which would indicate that she approved or opposed the idea? A I cannot answer that.

Q Did you ever speak to Mrs. Hartley about it? A I did not.

Q Didn't she ever speak to you about it? A No.

Q Or ever suggest any such thing to you? A Not to me.

Q Did Hartley ever suggest it again? A No more, because I told him just where I stood and where he stood; that was as far as I was concerned.

Q That was five or six months before the confinement? A Yes; she was two or three months pregnant. I told him it meant my license.

Q Was it in the early months of her pregnancy? A Yes.

Q He didn't ask you to suggest any means by which he could have it done, did he? A No, he asked me to do it.

Q When you refused to do it because it meant your license, he didn't ask that you suggest a means by which it could be done? A No.

Re-direct examination by Mr. Mylod.

Q When Mr. Hartley called on you first, doctor, for the prescription—the box, which contained the medicine, now before you—did he tell you that his wife had gone over her period and he wanted something to bring on menstruation? A That was the substance of it.

Q Did you give him something that would bring on menstruation? A Yes, if her menstruation were suppressed from cold or nervousness or something of that nature.

Fred A. Hartley, direct.

Q And he told you that she had failed to menstruate? A Yes, and that he desired to—

Objected to. Objection sustained.

FRED A. HARTLEY, recalled.

Direct examination by Mr. Lane.

Q Did you in December, 1918, call up Dr. Ballinger and make an appointment with him, and that day see him and tell him that your wife's menstruation period had passed and that you wanted to get something to bring on menstruation, or words to that effect? A No, sir, I never called him up and I never even went to his office.

Q Did you subsequently, when your wife was about three or four months pregnant, go to Dr. Ballinger and ask him to perform an abortion upon your wife? A No, sir.

Q Or words to that effect? A No, sir.

Q You have heard his testimony with respect to that statement as to what you said and what he said? A Yes.

Q Did that take place at all? A It did not take place.

Q Has there ever been in the course of your married life any talk between your wife and yourself at any time with respect to any abortion? A None, whatever.

Q Or has there ever any statement been made up until the trial of this case, by your wife complaining because you had suggested an abortion, or because there was an abortion contemplated between you and your wife? A None whatever, no, sir.

Fred A. Hartley, direct.

Q In any of the talks which you had with her? A No, sir.

Examination by the Court.

Q You said the doctor was indebted to you at the time of the confinement, and he is now? A Yes.

Q He said he never owed you? A He owes me for two crates of strawberries which I delivered at his home, corner of Johnston avenue and Kearny avenue.

Q You are anticipating me. Did you bring anything to show that he was indebted to you? A No.

Q Have you books? A Just a small book.

Q Have you anything on your books charging him with these items? A No, sir, I have not.

Q Why didn't you put it down? A I most likely did.

Q If you did, then why isn't it there? A It was a little note book.

Q Why are they not in your books, if you put it down? A I carried a note book in my pocket.

Q Did you have them in your note book? A At that time.

Q Where is it? A I don't know where they are.

Q When was it? A That must have been about five years ago, when he lived corner of Johnston avenue and Kearny avenue.

The Court. If you find that note book of five years ago, bring it here; I would like to look at it. If you find any books containing an account against Dr. Ballinger, I would like to see it.

Fred A. Hartley, direct.

Further direct examination by Mr. Lane.

Q Are you and Dr. Ballinger on friendly terms? A No, sir.

Q How long have you been on anything but friendly terms? A Quite a number of years; that is practically since I married my wife. Dr. Ballinger and his wife and I and my wife went over to New York one night; we stopped in a couple of places, Murray's, and on our way home, when I got home in the house, my wife complained to me of what Dr. Ballinger had done in the tonneau coming home.

The Court. Taking liberties with her?

The Witness. Yes, and I was going up and lick him.

Q When was that? A A little while after I was married to my wife. I initiated him as an Elk.

The Court. After that?

The Witness. No, before that, or he would never have become an Elk, if I had known that.

Q Since that time you have not been on friendly terms with him? A No.

Q Did your wife know of your objection to Dr. Ballinger? A She did.

Q How is it that you continued to have him as your physician? A I didn't have him; my wife had him there, and when she told me that Dr. Ballinger treated the baby for cold or something, I said, "What is the use; I won't take his word, I will send another doctor," and I sent another doctor there.

Q When was that? A A couple of months ago, three months ago; since the last hearing I seen him twice.

Q Was there any occasion before that that you had objected to Ballinger? A I didn't want him in the confinement case.

The Court. Did you object to him?

The Witness. Yes. I told her I didn't want him.

Q How is it you had him? A They engaged him; I paid him.

Q Did you voice your objection? A I told her I didn't want him.

Q What was the answer? A She said, "You will have to take him, I have engaged him."

Q Besides being the family physician of Mrs. Ferris, is Dr. Ballinger and his wife socially intimate with Mrs. Ferris or not? A I do not know; I know my wife visits there.

Q You spoke about going to New York together? A That was a couple of months after I married Mrs. Hartley.

Q Was there social intercourse between the Ferrises and Ballingers? A No; my wife goes to his house now.

Q How do you know? A She told me she has been up there a whole lot of times.

Q When did she tell you that? A During our meetings.

Q What do you mean? A She goes and visits there.

Q How long has that been going on? A Right along.

Fred A. Hartley, cross.

Cross examination by Mr. Mylod.

Q You sent Dr. Mutter to visit your child after your wife told you that Dr. Ballinger was taking care of the child? A Yes.

Q You didn't believe your wife when she said the child wasn't fit to be sent out in the cold? A I didn't believe Dr. Ballinger. He would say anything; that was my reason.

Q You thought your wife would also deceive you and that the child might be well enough to go out? A No, I loved the child and believed it should have proper care.

Q That is why you sent Dr. ———? A Yes.

Q You didn't send Dr. Mutter there to treat the child? A If necessary, yes.

Q You knew and now know that when there is one doctor taking care of a patient, that no other doctor will go in and insist on having the patient take his prescription? A Yes, in this case Dr. Ballinger is not well thought of by the physicians in West Hudson.

The Court. Strike that out.

Q You know that where one doctor is taking care of a patient, that another doctor will not go in and prescribe for the patient?

The Court. Is there any use of going into this examination here? I don't need to have it stressed to convince me of it.

Q When did you first learn that your wife was pregnant with this child? A She might have told me.

Q When was that? A When she told me.

Q When was that? A Possibly three or four weeks after.

Q After what? A After she hadn't menstruated.

Q When was that A Possibly around the holidays, in January; I cannot recall just what month.

Q The child was born in August? A Yes.

Q What date in August? A Thirteenth.

Q Or fourteenth? A Thirteenth or fourteenth.

Q You gave me the twelfth today? A Between the twelfth and fourteenth.

Q You don't know the exact date? A No.

The Court. What is the exact date?

Mr. Hartley. August 14, 1919.

The Court. Then you learned that your wife hadn't menstruated and that she was about to be pregnant, sometime in December of the year before.

Q You learned your wife was pregnant in December, the child having been born in August 1919?

The Court. He said he first learned of it around the holidays, in January sometime.

Do you still want to stick to your answer that you didn't learn that your wife was in the family way until January?

The Witness. Yes, I stick to that.

Q What do you know about that? A What she told me.

The Court. Did she tell you before January?

The Witness. Around the holidays.

The Court. That would be either December or January?

The Witness. Yes.

Q Didn't you understand that if your wife had her menstruation period that that would clear away all pregnancy? A Yes, naturally.

Q You knew that? A Yes.

Q Weren't you looking to ascertain whether or not she had her regular menstruation period during the month of December or January? A No.

Q Weren't you interested in that? A To have her—

Q To ascertain whether or not— A I was glad she was that way.

Q And you kept asking her as to whether or not there was any change in her condition? A I did, yes.

Q And yet you know that if she did menstruate, that then that would be an indication that she was not pregnant? A Yes.

IN CHANCERY OF NEW JERSEY.

Between

MARIA A. HARTLEY,
Complainant,

and

FRED A. HARTLEY,
Defendant.

Transcript of testimony taken in the above-entitled cause on Monday, June 26, 1922, at the Chancery Chambers, Newark, New Jersey, before Hon. John E. Foster, Vice-Chancellor.

Present: Counsel as before stated.

CHARLES R. COOK, sworn for defendant.

Direct examination by Mr. Lane.

Q Where do you live? A 85 Johnston avenue, Kearny, New Jersey.

Q What is your business? A Bookkeeper.

Q Were you on the twenty-fifth of September, 1918, a Notary Public? A Yes.

Q How long have you been a Notary Public? A Twenty-nine years.

Q With what firm were you bookkeeper? A Clarence T. Van Deren, real estate and fire insurance.

Q Were you accustomed prior to the twenty-fifth of September, 1918, to take acknowledgments to deeds, etc? A Yes, sir.

Q Did you know the requirements at that time with respect to the acknowledgment of a married woman? A Yes, sir.

Q I show you a deed dated September 25, 1918, and ask you whether you took the acknowledgment of Mr. and Mrs. Hartley to that deed? A I did.

Q Do you remember the circumstances? A Yes.

Q Tell us about it. A Mr. and Mrs. Hartley came in the office—

Mr. Lane. The acknowledgment is the tenth of December.

A —Mrs. Hartley signed this deed first about the twenty-fifth of September. I mean to say Mr. Hartley signed this deed first, and then the thing hung fire until about the tenth of December, when Mr. and Mrs. Hartley came to the office together, and I took both of their acknowledgments on that day.

Q Did you explain to Mrs. Hartley what it was? A I did.

Q What did you tell her? A I told her it was a warranty deed from Mr. Hartley and herself to the F. A. Hartley Realty Company, a corporation, conveying the property described therein, which I read over to her; I read over the description.

Q How long was she at your office? A I don't think over fifteen minutes.

Q Did you take her acknowledgment separate from her husband's? A I did.

Q How long had you known Mr. Hartley? A I guess from the time he was about seventeen or eighteen years of age.

The Court. Had you known Mrs. Hartley before taking this acknowledgment?

The Witness. Yes.

Q How long had you known her? A I should judge about twelve or fifteen years.

Q Did Mrs. Hartley appear to be under any control of her husband at that time? A It didn't appear to me to be so; no, sir.

The Court. Was he with her?

The Witness. Yes.

Q How well had you known Mrs. Hartley? A She was a neighbor of mine for I guess four or five years, probably five years.

Q How well had you known Mr. Hartley? A Well, he has had business where I am employed for a good many years.

Q Do you know the people with whom he associated? A Not to any extent; no, sir.

Q Did you ever see him under the influence of liquor? A I did not.

Q Have you ever been in the Hartley apartment during the time Mr. and Mrs. Hartley were living together? A Once.

Q How did you come to go there? A I went there to have this deed signed.

Q How was the place furnished? A Pretty fair.

Q What do you mean by "pretty fair?" A It wasn't elaborate and it wasn't poor.

Q Was it substantially furnished? A I should judge so; yes, sir.

Q Was there any oilcloth on the kitchen floor? A As far as I know, there was.

The Court. Do you remember anything about it?

The Witness. To my recollection there was oilcloth on the floor.

Charles R. Cook, cross.

Cross examination by Mr. Mylod.

Q What time of the day did you go to Mrs. Hartley's house? A I think between one and two o'clock.

Q On what date? A It must have been about the date of this deed—September 25th—possibly a day or two later.

Mr. Lane. I offer the deed in evidence.

Q You were only in one room in Mr. Hartley's apartment, in the kitchen? A On that day.

Q That was the only time you were ever there? A No, I have been in the house before that.

(Deed offered in evidence and marked Exhibit D. 1, 6/26/22.)

Q In answer to Mr. Lane's question you said you were only at the house once? A No, I have been in the house three or four times; about twice since Mr. and Mrs. Hartley have been married.

Q What was the occasion of your second visit?

The Court. On your other visit, whether first or second.

A It strikes me it was in connection with this matter; I wouldn't be positive.

Q You think you went there twice to have Mrs. Hartley execute this deed? A I rather think so; I am not sure.

Q Mrs. Hartley was home; Mr. Hartley was not at home? A He was home.

Q On both occasions? A I think he was.

Q Don't you know? A I am not sure; I was there twice, but I was there once and Mr. Hartley was there, because I went there to have both sign the deed, but Mrs. Hartley would not sign at that time.

Q What did she say when she wouldn't sign at that time? A I think she said she wanted to consider it.

Q Was the real estate corporation mentioned that day? A Yes, sir.

Q What was said about the real estate corporation? A That was F. A. Hartley Realty Company.

Q Did you hear Mr. Hartley say that Mrs. Hartley was to be a part of the corporation? A I did not; no, sir.

Q Haven't you any way in which you can fix the date? A No, I have not.

Q How many windows in the kitchen? A About three.

Q How many in the room looking out in the back yard? A One.

Q And where do the other windows face? A On the side.

Q Does the kitchen run the full length of the house? A It runs north and south and the windows are on the east side.

Q In what part of the room would you say the coal stove is? A I cannot recall that.

Q Do you recall the color of the oilcloth? A No, I cannot.

Q How do you recall at this time that in September, 1917, there was oilcloth on this floor? A I cannot really say how I recall it.

Q But you do positively recall that there was oilcloth on this kitchen floor in September,

1917? A Not positively, no; I rather think so; I don't say positively.

Q Do you recall the circumstances under which Mr. Hartley signed this deed? A I don't understand what you mean.

Q Do you recall the date on which Mr. Hartley signed the deed? A It must have been on the day—

The Court. If you don't recall, say so.

The Witness. I rather think it was the date of the deed.

Q You think that on the twenty-fifth of September Mr. Hartley signed this deed? A That is my impression.

Q Where did Mr. Hartley sign it, at what place; in your office? A In his kitchen.

Q Was Mrs. Hartley present? A Yes.

Q You recall this, do you, distinctly? A Yes.

Q You recall Mr. Hartley signing this deed in his kitchen with Mrs. Hartley present; that is true, is it? A Yes.

Q Then did you ask Mrs. Hartley to sign? A I did.

Q What did she say? A I understood her to say she wanted time to consider it.

Q When did you sign as the subscribing witness, that day? A No, on the tenth of December, the date of the acknowledgment.

Q Did Mr. Hartley sign this deed twice on the twenty-fifth of September, or only once? A Only once.

Q Did he sign his name to it again in December, when he went to your office? A He did not.

Q He only signed it once? A Once.

Q You don't recall that he made any mistake at all in the signing? A He made no mistake.

Q Who drew this deed, do you know? A I did.

Q I notice he has it signed Fred A. Hartley and Fred Allen Hartley; did he sign his signature twice in September, or once in September, and once in December? A He signed that in September, as he is known as Fred A. Hartley, and Fred Allen Hartley.

Mr. Mylod. The deed is drawn Fred A. Hartley, also known as Fred Allen Hartley, and he has signed it both ways.

Q Your recollection is he signed it both ways on that day in September? A Yes.

Q You take a great many acknowledgments in Mr. Van Deeren's office? A I do.

Q Three or four a day? A I should judge so, yes.

Q Different kinds of papers, releases, mortgages and all kinds of papers dealing with real estate transactions? A Yes.

Q And yet you cannot recall the circumstances under which this deed was signed, and just what you said to Mrs. Hartley that day, can you? A Oh, yes.

Q Did you read the description in this deed to Mrs. Hartley when you called at her home in September? A I did; I read it over to both Mr. and Mrs. Hartley.

Q And did you go to the trouble of reading the description to the five tracts of land in this deed to Mrs. Hartley, in December, a second time? A Yes.

Q Where did you get the information to put into the deed; from whom did you get it? A From other deeds.

Q Will you try to tell us once again just how you explained this deed to Mrs. Hartley in December? A I told her it was a warranty deed, dated so and so, from her and her husband to the F. A. Hartley Realty Company, a corporation of New Jersey, consideration of one dollar and other valuable consideration, conveying the property described therein; then I read the descriptions over.

Q You do that in every transaction, do you not? A I always do.

Q Invariably? A Invariably.

Q And the reason you are testifying today that you did that in December, 1918, is because it is your custom to do that? A Yes.

Q But as far as this particular transaction or the kind of a day, whether it was a cloudy day or a sunshiny day, you cannot recall? A No, I cannot recall that.

Q You have no personal recollection of this particular transaction, have you? A As to the weather?

Q As to the transaction itself?

The Court. As to the signing and what was done.

A Yes, they came in—

The Court. Have you any distinct recollection?

The Witness. I recollect they both came in the office.

Q But just what took place there, inasmuch as you handle three or four acknowledgments

every day of the week, exclusive of Sunday, you cannot pick out this particular transaction way back in December, 1918? A As to the execution of the deed?

Q As to what was said and what was done. A I took both their acknowledgments.

The Court. Can you recall it distinctly?

The Witness. Yes, I can.

Q This deed is what refreshes your recollection; if you didn't have this deed, you wouldn't be able to recall what took place at all? A Oh, yes, I would.

Q Can you recall all these transactions? A Oh, no.

Q What particularly impressed this particular transaction on your mind? A I knew there was something wrong when Mrs. Hartley would not sign that deed, in the beginning, and it was between September and December before she signed it, and I knew there was something wrong, and I thought probably in the future there would be some trouble, and I might be called into it.

Q Did Mr. Hartley tell you that there was likely to be some trouble with his wife about signing this deed? A He did not.

Q You don't usually go to a person's house to have a deed executed, do you? A Very seldom.

Q How was it that you went to Mrs. Hartley's home to have this deed signed in September, do you know? A Mr. Hartley requested me to do that, to save Mrs. Hartley the trouble of coming down to the office.

Q Did you hear anything about this deed, from September, when Mr. Hartley signed it, until December, when Mr. and Mrs. Hartley came in? A No, I don't think I did.

Q Didn't Mr. Hartley come in between September and December and talk about this matter? A I don't recall him doing so; no, sir.

Q I understood you to say you knew Mr. Hartley since he was eighteen? A About seventeen or eighteen years of age.

Q How old are you now? A Fifty.

The Court. When you speak of age, you refer to your age or his age?

The Witness. His age.

Q You knew him since he was seventeen and you are now fifty? A Yes.

Q Did you know his age at that time, when he was eighteen years of age, at that particular time? A No, I should judge so.

The Court. Did Mrs Hartley give any other reason for declining to sign the deed in September, except that she wanted further time to consider it?

The Witness. That was all.

The Court. What did he say, if anything, when she made that objection or statement?

The Witness. I don't recall that he said anything at all.

The Court. Any explanation offered to you by her or him at that time?

The Witness. None whatever.

The Court. Did you have any further discussion about her signing the deed or refusing to sign?

The Witness. No, I let the matter rest.

The Court. Did she and Mr. Hartley have any further discussion at that time?

The Witness. Not while I was present.

Q You wouldn't say that you recall at this time, that in September, when you went to Mrs. Hartley's house, you read the description in this deed? A Yes.

Q You will say that you read the description? A Yes.

The Court. He said he read it both in September and December, all five parcels.

Q Where was Mr. Hartley when you took the acknowledgment in December? A In Mr. Van Deeren's private office.

Q Did you attempt to take Mrs. Hartley's acknowledgment on that day or attempt to get her to sign the deed in September, when her husband was not present, or was he present all the time during the September conversation? A He was present.

Q When she came in December with him and finally signed and acknowledged the deed, did she make any statement whether she had or had not considered it? A She did not.

Q Did she make any further objection to signing it? A No objection whatever.

Q Did she make any further statement about its execution? A No, sir; no statement whatever.

The Court. What amount of revenue stamps are on there?

Mr. Mylod. $19.

The Court. Were the stamps put on in September or in December?

The Witness. I don't remember.

The Court. Do you remember whether they were put on in the presence of Mrs. Hartley?

The Witness. I am pretty sure they were not.

The Court. Do you know whether she was present when the amount of them was determined?

The Witness. I don't think so.

The Court. Or discussed?

The Witness. I don't think so.

Q You are sure they were not put on before the deed was signed? A No, I am sure I put them on afterwards.

Q You put them on when you went back to the office? I direct your attention to the fact that they are marked cancelled 9/25/18; does that refresh your recollection? A I don't think I put those stamps on until December.

Q And cancelled them as of September? A Yes.

The Court. That is the date of the deed?

The Witness. Yes.

Q Now, Mr. Cook, do you recall distinctly that Mrs. Hartley was in the kitchen when you called and talked to Mr. Hartley about this deed in September? A Yes, sir.

Q You are sure she was in the room and participated in the discussion? A Yes, sir.

Q Was she out of the kitchen at any part of the time? A I think she was there the whole time that I was there.

Q You don't think she was in another room, do you? A I am positive she was not.

Q Did you have any other papers for Mr. Hartley to sign that day? A That was the only paper.

Q You didn't have him sign the incorporation papers at all? A I had nothing to do with those papers whatever..

Q How long were you at Mrs. Hartley's home in September? A I should judge eighteen or twenty minutes.

Q Did Mrs. Hartley say anything to you when you read the description and told her where to sign; did she say anything to you? A Nothing at all.

Q Just signed and left the office? A Yes, sir.

RIECKA WOOD, sworn for defendant.

Direct examination by Mr. Lane.

Q Where do you live, Mrs. Wood? A At 335 Chestnut street, at present, Arlington, New Jersey.

Q Do you know Mrs. Caroline Wood? A Yes, sir.

Q What is her relation to you? A Mother-in-law.

Q During October, 1921, were you at the house of Mrs. Caroline Wood, 633 Chestnut street, Kearny? A Yes.

Q What were you doing there? A I was nursing Mr. Hartley's daughter-in-law.

Q Who was the daughter of whom? A Mrs. Roemer.

Q You remember October 29th of that year? A Yes.

Q Do you remember Mrs. Hartley and Mrs. See coming to the house? A Yes.

Q Do you know what time it was? A About 1:45 or ten minutes of two.

Q Tell us what happened. A Mrs. Hartley brought the child there for Mr. Hartley to see, an Mrs. Hartley brought the child on the porch and Mr. Hartley objected a little to Mrs. See coming in; he said that Mrs. Hartley was welcome, but he didn't care so much about Mrs. See coming in. Of course, Mrs. Hartley said she would not enter the house without Mrs. See, and there was just a little discussion about it, and I stepped in and asked them please to keep quiet; I asked Mrs. Hartley not to make any disturbance there, because I had a sick patient upstairs. Mrs. Hartley said that she wouldn't come in without Mrs. See, and I let them both in, and they went in the dining-room while Mr. Hartley took the baby in the front room; then I asked Mr. Hartley if he wouldn't take his baby up to let his daughter-in-law see him; and he went upstairs. Then when the time was up—I believe it was four o'clock, if I am not mistaken, that the child was to be returned—he brought the child down—that is, the son Fred and I brought the child down, and they fixed up the child and took him away.

Q Was there any disturbance? A Not then. The child made the disturbance; he kicked terribly about going; he wanted to stay with his

daddy. I said, surely that child loves his father, and he must be good to him.

Q Were you there any other time that Mr. Hartley was there? A No, I wasn't; that is the only time.

Q How long have you known Mrs. Hartley? A I never have spoken to Mrs. Hartley until that day, the 29th of October.

Q How long have you known Mr. Hartley? A I have known Mr. Hartley for years, but we never associated very much; I have known Mr. Hartley at least twenty-seven years.

Q Have you been a neighbor of his? A No.

Q Now, what do you mean by you know him? A He used to come up to mother-in-law's and deliver vegetables and I lived at my mother's home then.

Q Did you ever see him under the influence of liquor? A No, sir; I never did.

Cross examination by Mr. Mylod.

Q You were never in his company very much? A No, I was not.

Q What relation are you to Mr. Hartley's daughter-in-law? A She is my niece through marriage.

Q You invited Mrs. See and Mrs. Hartley in? A I did.

Q Just what did you say to them when you invited them in? A I asked them to come in and we made room for them in the dining-room and closed the dining-room doors leading into the front room.

Q You were upstairs at the time Mrs. Hartley came to the door? A No, I was in the kitchen; my mother-in-law went to the door and

there was a little trouble, so I thought I would go—

Q Suppose you describe a little more in particular the trouble that occurred at the door that caused you to go to the door. A She said, "I am Mrs. Hartley," and my mother-in-law said, "Mr. Hartley is not here, so you can leave the child; he will be all right." No, she said she wouldn't do that, "He is out there;" so we looked; then when she said that, I went to the door.

Q Where was Mr. Hartley when someone said, "He is out there?" A He was speaking to some of the men.

Q Men that were repairing the street? A I should judge he was about 150 feet away from the house.

Q Did he come on the stoop before Mrs. Hartley came in the house? A Mrs. Hartley was on the stoop when he came up.

Q Can't you answer that? A She was on the stoop.

Q And that is the time that the trouble occurred, that you said you didn't want any fuss there on the porch? A Yes.

Q There wasn't any trouble after Mrs. Hartley came inside? A Not at all.

Q You say Mr. Hartley at that time objected to Mrs. See coming in the house? A He didn't care to have her come in.

Q What did he say to Mrs. See or his wife at that time? A He just simply said that Mrs. Hartley was welcome in the house, but he didn't wish Mrs. See to come in.

Q He didn't use any stronger language than that? A Not that I heard of.

Riecka Wood, cross.

Q And you said you didn't want any fuss because you had a sick patient? A Mrs. Hartley said she would not leave the child, and that she would not come in herself without Mrs. See.

Q Mrs. Hartley didn't raise her voice, did she? A She didn't raise her voice terribly high.

Q When Mr. Hartley speaks, he speaks in a loud tone of voice? A I presume he does, louder than a woman.

Q You don't have to presume about this; you heard him that day? A Yes.

Q How long was Mrs. Hartley on the porch before Mr. Hartley walked up from the street to the porch? A We will say about between five and ten minutes.

Q During that five or ten minutes Mrs. Hartley stood outside on the porch? A She didn't want to come in, she said she would wait.

Q But your mother-in-law wouldn't allow Mrs. See to come in? A My mother-in-law had nothing to do with it.

Q Didn't your mother-in-law, when Mrs. Hartley and Mrs. See came to the door, say to Mrs. Hartley, "You can leave the baby; you can come in, but Mrs. See cannot come in?" A No, she did not. She never mentioned Mrs. See's name.

Q Can you explain why Mrs. Hartley and Mrs. See didn't come in when they reached the house? A Because Mr. Hartley was outside; she knew Mr. Hartley was out there talking to these men, and she said, "I will wait here; he is right there."

Riecka Wood, cross.

Q And then the door was closed? A No, they stood there waiting for Mr. Hartley to come up the porch; the door was closed.

Q There wasn't any commotion until Mr. Hartley came up on the porch? A Of course not.

The Court. What was the fuss or commotion then?

The Witness. Mr. Hartley said he didn't care to have Mrs. See come in—that is where the commotion come in—and Mrs. Hartley said, "I will not come in without Mrs. See."

The Court. What else was said?

The Witness. Then I said, "Let Mrs. See in, and we will arrange this."

The Court. What did Mr. Hartley say to that?

The Witness. He didn't say anything.

The Court. No further objection?

The Witness. No, sir.

The Court. How long were they quarreling there, if they were quarreling at all?

The Witness. I don't suppose the fuss lasted five minutes.

Q Did Mr. Hartley say to Mrs. See, "I got your record?" A I never heard it. I was right there by Mr. and Mrs. Hartley; I never heard those words.

Q Mr. Hartley took the baby in his arms on the porch? A The baby just hung onto him. Mrs. Hartley took him down on the porch and he went right to his dad and then he picked up the child and come in.

The Court. How old was the child then?

The Witness. I don't know his age now.

Q About? A I presume a little over two years old.

Mr. Lane. The affidavits say twenty-seven months; I imagine they were correct at that time.

MRS. LILA ROAMER, sworn for defendant.

Direct examination by Mr. Lane.

Q Where do you live? A 603 Chestnut street, Arlington, New Jersey.

Q Were you home on October 29th? A Yes, I was home.

Q Where were you? A I was lying down and I wasn't feeling very well.

Q Did you hear anything of any commotion at two o'clock? A No, not a word.

Q When did you come downstairs? A I guess about an hour after they come in.

Q And where was Mrs. Hartley at that time? A Sitting in the dining-room.

Q With whom? A With Mrs. See.

Q And where was Mr. Hartley? A Mr. Hartley was upstairs in my daughter's room.

The Court. With the baby?

The Witness. Yes.

Q When did Mrs. Hartley leave? A Mrs. Hartley left at four o'clock.

Q Was there any commotion or trouble of any kind? A Not a bit.

Q Were you home in November first? A Yes.

Q Do you remember what time it was that Mrs. Hartley came? A She got in there just about five minutes of two.

Mrs. Lila Roamer, cross.

Q Did you see Mr. Hartley there? A He wasn't present at that time, but he come in about ten minutes after.

Q Who was with Mrs. Hartley, anybody? A Mrs. See.

Q What was done with the baby on the first of November? A The baby was running around and playing; I was showing him the cats, like that, and I took the baby in my arms and held him at the parlor window until Mr. Hartley came; when Mr. Hartley came, I met him at the front door and he took the baby and went right upstairs.

Q How long was the baby kept up there? A Until four o'clock.

The Court. Did Mrs. Hartley remain there at the time?

The Witness. Yes, in the dining-room.

Q Was there any trouble? A Not a word was said.

Q How long have you known Mr. Hartley? A I have known him just about the same length of time; I was a little bit of a girl when he came through with a wagon; that is about as much as I know about him, until my daughter's baby was born.

The Court. Your daughter married his son?

The Witness. Yes.

Q Did you ever see him under the influence of liquor? A Never.

Cross examination by Mr. Mylod.

Q How long do you say you have known him? A I have known him for a good many years;

I have lived there about thirty years, and he used to come through there with vegetables.

Q His son married your daughter? A Yes.

Q Now living with you? A No, not living with me; they are living down at Mr. Hartley's place.

Q At the time you were ill and the time Mrs. Hartley was calling there, his son was a member of your household? A Yes, he lived with me.

Q As a matter of fact, didn't you threaten to have Mr. Hartley bound over to keep the peace prior to the marriage? A Not as I know of; I never said a word like that.

Q Didn't you ever have any difficulties with Mr. Hartley and tell people about it? A Not a word; I never spoke to the man until my daughter's baby was born, when I met him at my house and found him a very nice man.

Q You never knew him to talk to? A Never.

Q Prior to the time of the marriage? A No.

Q You never met him until after the baby was born? A No, sir.

Q Were you in bed on the occasion of Mrs. Hartley's call at your house in October? A Yes.

Q You say she got there about two o'clock? A I wouldn't say for sure; that is what my mother said; I got up about half an hour or fifteen or twenty minutes after that, they came up and told me they were downstairs.

Q When you woke up you found Mrs. Hartley was downstairs? A In the dining-room.

Q You heard no voice on the front porch at all; you were asleep at the time? A Not a word.

Mrs. Lila Roamer, cross.

Q Was Mrs. Wood taking care of you or your daughter? A Taking care of my daughter.

Q And she was ill also at the same time? A Yes, her baby was born.

The Court. Were you ill yourself?

The Witness. Yes, I was lying down, I wasn't feeling very well.

Q You were not under the care of the nurse? A No.

Q Did you watch Mrs. Hartley go down the street with the baby through your window on either of the occasions? A On October 29 my son-in-law brought the baby down to her; I was downstairs when he brought it, and he stood there while she put the baby's things on to take him out to the baby cart, and she went up toward Stewart avenue.

Q That is toward the trolley car? A No, going up the other way; she went up that way with the baby in the carriage, the baby crying as far as you could hear him.

Q And Mr. Hartley close behind? A No, he remained in the house for a few minutes, and he went the other way, toward the trolley car.

Q He went in the opposite direction from Mrs. Hartley? A Yes.

Q And the second time, did he go in the opposite direction? A He went down behind them, I should judge half a block, and I stood on the stoop watching them, and the baby was crying all the way, crying for his father, and turning around, and Mrs. Hartley was trying to keep him quiet.

Riecka Wood, direct.

Q Mrs. Hartley was carrying the baby on that occasion? A Yes, and the baby was squealing for his father.

Q And his father was in back of the baby? A Yes. I watched Mr. Hartley, and Mr. Hartley went across the lots and Mrs. Hartley went down to Columbia avenue and turned up that way.

Q You can see the corner from your house? A Yes.

Q Did you see Mr. Hartley stand on one corner while Mrs. Hartley was trying to keep the child quiet on the other? A He went across the lots to the car; I didn't see him standing still at all.

RIECKA WOOD, recalled.

Direct examination by Mr. Lane.

Q While you were present on this twenty-ninth of October, did you hear Mr. Hartley say to Mrs. Hartley, on the subject of the child, "I have got him now; you had better kiss him good-bye, because you are never going to see him again," or words to that effect? A No, sir.

Q Was Freddie Hartley there during part of this time? A Yes.

Q Where? A Young Fred?

Q Yes. A Yes, he was there on the porch with us.

Q Did you hear Mr. Hartley say to Mrs. Hartley, "You are a liar, you know it," or words to that effect? A No, sir; he didn't.

Q Did you hear Mr. Hartley say to Mrs. Hartley, "Don't touch him," that is, referring to the baby, "Don't put your hands on him;

he is in my custody now, and don't you touch him," or words to that effect? A I didn't hear those words.

Cross examination by Mr. Mylod.

Q When Mrs. Hartley came up on the stoop and rang the front door bell, you were in the kitchen, on October 29? A This Mrs. Hartley?

Q Yes. A Yes.

Q And then you went out the door? A I did.

Q And was Mrs. Hartley on the porch and Mrs. See? A No, Mrs. See was on the sidewalk.

Q And the baby was in the carriage on the sidewalk? A Yes, I believe he was.

Q Mrs. Hartley didn't carry the baby in her arm up to the door, did she? A Mr. Hartley got the baby.

Q Mr. Hartley snatched the baby out of the baby carriage, did he? A He took the baby—just a minute; Mrs. Hartley did have the baby on the porch, and then when Mr. Hartley objected to Mrs. See coming in, she takes the baby and goes down and puts it in the go-cart again, and Mr. Hartley went down and got the baby.

Q And what did he say when he took the baby? A I didn't hear him say anything at all; I was on the porch then.

Q How far is the sidewalk where the baby was from the porch? A The house stands back, I should judge about twenty feet; the house stands back about from her to where you are.

Q Then the baby carriage was about where I am seated, and Mrs. Hartley was about where you are seated? A Yes.

Q Mr. Hartley didn't say anything when he took the baby out of the baby carriage? A No, he picked up the baby.

Q Where was Mrs. Hartley when he picked it up? A She was out by the baby carriage.

Q She might have said something to her and you wouldn't have heard it? A I don't know, we were all there; he didn't talk very quiet.

CAROLINE WOOD, sworn for defendant.

Direct examination by Mr. Lane.

Q Where do you live? A 663 Chestnut street, Arlington, New Jersey.

Q How old are you? A Sixty-six.

Q Do you know Mr. and Mrs. Hartley? A I only met Mrs. Hartley twice; she was to the house a second time.

Q How long had you known Mr. Hartley? A A good many years—when he was peddling around the street.

Q But not to talk to him? A Not until my granddaughter was married.

Q October 29th were you at the house? A Yes.

Q Did you see Mrs. Hartley? A Yes.

Q When did you see her? A That was the first I met her; I seen her at the door and opened the door for her.

Q Who was with her? A No one was on the stoop but her.

Q What happened there? A She introduced herself to me, and she said I was to bring the baby here today and I said, "I don't know

anything about it," so I called up to my granddaughter, who was sick in bed, and she said, "I guess it is all right for Fred asked to have him come up," that is the son; so I said, "He is not here yet," and she said, "There he stands down the street talking to two men." In the meantime Mr. Hartley came up and came out on the stoop and he said to me, "My wife can come in and the baby, but I don't care to have Mrs. See come in," and I turned around to Mrs. Hartley and I said, "Well, you can come in and bring the baby, but Mr. Hartley doesn't seem to want that lady," and she said, "I will not come in without Mrs. See," so she started down the steps, and Mr. Hartley said, "Well, I want to see the baby"; she went down the steps and put the baby in the carriage, and she said that she wouldn't come in without Mrs. See; so then Mr. Hartley took the baby from the carriage and brought it up the steps again; then she said, "Come on," to Mrs. See, and Mrs. See did come on. I said, "We cannot have any confusion; if you two ladies will step in the dining-room, and Mr. Hartley took the baby upstairs and he come in the front room a minute and went upstairs with it; there wasn't a word; they went in the dining-room and stayed there.

Q Did you hear Mr. Hartley say to Mrs. Hartley with respect to the baby, "I have got him now, you had better kiss him good-bye, because you are never going to see him again," or words to that effect? A No, sir.

Q Did you hear Mr. Hartley say to Mrs. Hartley, "You are a liar, you know it," or words to that effect? A No, sir; not in my presence.

Q Did you hear Mr. Hartley say to Mrs. Hartley with respect to the baby, "Don't you

touch him; don't put your hands on him; he is in my custody now, and don't you touch him," or words to that effect? A No. He took the baby from her arms and I didn't hear a word between them; she stood there.

Q Do you remember the Tuesday, the first of November? A Yes.

Q Were you home then when Mrs. Hartley came? A Yes.

Q What time did she come? A She come about two o'clock. I guess, just about two.

Q Was Mr. Hartley there at the time, or didn't he come yet? A No, he wasn't there yet.

Q When she came was Mrs. See with her? A She brought Mrs. See with her.

Q When he came, was there anything said or any disturbance or any trouble? A No, he called up and wanted to know if Mrs. Hartley was there yet; I said, "Yes, they have been here quite a few minutes," so he said, "I will be right up," and he came up and my daughter took the baby in her arms, showing him the pigeons and one thing and another, and she goes right out into the hall and handed the baby to Mr. Hartley, and he went upstairs.

Q Is your granddaughter the wife of Mr. Hartley's son? A Yes.

Q Were you home on November 5th? A Yes.

Q Do you remember Mr. Hartley coming there? A I ain't sure whether he came or was confined to bed.

Q Was that Election Day? A I don't know; he was busy and he said if she was there he would come, but she wasn't there.

Caroline Wood, cross.

Q She didn't come there that day? A No, sir.

Cross examination by Mr. Mylod.

Q Mr. Hartley carried the baby from the baby carriage right into your house and right on upstairs? A From the baby carriage on the stoop.

Q Did he stop on the stoop and talk? A Yes, just a second; I invited the ladies in the dining-room.

Q What did he do with the baby? A He went right upstairs.

Q When he picked the baby out of the baby carriage, Mrs. Hartley was standing alongside of him? A Yes.

Q And they had their back to you on the porch? A No, I don't think they had their back to me; they stood there; I could see them very plainly.

Q Freddie was there, Mr. Hartley's son, who is married to your granddaughter? A Yes.

Q Didn't Mrs. Hartley say that she didn't know that his wife was sick, and that she was sorry his wife was sick? A I understood her to say she didn't know that, and she wouldn't have come if she had known it, and I said it didn't make any difference.

Q She said she was sorry? A Yes.

Q Mr. Hartley was there then? A Yes.

Q Didn't he say that she was a liar, that she did know that Mrs. Hartley was sick? A No, I was there; I could have heard it; he never said a word like that in that house.

Q Did he stop to talk to Mrs. Hartley or some one on the porch after he took the baby

out of the carriage? A No, he spoke to me; he didn't speak anything to her.

Q He took the baby out of the carriage? A Yes.

Q And he brought it to the porch and stood there on the porch? A He said, "Mrs. Wood, I don't want Mrs. See in, but my wife and the baby I want in."

Q He had the baby in his arms at the time? A Yes.

Q What did he say or do after he said, "I don't want Mrs. See in"? A We told them all to come in off the stoop.

Q What did Mr. Hartley do? A He stayed there until he come in the house.

Q Didn't he go right on upstairs? A He sat in the front room to take the baby's things off and he went right upstairs, and the two ladies went in the dining-room.

Q Who took the baby's things off in the front room? A The first time they were there Freddie helped to take them off the baby.

Q When he carried the baby in the first time and into the parlor, the baby had a heavy sweater on? A Yes.

Q And Mrs. Hartley was inside then? A Yes.

Q Didn't she say if she should take his sweater and his hat off? A Mrs. Hartley asked me to see that it was taken off; Freddie took it off then, he said he was warm.

Q Do you recall that she said to Mr. Hartley, "Shall I take the baby's sweater and cap off?" A No, she didn't speak one word to him about it.

Q Did she attempt to take the baby's sweater and hat off? A No, because Mr. Hartley had the baby.

Q Even so, did she make any effort right there to take the baby's sweater off? A No, she asked me to take it off. It was very warm.

Q Mr. Hartley didn't say to her, "Don't touch him; don't put your hands on him, he is in my custody now?" A No, sir.

Q You didn't hear him say that inside of the house? A No, he didn't say it there.

Q There are two rooms, at least, on that floor? A Three rooms.

Q And folding doors? A Yes.

Q And before the baby was taken upstairs the folding doors were closed? A We closed the doors because Mr. Hartley was going to stay in the front room; he didn't think it would be advisable to go upstairs where the sick was.

Q Mrs. Hartley was sitting in one room and Mr. Hartley in another room with the baby; who closed the folding doors between the two rooms? A I did.

Q Who told you to close them? A Mr. Hartley said, "Can the doors be closed" while he had the baby and the ladies were in the other room.

JAMES A. KELLY, sworn for defendant.

Direct examination by Mr. Lane.

Q Where do you live? A 12 Watts street, Kearny.

Q What is your business? A Clerk of the Second District Court, Kearny.

Q What was your business in 1916, 1917 and 1918? A I was clerk of the court, but I

did some bookkeeping for the S. Smith Coal Company.

Q What time of the day did you do that bookkeeping? A My office was right in the S. Smith Coal Company office.

Q Do you know Mr. Hartley? A Very well.

Q How long have you known him? A Between twenty and twenty-five years.

Q Do you know Mrs. Hartley? A Yes, sir; I do.

Q How long have you known her? A I think about three or four years.

Q Do you know of Mrs. Hartley buying coal at that coal company's office? A Yes.

Q What do you know about it?

Mr. Mylod. I think the time should be fixed, and if there are any records, we should have them.

Q Do you know anything about her buying coal? A Yes.

Q What do you know about it? A I know that ever since I have been there Mr. Hartley has bought his coal from the S. Smith Coal Company.

The Court. Who, Mr. or Mrs. Hartley? The question was about Mrs. Hartley buying coal.

The Witness. Mrs. Hartley in 1919 was the first time, I believe, that I ever sold coal at the request of Mrs. Hartley.

Q Did she get coal there? A She did; yes, sir.

Q And did Mr. Hartley buy coal there? A Yes.

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Q Did Mr. Hartley have an account there? A Yes. Mr. Hartley had an account.

The Court. Did Mrs. Hartley have an account?

The Witness. No, it was run under the name of F. A. Hartley.

Q Was that account ever closed? A No, never.

Q Do you remember about the time that Mrs. Hartley left her husband? A I do, yes.

Q After that time did you see Mr. Hartley? A Yes.

Q Where? A At the office.

Q How soon after that? A I guess it was the second day after.

Q After she left? A Yes.

Q What did he do? A He called on the 'phone.

Q Called whom? A He called up his mother-in-law, or he said he was going to call his mother-in-law.

Q Was there a conversation that he had on the telephone? A No, sir.

Q You could hear what he said? A Yes.

Q What did he say? A He said he wanted to talk to his wife.

Q What else did you hear?

Mr. Mylod. I object; he doesn't know who he was calling on the 'phone or talking to.

The Court. It depends on what weight is to be attached to it.

Q Tell us what happened after he asked to talk to his wife. A He told me that his wife had left him.

Mr. Mylod. I object.

The Court. Strike that out.

Q What did you see and hear there? A He called the number and someone answered, and he said at that time that he wanted to talk to his wife, and he tried to talk further, but the connection was cut off, he told me.

Mr. Mylod. I ask that that be stricken out.

The Court. Strike that part out.

Q What did he do with the telephone receiver? A He went in and called a number and someone answered, and he said to the person that answered, that he wanted to talk to his wife, and there was nothing further got on the 'phone.

Q Did you see him then put the receiver back? A He tried to get the number again.

Q How long was he at it? A Several minutes.

Q Did he finally give it up? A Yes.

Q How soon after that did he come to your office again? A Well, I suppose altogether he talked several hundred times on that same number.

Q The same number he called that day?

The Court. Since the separation?

The Witness. Yes.

The Court. Several hundred times?

The Witness. Yes, I should think so.

The Court. He called his mother-in-law's number?

The Witness. Yes.

Q How soon after this first time was it that he made the next attempt? A I think it was on the following week—Monday or Tuesday, but there has been a repetition of this.

Q When was the first time that he got anybody on the 'phone, whom you assumed to be his wife? A I think it was the following week, on a Thursday.

Q You say from that time up until when were there so many talks over the telephone? A I think even until January, a year and a half, I suppose.

Q January and February of this year? A Yes.

Q After he got them on the 'phone what did he say; what was the purpose of the calls, as you gathered from what you heard? A I think the first time he called, he said he couldn't get along the way he was going, and he couldn't stand it any longer, he would have to have someone.

Mr. Mylod. I object.

The Court. This is the conversation he heard over the telephone?

The Witness. Yes.

The Court. Is this on Thursday, when you understood he was talking to his wife, that you are referring to now?

The Witness. Yes, and he said he wanted her to come home. I heard him say that he would leave the key in the same place, and he told me at that time that she was coming home.

The Court. Strike out what Mr. Hartley told him.

Q After that did you hear any telephone conversation over the 'phone at which appointments were made? A Yes, sir.

Q What for? A The one appointment was to met Mrs. Hartley.

Q Was there more than one occasion at which an appointment was made? A Yes, many occasions.

Q These one hundred or more calls that you have referred to, were they generally for the purpose of making appointments? A Yes.

Q Did it appear from the conversation that you overheard, as to whether those appointments were actually made? A Yes, sometimes I could hear the reply. I would be working within eighteen inches of the 'phone in the office, being quiet, I could hear the reply.

Q How well have you known Mr. Hartley? A Very well, he coming in and out of the office most every day.

Q For how long? A Since 1917 I have been located down at Johnston avenue.

Q Did you ever see him under the influence of liquor? A No, sir.

Cross examination by Mr. Mylod.

Q Did you ever see him take a drink of intoxicating liquor? A No, sir.

Q Never took a drink with him either? A No, sir; I don't drink.

Q You never associated with him either? A We have been out together, but I have never been where there has been any liquor.

Q As a matter of fact, Sam Smith or Sam Smith's son is one of the incorporators of the Hartley Realty Company? A I don't know much about the F. A. Hartley Realty Company.

Q Didn't you hear Mr. Hartley and Mr. Smith talking the realty company over down at the coal office? A No, Mr. Hartley some time ago, I think in 1919, come in to me and said he would like to get in some other business; I think it was at my suggestion that he formed the F. A. Hartley Realty Company.

Q He didn't tell you that his wife suggested that he form a real estate corporation? A He did not.

Q He never told you that? A No.

Q Did you hear him on the telephone make an appointment to meet his wife and the baby at the Day Nursery? A I think I have.

Q You think you heard about the Day Nursery? A Yes.

Q And these calls that you talk about were around about that time, these telephone calls to his wife? A Mr. Mylod, they were distributed over a period of, you might say, a year and a half.

Q You have, of course, a very good idea of numbers and amounts? A Yes.

Q And when you say several hundred, you mean that? A Yes.

Q When you say several hundred, how many do you mean? A Probably three or four calls a week.

Q And that amounts to several hundred calls? A Yes.

Q In your opinion? A Yes, it does.

Q Did you keep books of account? A Yes.

Q And Sam Smith is still in the coal business? A Yes.

Q His records are still there? A No, sir.

Q What happened to his records? A The records are in the other office, 562 Market street, Newark, where he has the coal pockets.

Q And if Mr. Hartley purchased any coal during the winter of 1918 from Sam Smith, the records in the Market street office would show? A I believe they would.

Q You knew you were going to testify here today? A Yes.

Q When did you know that? A I knew it several months ago.

Q Mr. Hartley told you what testimony he expected, didn't he, with reference to deliveries of coal? A No, sir.

Q Didn't he tell you what he wanted you to testify to? A No.

Q The nature of the testimony? A No, sir.

Q You didn't know you were to be called to prove that Mr. Hartley had an account with Sam Smith, and that the Sam Smith Coal Company furnished coal? A I don't believe anyone would ever deny that.

Q You didn't know that? A Yes, I suppose I did.

Q Why didn't you think it worth while, then, to get the records? A I haven't them.

Q But you know they could be procurred through the coal company? A Yes, I suppose they could be; they are not in my possession, though.

Q You never called Mrs. Hartley from the coal office for Mr. Hartley, did you? A No, sir; I never did.

Re-direct examination by Mr. Lane.

Q Do you remember what year the coal strike was? A 1917.

Q The winter of 1917-18? A Yes.

James A. Kelly, re-cross.

Q Was there not difficulty in getting coal in Kearny at that time? A There has not been a normal supply of coal for four or five years.

Q Was there any difficulty during the coal strike in Kearny, at that time? A Very much; we had to sell it by the bushel, something we had never done before.

Q And has there been difficulty since? A Always been difficulty.

Q With respect to large orders for coal? A Yes.

The Court. Did Mr. Hartley have any large orders for coal?

The Witness. We used to send him a ton at a time, but during the coal strike—

Mr. Lane. I mean orders taken in the spring to fill for the winter supply?

The Witness. We haven't been able to do it the last three or four years.

Q Have you been able to do that? A No, we would have to string them all the way through the year.

Q So your customers for the last four or five years have been on a supply from hand to mouth, so far as coal is concerned? A Yes.

Re-cross examination by Mr. Mylod.

Q You always had some coal for good customers? A Yes.

Q Enough to keep them going? A I always provided for Mr. Hartley a bag of coal and he used to send a man in to get it, either that or coke.

Fred Hartley, direct.

FRED HARTLEY, sworn for defendant.

Direct examination by Mr. Lane.

Q How old are you? A Twenty years.

Q Do you remember when your father married the present Mrs. Hartley? A I do.

Q How old were you then? A Between fourteen and fifteen.

Q Had you known Mrs. Hartley before her marriage? A Yes, I had known her for about ten or twelve years; she always lived in the same house with us.

Q Do you remember a trip which you took to Long Branch? A To Asbury Park.

Q In the latter part of 1918? A Yes.

Q Will you tell us what you remember about any trouble that there was on that trip? A There was no trouble until we got down to Asbury Park, and we went down in the car and my father suggested spending the summer—we were going down to get a place to spend the summer; he suggested going to Ocan Grove, where my mother and my father and I had always spent the summer.

Q Had the present Mrs. Hartley been down there with the family then? A The previous year she took my brother and I down to Asbury Park and when we got down there, my father suggested going to Ocean Grove, and that was the first time there was any scene or any trouble.

Q What happened? A Mrs. Hartley said, "I won't go to Ocean Grove; I don't want to lose my reputation," and there was nothing further said there, that I remember of, and that day my brother and I went down in the sand and played while my father and Mrs. Hartley sat

on the boardwalk, and after a while we got in the car and came back. I don't know what happened while we were in the sand, but we got in the car, and nothing was said until we came through Long Branch, and at a fork in the road my father was forced to slow up, due to the heavy traffic, and Mrs. Hartley jumped out of the car while it was still in motion, and said, "I won't ride another inch with you and your two brats," and she said she wanted money to ride home in the train. We persuaded her to get back in the car, and there wasn't another word said, until we got up as far as Elizabeth, and as we were passing the Elks' Club House in Elizabeth, there was a long chain of cars, and we ran into a car in front of us, in front of the Elks' Club House—a slight accident, and we proceeded home, and when we got home my brother and I and Mrs. Ferris, and Mrs. Hartley and my father and I were in the machine, and my father was getting a drink, and he turned around and Mrs. Hartley went and grabbed for his pocket, and as she did, she tore his trousers, and in lifting up her hand, she scratched him on the face, and my father said, "You children have never seen this while your mother was alive; you are not going to see it now; pack your grips and I am going to take you away," and he took us to Mrs. Larkin's, Boyden street, out in Newark, and we stayed there that night, and the next morning he brought us home and stayed there until about the first of August.

Q What happened then? A Then we went to Asbury Park for the month; my father and brother went down in the car; they took our clothes along, and Maria and I went down on the

train together. Nothing particular happened on that vacation, until around Labor Day, and my father came down; we were going to the Elks' convention at Long Branch, and my father came down on Sunday, and he came upstairs and my brother and I had collected some shells during that week, and we went inside and met them; we had two rooms, Maria had one and my brother and I had another room; he went inside with her; later on he came out and told my brother and I to pack our grips, we were going home; we did that and waited in the car and he came down alone; we rode off for two or three blocks, and finally we came back and he went inside and got her and we came home; when we came home, my brother and I went upstairs to Mrs. Ferris; we had always gone in and out there and when we got inside, Charlie Ferris, her brother, and I think her sister and her aunt and the whole crowd of them started to call the two of us "brats," "tattle-tales," and her aunt said she wished she had a knife, she would go down and give it to him good, but we came downstairs and my brother told my father, and he said, "This is about the finish of it," and told us to pack our grips again, and then he took us down to Mrs. Seeley's, on Cleveland avenue, Harrison.

Q Where you stayed until when? A Until we went down to Rutgers.

Q And you went through Rutgers? A I went through Rutger Prep.

Q What are you doing now? A I am assisting the collecter of the Internal Revenue for 1921, of the income taxes.

Q Where do you live? A 27 Johnston avenue. I occupy one of the apartments in my father's house.

Q When were you married? A 1920.

Q From the time that you left, about Labor Day, 1918, did you live home with your father and Mrs. Hartley at any time? A I lived there for about six weeks to two months.

Q After that? A No, after that I lived with my own family.

Q The time you did live home after the marriage, was there any trouble other than what you have said? A Not a bit.

Q How was the house furnished? A Very well.

Q What do you mean by that? A There was a complete set of furniture in each room.

Q How were the floors covered, if they were covered? A In the parlor we had a rug carpet, and in the dining-room and in the bedroom, the middle bedroom. we had a rug, and in the dining-room there was a rug, and in the kitchen there was oilcloth, and in the back bedroom I think there was another rug—I am not sure about the back room.

Q Do you remember October 29th, when you met your father at or near the house of Mrs. Wood? A Yes, I was in New York at that time; I was over on Wall street; I came home and met my father, and he was talking to the contractor who was paving the street, and he showed me a letter which he had received from you telling him that he was to get the baby at my mother-in-law's, and we walked up to the house and we walked up on the stoop, and my father got the baby and took him inside, and he

and I took his sweater off and took him upstairs.

Q When were you with your father, before he went to the porch? A I met him on the street.

Q He wasn't talking to Mrs. Hartley before you met him, as far as you could see? A As far as I could see, no.

Q What was said when he walked up, as to Mrs. See; who was there? A Mrs. Hartley and Mrs. See, and Mrs. Wood, the nurse, and Mrs. Wood, my wife's grandmother, and I think that is all.

Q What was said? A My father objected to Mrs. See coming into the house; he said, "Marie, you can come in and bring the baby, but I won't see you in the presence of Mrs. See," and finally we agreed to have Mrs. See and Marie come up.

Q Did you hear your father say during that discussion—I refer to the baby—"I have got him now, you had better kiss him good-bye, because you will never see him again," or words to that effect? A I did not.

Q Was there any time during the discussion that you told your father to keep quiet, or words to that effect? A No, sir.

Q Did you hear him say to Mrs. Hartley, "You are a liar, and you know it," or words to that effect? A I did not.

Q Did Mrs. Hartley ever offer to take off the baby's sweater after he got in the house? A Not that I know of.

Q And did Mr. Hartley say to her when she did that, "Don't touch him, don't put your hands on him; he is my custody now, and don't

you touch him," or words to that effect? A No, sir; when Mrs. Hartley and Mrs. See came in, they walked through the parlor and into the dining-room and the doors were closed.

Q Who had the child then, you or your father? A My father was sitting on the couch holding the child, and I was taking off his sweater—both of us were.

Q When was it you went to Rutgers? A In the fall of 1917.

Q Do you remember going home in June, 1917? A Yes.

Q Did you stay at the house then? A I went upstairs with my aunt then; there was no one home when I came home; I think it was 1918 I was a junior down there and when I came home there was no one home and I went up to live with my aunt.

Q From the time that you went to Rutgers Prep School up to the time that Mrs. Hartley left, how often were you in the presence of your father and Mrs. Hartley? A I was there very few times.

Q Those times that you were, how did he treat her? A Very affectionately; in fact, I never had a chance to go out with them, because they were always out together; I had very little chance to be with the two of them.

Q How did you get along with Mrs. Hartley? A All right.

Q Did he ever say anything to you that indicated any lack of affection for Mrs. Hartley? A No.

Fred Hartley, cross.

Cross examination by Mr. Mylod.

Q You and your brother had a very nice summer with your stepmother at Asbury Park in 1917? A Yes.

Q How long did you and Mrs. Hartley and your brother stay in Asbury Park in 1917? A About a month.

Q You stayed where? A At the Elberon Hotel, on Third avenue.

Q And in 1918 you went back to the same place? A I think it was 1916 the three of us went down and 1917 too; I know that we went down two years in succession together.

Q The trouble occurred about Labor Day, 1918, didn't it, or 1917? A Yes.

Q Which year did the trouble occur? A 1917.

Q The first year they were married? A Yes, that is right.

Q Your father didn't speak to Mrs. Hartley on the way back from Asbury Park at all—when he got to Long Branch on that trip in June? A Not a word was said all the way in.

Q You were sitting in the rear seat? A Yes.

Q Your brother was with you? A He was.

Q And Mr. and Mrs. Hartley in front? A Yes.

Q And there wasn't a word exchanged in all that time? A Not a word that I heard.

Q You were talking to your brother and not paying much attention to what was going on in the front seat? A That might be.

Fred Hartley, cross.

Q Mrs. Hartley did talk about leaving the automobile at Long Branch and say she would go home in the train? A Yes, she did.

The Court. Any reason given why she should refer to you as the brats?

The Witness. No, sir; there was no trouble between us.

The Court. And had not been?

The Witness. No, sir.

The Court. Did she ever make use of that expression before to you?

The Witness. No, sir.

The Court. Was she very angry?

The Wtiness. Yes, she seemed to be angry and excited.

Q Up to that time you and Mrs. Hartley and your brother got along very well and were friendly? A We did.

Q There was no trouble in the house? A Mrs. Hartley and I got along very well; there might have been a little quarrel between she and my brother; he was a youngster then, and of course once in a while he—

Q Nothing to amount to anything; she showed no ill will toward him? A No.

Q Or none toward you? A No.

Q She went to the movies with both of you very often? A I wouldn't say that; while we were on a vacation?

Q No, while you were home, generally. A No, sir.

Q While you were on your vacation did you got out to the movies? A No, we were out

very little together; Marie and I might have taken a walk a couple of times.

Q While you were down at Asbury Park, Sam Smith, of Kearny, went out with you in the automobile, and Mrs. Hartley was there? A Yes.

Q You drove down to Clayton's? A Yes; I don't remember the name of the place.

Q You remember taking a drive with Sam Smith and Mrs. Hartley? A Yes.

Q And your brother? A Yes.

Q Did you know that your father had arranged for you to go to this lady in Newark prior to the night that you went there? A I did not; no, sir.

Q When you came back from Asbury Park, he said, "Pack your grips and I will take you out of this house," something like that? A Yes, that was not in June; I think around July Fourth.

Q That was to Mrs. Seeley's you went? A No, that was Mrs. Larkin's.

The Court. On Labor Day when you came up and had this quarrel, when you got to Elizabeth you had some trouble in front of the Elks' Club; when you got home that night, wasn't there some trouble about tearing his pocket and scratching his face?

The Witness. That was another occasion; yes.

The Court. In June?

The Witness. Yes. The time in June we went to Newark, and in August we went to Harrison.

Q Didn't your father ask you boys if you had dress suit cases on this June trip? A No, I don't remember him asking me that.

Q On the Labor Day trip did he ask you if you boys had suit cases? A I don't remember.

Q You don't know that your father made arrangements with Mrs. Seeley? A No, sir.

Q For you to go there prior to the night you went there? A I do not, no.

Q Did Mrs. Hartley ever object to having you or your brother around the home? A I never heard her object.

Q Coming down to October 29, 1921, when Mrs. Hartley called, did Mrs. Hartley say to you that she was sorry that your wife was sick, that she didn't know it? A She did.

Q Was your father nearby when she said that? A Yes.

Q He didn't say she was a liar, that she did know it? A No.

Q If he did say it, you didn't hear it? A I didn't hear it.

Q Prior to the starting of this suit, you were not on friendly terms with your father, were you? A That is right; yes, sir.

Q How long a time was it that you didn't speak to your father? A About a year, possibly a little more than a year.

Q Then after this suit started, your father went to you? A No, he didn't come to me; I went to him.

Q After the suit started? A Yes.

Q Then did you go over all these things with him, as to what you knew about his trouble with his wife, with Maria; did you talk them

over with him? A I wouldn't say we went over it in detail; there was a discussion; I knew all the time what was going on, through hearing it about town; of course, we had a discussion on it.

Q And you told him you knew all about the June trip in 1917 and the Labor Day trip in 1917? A I did.

The Court. Did your father and stepmother have any quarrels over money matters?

The Witness. I never heard them have any quarrels over money matters; I never heard them quarrel except on these occasions I told you about.

Q When you got home from the trip to Asbury Park was there any explanation as to Mrs. Hartley's desire to quit the car at Long Branch? A No, sir; there was no explanation at all.

Q Was anything said after she got back in the car, when you prevailed on her to go on with the trip? A The way they acted on the way up, it looked to me as though something happened while we were down in the sand that we knew nothing about, and we sat there and not a word was said until we got to Long Branch, and I understand she tried to jump out of the car.

Re-direct examination by Mr. Lane.

Q Are you talking about the Labor Day trip or the one in June? A In June.

Q Did you ever see your father under the influence of liquor? A No, sir; never.

Q Are you living at home with your father now? A I have my own home.

Q The difficulty between your father and yourself was due to a difference of opinion with respect to education? A Yes.

Q You live in the same house your father lives in, the same building? A Yes, but not the same flat.

MRS. MARY LARKIN, sworn for defendant.

Direct examination by Mr. Lane.

Q Mrs. Larkin, where do you live? A 129 Boyden street, Newark.

Q How long have you known Mr. Hartley? A About twenty-seven years.

Q How long have you known the present Mrs. Hartley? A I never met her to know her, only just to see her.

Q Where did you live in June, 1917? A Where I live today.

Q Did Mr. Hartley bring the boys to your house at one time? A One Sunday evening, his two boys.

Q What time of the day was it? A In the evening—I wouldn't say just the exact time; it might have been about eight o'clock or later.

Q What did he bring them there for? A Mr. Hartley brought his two boys in and he asked me to do him a favor, and I said yes, I would, anything I could do for him and the boys I would do it; he asked me to keep his boys over night, because he had a little trouble at home.

Mr. Mylod. I object to it.

The Court. Strike out the last part of the answer.

Q Did you keep the boys over night? A Yes.

Q And when did they go home? A The next day.

Q Who came for them? A Mr. Hartley came himself.

Q When Mr. Hartley came the night before with the boys, did you see whether he had a cut over his face? A Yes.

Q Where was the cut? A Right over his face, and I asked him what had happened.

The Court. Was it a scratch?

The Witness. Like a scratch.

Q How well did you know Mr. Hartley? A I don't think there is anybody outside of his wife that is more intimate than I have been.

Q Did you ever see him under the influence of liquor? A No, sir; never.

Q How far is your house from Mr. Hartley's house? A At one time I was almost a neighbor of Mr. Hartley, when his wife first left.

Q How far away were you at the time he brought the boys to you? A He lives in Kearny and I live in Newark.

Q Some distance? A Yes.

Q Have you been in their house, in Mr. Hartley's house? A Yes, many a time.

The Court. Since he married his present wife?

The Witness. No, sir; never.

Q How long before he married his present wife was it you were in there? A I have been in his house a couple of weeks before his wife died.

Mrs. Mary Larkin, cross.

Q How was it furnished? A Lovely.

Q What do you mean? A Everything was all right in it. Mr. Hartley had one nice home for anybody.

Q Was there something on the floors? A Yes.

Q What? A He had a beautiful rug on his parlor floor and he had carpet on his bedroom floor, and I am pretty sure he had a rug on his dining-room floor.

Q Do you remember whether there was any oilcloth on the kitchen? A Yes, there was oilcloth on his kitchen.

Q How was it furnished so far as furniture was concerned? A His furniture was all right; Mr. Hartley had nice furniture.

Q Did he have bedroom furniture and dining-room furniture in the different rooms? A He had everything in the different rooms.

Q Plenty for housekeeping purposes? A Yes, sir; he had everything.

Q Was there a piano there? A Yes, there was a piano there.

Cross examination by Mr. Mylod.

Q You didn't know when the piano was moved upstairs, did you; to the aunt's? A To what aunt's?

Q Some relation who lived on the floor above. A I didn't know as Mr. Hartley had anybody upstairs then.

Q You know a Mrs. Kerr? A No.

Q You never heard of her? A No.

Q The rugs appeared to you to be new? A I wouldn't say they were new, but they were all right, because when Mr. Hartley went in the home he furnished everything new in it.

Q And he went in it just after he built the house, didn't he? A I guess he did.

Q Do you know when he built the house? A No, I cannot tell just when he built it.

Q Ten years? A I guess a little longer than that.

Q Longer than that? A It might be.

Q You saw the furniture two weeks before his first wife died? A Yes; I was in the house on Saturday and saw the furniture, and his wife died on Thursday, and I saw his home.

Q How long was the first Mrs. Hartley sick? A For years. She never had really to do her housework.

Q You went there weekly? A Not all the time.

Q During the last three or four years of her illness didn't you work there then? A Mrs. Hartley had a lady take care of her.

Q Mr. Hartley had someone taking care of her? A He had a lady taking care of her; I wasn't there much after they built their new home, because I was in Newark and they lived in Kearny.

Q That was the only night that Mr. Hartley ever brought the boys to your house, one Sunday evening? A One Sunday evening.

Q He was very nervous and very excited? A No, he was not.

Q Very cool? A The man was all right.

Q You never saw Mr. Hartley excited or nervous, did you? A No, sir.

Q Always cool and calm? A I never saw him any different than anybody is looking at him now.

Q You don't know whether he drank intoxicating liquors or not, do you? A I always heard that Mr. Hartley didn't; I always heard that because he couldn't take and attend to his business like what he had been.

Q There were some rooms in that house that were not furnished at all? A No, sir.

Q Every room was furnished? A Every room was furnished.

Q How many rooms were there in the apartment? A They had a parlor and bedroom and dining-room, and their kitchen, and bedroom off their kitchen, and every room in that place was furnished.

Q How many rooms did that make as you counted them? A There was a parlor, dining-room, and two bedrooms and their kitchen, they had five rooms.

Q As a matter of fact there were six rooms in that flat? A Mr. Hartley had a room for his parlor.

Q Did you see the davenport there? A Yes.

Q What room was the davenport in? A In their dining-room.

Q And what kind of furniture was in the dining-room; was it polished or mahogany? A That I just cannot tell you.

Q You cannot tell what the lovely furniture was in the parlor? A No, his furniture was fit for anybody to live in it.

Q You don't know whether it was mahogany or walnut? A No, I cannot tell if it was mahogany or walnut.

Q But it looked good to you? A Yes, and to everybody else.

MRS. GRACE McGLYNN, sworn for defendant.

Direct examination by Mr. Lane.

Q Where do you live? A 87 Johnston avenue, Kearny.

Q Do you know Mrs. Hartley? A Yes.

Q Do you know the present Mrs. Hartley? A Yes, I first became acquainted with her about ten years ago.

Q Do you live in the same house they lived in when they lived together? A Yes.

Q How long did you live there? A Seven years.

Q What apartment did you occupy with reference to the apartment they occupied? A The opposite side.

Q How often did you see her during the time she lived at that place? A Every day.

Q How was she dressed? A Very nice.

Q Usually? A Yes.

Q Have you ever been in their apartment? A Yes.

Q How was it furnished? A Very comfortable.

Q Fit for housekeeping purposes? A Yes.

Q Did you observe during the time that Mrs. Hartley was there whether there was coal in the cellar of the house? A Yes, there was.

Q Did you observe whether Mrs. Hartley had money in her possession? A Yes.

Q How did you know that? A Because I asked Mrs. Hartley to loan me two dollars, and she said, "I will let you have five dollars, if you want it."

Q You were friendly with Mrs. Hartley? A Yes.

Q Did you talk to her? A Yes, every day.

Q What do you mean by friendly with her? A She come in to see me and I would go in her house.

Q During all that time she was living there? A Yes.

Q Did she ever complain to you? A She never complained.

Q Do you know whether Mrs. Hartley was out quite often? A Yes, she was.

Q How do you know that? A She told me she was going to her mother's.

Q Was that spasmodic or customary? A Yes, customary, I think.

Q How often would that be? A She would go in the morning and stay all day until about four o'clock.

Q How often in the week did she do that? A Every day.

Q Is there any way that you know it except that she told you so? A Yes, I used to see her go some days.

Q Do you remember the ice being left and melting? A Yes.

Q Because no one was home? A Yes.

The Court. Do you know; did you ever see the ice melt?

The Witness. Yes, I did.

Q How often? A Very often.

Q Do you know why it melted? A Because there was no one home.

Q Have you ever observed anything with respect to the butcher? A Yes.

Q Tell us about that. A The meat would be left between the screen door and the other door, and I saw it and put it in the icebox.

Mrs. Grace McGlynn, cross.

Q Why? A Because there was no one home, and I didn't want to see it left there for the cats to get it.

The Court. What time in the morning would she go out?

The Witness. I don't know what time, but it would be right after Mr. Hartley would go out.

Q What time did he go out? A Sometimes he would go out early.

Q How late did he go out, if he didn't go early? A Mrs. Hartley would go out half-past ten and get back at four.

Q And the ice and meat was all delivered between ten and four? A Yes.

Q Do you know where Mr. Hartley lives now? A Yes.

Q Where? A 87 Johnston avenue.

Q The same place he was living? A Yes.

Q Has he made any change in the house since his wife left him? A No, it is just the same.

Q Did anybody live there with him? A No, only Henry, the son.

The Court. Who keeps house for him?

The Witness. Nobody; himself, for over two years.

Q Did you ever see Mr. Hartley under the influence of liquor? A Never.

Cross examination by Mr. Mylod.

Q How do you know the house is just the same as when Mrs. Hartley left it? A Because my sister-in-law calls on the 'phone and I can see it.

Q Do you go into his flat? A If I am called on the 'phone.

Q If you answer the telephone? A Yes, if it is for me.

Q Have you a key to his apartment? A No, only when Mr. Hartley is there.

Q His boy is out during the day? A Yes.

Q And if the telephone rings and Mr. Hartley is away and the boy is out, can't you get in? A No.

Q When did Mr. Hartley or his son call you in last to answer the 'phone? A I haven't been called in for quite awhile.

Q The only time you have been in the apartment since Mrs. Hartley left has been to answer the telephone? A Yes.

Q How many times have you been in to answer the telephone? A Not very many times, but I would go in and put the little boy's clothes on when he went home, little Alfred.

Q Do you help take care of him when he comes down to the house? A No, I have enough to do.

Q You heard Mr. and Mrs. Hartley disagree about money matters? A No, never.

Q Did you ever hear any discussion about Mrs. Hartley taking fifty cents out of Mr. Hartley's pocket? A No.

Q Did you ever tell Mrs. Kerr that there was quite a rumpus in the Hartley household on account of fifty cents? A No.

Q Do you know that Mrs. Hartley was getting $20 a week from her husband to run the house? A No, I did not, only what I read—

Q Only what you read in the newspapers? A I thought you meant about $25 a week.

Q Can you recall the date on which you wanted to borrow two dollars from Mrs. Hartley and she said she would loan you five dollars if you needed it? A No.

Q It might have been a month ago or a year ago and might have been six months? A It might have been a year.

Q You don't know when it was? A Yes.

The Court. Did she actually loan you five dollars?

The Witness. No, she said she would loan me five.

The Court. Did she?

The Witness. No, she gave me the two dollars.

Q You paid it back to her? A Yes.

Q Did you borrow Mr. Hartley's sewing machine? A Yes.

Q When was that? A I don't remember the date.

Q How long did you keep it? A Not very long.

Q Was there some trouble over the sewing machine? A No.

Q Did you have your husband bring it back or did Mr. Hartley come after it? A He come for it; it was his.

Q Mrs. Hartley always looked neat and well dressed? A Yes.

Q Didn't you discuss household matters with Mrs. Hartley; didn't she tell you that her husband was giving her $25 a week and she could loan you five dollars out of that? A She never said a word what she got.

Q You know Yates, the coal man? A Yes.

Ada Seeley, direct.

Q Did you ever see him bring coal to Mrs. Hartley? A Yes.

Q What was the largest amount of coal you ever saw Yates bring? A I cannot say.

Q He brought it in a pail usually? A No.

Q In a bag? A A bushel bag.

Q How many bushels did you see Yates bring in to Mrs. Hartley's house at different times? A I cannot say how many, but that was when coal was scarce.

Q Did you see him bring ten bags in at different times? A I cannot say how many.

Q You were never without coal yourself while coal was scarce, were you? A Yes, I was. I had the same difficulty just the same as anyone else.

Q You always managed to get coal? A Yes, I had to buy it by the bushel and wait for it.

Q Did you loan coal to Mrs. Hartley? A No, only when she said she didn't want to go down in the celler; I had a box back of my stoop and I let her have a pail.

Q How often did you loan Mrs. Hartley coal? A Just twice.

Q Did you live on the same floor in this flat that Mr. Hartley lives on? A Yes, the opposite flat.

Q Have you seen Mrs. Hartley since she moved away from there? A No, I have not.

ADA SEELEY, sworn for defendant.

Direct examination by Mr. Lane.

Q Where do you live? A 429 Claremont avenue, Harrison, New Jersey.

Q Do you know Mr. Hartley? A Yes.

Ada Seeley, direct.

Q How long have you known him? A About twenty-five years.

Q Did you know the first Mrs. Hartley? A Yes, sir.

Q Did you visit the house while she was alive? A Yes, sir.

Q Do you know the present Mrs. Hartley? A Yes, sir; I have known her.

Q How long have you known her? A Just since they moved in with Mr. Hartley.

Q How intimate were you with Mr. Hartley; that is, how often did you visit the house? A I used to go real often when Mrs. Hartley was living, because her and I were friends.

Q Did you ever see Mr. Hartley under the influence of liquor? A No, sir; I never did.

Q Do you know the way in which the house was furnished? A Yes, when they moved there and now at the present time.

Q How was it furnished when the present Mr. and Mrs. Hartley moved in? A Every room in the house is furnished real comfortable.

Q What kind of floor covering have they? A On each room is rugs and in the kitchen is a linoleum.

Q What kind of furniture is there? A In the dining-room, big dining-room set and book case, and bedroom, bedroom set, and also furniture in the parlor, and the kitchen, of course, has got things in it that needs to be in it.

Q Is it comfortably fixed for housekeeping? A Yes.

Q How recently have you been in the apartment? A I haven't been there for two months; I was sick and couldn't go no more to clean house for Mr. Hartley.

Q After Mrs. Hartley left did you go to the house to clean it for Mr. Hartley? A I did.

Q How often? A Every other Thursday.

Q Has the house been changed at all? A No, sir.

Q Who has lived there since Mrs. Hartley left? A No one at all.

Q Has Mr. Hartley been there? A Mr. Hartley has been there; he has been there since I have been up there to do the work.

Q Is the house and apartment still there ready for occupancy? A Yes, it was when I was there two months ago.

Q Was there a time when the children, Fred and Henry, were brought to you? A Yes.

Q When was that? A On the day before Labor Day, 1917.

Q Tell us what you know about it; what happened? A Mr. Hartley brought the two boys down and asked me if I would keep them until he could get them ready for school and I said yes.

Q Have you seen Mr. Hartley and the present Mrs. Hartley together? A No, sir; I haven't; I never met Mr. Hartley and Mrs. Hartley from the time they were married. I never saw the present Mrs. Hartley, only once, when she came down to my house on a Friday morning and asked me if I could tell her where she could see Mr. Hartley, and my daughter went down to the door and told her that she could see him on Fifth street when he comes around that way with fish; she wanted to see about some papering that was going to be done in the house they were going in, in Woodlawn avenue.

Ada Seeley, cross.

Q When was that? A I cannot tell you when that was, because I don't remember the date, but it was after they were married, because I was away when they were married.

Q Have you talked with Mr. Hartley since the marriage to the present Mrs. Hartley? A No, sir; I haven't.

Q With Mr. Hartley? A No, with no one.

Q When the children were brought to you around Labor Day, how soon after Labor Day was it, do you remember? A I think it was on a Monday as Labor Day was on Tuesday.

The Court. Labor Day is usually on Monday.

The Witness. It must have been after Labor Day.

Q At that time did Mr. Hartley have any scratch or anything? A No, sir.

Q On his face? A No, sir.

Cross examination by Mr. Mylod.

Q Mr. Hartley when he brought the children said he wanted you to keep them until he could make arrangements to send them to school? A Yes.

Q Until school opened? A Yes.

Q When had you seen Mr. Hartley prior to that? The time he brought the boys down, did you see them a few days before? A No, sir; I wasn't home the Sunday he wanted me to take them; when he took them to Mrs. Larkin's, I wasn't home.

Q That was in June; I mean several days before Labor Day, did you have a talk with him then? A No, I never did until he brought them

down to my house and asked me if I would keep them there until he got them ready for school.

Q You were not doing any work for him then? A No.

Q You were never in Mr. Hartley's home after he married his second wife, the present Mrs. Hartley? A Not until after she left him.

Q You don't know how the home looked during the time she was there? A It looked just the way it was after I went there, and it was all right then.

Q Do you recall when you first went there to clean after Mrs. Hartley left? A No.

Q Do you know when Mrs. Hartley left? A No.

Q Have you any idea of the year you first went there to clean? A No, it might have been two years ago and it might have been four; I cannot tell you, because I never kept account.

Q You can recall how the house looked? A I had it all to clean, and I can recall it, and what I had to do in the house.

Q Labor Day what year was it that Mr. Hartley brought the children? A 1917 he brought the children down and then I asked him what was the trouble.

Q Can't you in some way fix the time that you suppose Mrs. Hartley left? A No, sir.

Q It was after Labor Day, 1917? A I wasn't home.

Q Were you home in Labor Day when he brought the children? A Yes, but I don't just remember anything about it.

Q You didn't take any particular notice of Mr. Hartley's face when he brought the children down? A I don't know why—anyone

would come in and have a scratch on or not have one, I don't see why anyone wouldn't notice it.

Q You didn't take any particular notice then as to whether he had a scratch on his face? A Sure, I simply looked at him, and I didn't say anything, because I thought he looked worried, and that is why I looked at him.

Q Did you notice any new furniture in the house after the second Mrs. Hartley came to the house? A Yes.

Q What new furniture did you observe? A Everything that is there now, even the davenport, I don't remember was there when Mrs. Hartley, first, moved there—the first Mrs. Hartley; she had everything new in the house.

The Court. You don't understand the question. Has anything new been bought since the present Mrs. Hartley came there?

The Witness. Everything in now is different from what it was when the first Mrs. Hartley was there.

Q With the exception of the davenport? A I don't remember whether that was there or not.

Q How long before the first Mrs. Hartley died did you see her? A I went to visit her on November first and then I went away to Boston and she died and was buried before I got home.

Q Then you saw her in November, 1916? A I wouldn't say to the date at all.

Q A few months before she died? A Yes, the month she died, in November.

Q Was the same dining room set there at that time, in November, 1916, when you called, that is there now? A Yes.

Ada Seeley, cross.

Q Then there wasn't a new dining room suit purchased after Mr. Hartley married his present wife? A It was all new then; I don't know what was the matter with it.

Q Was there a new one bought after he married her? A Not that I know of; everything else was new.

Q And before the time Mrs. Hartley died was that in the house? A No, sir.

Q In the room when you went there to clean after Mrs. Hartley left? A No, after Mrs. Hartley died, Mr. Hartley told me he took that bed and everything out of the room.

The Court. Strike it out.

Q It is what you observed. A It wasn't there.

Q Were the carpets that you saw there in November before Mrs. Hartley died the same that you cleaned after the present Mrs. Hartley left? A I don't know; they were all different; they are rugs now.

Q Were there any carpets there when she died? A Yes.

Q Now they are different? A Yes.

Q You don't know whether they were purchased new or second-hand? A They looked new.

Q Do you recall seeing an ice-box in the house? A Yes, she always had one.

Q Didn't the first Mrs. Hartley have an ice-box in the house? A No, there is a different box there now.

Q What articles of furniture are in the front room? A There is the davenport, a couple of nice rugs and chair and piano.

Charles Schiller, direct.

Q Is the piano in the front room now? A Yes, and oil paintings on the wall and a nice rug on the floor.

Q Do you know if the piano was ever out of the house? A Yes.

Q Where was it? A It was upstairs when the boys were up there, because it was Freddie's.

CHARLES SCHILLER, sworn for defendant.

Direct examination by Mr. Lane.

Q Where do you live? A 58 Johnston avenue, Kearny.

Q What is your business? A Butcher and grocer.

Q Do you know the present Mrs. Hartley? A Yes.

Q How long have you known her? A About ten years or so, I guess.

Q Do you know Mr. Hartley? A Yes.

Q How long have you known him? A About fifteen years.

Q How well do you know him? A Pretty well; he was a neighbor of mine.

Q Did you ever seen him under the influence of liquor? A No, sir.

Q Was Mrs. Hartley a customer at your store? A She came down and bought stuff, I would say yes.

Q During the time she lived with Mr. Hartley? A Yes.

Q Did she have credit or pay cash? A She paid cash whenever she got anything.

Q Did she actually pay cash? A Yes.

Q Did she send anyone to your store for things? A Sometimes the child would come and say it was for Mrs. Hartley.

Q Was her credit ever stopped? A No, sir.

The Court. Did she ever have an account and credit?

The Witness. No, sir; she always paid for what she got.

The Court. Did she ever ask for credit?

The Witness. No, sir. If she did, it was only until she come back the next day.

Q Mr. Hartley had credit? A He could have.

Q Did he run an account, as a fact, with you? A No, sir.

HARVEY BROWN, sworn for defendant.

Direct examination by Mr. Lane.

Q How old are you? A Sixteen.

Q Where do you live? A 215 William street, Harrison.

Q Did you work for Mr. Hartley? A Yes.

Q When? A For three or four years.

Q What days of the week did you work for him? A Saturdays, during vacation.

Q Were there any times when you delivered goods to Mrs. Hartley? A Yes, on Saturday night.

Q How often? A Saturday night.

Q Every Saturday night? A Yes.

Q Was she home? A Once or twice, that was all.

Q Where was she the other times? A I don't know.

Q Was the house closed? A Yes.

Harvey Brown, cross.

Q Where did you leave the keys? A On the back porch.

Q What kind of goods were they? A Fruits and vegetables.

Q Have you ever been sent to the store by Mrs. Hartley? A Yes, sir.

Q Where? A Up to the A. & P. and National Grocery.

Q How often, generally? A Any time I was around with Mr. Hartley, any time he was around, if she wanted anything, she would send me to the store.

Q Did you get things for her? A Yes.

Q Who gave you the money? A Mrs. Hartley and Mr. Hartley.

Cross examination by Mr. Mylod.

Q You only went there on Saturday night? A Yes, with fruits and vegetables.

Q And you went to school during the rest of the week? A Yes.

Q And the only time you saw Mrs. Hartley would be Saturday night when you would go to leave the goods—the fruits and vegetables? A Yes, during the day time we stopped there.

Q Would you deliver goods there in the morning? A No, at night.

Q Mr. Hartley kept his wagon, and his place of business was at 87 Johnston avenue, was it? A No, sir.

Q Would Mr. Hartley stop there in the morning when you say you would stop there? A That was our second stop on Saturday morning.

Q 87 Johnston avenue? A Yes.

Q What would you stop there for Saturday morning? A That was our second stop, to serve the customers with fruits and vegetables.

Q Why wouldn't you make the deliveries then to Mrs. Hartley instead of waiting until Saturday night? A We were in a hurry.

Q You had the goods on the wagon when you stopped there Saturday morning for other customers, didn't you? A Yes.

Q And yet you didn't leave any goods for Mrs. Hartley until Saturday night? A That wasn't up to me; that was up to him.

Q Did you ever go up to Mrs. Hartley's apartment when you went there Saturday morning? A Yes, once in awhile.

Q Once or twice? A Yes.

Q Did she ever send you to the store on Saturday night when you came with the order? A No.

Q You stopped there twice during the day in all the time you were working for Mr. Hartley, except the Saturday night visits? A No, sir.

Q Did you stop oftener? A Sometimes during the vacation we stopped there on Tuesday.

Q Wouldn't you leave an order there on Tuesday? A Whatever we had, what they needed.

Q You didn't go every Saturday night, did you? A Yes.

The Court. What time would you go there?

The Witness. About half-past eight or nine o'clock.

Q How many years ago was it when you used to go there Saturday night? A About four years—three years ago.

Q You were about thirteen years old then? A Twelve or thirteen, yes.

FREDERIC DIAUER, sworn for defendant.

Direct examination by Mr. Lane.

Q Where do you live? A 139 Washington avenue, Arlington.

Q Do you know Mr. Hartley? A Yes.

Q How long have you known him? A About twenty years.

Q You know the present Mrs. Hartley? A Yes.

Q How long have you known her? A About five years.

Q What is your business? A Butcher business.

Q Where? A I haven't any business now, but I was on Johnston avenue at the time.

Q When she lived with Mr. Hartley? A At Johnston avenue.

Q Did she ever get goods from your store? A No, sir.

Q Have you seen Mr. and Mrs. Hartley out together? A Yes.

Q When? A During the year 1920.

Q After they were separated? A Yes, I don't think they were living together then.

Q Where did you see them? A On Belgrove drive.

Q How often? A Once or twice a week.

Q Covering what period of time? A I would pass them there with the automobile, I

would see them talking together; I wouldn't make no stop.

Q Was it a regular thing for you to see them there? A Yes, it was. I passed there every day, and once or twice a week I would see them there.

Q How well did you know Mr. Hartley? A I know him well enough to talk to him.

Q Did you ever go out with him? A Yes.

Q Did you ever see him under the influence of liquor? A No, sir.

Cross examination by Mr. Mylod.

Q Did you ever pass along Belgrove drive twice in the one day and see them together? A Yes.

Q At what hour would you say you first saw them there? A It might be three o'clock—maybe a little before or after.

Q Then would you return there about five o'clock along the same street? A Not as late as that; maybe half an hour or three-quarters of an hour.

Q It might possibly be an hour? A It may be an hour sometimes.

Q And they were still there? A Yes.

Q Mr. Hartley would have the baby on the truck? A Sometimes I would see the baby on the truck.

Q And Mrs. Hartley would be over on the sidewalk? A Yes.

Q Do you know where Public School No. 6 is on Belgrove drive? A Yes.

Q Did you ever see her sitting on the steps of the school? A Yes.

Fred A. Hartley, direct.

Q Did you see Mr. Hartley with the baby on the truck in front of the school? A Yes.

Q Where was the truck; in the middle of the street or along the curb? A The truck was along the curb. Sometimes it might have been close to the curb and sometimes not so close.

HENRY HARTLEY, sworn for defendant.

Direct examination by Mr. Lane.

Q Where do you live? A 87 Johnston avenue.

Q How old are you? A Fifteen.

Q And when the trouble took place between your father and Mrs. Hartley, you were about twelve years old? A I was.

Mr. Lane. I don't propose to ask him any questions, but he is produced subject to cross examination. I think he is too young, or was at that time, to make his testimony of very much value, but I didn't want to be criticized for not calling him.

Mr. Mylod. No cross examination.

FRED A. HARTLEY, defendant, recalled.

Direct examination by Mr. Lane.

Q Something has been said with respect to your not sending goods to your wife, to your own house, until late in the evening; is there an explanation for that? A Yes, the idea of that is this: it has always been my custom—it is practically a trick in the peddling business, which I can bear out by a man who is here—a barrel of stuff, it is always customary for a

peddler to turn it upside down, so he may get the best stuff at last; that is the custom of the peddler, and that is why I always let my stuff go until the last—until late in the evening.

The Court. Do I understand you reserved the best for yourself and for your home?

The Witness. Yes; it has been my custom, and it is the habit with everyone in the business.

Q Did you on October 29, 1920, when you met your wife at Mrs. Wood's house, say to her on the street, "I have got him (referring to the baby) now, you had better kiss him good-bye, because you are never going to see him again," or words to that effect? A No, sir.

Q Did you also say to her upon the same occasion, "You are a liar, and you know it," or words to that effect? A No, sir.

Q Did you also say to her, referring to the baby, and at a time when there was some discussion as to who was to take the sweater and hat off, "Don't touch him, don't you put your hand on him; he is in my custody now, and don't you touch him," or words to that effect? A No, sir.

Q Did you in the presence of a Mr. Smith say to him, "See what you have done; she is up with her mother now and she is going to stay there?" A No, sir.

Q Or words to that effect? A No, sir.

Q Did you ever sit in your house with your overcoat and cap on, in order to keep warm, because of the lack of coal? A No, sir! I worked every day in my life.

Fred A. Hartley, cross.

Q Did you upon any occasion when your wife brought the baby to you, say that she wasn't fit to be the mother of a slut? A No, sir.

Q Did you call her a son of a bitch and bastard? A No, sir.

Q Or words to that effect? A No, sir; I deny that.

Cross examination by Mr. Mylod.

Q Would you be on the wagon Saturday night when you sent the boy up with the vegetables? A I would back my wagon in down at the barn and that would be the first thing I would do before unloading the wagon.

Q How far was your house from the barn? A About 250 feet.

Q How is it you didn't bring the order up? A Because I would unload my stuff in the empty barrels, which I would have, and pack them in the back of the barn, and then unhook my horses and put them in.

Q At what hour of the night would this be? A I don't know; half-past eight or half-past nine.

Q During all the time that your son lived with you, you sent the boy up with the fruit and vegetables? A Yes.

Q And didn't know that Mrs. Hartley was out every Saturday night and the boy couldn't go in? A She was out all the time.

Q Didn't you know that the boy would have to leave the fruit and vegetables on the back stoop? A Yes, he would take the stuff up and she was never there.

Q And found the home closed? A Yes.

Q Every Saturday night? A As far as I know.

Q And yet you never thought it was worth while taking the vegetables up yourself and putting them inside? A Yes.

Q How long after half-past eight or nine would you go up to the house? A Maybe half to three-quarters of an hour.

Q You got there from nine to ten o'clock? A Yes, between nine and half-past.

Q Would she still be out? A No, not on all occasions. She has been out on numerous occasions.

Q When you got home did you put the vegetables away? A No, nine times out of ten she would be there by the time I got there; she would only be to her mother's; that is as far as she was.

Q How often did you find the vegetables on the back stoop when you came home every Saturday night? A I don't think over two or three times at the most.

Q And that covered a period of how many years? A Maria is away from me more than she has been with me: that would be about a year and a half.

Q In the year and a half she was out two Saturday nights and then she would get home about half-past nine or ten o'clock? A Yes; I lived forty months alone out of five years.

The Court. I understood you—if I am in error, correct me—that you always expressed a willingness to support your wife and child?

The Witness. Yes.

Fred A. Hartley, cross.

Examination by the Court.

Q And are you still in that frame of mind? A I am.

Q If she comes back and lives with you? A Yes.

Q What do you think you should spend a week for the support of your family? I am talking about according to your means and income and average earning capacity and your willingness to meet her desires if they are reasonable; according to your income what do you think you should spend a week to keep your family? A My income at present is practically nothing; I have lost my peddling business through having to keep my home together; the only way I make my living is through doing business with the General Electric, and peddle fish on Friday.

Q Tell me what is in your mind. A Whatever she desires.

Q That might be unreasonable. A I want her to be satisfied.

Q You cannot give her whatever she may desire, if your income won't admit it. A She is reasonable if she is left alone.

Q What do you think would be proper for you to spend a week to support yourself, your wife and child properly in your home? A My son Henry lives with me; he wasn't there before. She says $20 a week is not enough.

Q Do you think it is? A I think it is for running household expenses.

Q You mean for the table merely? A Yes.

Q How much additional do you think you should spend to support your family? A To support my other boy?

Fred A. Hartley, cross.

Q No, I am talking about you four; that is your family; the other boy has his own home; you have a right to help him, if you please. Give me your own idea, in view of what property you have and what your means are, what you think will be a reasonable and proper condition in life for you and your family to live on, and how much do you think it should cost to do that; because if I should decide the case against you, I have got to determine that, and I would like to get your ideas about it. A I think $25 a week is sufficient, considering that I am not home.

Q $25 a week would cover what, the rent? A No, absolutely not; I can pay everything—rent and light and fuel.

Q How about clothing, entertainment, pleasure and everything else? A $50 a week, how will that be?

Q I will determine how it will be later; I want you to tell me what you think it is. $50 a week exclusive of the rent? A Including the rent.

Q Living in the same place? A Yes.

Q You mean to spend $50 for the family and clothing and pleasure? A Yes.

Q Do you think that would cover it? A I do.

Q Clothing for yourself and wife and the boy Henry? A Yes.

Q Can you afford to spend $50 a week? A I can if I can get my business together; if I am going on as at present, I cannot.

Further cross examination by Mr. Mylod.

Q What do you derive from your investments? A I have no investments.

Fred A. Hartley, cross.

Q When you turned the real estate which belonged to you and in which your wife had an inchoate right of dower, over to the Realty Company, you received from the Realty Company how much? A From the Realty Company—I owed a considerable amount of taxes on all the property.

Q What was the consideration for the transfer of the real estate which stood in your name individually, to the corporation; what did you get for it?

The Court. Isn't he the company?

The Witness. Yes, practically.

Q How much? A That I received?

Q Yes.

The Court. I think we have gone into that.

A I think on the Johnston avenue property I got when I raised a $8,000 mortgage to pay expenses—

Q On the total transaction there is indicated by the revenue stamps on the deed $19,000? A Yes.

Q Was there $19,000 paid to you by the corporation? A No, sir.

Q Did the $19,000 represent the value of the real estate described in this deed? A Yes.

Q The actual market value at the time? A Yes.

Q Was it worth any more? A No, sir.

Q The corporation took title to $19,000 worth of real estate in December, 1918? A Yes.

Q What became of that $19,000; did you lose it? A No.

Q Where is it now? A I got part of it.

Q How much have you? A Whatever I got.

Q How much is that?

The Court. You have the same property today that you had then?

The Witness. No, I sold two; I sold a two-family house and three-family house which were in a rundown condition, and the six-family apartment I still own.

Q The corporation sold all of the five tracts described in this deed, with the exception of the Johnston avenue house? A Yes.

Q You didn't sell them for less than the corporation took them in at? A I cannot tell you what I sold each piece for.

Q Where is the $19,000 now? A There is a six-family house there and I owed considerable amount of taxes, and after deducting those taxes, and straightening those things out, there was very little left.

Q What was the Johnston avenue house put in at this sale? A About $12,500.

Q And the balance of the cash was spent for paying taxes? A Yes, paying taxes and water rents and so forth.

Q And shortly after the corporation took title to the Johnston avenue house, which you put at $12,500, they borrowed $8,000 on a mortgage? A Yes.

Q What did you do with the $8,000 you borrowed? A I didn't get $8,000; I got about $6,400 after paying the taxes and one thing and another.

Q What did you do with the $6,400? A Put it in the bank.

Q Is it still in the bank? A Yes.

Q You haven't anything invested except what you have in a savings bank? A Part of it is in a savings bank.

Q And all your cash is earning is four per cent.? A About that.

Q You haven't any other investment? A No.

Q Aren't you interested in a coal company? A No, sir.

Q Did you buy any stock in a coal company? A No, sir.

Q What bank is this surplus money deposited in? A In the First National Bank of Arlington.

Q That is how many thousand dollars? A I think I have maybe seven or eight thousand dollars now lying around in different banks.

Q You use the interest on that seven or eight thousand dollars? A I have not been making my expenses. I have been using it for living expenses. I will state openly here and prove it beyond any doubt, I am ten thousand dollars poorer today than I was five years ago.

Q In answer to one of the Vice-Chancellor's questions, you said you are willing to have your wife return to you? A I have kept my home open for that purpose.

Q Did you ever write to your wife asking her to return, except the letter that Judge Archibald wrote for you? A No, because I was meeting her right along, two or three times a week, still believing in her.

Fred A. Hartley, re-direct.

Q You know you did not meet Mrs. Hartley until after the Court made the order requiring you to pay the ailmony? A I was meeting her.

Q Is that correct; yes or no? (Last question repeated.) A Yes, sir.

Re-direct examination by Mr. Lane.

Q What has been the effect on your business of this trouble with your wife? A I have lost my business entirely. I have no business whatsoever.

Q Why don't you go ahead and do business? A I have had to keep my home together and take care of my boy Henry.

The Court. You don't have to stay in the house all the time to keep the home together.

The Witness. I supply the General Electric Company and try to make my living in that way.

Q But keeping your home together and keeping the home with Henry, I don't see how that interferes your transacting your peddling business. A I leave early and work late.

Q How does he get his meals? Why not hire a housekeeper? A I was afraid, because it is not advisable; the housekeeper I had after my first wife died, I inserted an advertisement in the paper for a housekeeper, and in their insinuations in the affidavit, that would lead this Court to believe that she is a bad woman. My object in hiring that woman was because of the recommendation—she gave a minister as a reference. That was one of the

things that prevented me from getting a housekeeper. I was believing my wife was coming home. I met her hundreds and hundreds of times. I met her on Clifton avenue, Broad street, State and Broad, and I was in front of the Protectorate one afternoon so long that Father ———— came out and said, "What is the matter; have you got engine trouble?" Marie said "that is an insult; we must get out of here."

Q What is your state of feeling toward the child? A The best and dearest little boy in the world, no better; his affection toward me—I don't think there is a person in the room can take him from me, if he was here. I have trouble with him every time, and he does not want to go home; I guess there is at least a dozen here who can verify my statement with reference to it. One time when his mother went to take him from me, he took hold of my gray shirt and tore it and hung on. If I had not thought well of my little baby—he has got an exceptional name; my littlest boy is Fred Allen Hartley, called after me; my baby is called Alfred; I gave him all the letters in my name, with the exception of the "e-n." I have ten shares in the building and loan, the same as Judge Mylod has for his son; I carry a thousand dollar life insurance, assigned in my wife's name. I will do everything in my power.

Re-cross examination by Mr. Mylod.

Q I thought you said you had some Liberty Bonds? A Yes.

Q Have you got them? A I have a couple of hundred dollars of them.

Q You said you had about $2,200? A Yes, I showed them to my wife; if she will tell you how I helped a personal friend of hers out by loaning him the money and then giving them back to him.

MARIA A. HARTLEY, recalled for

Further direct examination by Mr. Mylod.

Q Did you at any time call Mr. Hartley's two boys by his first marriage "brats?" A No.

Q I noticed in the testimony that Mr. Lane referred to the Sam Smith who figured in the Asbury Park episode as a waiter; is Samuel Smith a waiter? A No, he is a coal man.

The Court. He is the man whom this witness works for, who appeared on the stand today?

The Witness. Yes.

Q Did you ever say to Mr. Hartley that you wanted him to go down to Mr. Mylod and get the $50 retainer which you paid him? A I never talked like that. I never told him such a thing.

The Court. Under what conditions would you be willing to go back and make up your home for yourself and the child?

The Witness. Under no conditions.

The Court. Why not?

The Witness. I would rather be dead a million times and my baby, too, than to put up with what I put up with that man.

The Court. How much do you think you need for support for yourself and child?

The Witness. At least $25.

The Court. A week?

The Witness. Yes, sir.

The Court. Have you been accustomed to living at the rate of $25 a week?

The Witness. No, I haven't; I didn't always have a baby. With the baby; he is a good deal older now.

Cross examination by Mr. Lane.

Q When did you make up your mind for the first time that you would rather be dead than live with him, or put up with what you had to put up with? A On the fifteenth of January when I went back to him and asked him won't he please be different.

Q I asked you a question as to the date. A On the fifteenth of January, 1920.

Q You had not made up your mind that you would rather be dead under the circumstances that you have described until that date, is that right? A Oh, yes; I did, all along while I lived there.

Q When did you make up your mind? A I cannot specify the date for you.

Q You were willing to go back and live with him on the fifteenth of January? A I went back and asked him.

Q You were willing to live with him on the fifteenth of January? A Yes, that is right.

Q Then you hadn't made up your mind that you would rather be dead than live with him at that time, had you? A Yes, I did.

The Court. In view of your willingness to go back and live with him, is what Mr.

Lane means, had you then made up your mind that you would rather be dead than live with him?

The Witness. I did, but for the sake of my baby I asked him to be different so I could live with him.

Q For the sake of the baby, then, you would have gone back with him on the fifteenth of January? A Yes, that is right.

Q Had he said that he would be different, is that right? A He said he wouldn't be any different.

Q If he had said he would be, you would have gone back and lived with him, would you not? A For the sake of the baby, yes.

Q That was on the fifteenth of January, 1920? A Yes.

Q And that was after everything had happened, that is right? A Yes.

Q And nothing has happened since that time? A Yes.

Q What has happened since that date? A All last summer when I went with the baby, and sometimes I went four times a week, up to Belgrove Drive, at any time that he called me up I would always make it so that he could see the baby and take him out. I have stood there as long as four hours, during the day, and sometimes when it was so warm that I couldn't go I asked him to make it when the sun went down, so the baby wouldn't get sick, and the abusive and inhuman language that he used to me, I will never forget it.

Q That is the language that he started to call you after this suit was started? A That is it.

Maria A. Hartley, cross.

Q Had you made up your mind that you would rather be dead than live with him, while you were meeting him during the summer of 1920? A I wasn't meeting him.

Q You were meeting him on the street? A No, I was not.

The Court. You met him to have him visit the child; is that what you mean?

The Witness. Yes, he has called up from Mr. Smith's office, but he has called when the Court had ordered him that he could see the baby before he made the arrangements for me to go to the Day Nursery.

Q I am talking about the summer of 1920, and after he started to call you these names? A No.

Q You talked with him on several occasions, didn't you? A No, I have seen him when I have had the baby out.

Q You have met him and talked with him on several occasions?

The Court. He is not talking about appointment; you are thinking one thing and he is asking another; did you during the summer of 1920 meet him on several occasions?

The Witness. Yes, I did.

Q When you saw him on these occasions, had you made up your mind that you wouldn't go back with him, or you would rather be dead than go back and live with him in 1920? A I never discussed it with him.

The Court. Had you made up your mind; had you reached any conclusion in your own mind?

The Witness. I made up my mind on January 15, yes.

Q And nothing that has happened since January 15 changed your mind? A Nothing.

Q Nothing could change it? A Nothing at all.

Q One question I overlooked on your man cross examination. On this trip in June, when you went to Asbury Park, did Mr. Hartley suggest going to Ocean Grove? A Never mentioned Ocean Grove, no.

Q Did you go over to Ocean Grove? A No, I didn't.

Q Then where did you go? A Asbury Park.

Q Had you been to Ocean Grove the year before? A No, I wasn't.

Q Where were you staying the year before? A At Mrs. Tilton's in Asbury Park.

Q Was anything said about Ocean Grove? A Never mentioned it.

Q Nothing was said at all about Ocean Grove? A No, sir.

The Court. There was testimony today by some witness who said you objected to going there; was there any such conversation?

The Witness. Never.

Q You are a Catholic? A Yes.

Q And Ocean Grove is a Protestant community? A I didn't know it; I didn't know that much about it.

OPINION.

Submitted December 15, 1922.

Decided December 21, 1922.

Mr. James P. Mylod for complainant.
Mr. Merritt Lane for defendant.

FOSTER, *V. C.*

This is a suit for separate maintenance under the statute. The parties were married in February, 1917, and were then, and have continued to be, residents of this State. At the time of the marriage defendant was a widower, about forty years old, with two sons, and complainant was then about twenty-three years old; he was a Protestant and she, a Catholic. Complainant's family had lived for some time in the same apartment house with defendant, and after the marriage, which was kept secret, complainant continued to live with her family, and she and her husband did not live together until May or June of the same year, when complainant took up her residence in defendant's apartment with him and his two children. Defendant was engaged in peddling fish and produce, and this work was distasteful to complainant.

It was agreed that the children of the marriage should be brought up in the Catholic faith, and she claims he later repudiated this agreement.

Shortly after they began to live together, defendant began to receive what the parties called "Black Hand" letters. The apparent purpose of these letters was to have defendant secure a divorce from complainant; and complainant's proofs show that about this time, in May or

June, 1917, defendant suggested that an actual or a mock divorce be secured, as a solution of the mystery of these letters and that this suggestion was rejected by complainant.

About Labor Day, 1917, defendant, while at Asbury Park, cursed complainant and struck her with a fan and accused her of being unfaithful, and on their return home defendant ordered her from her home and told her to go and live with her mother, which she did, until the following November 19th, and during this time she received no support from him. On the latter date complainant returned to her husband's home and remained there until June, 1918. During this period defendant left her alone frequently and did not provide her with either suitable or sufficient food, or with a satisfactory supply of heat. And he spent Thanksgiving and Christmas days away from her. The parties separated for the second time in June, 1918, and this separation continued until the following August, when complainant returned to live with defendant on his promise to treat her with greater consideration, and to give her a weekly allowance of $20 for supplies for the home, and this promise was kept until July, 1919, when complainant went to her mother's home to be confined.

In August, 1918, after defendant induced complainant to return and live with him, he organized a corporation, known as the F. A. Hartley Realty Co., and to this corporation he and his wife conveyed all the real estate owned by him, estimated to be worth $19,500. At the time complainant joined in these conveyances, defendant gave her $1,000 to buy a fur coat, but complainant claims that she has since discovered

that this payment was made her to induce her to release her dower and enable the defendant to dispose of these several properties, as he has since done, with the exception of one of them, without consulting her.

For some months after the reconciliation in August, 1918, the parties lived together harmoniously and until defendant had effected the sale, through the corporation, of all the real estate, except one parcel, on which was placed a mortgage for $8,000. Thereafter defendant returned to his old course of treating complainant with neglect and failed to properly support her.

There is also some proof supporting complainant's contention that defendant objected to having any children. On August 14, 1919, a child was born of the marriage, and in September complainant returned to her husband's home, where she continued to live until January 15, 1920, when they finally separated.

From September, 1919, to January, 1920, the proof is convincing that defendant discontinued the weekly allowance of $20 for household expenses; that he closed all charge accounts; that he forbade complainant buying anything for herself or the child on defendant's account; that the supply of food and fuel was wholly inadequate; the gas, the only means of heating, was shut off, ostensibly because defendant refused to pay a disputed bill. Complainant repeatedly begged defendant to end this condition of discomfort; she threatened to leave him, and some days before leaving, packed her trunk, without any protest or demand for explanation from him, and to add to complainant's wretchedness during this period, defendant assaulted and choked

her and threatened her with bodily harm, and called her vile and indecent names and accused her of unfaithfulness, and this conduct caused her to become afraid of him, so that on January 15, 1920, she left him and went to her mother's, and on the same day she returned to her husband and asked him to promise to treat her differently and she and the baby would return to him; this promise he refused to make and the separation then became final.

For a period of thirteen months, from the date of the separation to February 16, 1921, the date when the order for temporary alimony was made, defendant refused to contribute anything for the support of either his wife or his child, although requested so to do.

Defendant has denied every charge and statement of his wife and claims all his troubles are due to the interference of his wife's family in his affairs.

The proofs do not show any such interference.

Defendant further claims he has repeatedly made efforts to have his wife return and live with him, and he now professes great affection for his child. His neglect of his child for thirteen months and his failure to furnish anything for its support during this period, coupled with the fact that he engaged a lawyer to write the only letter he sent to his wife during this time to effect a reconciliation, convince me that this effort and the subsequent ones made during the pendency of this action, and particularly the one made on the eve of the hearing in October, 1921, were neither honest nor sincere, and I am satisfied they were made, most probably, on the suggestion of counsel, for their effect on the final outcome of the case.

The proofs convincingly establish the charge of the complainant that defendant has abandoned her and their child, and has neglected and refused to support and maintain them; and as the proofs further establish the ability of the defendant to pay at least $25 weekly for such support, I will accordingly advise a decree to that effect.

NOTICE OF APPEAL.

The defendant, Fred A. Hartley, hereby appeals from the whole and every part of the final decree made in this court in the above-stated cause to the Court of Errors and Appeals in the last resort in all causes.

MERRITT LANE,
Solicitor of Defendant.

MERRITT LANE,
Of Counsel.

Dated January 17, 1923.

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

MERRITT LANE,
Of Counsel with Defendant.

PETITION OF APPEAL.

Filed January 17th, 1923.

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

The petition of FRED A. HARTLEY, the appellant in the above-stated cause, respectfully shows that your petitioner finds himself aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of New Jersey, bearing date the 16th day of January, 1923, wherein the said Maria A. Hartley was complainant and Fred A. Hartley, defendant, in this respect, to wit: that the said decree recites and adjudges that the defendant without any justifiable cause, has abandoned the complainant and their child and separated himself from the complainant and has refused and neglected to maintain and provide for the support and maintenance of the complainant and their child; and in this respect, to wit, that the said decree orders, adjudges and decrees that the defendant, Fred A. Hartley, do pay to the complainant, Maria A. Hartley, or her solicitor, the annual sum of $1,300, payable in equal weekly installments, that is to say, that the defendant pay forthwith to the complainant or her solicitor the sum of twenty-five ($25.00), as and for an allowance for the current week, and that the said defendant do pay to the complainant, or her solicitor, the sum of twenty-five ($25.00) dollars on Monday in each and every week thereafter, and until the further order of the Court to the contrary; and in this respect, to wit, that the said decree orders the said defenant to give security for the performance of

said decree, and in this respect, to wit, that the said decree directs the payment to the said complainant, or her solicitor, of counsel fees and costs; and in this respect, to wit, that the said decree orders, adjudges and decrees that the said complainant have the exclusive care, custody, education and control of Alfred Hartley, the infant son of the said marriage, upon the ground that the same is erroneous for that it did not appear from the evidence in the said case that the said defendant abandoned the said complainant and their child and separated himself from the complaint, and refused and neglected to maintain and provide for the support and maintenance of the said complainant and their child, and for that it did appear from the evidence in the said cause that the said complainant deserted the defendant, and continued to desert the said defendant, and had for a term of more than two years prior to the making of the said decree wilfully, continuedly and obstinately deserted the said defendant, and for that it appeared from the evidence in the said cause that irrespective of the original desertion, whether it was by the defendant or by the complainant, or justified or not, the defendant had made *bona fide* efforts to resume performance of any marital duties which he had neglected, and had offered *bona fide* a home for the said complainant and said defendant and a proper place for the said complainant as his wife, which said offers the said complainant, without any justifiable cause or reason, rejected, and for that it appeared from the evidence in this case that the complainant was not entitled to the relief prayed for by her in her bill of complaint, because the facts were not proven which would give

the Court of Chancery jurisdiction under the statute to make the decree appealed from, and for that it appeared from the evidence in the cause that the complainant was not entitled to the separate maintenance awarded by the Court for the reasons aforesaid, and for the further reason that the said allowance was excessive and for that there was nothing in the evidence in the case to warrant the Court in requiring the defendant to give security, and for that the Court should not have awarded counsel fees and costs to the complainant, but, on the contrary, should have dismissed the bill of complaint with costs to the defendant.

Your petitioner therefore prays that the said decree of the said Chancellor may be, in the particulars aforesaid, reversed, set aside and for nothing holden. And that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

MERRITT LANE,
Solicitor of Appellant.

MERRITT LANE,
Of Counsel with Appellant.

New Jersey Court of Errors and Appeals

MARIA A. HARTLEY, *Complainant-Appellee,* *vs.* FRED A. HARTLEY, *Defendant-Appellant.*	*On Bill for Maintenance, Etc.*

Supplemental State of Case.

Arthur W. Cross, Law Printer, 243 Market Street, Newark, N. J.

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FINAL DECREE.

Filed January 17, 1923.

This cause coming on to be heard in the presence of James P. Mylod, Esq., solicitor for and of counsel with the complainant, and Merritt Lane, Esq., of counsel with the defendant, on petition, answer, and oral proofs taken in open court, whereupon and upon duly considering the said pleadings and proofs and hearing, and considering the argument of counsel, from all of which it now appears to the satisfaction of the Chancellor that the complainant and defendant were lawfully joined in the bonds of matrimony on or about February 17, 1917, and that the defendant, without any justifiable cause, has abandoned complainant, and their child, and separated himself from complainant, and has refused and neglected to maintain and provide for the support and maintenance of the complainant and their child; and that the parties have their domicile in this State, and the defendant was personally served with process in this State,

It is thereupon on this sixteenth day of January, 1923, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, ordered, adjudged and decreed that the defendant, Fred A. Hartley, do pay to the complainant, Maria A. Hartley, or to her solicitor, the annual sum of Thirteen Hundred Dollars ($1,300.00), payable in equal weekly installments; that is to say, that the defendant do pay forthwith to the complainant, or her solicitor, the sum of Twenty-five ($25) Dollars, as and for an allowance for

the current week, and that the said defendant do pay to the complainant, or her solicitor, the sum of Twenty-five ($25) Dollars on Monday in each and every week thereafter, and until the further order of the Court to the contrary.

And it is further ordered, adjudged and decreed, that a copy of this decree be served forthwith upon the defendant, or his solicitor, and that within twenty (20) days after said service, the defendant give bond to the said complainant, in the sum of Fifteen Hundred ($1,500) Dollars, with sufficient surety, or sureties, to be approved as to form and security by any one of the Special Masters of this Court, for the punctual payment of alimony and maintenance by this decree awarded, to be paid at the time and in the manner in this decree directed, and upon neglect or refusal of said defendant to give said bond, within the time so specified, or upon his default or that of his surety or sureties to pay the said sum or sums when the same shall fall due, according to this decree, that the complainant be at liberty to apply to this Court to award and issue process of sequestration, or for such other process or order, as this Court may, under the circumstances, deem equitable and just, and as may be consistent with the power and authority of this Court.

And it is further ordered, adjudged and decreed, that the said defendant do further pay to the complainant, or her solicitor, the costs of this suit, to be taxed, and also the sum of Two Hundred Fifty ($250) Dollars which is hereby adjudged and decreed to be a reasonable counsel fee for the counsel of said complainant, and that the said complainant do have execution for

said costs and counsel fee, according to the practice of this court.

And it is further ordered, adjudged and decreed that the said complainant have the exclusive care, custody, education and control of Alfred Hartley, infant child of the marriage, subject to the right of visitation now enjoyed by the defendant, which matter may be brought on for hearing upon five days' notice by either party to the other, and until the further order of the Court.

And it is further ordered, adjudged and decreed, that either party be at liberty to apply, upon a future chance of circumstances of the parties, for a variance or modification of this decree, touching said alimony, maintenance, and custody as shall be just and equitable.

E. R. WALKER,
C.

Respectfully advised:

JOHN E. FOSTER,
V.-C.

Exhibit C. 1.

STATEMENT AS TO EXHIBITS.

Exhibit C. 1. is so-called poison pen letters, of which but one is printed as a sample.

Exhibits D 2, 3, 4, 5 (letters from Mrs. Hartley to Mr. Hartley).

Exhibit D. 16 is a deed from Fred A. Hartley and Maria A. Hartley, his wife, to Fred A. Hartley Realty Company, dated September 25th, 1918, witnessed by Charles R. Cook, acknowledged December 10th, 1918, before Charles R. Cook, a Notary Public and containing $19 of Revenue Stamps, cancelled in typewriting with the initials F. A. H. and M. A. H., 9/25/18.

Exhibit D. 1. Letter from Post Office Department to Mr. Fred A. Hartley.

The remaining exhibits are either physical things impossible to print or are sufficiently described in the evidence.

EXHIBIT C. 1.

(Sample Poison Pen Letters.)

Well old pal
this is the third and last warning you have not made any move to wright the wrong you did to your boys when you married in haste now relent at your leisure as I said before you have the only hope of the girl, you got she was seen on Broad St. with a business man. She makes her proud boast of catching you and you seem to stand for it but remember the little gun with vitrol will soon put your swelled head down and you or her abuse those boys look out if you only want to be on the level why don't you

Exhibit C. 1.

divorce this kid and keep your promise to your other lady friends that you would not marry give the same chance the ones who in the past you have confided with.

you are trying to find out who i am well you will find out very soon when you do the right thing seek a divorce i will come forward and you readily see that i can make good if you dont believe me i will bother you something awful if you dont do something soon i will do something that will make the gang upstairs get out and i will take charge of your 2 boys and be kind to them they fooled you bad with her you thought you were getting somewhare when you did this job of marrying so soon but what what do you think francis would say if she could you and this girl she hated so much well just undo it and think it over see if you would do it again see if she would would walk into it again take this tip maybe you would be happier when you meet your old pals give this girl a chance to break away she wants a different life than you can give her do something dont let me spoil her pretty face be a wise man get busy by all means stick to those kids

from your lady friend

Exhibits D. 1—D. 2.

EXHIBIT D. 1.

POST OFFICE DEPARTMENT.
Office of Inspector,

Newark, N. J., July 16, 1917.

Mr. Fred A. Hartley,
85 Johnson Avenue,
Kearney, N. J.

Dear Mr. Hartley:

The enclosed letters were returned to me today from Washington, D. C. advising me that while the language used is of an objectionable & threatening nature, it is not such as to be unmailable, having been sent under cover. I am further directed to return the letters to you.

Very truly,

F. A. BUETEM,
P. O. Inspector.

EXHIBIT D. 2.

August 7, 1917.

My dear Fred

Just a line to tell you all I know, Well I told you about the Doc. he has a wild crush on me he came around today and ask Emma where I was and I saw him coming and I ran. Be he his married and Mrs. ONeil told me he married the bell of Washington, so he ask me and Emma to go out for a ride that was today and we didn't go see what a faithful wife hope you are the same and don't look at any ("chickens") so

Exhibit D. 2.

he made a date with Emma for tomorrow but she isn't going he's some Doc. Well kid how is she going you sent me to a dangerous place I have clues every time I look around but the Doc. Oh boy, but he couldn't wipe your shoes. I will be awful glad to see you. Just to love you up. Well, I am writing this to you and I just up and Henery and Freddie to bed. We all went out together tonight and had a very good time I met a girl she is married and she has her brother down and he is just same age as Freddie and they are having fine times she is a wonderful girl she is only nineteen years old and her husband is over thirty and she is married two years but she hasn't any children. They have lots of money and she is just like a kid we are all going in bathing tomorrow she beg me to go in and Freddie said he teached me how to swim can you imagine me in a one piece bathing suit she said she would give anything in the world to built like me oh Eddie, well dear it is getting late and Freddie is waiting for me to come back so guess I will say goodnight. I sent Sam Smith a card and Mrs. Tilton made Emma ONiel send him one two so write and tell me what you think about the Doc and tell ma I will see her Sat. Oh, I forgot to tell you I bought a swell waist and a pair of blue silk stockings they look the cats well I am going to bed and am sure lonesome when it comes nights, every thing is allright and we all three send are very best love.

Dont mind my writing becaus I am awful tired Emma ONiel does nothing but doll me up today she fix all my eyebrows up isn't that a joke hope you are thinking about me because I am always thinking about you take good care

of yourself and that isn't Eddie either because I know that is what you will say, I am going upstairs it is now 10:50 the kids are in bed everything is fine and I am glad I call you up about the boats because he would certainly get drown I don't think he will go in any more but cut down on the money and then he cant be hiring them because he spends it so silly. Well, goodby for tonight with lots of love and kisses.

MARIE.

******

EXHIBIT D. 3.

August 16, 1917.

My dear Fred

Awful glad to hear side was better when I talk to you over the phone. Well kid how is she going anyway Freddie Dear often feel lonesome for some lovings, you act as tho you never feel lonesome for me, told you I was going out but change my mind I am staying in for the euchre. There is so much noise I can hardly hear my own ears. Well dear wish you were here, but if you dont want to stay down what that's up to you. I sending some of my pictures haven't got them all yet. I had a very good time last night over in Scottes hope you don't mind my going out with Sam he is harmless. I am all class up to night for the event. Well dear be careful and dont get kick again well be glad to see you Sunday. Sam has gone out alone tonight I think he has something on. Hope I get a clue to dance with you don't care if I

Exhibit D. 4.

get fifty do you show my pictures to Ma. tell her I send my love and will close with a lot of love to you and just as many kisses.

(Wife) MARIE****

EXHIBIT D. 4.

August 14, 1917.

My Very Dear Fred,
(That isn't Eddie)

I was very sorry to hear your side was sore wish I was home, never again on a vacation unless you go to I dont think any girl, when she marries that she should go away from her husband for so long., There is one thing that hurts me very when I said dont be a lemon and work so hard and you said you knew you are a lemon. I hope that it isn't I who is making the lemon out of you. Well be sure and attend to your side by all means. Well there isn't anything new only I was in bathing and look real class I went over to Belmar and got there bathing suit and look the cats, and they were real nice to me Took Henery with me and the Bride My Dear Fred have tryed to do everything you told me Hope you have kept my hair I want to ask you if it is all right Clymers Wife is going to make her will and she wants me as a witness let me know what you think. If you don't stay down next week I am coming home Sunday you could stay down. How is it that Sam Smith can If you want I will go home and you can stay down if you don't want both of us to be down Gee, kid you don't know how I wish you were

Exhibit D. 5.

here just to rub your side and love you up on the side. That isn't Eddie as you call everything I say. Well the only thing I wish is that I was home to take care of you, I know no one can take care of you like I can. Be sure and take good care of yourself and dont kill yourself working hard. Now you think it over about staying down next week. The boys have been in bed since 9:15 and I am going now but I am going to mail the letter first Hope you be all right until I see you again, was out for a walk with Henery tonight please write to me and will close with lots of love from us all and a lot from me ("Wife").

MARIE.

****

And a lot more.

Don't let anyone read my letter.

GOODNIGHT.

Excuse all mistakes in writing I am all in.

EXHIBIT D. 5.

August 23, 1917.

My dear Fred

Well dear how are you and everything else. There are two girls here and they said they give anything to know what I am saying in my letter they think it is a lot of love stuff. Well I said I would tell you about Emma well that fellows mother was over and she wants Emma to write to him for to come back and marry the girl, but I dont think Emma ONiel will do it

Exhibit D. 5.

because she likes him herself to much. I feel very sorry for Emma O Niel she is always getting herself in wrong. You know that fellow wants to make me believe he had her in wrong so he would have to marry her, you know he is out in Richmond, Va. He told his people he would never marry anyone but Emma O'Niel, but I think she is foolish to take a chance on him. I had a pain in my back today and in my stomach and I don't feel so good. I got a letter from home saying ma was quite sick I hope she is better now.

Listen Husband dear please excuse my using pencil but there was no pens hope you will be able to read it. The two fairy soap boys are here yet, I would rather be dead if I was a fellow than be a fairy wouldn't you? Well father guess I haven't any more to say only hoping that you are keeping away from the (women) every thing is all right and guess I will close with lots of love and kissess ********** be sure you want them and done let anyone else give you any.

MARIE.

Forgot to tell you where I was last night out with Freddie and Lillian, The girls here said I am quite popular among the kiddies Guess I will start and have some for myself.

Arthur W. Cross, Law Printer, 243 Market Street, Newark, N. J.

New Jersey Court of Errors and Appeals

MARIA A. HARTLEY, *Complainant-Appellee,* *vs.* FRED A. HARTLEY, *Defendant-Appellant.*	*Appeal from a Decree for Maintenance.* Heard Below Before FOSTER, *V.-C.*

BRIEF FOR COMPAINANT-APPELLEE.

Statement of the Case.

This proceeding was brought by the complainant-appellee, to the end that the defendant-appellant might be ordered and decreed to provide suitable support and maintenance for complainant and the child of said marriage. The bill was filed January 12th, 1921 (p. 1), and the final decree in the matter was made January 16th, 1923 (p. 391). The parties were married February 17th, 1917 (p. 11). The wife at the time was twenty-one years old (p. 136). The husband was forty-four years old (p. 178).

Complainant and defendant, although married February 17th, 1917, did not begin to live together until some time during the month of May of the same year. One child of the marriage, Alfred, was born August 14th, 1919. From the time the couple went housekeeping, May 1917, they had differences which resulted in three distinct separations. The first separation beginning on the Sunday before Labor Day, 1917, and continued until November 19th, 1917 (p. 17). On the Sunday before Labor Day, the defendant assaulted and choked complainant at a Hotel in Asbury Park (pp. 16-17). The couple returned home by automobile, and upon reaching the house, the defendant told the complainant "to go upstairs and stay

with'' her mother, until the complainant's conduct while at Asbury Park was investigated (p. 17).

The second separation occurred in June, 1918, at which time the complainant went home because the defendant failed to support and provide for complainant (p. 23). This separation continued until August of the same year, at which time complainant returned to the defendant upon his promise "to be different," and that he would give complainant money with which to run the home (p. 24). The defendant purchased a bed and an ice box for his home the day on which his wife returned, August, 1918. The complainant prior to this time had been sleeping on a davenport (p. 24). From the date of complainant's return to her husband, August, 1918, after their second separation, the defendant gave the complainant $20 per week with which to run the house, and on December 10th, 1918, made her a present of $1,000 with which to purchase a fur coat (pp. 260-261). On the same day, and shortly after the defendant presented the complainant with the thousand dollars, the complainant joined with her husband in conveying all his real estate to a corporation known as the F. A. Hartley Realty Company, which the defendant had organized. The deed was dated September 25th, 1918, but was not acknowledged until December 10th, 1918 (p. 394). The deed contains cancelled revenue stamps in the amount of $19 (p. 394). At this time, and from the complainant's return to her husband, under his promise to do better, August, 1918, the couple were getting along "fairly well."

The third or final separation of the couple occurred January 15th, 1920. The causes leading up to the final separation, and the circumstances under which the couple separated will be dealt with in the argument.

Argument.

The points raised by the defendant-appellant in this appeal are two-fold (Brief, p. 14).

First. That the conduct of the defendant was not such as to warrant the wife in leaving and remaining away from her husband, within the cases cited in the brief.

Second. That the husband was entitled at least to have the sincerity of his offers to have his wife return, tested by her actually coming back, in view of the case of *Burlingham* v. *Burlingham,* 116 Atlantic, 494, and other cases cited in this brief.

POINT I.

The wife was warranted in leaving and remaining away from her husband. The husband abandoned his wife and child and neglected and refused to support and maintain them.

At the very outset of their married life, the husband's desire to be free from the obligation which he had just assumed can very readily and properly be inferred from the so-called "blackhand" or "poisoned pen letters." The couple although married February 17th, 1917, did not begin to live together until some time during the month of May of the same year, and within a week after they began housekeeping, the first of the objectionable letters were received (p. 13, ll. 10-15). The testimony of the complainant regarding the letters and the corroboration of her testimony, is as follows:

Page 13:

> "Q Did anything occur shortly after you went to live with him? A Shortly after I went to live with my husband, I should judge a week after, we started to receive unsigned letters, and they came every week."

Page 14:

"Q What is the purpose of the letters? A The meaning of these letters—were that Mr. Hartley was to divorce me, and if he didn't divorce me and go away with the party that wrote these letters, they would blind me with vitriol. That is all I remember about the letters."

Page 14:

"And did Mr. Hartley say then how these letters could be stopped coming, or make any reference as to what should be done? A Yes, Mr. Hartley talked the letters over with me and suggested a divorce, and he afterwards told me that he had saw a lawyer, that told him it would be a good idea to get a mock divorce, and then after I got the divorce—I could still be friendly with him, we would still be married, and after the divorce was granted, it would be placed in Trenton, and the party that was writing the letters would naturally go and look for the divorce papers, and that is how they would catch the one that was writing unsigned letters."

Page 67, lines 29-33:

"You think that your husband wrote them, himself, don't you? A The reason why I think that, from things that is in these letters, I have heard them so often from him. That is what makes me think that way."

Page 68, lines 11-17:

"Well, is it a fact that some time after these poisoned pen letters were received, you accused your husband of having written the letters himself? A Yes.

Q And what did he say? A I asked him if he knew who wrote them. He said, 'Yes.' I said, 'Was it you?' and he didn't answer me."

Page 122, lines 37-40: Sadie E. Ferris, direct.

Page 123, lines 1-10:

"Q Do you know anything about any letters being received by Mr. Hartley, threatening hs life, or threatening your sister's life, and threatening to throw vitriol in her face, if he didn't divorce her? Yes, Mr. Hartley showed me several letters, called

me in on my way from business and showed me letters, and they spoke of divorce, and throwing vitriol in her face, and burning the house if he didn't divorce her, and of our moving from the upper apartment, that we must move from the upper apartment."

Page 123, lines 15-25:

"Q Did Mr. Hartley make a suggestion as to what should be done in order to prevent these letters being written? A I knew my sister went to the Post Office with the first letter, and I knew that she and Mr. Hartley went on several occasions to the Post Office, then he called me one evening, and told me that he had consulted a lawyer about that, and the lawyer advised that he divorce my sister and we move from the apartment, and he said, 'Naturally the writer will come forward.'"

Page 137, lines 14-30: Mrs. Ferris, direct.

"Q What were those letters about generally, do you recall? A They were about divorcing Mrs. Hartley, and throwing vitriol on her and my moving from the apartment, would make it appear that they would find out who was writing those letters.

Q Did you have a talk with Mr. Hartley regarding those letters? A Well, Mr. Hartley went to his lodge one night, and I was sitting downstairs with Maria, and I remember him coming in and he said to me, 'Mrs. Ferris, I have an attorney, a friend of mine up in the Elks, and he told me that if Maria would agree to a divorce, we would then find out who was writing those letters.'

Q How long had they been married at that time? A About going on the third month."

From the foregoing testimony, it is evident that the defendant, within a very few months after the marriage, suggested that a divorce be secured, and counsel submits it is a very fair inference that the letters were part of a plan or scheme devised by the defendant to terminate the bonds of matrimony almost at its inception, and should have a great weight with the Court in showing an intent on the part of the husband to abandon his wife.

New Jersey State Library

The testimony is replete with occurrences that establish the fact that the husband's conduct was so cruel and malignant as to show that he meant to force his wife away. The happening at Asbury Park on the Sunday before Labor Day in 1917, the very year in which the couple were married, fairly indicates the course which the husband pursued. It is to be remembered that the so-called poisoned pen letters were still being received, and that the husband was still suggesting that the mystery of the letters could be solved by a mock divorce. On the Sunday before Labor Day, while complainant was at a boarding house in Asbury Park, with two sons of the defendant, by his former marriage, the defendant cursed her and struck her in the face with a fan, which acts he admits, and accused her of improper conduct. Upon their return from Asbury Park, the defendant put the complainant out of his house, and told her to go and stay with her mother, which complainant did, and where complainant remained until November 19th, 1917, without receiving any support from the defendant. The testimony covering the assault at Asbury Park, and the happenings which followed are found in the state of the case, as follows:

Page 16, lines 3-15:

> "Q And what took place, if anything, at Mrs. Tilton's between you and Mr. Hartley? A Mr. Hartley accused me of going out with other men, when I was in Asbury Park. He accused me of going out with Mr. Smith, which I told him I did, Mr. Smith, as I thought, was a relation of his. His two boys called him 'Uncle,' and he took us out for a ride in his automobile. I told Mr. Hartley—I wrote and told him about it, and I told him that over the phone."

Page 16, lines 35-40:

> "Q Did he come into your room at the hotel? A He came in my room, and he put me out of the room until he would search it.
>
> Q Who was in the room when Mr. Hartley arrived besides yourself? A My sister."

Page 17, lines 1-13:

"Q And what did Mr. Hartley do? Tell us all that took place. A Mr. Hartley put us both out of the room, and told me that he would have to search it, and after he got finished he brought me back into the room and pushed the door in my sister's face, and when he brought me in the room, he choked me, and the only way that I could make him let go of me, was, I scratched him on the face with my ring, and that is how he let me go."

Page 17, lines 25-40; Page 18, line 1.

"Q And when you reached 87 Johnston avenue what did Mr. Hartley do? A He told me to go upstairs and stay with my mother, until he investigated this matter.

Q What matter did he refer to? A The matter of my going out with Mr. Smith.

Q Who had the key to Mr. Hartley's apartment, at 87 Johnston avenue? A Mr. Hartley had it.

Q How long did you remain with your mother there? A I remained with my mother a couple of months, until November. It was November 19th, that I went downstairs.

Court. Did your husband support you in the meantime?

Witness. He did not.

Page 123, lines 36-40; Page 124, lines 1-23:

"Who was in the room? A Mrs. Hartley and I were in the room at the time.

Q Didn't he say anything except order you from the room? What did he say first? A He said he wanted to search the room, that we would have to get out. My sister went out, and he pushed the door, and shoved me out of the room, and I went down the hall, and when I came back my sister was in the room, and the door was locked, and I heard sounds in the room, and then I heard her scream, and I rattled the door knob, and demanded that he let me in the room.

Q Did you get in? A Yes, I got in.

Q What was the condition of the room? A My sister's hair was disheveled, and Mr. Hartley was

pale, and he had a mark of blood on his face. I asked what was the matter. She said she scratched it with her ring.

Q Did he say what he was going to do with Maria? A He used very profane language, in the room that morning. He told me that I could go home, take her home, called us out of our names, and told me I could go to hell, and do as I liked with her."

Page 131, lines 30-40:

"Q What did he say? A He started in cursing and using that profane language.

Q What did he say? A He called my sister a son-of-a-bitch, and a God damn bum, and cursed this man Mr. Smith, and said that he would break the sanctity of any man's home. I said, "Isn't he related to you? What do you mean by talking about that man in that manner?' He said that he would break the sanctity of any man's home.

Q Mr. Smith would? A Yes.

Q What else did he say? A And she told me about taking her home or doing as I pleased."

The defendant at the trial insisted that he did not accuse his wife of improper conduct, but nevertheless failed to call Samuel Smith, referred to in the testimony quoted above as a witness, although Mr. Smith was available. Neither did the defendant give any reason for not calling Mr. Smith. The complainant on the first day of the hearing which was held months before the close of the case, testified as follows:

Page 18, lines 13-20:

"Q During that time you said that he was going to investigate your going out with Mr. Smith. Did Mr. Hartley take you to Mr. Smith? A Yes, he took me to Mr. Smith—in front of Mr. Smith's restaurant on Fourth street in Harrison, and he told Mr. Smith, he said, 'See what you have done, she is up with her mother now, and she is going to stay there.' "

If defendant was sincere in his denial that he did not accuse his wife of improper conduct, it seems that a

splendid opportunity for furnishing corroboration for his unsupported statement was lost in not calling Mr. Smith, who, as the testimony shows, is a very close friend of the defendant, and the father of Samuel Smith, Jr., one of the incorporators of Mr. Hartley's Realty Co. (p. 26, ll. 22-24).

The first separation of the couple, as mentioned within, began on the Sunday before Labor Day in 1917, and ended November 19th, 1917, during which interval the defendant investigated the conduct or the misconduct of his wife while at Asbury Park. The couple lived together from November 19th, 1917, until the month of June, 1918, at which time the second separation began.

From November 19th, 1917, until June, 1918, the defendant left the complainant at home every Sunday. Thanksgiving Day and Christmas Day the defendant absented himself from his home, and at no time during this interval did the defendant provide or even attempt to provide an adequate supply of food or coal with which to heat the house. Thanksgiving and Christmas Days, and it is to be remarked that this was the first Thanksgiving Day and the first Christmas Day after the marriage, were spent by the defendant at the home of his aunt, and not with the complainant. This is not denied. The testimony bearing on the neglect of the complainant by the defendant as enumerated above is found in the following testimony:

Page 19, lines 1-32:

> "Q After November, while you were living with Mr. Hartley did anything take place then? A From November until that June, Mr. Hartley every Sunday left me and went to visit his boys—his two boys that was at Rutgers College. He left me every Sunday without anything to eat, until he came home at night, then he would take me to a restaurant for my supper.
>
> Q Wasn't there any food in the house? A There was no food in the house, and I had no money to buy it.

Q How was the house provisioned? How was the food provided? Did you buy it or did you order it?

Court. Did you have credit at the stores?

Witness. I didn't have any credit because I didn't know that I could go and get credit. Mr. Hartley never told me to go and get credit. I knew I couldn't get credit on his name, and live with him because he would have made life too uncomfortable for me.

Court. Was there any coal in the house from November to June?

Witness. No coal at no time.

Q Wasn't the house heated in any way? A I lighted the gas range that was in the house."

Page 126, lines 5-14:

"Q Do you know whether or not there was any food in the house, have you any way of knowing that? A I never knew while I lived there, after we came home Labor Day. I never knew her having anything in the house. I recall her going out in the evening. That was when she went to the lunch room."

Page 141, lines 3-19:

"Q Have you supported your daughter? A I have, and my daughter never came to my house only when she came for food. I always had to have something prepared for her.

Q Did you ever bring food to your daughter? A Yes, when the weather was snowy and damp, after her baby was born; on different occasions I carried stuff to her.

Q When she couldn't get out you mean, get out to buy food? A When she couldn't get out to come up home.

Q Had she been in the habit of coming home to you for her meals before the baby was born? A She did."

The events leading up to the second separation, as related by the complainant, are as follows:

Page 23, lines 4-40:

"Q In June, 1918, what took place, if anything, after the boys went to live with the aunt, after they came from college? A In June, 1918, I went home. I left Mr. Hartley from lack of him not supporting or providing for me.

The Court. How long had that continued? How long had he failed to support and provide for you at that particular time?

The Witness. We never lived properly. We didn't properly the whole winter. I never received any support from him, only when he would take me out and buy my supper.

The Court. How did you get your other meals?

The Witness. I never got any unless I went home for them.

The Court. You mean from November, 1917, to June, 1918, he made no provision for your support?

The Witness. No provision at all.

The Court. Gave you no money?

The Witness. He never left me any money.

Q Did he bring any groceries or food home? A He never brought anything in.

The Court. Establish any credit for you at the stores?

The Witness. Never told me that I could have any credit anywhere."

Page 24, lines 1-40:

"Q Did you have a butcher by the name of Reardon at any time? A Yes, I went to Reardon when I went back in August.

Q That was later on? A That was later on.

Q In June what occurred about that time to cause you to leave? A Mr. Hartley told me that he never intended to be any different. That he wouldn't change. That winter I lacked support in every way, and I couldn't stand it any longer, and he told me that if I didn't like the way I was living, I could go away. I got up and went home.

Q Did you return to him after June, 1918? A I returned to him in August.

Q Why did you go back to him in August? A Because Mr. Hartley came after me, and told me that he intended to be different, that he would give me money to run my home, that he would entirely change, which he did.

Q Did he buy any new furniture immediately prior to your returning in August? A The day I went back with Mr. Hartley, we went over and bought a bed and an ice box.

Q What had you been sleeping on during the time you lived with Mr. Hartley? A I slept on a davenport.

Q Didn't you have a bed? A There was a bed, but I didn't care to sleep in it.

Q Did you tell Mr. Hartley why you thought you should not use that bed? A Yes, it wasn't clean, and it was so unclean, that I didn't know how to start to clean it.

Q It was the same furniture that had been in the house at the time that Mrs. Hartley died of tuberculosis? A The same furniture."

Page 25, lines 1-17:

"Q She had died how many years previous to your marriage to Mr. Hartley? A It was only a short time, not years. It wasn't a year.

Q Was the same furniture in the house, and the same carpets that had been there during all of Mrs. Hartley's illness? A The same furniture.

Q At the time you went in? A The same furniture, yes, and the same carpets.

Q How old were you when you married Mr. Hartley? A Twenty-one.

Q How old did Mr. Hartley say he was? A He said he was thirty-six."

In connection with the above testimony, with reference to the defendant's failure to properly support his wife, the defendant's admission that he did not contribute one cent toward the support of his wife or child from January 15th, 1920, until an order of the Court to that end was entered February 16th, 1921, a period of thirteen months should be taken into consideration. Defendant seeks to

excuse his failure in this regard by stating that his wife asked him not to send her any money, because if he did, her people would never want her to come home. Defendant's excuse, in view of all the testimony, in the case is absurd, and in the opinion of counsel, weakens the story that he did provide food and coal for his wife from November 19th, 1917, her twenty-second birthday, the date on which she returned, to June 18th.

As shown by the foregoing testimony, and as admitted by the defendant, the complainant returned to live with her husband in August, 1918. This was the conclusion of the second separation. The complainant returned on the strength of the defendant's promise to treat her with more consideration, and give her $20 a week with which to run the house. The defendant did treat his wife, at this time, with more consideration and did give her $20 per week. In the same month, the defendant organized his real estate corporation, August, 1918, the certificate being dated and acknowledged August 16th, 1918, recorder September 23rd, 1918, which is the approximate date on which the defendant made overtures to the complainant to return and live with him, promising her kind treatment and adequate support. It is remarkable that the real estate corporation should be organized just at the time that the defendant succeeded in having his wife return and live with him. On December 10th, following the wife's return, the defendant procured the complainant's signature to a deed for all the real estate of which the defendant was seized, transferring the title of same to the real estate corporation of the defendant. The value of the real estate thus transferred, according to the defendant's own testimony, was $19,500. On the same day that the complainant unknowingly, and unwittingly signed away her dower interest in the real estate, the defendant, to show his love and affection for his wife, gave her a present of $1,000, which he explains was to be used in part by her for the purchase of a fur coat.

The defendant testified with reference to the organization of the corporation, and the present of $1,000 as follows:

Page 260, lines 8-40:

"Q You were incorporated in September, 1918? A Yes.

Q And at the time you filed papers of incorporation, your wife was living with her mother? A It was her suggestion, I guess she was; yes, sir.

Q Then you brought her back home? A Yes.

Q And was home for a couple of months, and you were very kind to her and lived very happily together until the deed was signed? A We lived happily together all the time.

Q And the time the deed was signed, you made her a present of a thousand dollars? A I did.

Examination by the Court.

Q Why did you select that particular day to give her the thousand dollars? A I thought if she was good enough to do that for me, I was good enough to give her a thousand dollars.

Q What had she done that day particularly for you? A She signed that, and I thought that anyone what was good enough to do that—

Q What was there about her signing that was good enough in any way; how did you regard it as good to you? A I thought it was fair she should do it.

Q You realized she was giving up her dower? A No, I thought she had complete faith in me.

Q To do what? A To do what she did do.

Page 261, lines 1-40:

"Q Faith in you to do what? A To sign that I go in the real estate business. I don't care about it now.

Q About what? A About everything; this is a matter of principle; I have been accused of something that is not so.

The Court. I don't want a speech from you; I only want the facts.

Q You say your wife had been at you for months for a fur coat? A Yes.

Q You selected a particular time when she assigns all her interest in your real estate, so to hand her a thousand dollars, which she was to use for a fur coat, and which she did not use for nearly ten months after to buy the coat? A No, not for ten months, or a year.

The Court. I cannot reconcile your statement with her interest to have a fur coat, and the payment of a thousand dollars on the day she assigned away her interest in the property with your explanation.

Q She hadn't anything to show about it; you had the money, why didn't you give it to her before? A I gave it to her, yes.

Q Did you give her a present of any other large sums of money at any time, either before or after? A No, I don't say I did.

Q Why didn't you? A She never asked me.

Q Hadn't she wanted other things beside the fur coat? A No, sir.

Q Never wanted anything else but the fur coat? A Not a thing; everything she wanted she got."

The testimony shows that the F. A. Hartley Realty Co. disposed of all the property by sale, with the exception of one parcel on which a mortgage of $8,000 was quickly placed. The corporation served no purpose other than to acquire title to the defendant's title and thus cut off complainant's right of dower in the real estate so transferred . The good faith and sincerity of the husband in inducing his wife to return to him in August, 1918, can well be questioned in view of defendant's conduct in regard to his real estate.

According to the defendant's testimony, his wife was ambitious in a material sense and attempted to foist the support of her family upon him. If such is the fact, it would be a most unusual thing for the wife to voluntarily divest herself of all interest in the real estate of her husband, particularly in view of the many estrangements and difficulties which she had experienced during the very short time she was married. The testimony bearing on

the ambitions of the wife from a material standpoint is as follows:

Page 207, lines 13-35:

"Q Did she ever complain that you didn't give her pocket money? A No, none whatever.

Q Did she object to the home you had over in Johnston avenue? A No, she did not; it was my intention to move to New Lawn avenue; I had my home all decorated.

Q Why didn't you move there? A She wanted me to take her whole family with her.

Q You interrupted yourself after telling about the decoration of the apartment. What occurred that prevented you from moving there? A She wanted me to take her whole family, her mother, her sister, her brother, and her aunt.

Q Up to this New Lawn avenue house? A And her Aunt Maggie was going to be the servant.

Q You didn't have any maid? A No.

Q Was she to give her services without pay? A Nothing said; I put my foot down on that.

Q That you didn't want the family? A I didn't marry the whole family."

Page 239, lines 24-40:

"Q The one reason, or one of the principal reasons why your wife refused to live with you, in your opinion, is that she refused to have any more children? A Yes, that and her people.

Q What had her people to do with that? A They wanted me to support the whole family, and take them up to New Lawn avenue.

Q Did you ever support any of the family outside of your wife? A No.

Q Your wife wanted you to support them? A She wanted me to have them come up to New Lawn avenue.

Q Did you promise your wife to live there? A Yes, but not with her family."

Page 240, lines 1-13:

"Did you ever ask your wife to come and live in the New Lawn house with you alone? A Yes.

Q And she refused? A She wouldn't without I took the whole family, and have her aunt as a servant.

Q She preferred to remain in the flat at 87 Johnston avenue, rather than go to New Lawn avenue, with you alone? A She stayed there.

Court. Did she, say so?

Witness. No, sir."

The only child of the marriage, Alfred, was born August 14th, 1919, and the complainant returned to her husband September, 1919, where she remained until January 15th, 1920.

Before considering the events leading up to the final separation, January 15th, 1920, the testimony of Dr. Ballinger should be considered, and particularly his conversation with the defendant, both at the time the prescription was given (Defendant's Exhibit 6 not printed in State of the Case), and at the time the delicate position of Mrs. Hartley was definitely established. The testimony of the doctor corroborating the testimony of the petitioner, forces the conclusion that the defendant did not want the complainant to become a mother, and in a decree, explains the defendant's lack of any show of affection for the child or willingness to support the child until after an order for temporary alimony was made February 16th, 1921. It is undisputed that for the thirteen months which elapsed from January 15th, 1920, the date on which the couple separated, to the making of the court order, February 16th, 1921, defendant contributed nothing for the support of the child of the marriage, although he had been requested so to do, and had received two letters from complainant's attorney, one dated May 4th, 1920, and the second dated May 20th, 1920 (Exhibits D. 9 and D. 10, not printed in the State of the Case).

The testimony of the married life of the couple from the date she returned from her mother's home, September, 1919, with the infant scarcely one month old, until January 15th, 1920, shows that during that time, the defend-

ant denied complainant money with which to run the house, except during the first week of her return when the usual allowance of $20 was paid. The so-called charge account in Bamberger's was closed, the coin which is necessary in order to obtain credit having been lost or taken by the defendant. Complainant had been forbidden to purchase anything either for herself or for her baby on defendant's name, and as she testified, refrained from doing so for peace sake. There was no means of heating the flat, except the use of the gas range. After the gas was shut off on account of defendant's failure to pay the gas bill, complainant remained in the house for three days, and begged and pleaded in vain with the defendant to give her "the money to go over and pay for the gas." Defendant's testimony is that during this time he was giving the complainant $20 per week, as well as giving her any other sums which she might desire. It is only reasonable to suppose that if the complainant was receiving $20 per week, she would have used some of the money for the purpose of paying part of the disputed ($18) gas bill. The testimony is undisputed that the complainant did not leave the house hastily, but repeatedly begged the defendant to give her a chance to discharge her duties as a wife, and to relieve the discomfort and wretchedness under which she had been living since her return to the defendant in September of the previous year. The complainant's trunk was packed, and was removed from the house to the knowledge of the defendant several days before the final separation. There appears to be nothing in the testimony to show that the defendant objected to the packing of the trunk or made any sincere effort to have his wife remain. On the contrary the evidence seems convincing that if the defendant did not welcome his wife's departure, he at least passively consented to same. Complainant left defendant's home in the morning, but returned again about 5 o'clock in the afternoon and again pleaded with the defendant, and told him that she "had taken the baby and wouldn't he change." Com-

plainant's efforts for a reconciliation on this occasion were lightly brushed aside, and complainant took the only self-respecting course left open to her, namely, to return to her mother.

The complainant's version of the final separation on direct examination, is found in the following testimony:

Page 37, lines 10-40:

"Q During the winter of 1919 after you returned in September with the child, did you have a supply of gas in the house? A Yes, I had a gas range up until the month that I went home in January. Our gas was shut off for non-payment of a bill.

Q In January? A In January.

Q That was how long before you went home? A I stayed there three days without any light.

Q How did you light it? A I got a lamp from Mr. Hartley's aunt upstairs. Mr. Hartley's oldest boy brought the lamp down to me.

Q Did you get any oil for the lamp? A Yes, I got the oil next door, from the woman that lived next door to Mr. Hartley.

Q You borrowed the oil? A I borrowed the oil.

Q Did you have any heat during these three months? A Only the heat that I bought by the bushel, the coal.

Q Where did you get the coal? A I charged it.

Q After the gas was shut off, you used this kerosene oil lamp; did you have a talk with Mr. Hartley? A Yes, I told Mr. Hartley that I couldn't stand living that way any longer. I asked wouldn't he give me the money to go over and pay for the gas. He told me that he would live like that for the rest of his life, and I told him that I couldn't live that way, I couldn't live that way any longer.

Q And what day did you return to your mother? A I returned there on the fifteenth of January, 1920."

The defendant's version of the occurrences on direct examination, is found in the testimony, page 203, lines 20-40, and page 204, lines 1-20.

The complainant also testified on re-direct examination as follows:

Page 112, lines 8-40:

"Q Did he make any suggestion at that time, as to what should be done with the expected baby? A He told me that he would take me to a midwife on Mulberry Street.

Q And was there anything else said with reference to anyone else he could appeal to? A Yes, he told me that he could appeal to another doctor.

Q Did he say where he got the name of the other doctor? A Yes, he told me.

Q What did you say to this suggestion? A I told him that I was going to have my baby.

Q Just what did you say to him—to one of Mr. Lane's question I understood you to answer that your husband said to you, 'Don't bother me, when I got the fish on the wagon.' What question did you ask him then? A I asked him if he didn't want me to bring the baby back home that night, that I went back there.

The Court. January 15th, when they parted is that right?

The Witness. Yes.

Q You were asking for money? A I asked him if he would give me some money, some carfare up home, and he wouldn't give it to me.

Q You also suggested in answer to one of Mr. Lane's questions, that you sent your trunks to your mother's house about a week before you went to your mother's house. Just why were those trunks sent, and what did Mr. Hartley know about it, if anything? A Mr. Hartley knew the trunks were gone. He continually before that, came in every day and asked me when my trunks were going, and if the expressman had called yet.

Q Were the trunks packed at Mr. Hartley's suggestion or at his request? A Yes, they were.

The Court. What do you mean, when did he ask you or request you to pack them?

The Witness. He told me that he wanted me to go.

In view of the repeated assaults and the threats made by the defendant and the vile and indecent names which the defendant called the plaintiff, it is reasonable to infer that complainant was "afraid" of the defendant, as stated in her testimony.

As to the failure of the defendant to contribute anything toward the support of his wife or child from January 15th, 1920, until ordered so to do by the Court, February 16th, 1921, it is submitted that the husband is charged with knowledge of the fact that whether or not his wife was justified in leaving him, he was still morally and legally obliged to support the child. Not only is the defendant charged with knowledge of his obligation in this respect, but the fact was brought home to him by two letters from complainant's counsel, and it is fair to assume that the same information was given to defendant when he conferred with Attorney Archibald, after receiving the first letter from complainant's counsel.

Counsel for the defendant places the refusal on the defendant to contribute toward the support of his wife and child upon the ground that the defendant would not contribute toward the support of either, unless the wife returned to live with him. This theory is negatived by the defendant's own testimony.

Page 238, lines 4-30:

"Q I understood you to say, Mr. Hartley, that from the time your wife left you the last time, January, 1920, down to the time the Court made an order that you were willing to support her and had offered her money; is that correct? A No, sir.

Q You never offered her money? A I offered her money to support the baby, but not to support her.

Q How much did you offer her? A I didn't specify any amount, because her answer was, 'Then they will never want me to come home, you start in doing that.'

Q She didn't want to take any money from you? A No, sir.

Q This offer to support your baby while your wife was living separate from you continued from January, 1920, until this Court made an order requiring you to support the baby?

Court. Did you continue your offer to do so? Or express a willingness to do so?

Witness. Yes, at least ten or a dozen or fifteen times."

It is submitted that complainant makes a very reasonable and satisfactory explanation of her failure to bring her husband promptly to court, by her testimony to the effect that she refrained from instituting proceedings in the hope that her husband would voluntarily perform his legal and moral duty, and pay her something toward the support of his child, without the necessity of airing the matter in court, and subjecting all the parties concerned, and particularly the baby, to the unfavorable notoriety incident to a suit.

In the case of *Taylor* v. *Taylor,* 73 New Jersey Equity 745, the third headnote reads as follows:

> "A wife who has separated herself from her husband on account of his extreme cruelty may be entitled to alimony, though he used no physical violence toward her, but she must prove that his conduct was such as to place her life or health in danger, or to render her life one of such extreme discomfort and wretchedness as to incapacitate her to discharge the duties of a wife, or that the conduct of the husband was such as to bring about these conditions."

It is submitted that the facts bring the case at bar clearly within the doctrine laid down in the Taylor case, and the same will be urged in the argument.

In the case of *Eisenger* v. *Eisenger,* 100 Atlantic, page 840, in the opinion written by Vice-Chancellor Lane, solic-

itor for the defendant in the case at bar, appears the following apt expression of the law:

> "It is of course, the law that mere harsh words, mere threats of personal violence, accompanied by some overt act, mere intoxication, even habitual intoxication to a certain extent, are not sufficient to warrant a decree of separate maintenance, but when all three combine, or two combine, and such a course of conduct is persisted in for a number of years, then this Court will lay hold upon slight physical cruelty to justify a decree."

And in the case of *Rhodes* v. *Rhodes,* 114 Atlantic 414, affirmed by the Court of Errors and Appeals "for the reasons stated in the opinion filed in the Court below" by Vice-Chancellor Lane, the Vice-Chancellor held as follows:

> "As respects separate maintenance, acts of cruelty by the husband may be condoned but condonation is but provisional, and does not prevent consideration of such cruelty where the husband's subsequent conduct is such as to justify its consideration."

POINT II.

There was no obligation on the part of the wife to return to the husband after their final separation, for the purpose of testing the sincerity of his offers to effect a reconciliation.

The case of *Burlingham* v. *Burlingham,* 116 Atlantic 494, urged on behalf of the defendant, is distinguished from the case at bar, in that the efforts on behalf of the defendant to induce his wife to return to him were not sincere. It is also distinguished from the case at bar, in that the complainant has shown no hatred whatsoever toward the defendant. As the defendant admits, she was ever a true and faithful wife. On the witness stand he lauds her virtue and assigns no reason for her leaving, except that it was the wish of "her family."

The defendant's attitude toward his wife's family, and the principal reason which he assigns for his feeling of hostility toward his wife's family, may be gleamed from the following questions and answers:

Pages 230 and 231:

Examination by the Court.

Q Why did you meet your wife so peacefully and harmoniously after she charged you with failure to support and provide for her? A Because I knew this was not her doing; it is not her doings. My wife has met me all over the city. I met her down in Clinton avenue; it is her people, it is not my wife; my wife's people couldn't pay $18 a month's rent in my house, but after I married their daughter they could move out and pay $35 or $45 and put in a telephone.

Q Did you help them to do it? A I don't know; it was very mysterious.

Q What did you mean by that; did they get any of your money to pay any of the additional rent? A It is very mysterious; I have had money disappear out of my home.

Q Your wife has stolen money? A No, sir.

Q Who has done it? A I don't know.

The Court. I don't see any sense in the statement you make.

The Witness. It is a fact, nevertheless.

In the case of *Rhodes* v. *Rhodes,* a case in which there was no physical violence on the part of the defendant, and yet a bill for maintenance "under the statute was sustained," there was no *bona fide* effort made by the husband to induce his wife to return. That the defendant in the case at bar, made no sincere effort is evidenced in no small degree by the fact that the defendant procured a lawyer to dictate and typewrite on plain paper, the only letter which defendant sent to the complainant, during the entire period of the separation. The letter begins "My dear Maria," and is signed, "Yours, Fred" (Case, p. 45, ll. 11-20). It was sent in a plain envelope by registered mail, and was received on or about October

12, 1920. The defendant, no doubt, intended that his wife should believe that the letter expressed his own state of mind, and was not the work of his legal advisor.

It is to be remembered that as early as May 4, 1920, the complainant, through her counsel, had requested the defendant to make some provision for the support of his wife and child, and the defendant's state of mind can best be judged by his actions rather than by his testimony, and when we consider that for thirteen months, he contributed nothing toward the support of his child, although he apparently recognized the obligation, we are forced to the conclusion that the defendant did not avail himself of a most practical and natural manifestation of sincerity. The defendant seeks to place the responsibility and fault in this matter, as in every other matter in issue, on the complainant, as shown by the following testimony:

Page 266, lines 12 to 33:

> Q Why didn't you send something for the support of your child? A Because she asked me not to. She said "If you start in doing that, they will never want me to come back home to you."
>
> Q You knew that she was offering to come back home? A No, I was believing that she was coming back, and kept my home for that reason.
>
> Q For a year? A For two years.
>
> Q You still believed that after this suit was started? A You asked me to take her home.
>
> Q Do you believe that now? A I have done everything I could do.
>
> *The Court.* Did you say Mr. Mylod asked you to take your wife home?
>
> *The Witness.* Yes.
>
> Q What did you say? A I said, "My home is there." She wanted me to move up to Arlington and move there with her. He asked me that about the fifteenth or sixteenth of October.

The credence to be given the testimony of the defendant is manifestly very slight, and it is on his testimony only that his plea of "sincerity" can be sustained. His protestations of love and affection for his wife and child,

and his desire that his wife return and live with him, do not ring true, and especially so in view of defendant's testimony quoted above and in view of his conduct on the witness stand which moved the Court to admonish the witness as follows:

Page 262, line 14:

> *The Court.* Tell the truth; when you give these hesitating answers, you are not telling the truth.

It is true that counsel for the defendant, in open court stated that the defendant desired his wife to return to him, and live with him, and that at practically every hearing, his offer was renewed by counsel, and made much of by counsel during the trial. The testimony shows that from the first time that counsel made the offer in open court, the defendant allowed no occasion to pass without repeating the invitation that his wife return to him, which, in our opinion, indicates that the defendant, either by design or otherwise, followed the lead of his counsel, in this respect.

The complainant left the defendant, January 15, 1920, and took the child with her. During the next succeeding thirteen months, that is until the Court made an order for support, February 16, 1921, according to the wife's testimony (page 40), the defendant called on his wife and child, not over four times.

Page 40, ll. 35-40.

> Q Not over four times, would you say? A Not over.
>
> Q Since the Court made the order?
>
> *The Court.* When was the order made?
>
> *The Witness.* February 16, 1921.
>
> Q Since the order was made of February, 1921, how often has Mr. Hartley requested to see his baby, and how often has he seen his baby? A Three times a week.
>
> Q And just how did you arrange—how does he see his baby three times a week? A He arranged

with Mr. Lane that he couldn't call at my home because there was always trouble for him when he called.

Page 41, lines 27-40; also page 42, lines 1 to 29.

"Q And when he couldn't see the baby at the Day Nursery, how did you arrange for him to see it? A I took it three times a week in front of Number Six School on Belleville drive.

Q How long would he keep the baby three times a week? A I have stood as long as four hours with the baby for Mr. Hartley to see it.

Q What would he be doing? A Mr. Hartley every time, with the exception of yesterday, called me out of my name and abused me scandlously, when I went there.

Q Will you tell the Court some of the things Mr. Hartley called you when you brought the baby down to him to visit him on the street, when he wouldn't go to the house? A When I brought the baby to Mr. Hartley, he used to tell me that I wasn't fit to be the mother of a slut. I am only a human being—he used to call me a whore, a son of a bitch, and a bastard every time I ever went to see him with that baby.

Q And what would he do with the baby, why wouldn't you leave him and go home, when he called you those names? A Because I knew that he was calling me those names to get me out of patience.

Q Where was the baby during the time he would call you these names? A Sitting in his automobile with him.

Q Where were you? A I was standing on the street, or sitting on the school steps.

Q All during the summer, during the warm weather in July, did you take your baby out on the street to meet Mr. Hartley? A Yes, I did.

Q How long a time would he keep you waiting with the baby? A I would stand as long as four hours some days.

The Court. What was the shortest time he kept you there?

The Witness. Never shorter than two and a half or three hours.

The defendant did say to the complainant that he would have to get a housekeeper, if she didn't come back, and he also did say "his home was open," but such requests are not the kind referred to by Justice Parker in the opinion in the case of *Burlingham* v. *Burlingham.*

The case of *Taylor* v. *Taylor,* 73 N. J. Law, at page 753, the following statement is found:

> "I am not prepared to say that no case can be conceived where the husband could not procure a divorce upon the ground of desertion without having made some effort to procure the return of his wife, but I am prepared to say that such a case must be an extreme one, if it can in fact exist, and that this is not the kind of a case. It is undoubtedly true that where it is perfectly clear that any attempt upon the part of the husband to induce his wife to return would be unavailing, he would be excused from that duty, provided his heart was right, but if the going away of the wife was to any degree caused, or provoked by him, if he can in any sense be said to be chargeable with misconduct, even though not in such degree as to justify her conduct, then there is upon him the most powerful duty to use his utmost effort to get her to return, and upon that the authorities are entirely at rest."

Can it be said that the defendant in the case at bar used "his utmost effort" to get his wife to return to him, as mentioned in the doctrine enunciated in the Taylor case?

It is urged that the wife should return to test the sincerity of the husband's offer. There was no obligation on her part to return, and especially so, since the husband not only indicated that home conditions would be improved, but on the contrary told his wife that "he would not change."

Page 43, lines 8 to 38.

> "Q What do you mean, make an effort? A He never told me that he would change, and I was really afraid to go back.

Q Why were you afraid of him? A Because he threatened my life and abused me so.

Q You told me on one occasion that he choked you? A Yes.

Q Did he ever do anything like that on any other occasion? A Yes.

Q How frequently? A About three or four times.

Q He actually assaulted you? A Yes.

Q Did anyone ever treat any of your bruises or marks at any time? A No, not until I went home to my mother one day, and she sent out for arnica and witch hazel.

Q Where were the marks on your body then? A On my throat.

Q When was that? A October, 1919.

Q Why did he assault you then? A Because I told him that I didn't think I would sign the realty papers, since my name wasn't in the newspaper, and I think he must have got angry about that, and that is what the cause of it was.

Q When were the other occasions you say he assaulted you? A One night when I went up to see my mother, when she first moved.

Q When? A December 1st, 1917.

Q What happened then? A He pushed me up against the tubs and he choked me.

Q Why, what was the trouble? A Because I had gone up to see my mother."

The defendant has in no way repented of his treatment of the complainant, and there is not the slightest suggestion in the case that the defendant will change from his former conduct toward the complainant in the slightest degree. It is clear that a return by the complainant to live with the defendant, would only result in a repetition of his past conduct toward her, or crueller conduct and acts of greater violence, endangering the safety and the health of the complainant.

In the event that the complainant is denied the relief which she seeks, it would seem that the way is made clear for the defendant to maintain a suit for divorce on the grounds of "willful, continued, and obstinate deser-

tion, for the term of two years'' under the decision of *Oertel* v. *Oertel,* 112 Atlantic, 487, and while no counter charge has been made in the suit at bar, the fair inference to be drawn from the testimony in the case is that a dismissal of complainant's bill will move defendant to avail himself of the opportunity which he sought at the outset of his married life, when the so-called ''poison-pen'' letters were received.

In the case of *Haydock* v. *Haydock,* 34 N. J. Equity, 570, at page 576, Justice Magie in writing the opinion, states:

> ''The careful and deliberate judgment of the Vice-Chancellor, pronounced after an opportunity to see and hear the witnesses, has, and ought to have, great weight. It ought not to be reversed, unless clearly wrong.''

In conclusion the complainant-appellee submits that the decree in this case is based essentially upon findings of questions of fact, and should be sustained.

Respectfully submitted,

JAMES P. MYLOD,
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New Jersey Court of Errors and Appeals

MARIA A. HARTLEY, *Complainant-Appellee,* *vs.* FRED A. HARTLEY, *Defendant-Appellant.*	*Appeal from a Decree for Maintenance.* Heard Below Before FOSTER, *V.-C.*

BRIEF FOR APPELLANT.

Statement of the Case.

The bill was filed January 12, 1921 (p. 1). The parties were married February 16, 1917. At the time of the marriage the wife was twenty-three years old (p. 178). The husband was forty-four (p. 178). The husband was a Protestant, the wife a Roman Catholic (p. 47). The husband was a widower, his first wife having died November 16, 1916, after having been ill for at least eight or ten years. The wife's family for a long time prior to the marriage and subsequent thereto lived in the same house in which the husband lived. For the first three months after the marriage the wife continued to live with the mother. The couple commenced to live together in a house owned by the husband on Johnston avenue, Kearny, N. J., June 15, 1917. The husband was a peddler, peddling fish from door to door, working sometimes twenty-two to twenty-four hours a day. To this the wife objected. On June 12, 1918, the wife went home to her mother and remained until August 27, 1918, when she returned. She continued to live with her husband until July, 1919, at which time she was about to become a mother and went home to her mother for her confinement where the child of the marriage, Alfred, was born August 14, 1919. In September, 1919, the wife returned to her husband's home and there remained until January 15,

1920, when she says she was obliged to leave her husband, because of the husband inadequately supporting her, the prime actuating cause at the time seeming to be shutting off of the gas for non-payment of the gas bill "so that your oratrix was obliged to borrow kesosene oil from a relative of the defendant who resided on the third floor of the house." She took her child and went home to her mother, where she has remained ever since.

It was conceded by the wife that commencing sometime after the separation the husband met her on very many occasions to see the child and continually asked her to return to him. The night before the case was tried the husband made another effort to get his wife to return.

Upon the return of the order to show cause why temporary alimony should not be awarded the husband in open court asked his wife to return. He repeated the request through his counsel at the opening of the case (p. 10) and again repeated it at the close of the case under examination by the Court (pp. 370, 371). The wife refused to return under any conditions. She made no demand upon her husband except that he support the child and herself separately from him. She did not tell her husband that she thought that the offers which he made were not *bona fide* and request him to do something else. On the contrary she testifies (p. 62):

"Q And he never abused you or called you names before the making of the order on February of this year? A No, he didn't.

Q He never used any language of that kind toward you? A No, he didn't.

Q Apparently when he met you he was sincerely desirous that you should come back and live with him? A Yes.

The Court. Had he used that language before you had separated, any such language?

The Witness. Yes.

The Court. So that your answer to Mr. Lane's first question is that he never used this

abusive language between February, 1920, and February, 1921?

The Witness. That is right."

Although the wife says that after she left him and on the fifteenth of January, 1920, she was willing to go back and live with him nevertheless although she admits that the husband often requested her to come back and live with him and kept his apartment (having kept it until this date), she refused, and on the stand absolutely refused to go back (p. 378).

Assuming that the wife in the first instance in January, 1920, was justified in leaving the husband it seems to me that the question in this case is whether any effect is to be given to the decisions of this court summarized in *Burlingham* v. *Burlingham,* 116 Atl. 494, where Mr. Justice Parker, speaking for the Court, said:

> "But even if it is conceded that he treated her with such injustice as to justify her in leaving him, there still remains the undeniable fact that he made repeated and apparently sincere efforts to induce her to return. She did not return; and the manifest reason why she did not do so, as it seems to me, is that she hated him and hated the place where he was living, and was determined not to go back to him."

And the decisions in the Court of Chancery in *Csanyi* v. *Csanyi,* 115 Atl. 76; *Lister* v. *Lister,* 85 N. J. E. 109, and *Jerolaman* v. *Jerolaman,* 54 Atl. 166.

This husband, whatever his conduct may have been, which justified the wife in leaving (and I urge that his conduct did not justify her in so doing), nevertheless made repeated and *bona fide* attempts to get his wife to return. These attempts extended over the entire period that she was away from him, down to the day before the suit was opened. The offers were renewed in open court. The husband upon the stand agreed to do anything which the Court would suggest (p. 371) or which his wife would suggest. In the testimony there is not a suggestion that the efforts were not sincere. The wife's testimony in-

dicates that she considered them sincere, notwithstanding what she said on page 44. He is met with refusal and not only no adequate reason is given for the refusal but no demand is made indicating *what would satisfy* the wife. There is no doubt from the testimony that the husband loves the child.

While there was but one letter written (p. 45) and that at the dictation of counsel (Mr. Archibald), the husband and wife were meeting several times a week; the wife was represented by counsel; had been represented as early as April, 1920 (p. 45). It was not at all unusual for the husband to have counsel, in view of the persistent refusal of the wife to come and live with him, write the letter, a copy of which is printed in the record (p. 45).

After the writing of that letter he did not abandon his efforts to get her to come back. She admitted that he continued them persistently and apparently sincerely until February, 1921; that during all of that time he asked her to come back and never abused her.

She says that after February, 1921, when he met her he did abuse her. But her testimony is to the effect that the abuse consisted largely in complaining bitterly that the money that he was paying under the order of the Court was blood money (p. 63) as indeed from his standpoint it was. He had a home. He had a child. He had a wife. He had neither the wife nor the child at home although he wanted them there. The wife had taken the child and refused to bring the child back and not only refused to come and live with him, but refused to tell him under what conditions she would. Was it not blood money?

The result of the decree below, two years having expired since the wife's leaving, is to fix the status of the parties so that the husband can never obtain a decree for divorce against his wife upon the ground of desertion, nor, indeed, can he obtain a decree against her upon the ground of adultery which may be now committed, because, by virtue of this decree of separate maintenance, his status as a deserting husband has been fixed, and

that has been continued for a period of two years, and that desertion would be a defense to a suit brought by him against his wife for adultery.

Young v. *Young,* 119 Atl. 92.

The decree now entered would give the wife the right to sue her husband for divorce upon the ground of desertion if she so elected. But it puts it within her power to hold her husband to this separate maintenance and support, to hold him to the obligations of the marital relation so far as support is concerned, and to deprive him of any of its rights and that forever.

From her testimony it is clear that this is in strict accord with her desire (p. 46):

> "What was the delay? Why did you delay if you retained counsel in 1920 in taking proceedings until 1891? A Because I wanted Mr. Hartley to settle the matter out of court.
>
> Q What did you want him to settle, out of court; how did you want him to settle it out of court? A I wanted him to support the baby—do at least something for him.
>
> Q What specifically was it that you wanted? A I wanted him to support the baby.
>
> Q How about yourself? A And myself.
>
> Q Did you want him to support yourself? A Yes. * * *"

Page 47:

> "Q He merely told you he wouldn't support either you or the baby so long as you lived away from him, didn't he? A Yes, he did. * * *
>
> Q Then why did you wait from April, 1920, to 1921, before you brought your suit? A I waited to see if he would support me without taking the matter into court.
>
> Q And without your going back to him? A Yes, without my going back to him."

Although the two years had expired at the time this suit was tried, and if the wife had not responded to proper efforts of the husband to return she was the deserting party and had continued to desert for a period of more

than two years, nevertheless the husband upon the stand (p. 371), notwithstanding the expiration of the two-year period, offered to do anything that would be suggested either by the Court or by his wife to induce his wife to return.

It is submitted that under the circumstances the case should be clear before a decree such as made below, having the effect that it has, should be made.

The opinion of the Vice-Chancellor will be found on page 383 of the record. In this statement of the case I do not intend to advert extensively to the statement of facts of the Vice-Chancellor in reference to the treatment of the husband toward the wife in 1917 and 1918 for I deal with that in the argument. I do desire, however, to draw the Court's attention at this time to the fact that the Vice-Chancellor in his opinion in no place expresses the view that the conduct of the husband had been such as that the wife was justified in refusing to *return* to the husband upon proper request. Nowhere does he find or intimate that the conduct of the husband came within the cases of *Taylor* v. *Taylor,* 73 N. J. E. 745, Ct. of Er. affirmance; *Atwood* v. *Atwood,* 85 N. J. E. 87; *English* v. *English,* 27 N. J. E. 579; *Black* v. *Black,* 30 N. J. E. 215. The Vice-Chancellor does not suggest that the husband's conduct had been of such a nature as to deprive him of the rights of a husband under the decision of this Court in *Burlingham* v. *Burlingham.* The Vice-Chancellor's statement (p. 385):

> "For some months after the reconciliation in August, 1918, the parties lived together harmoniously and until defendant had effected the sale, through the corporation, of all the real estate, except one parcel, on which was placed a mortgage of $8,000. Thereafter defendant returned *to his old course of treating complainant with neglect and failed to properly support her.*"

has the effect of casting a doubt upon the sincerity of the husband.

The fact is (from the testimony) that the deed for the real estate was made in December, 1918, or within four months after the wife returned. The wife continued to live with the husband harmoniously until July, 1919, when she went to her mother's home, not because of improper treatment upon the part of the husband but because it was concluded that it was better for her to be there confined. It was not until after the return of the wife in September of 1919 that she charges that her husband again commenced to fail to properly support her.

In view of this testimony it is respectfully suggested that the inference which might be gathered from the remarks of the Vice-Chancellor on page 385 is not justified.

In passing I suggest that the testimony of the wife with respect to the happenings after September, 1919, down to the date of her leaving in January, 1920, is without adequate corroboration.

Again the Vice-Chancellor says (p. 386):

> "For a period of thirteen months, from the date of the separation to February 16, 1921, the date when the order for temporary alimony was made, defendant refused to contribute anything for the support of either his wife or his child, although requested so to do."

While the Vice-Chancellor does not say, in terms, that he considers this as conduct on the part of the husband to be criticized, nevertheless such an inference may be drawn from his opinion as a whole.

In considering the fact that the husband did not contribute to the support of the wife and child we must not overlook that the husband considered that the wife was not justified in leaving him, that he wanted his wife and child *home*, that he asked her, many, many times, to return home, that she had refused to return, that she had not made any suggestion as to what he should do to induce her to return but that (p. 47):

> "Q He merely told you that he wouldn't support either you or the baby so long as you lived away from him, didn't he? A Yes, he did."

Nor must we overlook that the wife's admission is that she was at that time attempting to get support for herself and child without the necessity of living with him (p. 47), nor that, although, according to her story, she was obliged to leave in January, 1920, because of non-support, and her husband had refused to support her separate and apart from him, she made no effort to compel her husband to support either herself or the child until January, 1921, or a period of a year, and that she testified (p. 47):

> "Q Then why did you wait from April, 1920, to 1921 before you brought your suit? A I waited to see if he would support us without taking the matter into court."

The Vice-Chancellor in dealing with the efforts of the husband to get the wife to return says that "the defendant further claims he has repeatedly made efforts to have his wife return and live with him, and he now professes great affection for his child." Not only did the defendant *claim* that he had repeatedly made efforts to have his wife return and live with him, but his wife admitted that he had. It was not a claim, but a conceded fact. In the presence of the Vice-Chancellor the statement was made by counsel at the opening of the case (p. 10), and Hartley testified before the Vice-Chancellor at the conclusion of the case (p. 371).

The Vice-Chancellor proceeds:

> "His neglect of his child for thirteen months and his failure to furnish anything for its support during this period, coupled with the fact that he engaged a lawyer to write the only letter he sent to his wife during this time to effect a reconciliation, convinces me that this effort and the subsequent ones made during the pendency of this action, and particularly the one made on the eve of the hearing in October, 1921, were neither honest nor sincere, and I am satisfied they were made, most probably, on the suggestion of counsel, for their effect on the final outcome of the case."

The neglect for thirteen months referred to by the Vice-Chancellor was the refusal of the husband to support the

wife and child apart from himself. Again I repeat the wife's testimony (p. 47):

> "Q He merely told you that he wouldn't support either you or the baby so long as you lived away from him, didn't he? A Yes, he did."

There was no *neglect* on his part. As to seeing the child, he saw him continually. He insisted upon seeing the child. The wife brought the child to him.

Was it unnatural that he should engage a lawyer in October, 1920, in view of the fact that the wife had been represented by counsel since April, 1920? Was it unnatural that counsel should suggest that a letter be written so as to put in written form the offers which he had been continuously making (p. 45)? Was it unnatural that there should be no other letters in view of the fact that the husband was meeting the wife weekly and sometimes more than weekly? Had there been more letters it would have been contended that the scheme of making neither honest nor sincere efforts had been the more perfected.

Is there anything in the *evidence* to indicate that the offer made on the eve of the trial was neither sincere nor honest? Is there anything in the evidence to indicate that the statement of counsel and the statement of the husband on the stand during the trial were neither honest nor sincere?

The Court below has suggested that:

> "I am satisfied they were made, most probably, on the suggestion of counsel, for their effect on the final outcome of the case."

There is nothing in the *evidence* which would even lend color to a belief that any of the efforts of the defendant were made upon the suggestion of counsel. On the contrary, an inference which might possibly be drawn from the testimony is that counsel advised Mr. Hartley not to see his wife because it put her in a position where she could say that things happened which, in fact, did not happen (see p. 221):

> "Q On October 10th you were here in court and heard her testimony with respect to what names you

had called her the night before; did you hear what was said in open court with respect to the advice I should give you about meeting her again? A Yes; you and Judge Mylod said I could see my baby twice a week, and if there was to be a third—

Q Did you get advice from me that after that you were not to see your wife under circumstances where that same kind of testimony could be given again? A Yes.

Q And whatever your conduct has been since with respect to a refusal to see your wife, or to see your child, was that due to following out the advice of counsel? A Yes.

Q Has there been any change in your attitude as to a desire to see your child? A None whatever; I wish he was here.

Q When did you last see him? A Yesterday afternoon."

As a matter of fact counsel did *not* suggest the efforts at reconciliation nor did counsel know that the meeting which was held between the husband and the wife upon the eve of the hearing was to be held nor that it was contemplated.

One other suggestion with respect to the reasons which from the opinion of the Vice-Chancellor would seem to have actuated the Vice-Chancellor. He says (p. 385), in speaking of the cutting off of the gas, that:

"the gas, the only means of heating, was shut off, ostensibly because defendant refused to pay a disputed bill."

It is submitted, in view of the testimony of the wife on page 48 of the record:

"Q You knew in January, 1920, that Mr. Hartley with respect to this gas episode—you knew that he was having a dispute with the gas company, didn't you? A Yes; I did. I tried to settle it my own way with the gas man.

Q They had given him an estimated bill for a sum that he considered exorbitant, hadn't they? A Eighteen dollars.

Q What he considered an exorbitant amount? A Yes.

Q It was an estimated bill, wasn't it? A Yes.

Q And he said that he knew as a matter of fact that the gas hadn't been used? A Yes.

Q And you wanted him to pay the gas bill? A I wanted him to pay the gas bill along with the other bills we owed the gas company.

Q And he said that he would not pay anything until that was arranged? A Yes.

Q And it was because of the quarrel that he had with the gas company as to whether these bills should be paid, that the gas was shut off? A Yes."

and the fact that Hartley did not settle the gas bill until it was, in fact, adjusted (p. 215) that there was no justification for the testimony of the wife (p. 49):

"Q Your thought was that he wouldn't settle the gas bill in order that you might be forced to leave, is that your theory? A Yes."

nor for the inference of the Vice-Chancellor that the cutting off of the gas was ostensibly because the defendant refused to pay a disputed bill which must be based upon the testimony of the wife appearing on page 49 of the record.

The Vice-Chancellor in his opinion further says that "During this period (that is, between November, 1917, and June, 1918, the defendant left her alone frequently and did not provide her with either suitable or sufficient food, or with a satisfactory supply of heat." With respect to the defendant's leaving her, the testimony is, from the wife (p. 69):

"Q You said something about your not having food in the house or whatnot during Sundays that the boys were at Rutgers. Mr. Hartley went to Rutgers every Sunday to see his boys, didn't he? A Every Sunday.

Q And he asked you to go down with him? A He never asked me once.

Q Sure of that? A Positive.

Q You went to your mother's on Sunday? A I used to go up there after he went out.

Q He knew you were going there, didn't he? A I don't know; I was always home when he came home.

By the Court.

Q When he came home from Rutgers? A Yes.

Q Sure you were always home when he came home? A Yes.

Q Didn't you meet him every Sunday or almost every Sunday at the Market Street Station of the Pennsylvania Railroad? A Once I met him there, one Sunday night.

Q Didn't you meet him upon almost every occasion if not all at the Market Street Station of the Pennsylvania Railroad and from there go to some restaurant? A How could I meet him there?

Q Did you? A No, I didn't because he was in his automobile.

Q He didn't go by train? A He didn't go by train every Sunday.

Q This was during the winter, wasn't it? A Yes.

Q Did he go down to Rutgers in the machine during the winter? A Yes, he did.

Q Every Sunday he went during the winter time to New Brunswick? A Yes.

Q In his car? A Very nearly every Sunday. I only remember once meeting him at the Market Street Depot.

Q Every Sunday did you go out to dinner with him after he came home? A Yes, I went to a restaurant.

The Court. Every Sunday.

The Witness. Every Sunday.

Q *With him?* A *With him.*

Q What restaurant did you go to? A We used to go to Thomas' Restaurant on Washington street and to the Presto sometimes on Market street.

Q Where else? Achtel-Stetter's? A No; I don't ever remember being at Achtel-Stetter's. Before I was married, but not after.

Q During this winter I am talking about what other restaurants did you go to? A Those are the two restaurants.

Q And after you got through, where would you go? A Sometimes to the moving pictures or to Proctor's.

* * * * * *

Q That would happen every single Sunday that Hartley went down to Rutgers and came back? A Yes; every Sunday I went out to meet him.

Q Did you object to going out with your husband for the evening meal on Sunday and thereafter going to a place of entertainment? A I never objected.

Q You rather liked it, didn't you? A I went.

Q You knew when he left in the morning on Sunday that this was going to happen? A Why, of course."

Page 71:

"Q Are you sure that you met him at home—bear in mind the fact that these restaurants are in Newark and that the theatres are in Newark—are you sure that he went home to Kearny and then came back to Newark? A We used to go in his automobile.

Q Then he would go all the way home in his automobile and get you and then come back to Newark? A He would go home and get washed and then he would come back to Newark.

Q Did you ever ask him to take you down and see the boys? A No.

Q You mean that you liked to see your mother, didn't you? A I used to like to go to see my mother.

Q You didn't object to seeing your mother once a week? A No.

Q You saw your mother more than once a week? A I used to see her, yes.

Q Almost every day? A Almost every day."

It is respectfully submitted that in view of this testimony the Vice-Chancellor was not justified in inferring that the husband during that period of time left his wife improperly.

ARGUMENT.

In the argument I shall attempt to review the evidence and the circumstances surrounding the parties in an attempt to show

First—That the conduct of the defendant was not such as to warrant the wife in leaving and remaining away from her husband within the cases of *Taylor* v. *Taylor,* 73 N. J. E. 745; *English* v. *English,* 27 N. J. E. 579; *Black* v. *Black,* 30 N. J. E. 215; *Atwood* v. *Atwood,* 85 N. J. E. 87, affirmed 87 N. J. E. 212, and

Second—That the husband was entitled at least to have the sincerity of his offers to have his wife return tested by her actually coming back in view of the following cases:

Burlingham v. *Burlingham,* 116 Atl. 494;
Csanyi v. *Csanyi,* 115 Atl. 76;
Lister v. *Lister,* 65 N. J. E. 109;
Jerolaman v. *Jerolaman,* 54 Atl. 166.

The bill was filed January 12th, 1921 (p. 1). It alleged a marriage between the parties on February 17th, 1917; the birth of one child on August 14th, 1919; the leaving by the wife on January 15th, 1920. The excuse for the leaving, set up in the bill, is that from the time of the marriage in February, 1917, until the latter part of August, 1917, the husband supported the wife but meagrely; about August, 1917, he began to illtreat her, accusing her of going around with other men and complaining that his meals were not properly prepared; in September of 1917 forbidding her to order any food; from September, 1917, to June, 1918, she was obliged to obtain food from her mother and during that time he

> "repeatedly choked and beat your oratrix so that your oratrix was compelled to seek food and shelter at her mother's home."

(The importance of this allegation is that no attempt was made to prove it, and it illustrates the extravagance of the wife's charges.)

She alleges that on June 12th, 1918, upon asking him for some money, he said she could do as she pleased, he wouldn't give it to her, and on the next day she was

forced to go to her mother's home where she remained until the latter part of August, 1918, during which time he begged her to return and that she did, on August 27th, return and stay with him until July, 1919, at which time she was about to become a mother, and she then went to her mother's house for her confinement, where she remained until about the middle of September, 1919, at which time she returned to her home; in August, 1918, defendant told her that he was going to give up the produce business and go into the real estate business, he was going to incorporate a corporation and that she was to be one of the incorporators; induced by such representations, she signed a deed, which was recorded on December 11th, 1918, transferring all of his real estate to the corporation.

The eighth paragraph of the bill is of importance. It reads:

> "During the interval between the time your oratrix was induced by the defendant to return to him in August, 1918, and September, 1919, the defendant lived agreeably with your oratrix and gave her $20.00 weekly to buy food for the home and to support herself."

This allegation is important because it indicates that whatever had gone before August, 1918, if anything, had been cleared up. It is an admission that for a period of approximately one year they lived in peace and harmony, and the amount paid by the husband for the wife's support was, in her estimation, sufficient.

She must, therefore, find her cause for leaving in events happening subsequent to September, 1919.

She alleges that after she returned in September, 1919, defendant commenced to upbraid her and tell her that he would no longer give her $20.00 a week, but that she could go to a certain store nearby and buy the necessary food for the family, for which he would pay. Then the allegation is made that he forbade her purchasing food at the store; from September, 1919, to January 15th, 1920, he failed and neglected to provide the necessities of life,

nagged and abused her and accused her of going around with other men, and failed to furnish sufficient coal to heat the home or cook what little food was brought in, with the result that on the 12th day of January, 1920, the gas was cut off, so that she was obliged to borrow kerosene oil from a relative; complainant urged defendant to pay the gas bill, whereupon he said that he would not do it, and also stated that if she didn't like the way she was being treated she could leave. She alleges that, under the circumstances, and on the 15th day of January, 1920, she went to her mother's home, where she has since remained.

From the time she left in 1920 to the time of the filing of the bill, approximately one year, she received no support from her husband. It was not until January 17th, 1921, that notice was given of an application for temporary alimony.

The importance of this is that it is hard to conceive that, if this wife had been so cruelly abused, as she states in her pleadings, and was justified in leaving her husband, she would have burdened her mother with the support of herself and the infant child of the marriage without enforcing any demand whatsoever upon the husband.

While it is not set forth in the pleading, the fact that during all of that time the husband was meeting the wife, talking to her and seeing the child, lends additional point to this situation.

Is it conceivable, that this woman, believing herself to be so wronged, would have waited twelve months before making any legal attempt whatever to get support from her husband? Although she was represented by counsel?

Added significance is given to the admission in complainant's bill that from August, 1918, until September, 1919, or thereabouts, they lived agreeably together by the fact that the night she came home from her mother's house, after the confinement, although according to her bill there had been no trouble between the parties, she immediately turned around and went out (p. 106) and she

says that the reason she went was that she was nervous and sick.

Now, the story of Mrs. Hartley's leaving, from her own lips, is contained on page 37 of the record. She says:

> "I told him that if the gas didn't get turned on, if he couldn't give me the money to get the gas turned on and wouldn't give me money to support myself, and my baby while I lived there, and not having me sending children out to charge this and charge that in stores, that I couldn't stand it any longer, I asked him, and I begged him to change that morning."

Page 80:

> "Q So you didn't make up your mind to go until the fifteenth? A No; I had my mind made up; he knew I was going before.
>
> Q When did you make up your mind? A The day they shut the gas off I made up my mind.
>
> Q What day was that? A That was on the twelfth of the month, twelfth of January."

Page 82:

> "A I made up my mind if he didn't support me properly I was going to leave him.
>
> Q What did you say to him? A I asked him for the money.
>
> Q What did you say to him? A I asked him for my allowance to run the house and he wouldn't give it to me."

Page 82:

> "Q AND NOTHING HAPPENED DURING THOSE MONTHS EXCEPT THIS DIFFICULTY OVER MONEY MATTERS? A NOTHING HAPPENED, NO."

On pages 120-121 she says that the day after she left in January she came back to the house and asked defendant if he wanted her back, and this is the testimony:

> "Q You came back to him the day after you left in January and asked him whether he wanted you back? A No, the same day.
>
> Q And asked him whether he wanted you back? A Yes.

Q If he had said yes, you would have gone back? A Yes."

This is quite inconsistent with the story she tells of extreme cruelty.

It is of importance because it is defendant's contention that from the very beginning after she had left he has been sincerely endeavoring to get her to return.

In her testimony she concedes, in effect, his attempts to get her to return, although she says she doubts their sincerity.

He paid her nothing either for the support of herself or for her child because he conceived that if he did it would simply induce her to remain away and he would be contributing to her remaining away and he so stated to her.

Upon the return of the notice for temporary alimony he set out these facts and stated in open court that he desired his wife to return to him. This was in January, 1921. Pending this suit, after January, 1921, the parties met on many occasions, and it is conceded by the wife that the husband upon many occasions asked her to return, and she testified on pages *48* and *49:*

"Q You stayed in the house until the gas was shut off? A Yes.

Q And you were after him to pay that gas bill? A Yes.

Q And if he paid the gas bill the gas wouldn't have been shut off? A No.

Q And you would have stayed in the house? A Yes."

With respect to the gas bill, she says that she knew there was a dispute between her husband and the gas company as to the amount of the bill (see her testimony, p. 48):

"Q You knew in January, 1920, that Mr. Hartley with respect to this gas episode—you knew that he was having a dispute with the gas company, didn't you? A Yes; I did. I tried to settle it *in my own way* with the gas man.

Q They had given him an estimated bill for a sum that he considered exorbitant, hadn't they? A Eighteen dollars.

Q What he considered an exorbitant amount? A Yes.

Q It was an estimated bill, wasn't it? A Yes.

Q And he said that he knew that as a matter of fact the gas hadn't been used? A Yes."

She began meeting him after she left and saw him several times before July, 1920 (pp. 50, 51), at least twice a week. The night before the trial, on the 10th of October, 1921, she was with him from three-thirty until six-thirty at night (p. *56*). And see her testimony on page *56:*

"Q During most of that time he was trying to get you to come back and live with him? A Yes, he was.

The Court. Last night. What was said between you last night?

The Witness. He asked me about coming home.

The Court. What did he say?

The Witness. He told me that he would like to have me come home, and I of course wondered at the sudden change and why he wanted me to come home."

Consider this in the light of her subsequent testimony that he had asked her to come home many, many times before and also in the light of the fact that on the application for alimony in January, 1921, in open court, he endeavored to get her to come home and also in the light of the fact that upon every other application made in open court, and there were several involving the visitation of the child, defendant urged his wife to come home.

"*Examination* by the Court.

Q What did you say? A I said to him, no, that I couldn't.

Q How long did he talk on this topic about your returning home? A He told me that there were several things he could do for me.

Q What did he say? A He told me that he could have went in business and been making well,

if it wasn't for me, and that he would like very much if I would consider and would not be the cause of robbing a baby from its father, and he would like very much to have me to come home and sit down and think, and think of what I had done by not having that baby with its father. I had robbed him of his baby's prattle, that he never had the enjoyment like other fathers have, *and of course to every answer that he made I had one for him.*

Q To every statement he made? A Yes, I had an answer.

Q WHAT WERE YOUR ANSWERS WHEN HE SAID 'YOU ROBBED HIM OF ALL THESE THINGS'? A I TOLD HIM IT WAS VERY ODD TO ME, WHY HE SHOULD JUST COME NOW, THAT HE WOULD LIKE THE BABY'S PRATTLE AND THE BABY HOME WITH HIM. HE NEVER BOTHERED MUCH BEFORE ABOUT IT AND WHY DID HE WANT IT NOW."

Consider this in the light of the witness' testimony on page *58:*

"Q You mean that that is the first intimation you had that he wanted you to come back and live with him? A That is the first.

Q Sure of that? A Positive. Only the other times after I went to Mr. Mylod, but all this summer, when I was taking the baby out, that was the first time; other times than last night, he told me he would never live with me.

Q I am talking about the time that preceded the— A Are you talking about from when I left him?

Q Yes, from the time you left him. Is that the first time that he has ever suggested that you should come back and live with him? A No, it is not.

Q When was the first time? A The first time was after I went to Mr. Mylod.

Q How long after that? A That was in April, about a week after when he got Mr. Mylod's letter.

Q And then he saw you? A He saw me.

Q And he asked you to come back and live with him then? A Yes.

Q What did he say then? A He asked me to come back and live with him.

Q What language did he use? A He just simply asked me would I come back and live with him.

The Court. What did you say?

The Witness. I said no.

Q Did you give any reason? A Yes.

Q What did you say? A I gave him the reason because what I stood from him before, that I couldn't stand it again.

Q Did you mention what you had stood from him? A Yes.

Q WHAT DID YOU SAY? A I MENTIONED OF HIM NOT PROPERLY PROVIDING FOR ME, NOT GIVING ME MONEY ENOUGH TO TAKE CARE OF MY BABY, NOT EVEN HAVING FOOD ENOUGH FOR MY HOME.

Q And when you reminded him of all those things, what did he say? A He never answered me.

Q Didn't he say that he would support you? A He never said he would support me.

Q In the April conversation did he say he would properly support you? A He said that *he wouldn't support me while I was living away from him.*

Q Did he say he would support you if you came back and lived with him? A *Yes, these were the chances I had to take.*

Q When was the last time he asked you to come back and live with him? A I cannot say.

Q How long after the first? A Maybe a month or so.

Q Being a repetition of the April conversation? A Yes.

Q On both sides? A On both sides.

Q Did he say anything more with respect to the reason why he wanted you to come back and live with him? A No. He always did say that he would have to get a housekeeper if I didn't come back.

Q And he also said that he wanted his child, didn't he? A Yes, he wanted him then.

Q Did he say in his conversation of April, May, June, July, August and September of 1920, when he said he wanted you to come back and live with him, didn't he say, among other things, that he wanted his child? A Yes, he said he wanted his child.

Q Didn't he say practically the same thing that he said to you last night? A No, he didn't, he didn't even ask me.

Q What did he say last night that he didn't say before? A He was very pathetic about it last night.

Q Hadn't he ever been pathetic about it before? A No, just asked me.

Q Didn't he refer to the child before? A Yes, that he wanted him."

Page 62:

"Q You knew, or were told, were you not, when this case came up in court before an application for alimony (this was in January, 1921), that Mr. Hartley had stated in open court through his counsel that he desired you to come back? A Yes, I did.

Q And you refused to come back, then, didn't you? A Yes, I did."

The witness testified that from February, 1921, the time of the making of the order for temporary alimony, she met her husband week after week, had conversations with him, and that during all of that period of time when she met him he abused her. She says that from April, 1920, down to the time of the making of the order in February, 1921, he met her on very many occasions and asked her to come back and that during that period of time he *never* abused her, but that commencing with February, 1921, down to the night before the trial, October 10, 1921, every time he met her he abused her, and that during all of that time he never asked her to come back.

This alleged course of conduct on the part of the defendant is denied, but whether it had been denied or not it is so absolutely improbable that this woman would, day

after day, meet her husband and stand the kind of abuse which she says he accorded her, as to be unbelievable.

Daggers v. *Van Dyke,* 37 N. J. Eq., 130;
Berckmans v. *Berckmans,* 17 N. J. Eq., at 456;
Second Nat. Bank v. *O'Rourke,* 40 N. J. Eq., at 94;
Buchanan v. *Buchanan,* 73 N. J. Eq., 544;
Quock Ting v. *U. S.,* 140 U. S. 417, 35 L. Ed. 501;
Thorp v. *Liebecht,* 56 N. J. Eq., at 501.

And see her testimony on pages 62, 63 and 64:

"Q You have testified that from April, 1920, during the summer and fall of that year when he met you, he very many times asked you to come back and live with him. Now, you say that after February, 1920, when the order was made he never asked you to come back and live with him until last night? A He never did.

Q That was a complete change, wasn't it? A Yes, a complete change.

Q I mean that he changed apparently from wanting you back previous to the making of the order in court and after the order of the court? A Yes.

Q And he never abused you or called you names before the making of the order in February of this year? A No, he didn't.

Q He never used any language of that kind towards you? A No, he didn't.

Q Apparently when he met you he was sincerely desirous that you should come back and live with him? A Yes.

The Court. Had he used that language before you had separated, any such language?

The Witness. Yes.

The Court. So your answer to Mr. Lane's first question is that he never used this abusive language between February, 1920, and February, 1921?

The Witness. That is right.

Q But he began to indulge in it after the order was made of February, 1921? A That is right.

Q You were rather astonished weren't you, when he began to use this vile languege to you

after February? A I was quite used to it when I lived with him, but I was astonished after.

Q But you had been free from it for a year, and he had been asking you during that time to come back and live with him and then suddenly he proceeds to call you almost every name in the catalog. You were astonished at that? A Yes, very.

Q What? A Very."

She says, on page 64, and notwithstanding that he called her all those names, still she continued to take the child to see him. And on page 64:

"Q You never said anything about it or complained about it? A I never said anything about it.

Q Never complained about it? A No.

Q You still continued to take the child to him? A Yes, every time he called me up to make the appointment I went to him.

Q Without complaint? A Without complaint."

On page 65 she would have the Court believe that on Wednesday, the week before the trial, just as she was leaving, he called her a son-of-a-bitch, and yet on the Sunday before the trial she still took the child to see him.

So far as the calling of her names is concerned when she met him she is without adequate corroboration and the story is most improbable.

When defendant was on the stand he described these meetings, pages 216, 217, and he said that he continually asked her to come back to him, and on the the question of the Court referring to a time after the commencement of the suit, page 218:

"*The Court.* After that and while that suit was pending, did you and she meet by appointment?

The Witness. Yes.

The Court. And talk things over?

The Witness. Yes.

The Court. Did you ask her why she sued you for maintenance instead of divorce?

The Witness. Her people."

On pages 252 and 253 defendant makes it clear that he blames his wife's people, as he does likewise on pages 218, 219, 230.

He tells, on page 254, a circumstantial story of her having promised to come back and then not doing it. He says of his wife on page 232 that she became one of the best housekeepers there was. He makes no charge whatever against her (see p. 218). Between September, 1919, and January, 1920, when she finally left she was at her mother's house two or three times a week.

Between the first of March, 1922, and the twenty-sixth day of June, 1922, no testimony in the cause was taken. On the 26th day of June, 1922, when the last testimony was taken, defendant was recalled and examined by the Court. On page 370 he said:

"*The Court.* I understand you—if I am in error, correct me—that you always expressed a willingness to support your wife and child?

The Witness. Yes.

Page 371:

Examination by the Court.

Q Are you still in that frame of mind? A I am.

Q If she comes back and lives with you? A Yes.

Q What do you think you should spend a week for the support of your family? I am talking about according to your means and income and average earning capacity and your willingness to meet her desires if they are reasonable; according to your income what do you think you should spend a week to keep your family? * * * Tell me what is in your mind. A Whatever she desires.

Q That might be unreasonable. A I want her to be satisfied.

Q You cannot give her whatever she may desire, if your income won't admit it. A She is reasonable if she is left alone.

Q What do you think would be proper for you to spend a week to support yourself, your wife and child properly in your home? A My son Henry lives with me; he wasn't there before. She says $20 a week is not enough.

Q Do you think it is? A I think it is for running household expenses.

Q You mean for the table merely? A Yes. * * * I think $25 a week is sufficient, considering that I am not home.

Q $25 a week would cover what, the rent? A No, absolutely not; I can pay everything—rent and light and fuel.

Q How about clothing, entertainment, pleasure and everything else? A $50 a week, how will that be?

Q I will determine how it will be later; I want you to tell me what you think it is. $50 a week exclusive of the rent? A Including the rent.

Q Living in the same place? A Yes.

Q You mean to spend $50 for the family and clothing and pleasure? A Yes.

Q Do you think that would cover it? A I do.

Q Clothing for yourself and wife and the boy Henry? A Yes.

Q Can you afford to spend $50 a week? A I can if I can get my business together; if I am going on as at present, I cannot."

On page 266 he said:

"Q In answer to one of the Vice-Chancellor's questions, you said you are willing to have your wife return to you? A I have kept my home open for that purpose.

Q Did you ever write to your wife asking her to return, except the letter that Judge Archibald wrote for you? A No, because I was meeting her right along, two or three times a week, still believing in her."

As to the state of his feeling toward his child he testified (p. 377):

"Q What is your state of feeling toward the child? A The best and dearest little boy in the world, no better; his affection toward me—I don't think there is a person in the room can take him from me, if he was here. I have trouble with him every time, and he does not want to go home; I guess there is at least a dozen here who can verify my statement with reference to it. One time when his mother went to take him from me, he took hold of my gray shirt and tore it and hung on. If I had not thought well of my little baby—he has got an exceptional name; my little boy is Fred Allen Hartley, called after me; my baby is called Alfred; I gave him all the letters in my name, with the exception of 'e-n.' I have ten shares in the building and loan, the same as Judge Mylod has for his son; I carry a thousand dollar life insurance, assigned in my wife's name. I will do everything in my power."

After this testimony Mrs. Hartley was recalled and under examination by the Court said (p. 378):

"*The Court.* Under what conditions would you be willing to go back and make up your home for yourself and the child?

The Witness. Under no conditions.

The Court. Why not?

The Witness. I would rather be dead a million times and my baby, too, than to put up with what I put up with that man.

The Court. How much do you think you need for support of yourself and child?

The Witness. At least $25.

The Court. A week?

The Witness. Yes, sir.

The Court. Have you been accustomed to living at the rate of $25 a week?

The Witness. No, I haven't; I didn't always have a baby. With the baby, he is a good deal older now."

Cross examined the witness said (p. 379):

"Q When did you make up your mind for the first time that you would rather be dead than live with him, or put up with what you had to put up with? A On the fifteenth of January when I went back to him and asked him won't he please be different.

Q I asked you a question as to the date. A On the fifteenth of January, 1920.

Q You had not made up your mind that you would rather be dead under the circumstances that you have described until that date, is that right? A Oh, yes; I did, all along while I lived there.

Q When did you make up your mind? A I cannot specify the date for you.

Q *You were willing to go back and live with him on the fifteenth of January?* A *I went back and asked him.*

Q *You were willing to live with him on the fifteenth of January?* A *Yes, that is right.*"

Page 380:

"Q For the sake of the baby, then, you would have gone back with him on the fifteenth of January? A Yes, that is right.

Q Had he said that he would be different, is that right? A He said he wouldn't be any different.

Q If he had said he would be, you would have gone back and lived with him, would you not? A For the sake of the baby, yes.

Q That was on the fifteenth of January, 1920? A Yes.

Q And that was after everything had happened, that is right? A Yes."

And then subsequently she says that something happened, the calling of her names between February, 1920, and October, 1921, when she met her husband on the street with the baby.

On page 475 she indicates that if this in fact happened it had no effect upon her.

Pages 381-382:

"*The Court.* Had you made up your mind, had you reached any conclusion in your own mind?

The Witness. I made up my mind on January 15, yes.

Q And nothing that has happened since January 15 changed your mind? A Nothing.

Q *Nothing could change it?* A *Nothing at all.*"

The net effect of this testimony, conceding for the sake of the argument that the statements made by Mrs. Hartley with respect to the alleged assaults on, I think, two occasions, are true, is that from August of 1918 until she went home to her mother's to have her baby in July of 1919, she lived in kind accord with her husband, and there was no trouble; she went home to her mother's and the baby was born, and then in September, 1919 she returned to her husband. Her story is that after that time he withdrew the twenty dollars a week which she says he had been previously giving her (he denies that); but nothing happened of a physical nature; she says that the reason why she left on January 15th was that he had not paid the gas bill due to a dispute with the gas company. She says that after she left she went back and asked him to take her back and said she was perfectly willing to go back.

We have her, therefore, on the 15th day of January, 1920, stating that she was perfectly willing to go back and we have her on the 15th day of January, after he had stated that he did not want her back, irrevocably making up her mind that she would not, under any circumstances, return.

Assuming that she was perfectly willing to go back on the 15th day of January, 1920, as she says she was, his refusal (which is denied by him) to take her back on the 15th of January is not sufficient excuse for her to irrevocably make up her mind that she would never return.

Schmidt v. *Schmidt,* 117 Atl. 400.

Even if the separation was due to the fault of the husband he had a right, during a period of two years, if he so desired, to have his wife come back to him.

It is conceded by her that between April of 1920 and July of 1920 she met him from time to time, and he asked her to go back with him, and she absolutely refused, and it is conceded that this kept up until February of 1921. The parties met time over and again and he asked her to come back, as she concedes, and there is nothing to impugn his motives. In the meantime, he had not been supporting her at all, and he says he was not supporting her because he did not intend to support her away from him, and that he so told her and she concedes this, and she remains away from him without making any move.

In February of 1921 an order for temporary alimony was made; she says that then he stopped asking her to come back. She knew that he had made the offer in open court, and had stated in open court that he desired her to come back. She says she continued to meet him day after day from February of 1921 until October, 1921, but that during all that period of time he did not ask her to come back, but, on the contrary, called her all kinds of names. She says just before the trial, which began on the 10th of October, 1921, he had a long conversation with her lasting from three o'clock in the afternoon until six o'clock at night, and that he was very pathetic about it; she says herself that he urged her to come back and used all kinds of arguments, but that she refused to do it.

His testimony, upon the 26th day of June, 1922, upon examination by the Court, indicated clearly his sincere desire to have this woman come back, and her examination, immediately following, indicated as clearly her sincere refusal to have anything further to do with him, and she says that she made up her mind irrevocably on the 15th of January, 1920, although upon the same day she was perfectly willing to come back with him.

In a consideration of a case of this kind the question is not so much as to what kind of conduct was indulged in by the parties as what effect that conduct had upon the mind of the wife. Apparently the conduct of defendant, whatever it may have been preceding January 15th, 1920, was not sufficient to induce her to refuse to live with him

if she was willing to come back, as she said she was. Nothing happened upon the 15th of January, 1920, according to her story, except the statement by him that he did not want her back. She says, then, that she irrevocably made up her mind that she would not go back with him. She says in her testimony that nothing has happened since either to change her mind or to make it more firm. She is unaffected by the happenings since.

Therefore, in order to justify her persistent desertion, she must show that his statement that he did not want her back is a sufficient excuse for her leaving.

In *Schmidt* v. *Schmidt,* 117 Atl. 400, Vice-Chancellor Backes said:

> "and in anger the wife told the husband to 'get out' and he left and never returned. Obedience to his wife's outburst, in a fit of temper, was not compulsory, nor was his two years' absence from home inevitable. Her direction, in whatever language it may have been couched, in the circumstances, was neither justification nor excuse for quitting."

And the same rule applies where the person accused of using language tantamount to that referred in the Schmidt case is the husband.

Even where the conduct of the husband has driven the wife away, nevertheless, if he makes a sincere effort to get her back she must come back.

In *Csanyi* v. *Csanyi,* 115 Atl. 76, the Chancellor said:

> "After the separation caused by the cruel conduct of the husband, it is his duty to reform his habits, seek out his wife, and apply for restoration of the marital relationship, giving her reasonable assurance of his sincerity and her probably safety in resuming cohabitation with him."
>
> *Lister* v. *Lister,* 65 N. J. E. 109;
>
> *Jerolaman* v. *Jerolaman,* 54 Atl. 166.

This rule was applied where the conduct of the husband had been of an extremely cruel nature. We have no such thing in the case at bar. There was no charge made at the time that his efforts were not sincere. After this suit

was started there were attempts made to get her to come back. What she terms the pathetic meeting in October, 1921, just before the trial, and his testimony in open court, indicates his sincerity—at least indicates that he is *entitled to a trial* and that she had no right to take the position that she did, on the trial, when she said in response to the Court's question (p. 378):

> "*The Court.* Under what conditions would you be willing to go back and make up your home for yourself and child?
>
> *The Witness.* Under no conditions.
>
> *The Court.* Why not?
>
> *The Witness.* I would rather be dead a million times and my baby, too, than to put up with what I put up with that man."

The rule as to the right of the husband, even if he has been cruel, to have his wife return to him is stated by this Court in *Burlingham* v. *Burlingham,* 116 Atl. 494, where Mr. Justice Parker, speaking for the Court, said:

> "But even if it be conceded that he treated her with such injustice as to justify her in leaving him, there will remain the undeniable fact that he made repeated and apparently sincere efforts to induce her to return. She did not return; and the manifest reason why she did not do so, as it seems to us, is that she hated him and hated the place where he was living, and was determined not to go back to him."

It is not hard, in view of the testimony in this case, it seems to me, to determine what the difficulty between the parties was, and what led to the trouble. The wife's family lived in the same house in which the husband lived. For the first three months after the marriage the wife lived with her mother (p. 184). The marriage has been said to be a secret marriage. They started to live together June 15th, 1918 (p. 182). Living with them were the two sons of the husband. She wanted to give up the house on Johnston avenue and take a house on New Lawn street, and she wanted him to take her whole family with them (p. 240). He was a peddler; he peddled fish from

door to door, working sometimes twenty-two and twenty-four hours a day. She objected to this. He was married by a Catholic priest and he agreed that the children of the marriage should be brought up in the Catholic faith. Notwithstanding this agreement on his part she had the child christened without his knowledge. She says that notwithstanding his agreement he objected to the child being brought up in the Catholic faith (p. 120). At any rate, the child was christened in the Catholic faith without the knowledge of the husband.

Page 120:

> "*The Court.* Did your husband know that you had him baptized?
>
> *The Witness.* I told him afterwards.
>
> *The Court.* How long after?
>
> *The Witness.* I told him maybe a month after.
>
> *The Court.* What did he say about it?
>
> *The Witness.* He told me that he was going to take him up now and have him baptized in his faith and I told him to go ahead and do it."

The wife's family was against the husband. The wife's mother said that she did not know that her daughter was going to be married; that her daughter was twenty-one years old when she was married (p. 136), and on page 142 the mother said:

> "Q So the marriage was an absolute shock to you, was it? A It certainly was.
>
> Q You never liked it, did you? A Yes. I never bothered about it after it was done. I felt that what is done is done. I knew I couldn't have undone it when it was done."

The testimony of Mrs. Ferris indicates her unfairness. She, however, corroborates Mrs. Hartley to the effect that when she left on January 15, 1920, she was still willing to go back to her husband and that she left the mother's house to go back and ask Mr. Hartley if he wanted her back (p. 146). The mother goes the limit. She says (p. 144, etc.), that the husband started to call the wife names

immediately. This is in direct conflict with the testimony of the wife.

The testimony of Miss Sadie Ferris is worthy of consideration (p. 121). She is the sister. She says that she didn't know of the marriage (p. 122). She testifies with respect to the episode on Labor Day in 1917 at Asbury Park, of having heard sounds in the room, her sister's scream, and of her going into the room and the appearance of the room indicating that her sister had been physically assaulted (pp. 124, 125), and yet she says that instead of protecting her sister—"I took my bag and clothes out of the room and I went downstairs, and I met the maid in the hall and I gave her two dollars. I asked her to give it to my sister for her carfare home and I immediately left the hotel."

She also testifies (p. 128) that after they came home from Asbury Park in the summer of 1917, Mrs. Hartley lived upstairs (pp. 128, 129). This notwithstanding the statement in her affidavit, sworn to on the tenth day of January, 1921:

> "After my sister's return from Asbury Park during the early part of September, 1917, as aforesaid, she continued to reside with her husband, the defendant, on the second floor of the house No. 87 Johnston avenue, Kearny, N. J."

and notwithstanding that this statement that she lived upstairs is contrary to the testimony of the wife.

And see her testimony on page 130, in which the fact that she had stated in her affidavit, in great detail, how the husband put the wife out of the house in the morning, and locked the door, taking the key with him, and how the wife would unlock the door to their apartment is brought to her attention. This is opposed to the testimony which she gave upon the stand and is also opposed to the wife's testimony. And see her testimony, pages 128, 129, 130, with respect to why it was she left her sister on Labor Day of 1917 with the man who had physically assaulted her and particularly on page 132.

The complainant is corroborated only by her mother and sister. They even go to the extent of swearing that the flat was not properly furnished. Mary E. Kerr was called to corroborate them with respect to this (p. 135), but she signally failed them.

In attempted corroboration of the wife, the mother and sister deliberately testified to things which the wife does not testify to, and indeed to a state of facts which it appears from the wife's testimony, did not exist. The sister testified to a state of facts which is directly contrary to what she swore to in her affidavit and is directly contrary to what the wife testified to and is contrary to the allegations of the bill. They both, in an attempt to bolster up the wife's case, grossly exaggerate, to say the best, the situation with respect to the furnishing of the house. The sister tells a most improbable tale of leaving her sister, the wife, with a wild man in Asbury Park on Labor day of 1917. The mother says that the marriage was a shock to her; that, *under the circumstances, what was done could not be undone.*

A statement of this situation indicates quite clearly the possibilities for trouble, and it needs no great imagination to conceive that the statement of the husband that the wife, if left alone, was all right and that the fault was the fault of her parents, is correct.

This man wants his wife back. He has kept his house open. Under these circumstances the law is settled as to the burden which is put upon the wife.

I concede that physical cruelty is not necessary. But in the language of *Taylor* v. *Taylor,* 73 N. J. E. 745, opinion by Vice-Chancellor Leaming, affirmed by this Court, 73 Eq. 745:

> "That to justify a wife in separating herself from her husband physical violence need not be proved, but such conduct of the husband must be shown as will reasonably convince the court that her life or health was in danger, or her life rendered one of such extreme discomfort and wretchedness as to incapacitate her to discharge the

duties of a wife, or that the conduct of the husband, if continued, would have brought about these conditions."

Citing:

English v. *English,* 27 N. J. E. 579;
Black v. *Black,* 30 N. J. E. 215.

And in considering the conduct of the husband in *Taylar* v. *Taylor,* Vice-Chancellor Leaming said:

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

And see:

Attwood v. *Attwood,* 85 N. J. E. 87, affirmed 87 N. J. E. 212, on the opinion of *V.-C.* Lewis.

And again let me refer to the cases which hold that even if the conduct of the husband has been such as to justify the wife in leaving, yet if he asks her to come back, under such circumstances as that it is fair to assume that she will be probably safe in resuming co-habitation she must come back.

Csanyi v. *Csanyi,* 115 Atl. 76;
Lister v. *Lister,* 65 N. J. E. 109;
Jerolaman v. *Jerolaman,* 54 Atl. 165;
And *Burlingham* v. *Burlingham,* in this court, 116 Atl. 494.

Notwithstanding the attitude of his wife toward him defendant has kept up an insurance policy payable to her (p. 229).

As indicative of the wife's attitude after she left her husband see the testimony of Fred S. Abselon, page 273.

He says that he went with defendant to Mrs. Hartley's house in July of 1920; that he had just lost his own wife (p. 274), and that he felt sorry for both Mr. and Mrs. Hartley; that defendant went in the house and that he talked with Mrs. Hartley, and he asked Mrs. Hartley why she didn't go back and live with her husband; he told her that he had been a widower for two months and he knew it was blue being alone. He says that in the conversation she made no complaint about her husband; that as a result of the conversation he was impressed with the idea that she was going back to live with him (p. 274). Defendant was assaulted by his wife's uncle (p. 275). His wife's people had defendant arrested as a result of this, he was tried before Judge McCarthy in the Hudson Special Sessions without a jury and acquitted. Yet the Vice-Chancellor says that there is no evidence of any interference on the part of the wife's people.

At the opening of the trial, on the tenth of October, 1921, counsel for the husband stated:

> "Before the cause opens, in order that our position is apparent from the very beginning, we have taken the position that Mrs. Hartley was not justified in leaving her husband; that her husband was perfectly willing and able to maintain and support her and desired her to live with him, and that irrespective of whether she thought or felt, or irrespective as to whether she was justified at that time in leaving, the conduct of the husband has been such since, and he is now in a position where he desires his wife to return to him and live with him and that whatever his conduct may have been that forced her to leave, if she were justified in leaving, it was not such conduct as would warrant her now refusing and continuously refusing to live with him. That is the position that the defendant takes."

As indicating the attitude of the wife toward the husband in 1917, I desire to quote some extracts from letters written by her when she was at the Elberon Hotel, in Asbury Park, during August of that year.

In a letter written on August 16, 1917, she, addressing her husband as "My dear Fred," (Exhibit D. 3), says:

> "I had a very good time last night over in Scotte's, hope you don't mind my going out with Sam; he is harmless. I am all class up to night for the event. Well dear be careful and don't get sick again. Will be glad to see you Sunday. Sam has gone out alone tonight I think he has something on. Hope I get a clue to dance with. You don't care if I get fifty do you? Show my pictures to Ma."

The Sam referred to is Sam Smith.

In a letter dated August 14, 1917, addressing her husband "My very dear Fred. (that isn't Eddie.)" she says:

> "When I said don't be a lemon and work so hard and you said you knew you are a lemon I hope that it isn't I who is making the lemon out of you."

This is significant in view of defendant's contention that his wife wanted him to give up his peddling business.

And further:

> "If you don't stay down next week I am coming home Sunday. You could stay down. How is it that Sam Smith can."

And again:

> "Be sure and take good care of yourself and don't kill yourself working hard." (Exhibit D. 6.)

In a letter of August 7, 1917, she says:

> "I sent Sam Smith a card and Mrs. Tilton made Emma O'Neill send him one too, so write and tell me what you think about the Doc and tell Ma I will see her Sat. Oh, I forgot to tell you I bought a swell waist and a pair of blue silk stockings. They look the cats."

She commences this letter by saying:

> "Just a line to tell you all I know. Well, I told you about the Doc. He has a wild crush on me. He came around to-day and asked Emma where I was and I saw him coming and I ran. But he is

> married and Mrs. O'Neill told me he married the belle of Washington, so he asked me and Emma to go out for a ride that was today and we didn't go. See what a faithful wife. Hope you are the same and don't look at any ("chickens") so he made a date with Emma for tomorrow but she isn't going. He is some Doc. Well, how is she going. You sent me to a dangerous place. I have clues every night. I look around but the Doc. Oh Boy, but he couldn't wipe your shoes. I will be awful glad to see you, good night."

These letters and extract from them were brought to Mrs. Hartley's attention on pages 90, 92 and 93 of the record. She says she didn't write the letters, or any part of them, to make her husband jealous.

It was the Labor Day of *this* year that defendant went down to the place where his wife was staying and found the fan, Exhibit D. 1, bearing the mark "Clayton" a roadhouse in the neighborhood, and when he asked his wife where she got it, she said it was none of his business and it was then that the assault took place complained of by the wife as an act of cruelty upon the part of the husband. The wife cannot account for the husband's act upon this occasion except by—

> "A Just to create a scene and trouble. Pure cussedness. Just out of a desire to create trouble, that is all."

In judging the husband's action there must be taken in conjunction with these letters written by the wife also the poison pen letters which were written to the husband just after the marriage, and which went into evidence as Exhibit C. 1, one of which started:

> "Just a line to inform you that you had better keep your eye on the girl you are accused of marrying. She was seen very prominent on Broad St. last Thursday talking to a business man who is married and from what I hear made a platonic date. Now, Fred, for the sake of your dead wife and 2 boys just wake up. Don't spend all your time trying to keep her for yourself. You can't do it. Your time is wasted. Get wise old man.

Don't let this young one put one over you. Come down to earth, etc. etc."

There is no question but that these letters caused great trepidation to Mr. and Mrs. Hartley, and defendant made an endeavor to ascertain who wrote them without success. The implication on the part of the wife now made that the husband wrote them himself is not only absurd, but is another indication of how far the wife would go in this suit. The wife testified with respect to these letters (pp. 67 and 68):

"And you took the letters and delivered them to the Post Office authorities with your husband, didn't you? A Yes.

Q And afterwards you knew that this letter was received from the Post Office people with respect to the letters, didn't you? A Yes, I did."

* * * * * *

"Q Mr. Hartley didn't raise any objection to these letters being taken to the Post Office inspector for investigation, did he? A Oh, no.

Q And he seemed to be sincerely desirous of finding out who wrote those letters, didn't he? A Yes, he did.

Q And was considerably worried about that? A Yes, sir.

Q Did you ever find out who did write them? A No.

Q You think that your husband wrote them himself, don't you? A The reason why I think that, from things that is in these letters, I have heard them so often from him. That is what makes me think that way.

Q You now think that your husband wrote those letters himself, do you? A I wouldn't outright accuse him.

Q You wouldn't? A No. * * *

Q As a matter of fact, you both of you thought at one stage of the proceedings that you knew who wrote them? A Yes.

Q And you were mistaken with respect to the identity of the party? A Yes.

Q And Mr. Hartley, when the name of this person was under discussion, sincerely—or appeared

to sincerely believe that it was that person who had written those letters? A Yes.

Q And it was the subject of very intense conversation between you and your husband? A Yes.

Q And it was a matter which you and your husband consulted upon, wasn't it? A Yes.

Q And acted upon? A Yes.

Q There was no dissension between you with respect to these letters, was there? A Oh, no, not at all."

It is easy to appreciate, in view of the circumstances, Hartley going "off the handle" Labor Day of 1917, as the wife describes it.

The wife's story is found on pages 86, 87 and 88 of the record. She says that after discovering the fan in her room her husband assaulted her, and said he was going to hold on to the fan for evidence; at that time she cut him with her ring (p. 95). And then she said (p. 88):

"Q Are you sure that you cut him with the ring that day? A Positive.

Q Wasn't it upon another occasion that you cut him with the ring? A No, he has got mixed up on that, it was on that occasion.

Q How do you know he is mixed up on it? A Because I told him so.

Q When did you tell him so? A I told him last summer when he told me, when I read his affidavit.

Q Have you read his affidavit? A Yes.

Q You did read them last summer? A Yes.

Q He took his grips and everything and left the house at Asbury Park? A Yes.

Q How long did he stay away? A He went around the corner and he came right back again.

Q When he came back he was cooled off? A Yes, he was cooled down.

Q And what did he say then? A He asked me to go right home.

Q And tried to be as pleasant as he could be after what had happened, didn't he? A Yes, sir.

* * * * * *

Q Why did you ever go home with him? A He went out in a rage.

Q And he came back cooled down? A Yes.
Q And rather shame-faced? A Yes."

She describes an occasion in the summer of 1917 before going to Asbury Park when they went down to look for a place when there was trouble and she says:

"A On that day, going down, Mr. Hartley's two boys were with me and Mr. Hartley was driving the car and I was sitting in front. When we got on the road towards Asbury Park, I cannot just remember just where it was, Mr. Hartley's machine stalled and he got out to fix it, and he got out of the automobile and his oldest son said to me—I don't know what remark he made, but 'Why don't we hurry up?' or 'Why don't we go?' and when he said that Mr. Hartley got angry. He got in the car and he never spoke all the way down until we got to Asbury Park, and we went in and had our dinner in a restaurant in Asbury Park, etc., etc."

She finally says, when they were sitting on the boardwalk, after they had had dinner (p. 102):

"Why, damn you, you are lucky if you go at all. We got up then and we went on home and on my way home I was so excited, from all he had done to me for nothing, because I wasn't at fault that day. I went to jump out of the automobile on my way from Long Branch because I didn't know why he was arguing with me, I had said nothing, but because he was excited that day he just put it right over on me to get out of it, and that night when we come home he took his two boys to a woman in Newark, out of the house; * * *. Then he said to me, 'I don't want them to be listening to this fighting going on,' and the next day he brought them home and that is all there was to that."

This was all out of a clear sky (p. 103). She says:

"Q What did he say? He told me, he said, 'I didn't want them to be listening to the fighting.'
Q What did you say? A I said, 'I didn't cause any fighting,' I wasn't in the wrong that day."

It was on this occasion that defendant claims that she cut him with the ring (pp. 185, 186). As to this episode Mrs. Hartley is without corroboration, while defendant

is corroborated by his son Fred (p. 333). He says that what happened was that Mrs. Hartley said:

> "I won't go to Ocean Grove; I don't want to lose my reputation."

and then on the way back she tried to jump out of the car while it was in motion and said:

> "I won't ride another inch with you and your two brats."

And then he describes the episode that took place at the home upon the return (p. 334):

> "and my father was getting a drink, and he turned around and Mrs. Hartley went and grabbed for his pocket, and as she did, she tore his trousers, and in lifting up her hand, she scratched him on the fact, and my father said, 'You children have never seen this while your mother was alive; you are not going to see it now; pack your grips and I am going to take you away,' and he took us to Mrs. Larkin's, Boyden street, out in Newark, and we stayed there that night, and the next morning he brought us home and stayed there until about the first of August."

He then describes their going to Asbury Park for the summer, and what happened on Labor Day and when they went home that night and went up to Mrs. Hartley's mother's house

> "her sister and her aunt and the whole crowd of them started to call the two of us 'brats,' 'tattle-tails,' and her aunt said she wished she had a knife, she would go down and give it to him good, but we came downstairs and my brother told my father, and he said, 'This is about the finish of it,' and told us to pack our grips again, and then he took us down to Mrs. Seeley's, on Cleveland avenue, Harrison."

And there the boys stayed until they went to Rutgers.

All of this trouble took place in 1917 (p. 333, where erroneously it is stated to be 1918, but the testimony p. 338 and the other testimony in the case show it to be 1917).

Defendant is further corroborated by Mrs. Larkin (p. 344), who says that it was to her house that defendant brought the two boys on this occasion in July or August of 1917, and that it was upon this occasion that he had a cut over his face (p. 345).

In any event, these two acts of physical encounter actually took place in 1917.

When they were over they were over, according to her own testimony, and when she left she did not leave because of any physical violence or fear of physical violence, but because, as she says, he wouldn't pay the gas bill.

She says that she returned to live with him in November of 1917 (p. 11), and continued to live with him until June, 1918, when she left him. Her reason for leaving is indefinite. Nothing particular happened (p. 18). She says: "I left Mr. Hartley from lack of him not supporting or providing for me."

Her story cannot be believed as it was stated that:

> "*The Court.* You mean from November, 1917, to June, 1918, he made no provision for your support?
>
> *The Witness.* No provision at all.
>
> *The Court.* Gave you no money?
>
> *The Witness.* He never left me any money.
>
> Q Did he bring any groceries or food home?
> A He never brought anything in.
>
> *The Court.* Establish any credit for you at the stores?
>
> *The Witness.* Never told me that I could have any credit anywhere" (p. 23).

This, of course, was untrue. It is without adequate corroboration and is shown to be untrue by the testimony of Kelley, page 324; Mrs. Larkin, page 344; Mrs. McGlynn, page 349; Schiller, page 361; Harvey Brown, page 362; Frederic Diauer, page 365; Henry Hartley, page 367; Mrs. Seeley, page 354.

Defendant and Mrs. Larkin are further corroborated as to when Mrs. Hartley cut her husband's face with the

ring by the testimony of Mrs. Seeley, page 357, who says that it was to her house that Mr. Hartley brought the two boys after the episode of Labor Day and that at that time he was not cut at all.

Mrs. Hartley says that after she went to the house with him in August, 1918, and lived with him until July, 1919, he, all during that time gave her twenty dollars a week to buy food for the home, and that there was no trouble, and she alleges this also in her bill of complaint.

She says that she went to her mother to have the child. She then returned. The very night she returned she went back to her mother's. She went back because she was nervous. She is wholly without corroboration.

Defendant says that (p. 201):

> "She hadn't been in the house one hour before she was crying; she wanted her mother; would I be mad at her if she went home to her mother; I said to her, 'Maria, don't be foolish; how do you think I am going to manage; I have been over ten or eleven weeks alone; I have to go to work in a few hours,' it was then around ten o'clock; I had to go to work at two or three o'clock in the morning—I said 'Don't be foolish.' She said, 'Will you be mad at me if I take the baby home; I am nervous and upset'; I couldn't do anything with her, and she went up home to her mother."

She went home and the following morning she came down and asked him to meet her at Frelinghuysen avenue and she said "Let me stay home with the baby, I am afraid to go back; I don't want to have any more children." I said, "I married you, Maria, in your own faith, and I love that baby; it is my boy and you must come home. I will not not agree to anything of the kind." She said, "I want to stay home." I said, "You come and stay with me; it is where you belong," and she came home, a day or two after—I am not sure which; I took her back to her mother's that night" (p. 203).

Her going back to her mother's *immediately after* is important in view of the fact of her admission that for

the year preceding defendant had treated her properly; there had been no trouble; she had been paid the money to run the house; nothing had occurred which justified her in taking the position that she wanted to return to her mother's, and yet, according to her own admission, that is what she wanted to do. She says it was because she was nervous. She is without corroboration and the burden is on her.

Defendant's story of the final separation is that she said to him—"I have got my things on, I am going home; I am tired of married life, and done with it."

> "*The Court.* Did she make any complaint about your treatment of her?
> *The Witness.* No, sir."

She made no complaint with respect to a proper allowance, and she went home taking her effects with her (pp. 203-81). He says (p. 205) that he tried to get her to come home again about two weeks after January fifteenth and that she said her people wanted her home. "Leave it to me, I will take care of it; I will straighten it out, that was always the cry."

Defendant's testimony is that he gave her twenty dollars a week right up to the time she left. She contradicts him in this, but there is no corroboration of her contradiction, and there *is* corroboration of defendant in her own testimony that the reason why she left was because the gas bill wasn't paid. Her statement with respect to his not providing things for the baby at the time of the birth is a poor subterfuge to justify her in taking the course which she took on the fifteenth of January.

Her evidence with respect to defendant's desire to have no children and to have an abortion committed is, I think, wholly without importance. Notwithstanding the fact that she says that his conduct with respect to this affected her very much she never told her counsel about it until after it was brought to her attention that he had the box (p. 78), because, she says, "I had forgotten all about it."

Dr. Ballinger's testimony, in view of the relations between defendant and himself, is not to be depended upon.

The testimony with respect to what has happened since the trial is to be discounted. It is inconceivable that Hartley should have, upon every occasion that he met his wife between February, 1921, and October, 1921, called her names as she said.

She is without adequate corroboration with respect to this. No charges of that kind were made until Mrs. Hartley made them in open court, and immediately upon such charges being made counsel advised defendant not to see his wife under such circumstances as that she could repeat the charges. Arrangements were made then that defendant see his child at different places. Notwithstanding the wife's knowledge that defendant objected to seeing Mrs. See, she insisted upon taking Mrs. See with her. Her story as to what took place upon one or two of these occasions in which she puts defendant in the position of while not acting cruelly toward her, yet not acting toward her with due consideration is contradicted by defendant; by Mrs. Wood, page 319; by Mrs. Romer, page 313; by Mrs. Wood, page 320, and by Bud Hartley (p. 337).

The burden of proof is upon her and she has not borne it.

Let me refer to her testimony, page 79, in which she says, that upon leaving she said:

> "I told him that if the gas didn't get turned on, if he wouldn't give me the money to get the gas turned on and wouldn't give me money to support myself and my baby while I lived there, and not having me sending children out to charge this and charge that in stores, that I couldn't stand it any longer, I asked him, I begged him to change that morning."

Her story with respect to his failure to support her is without adequate corroboration and is contradicted by the testimony of the witnesses to whom I have heretofore referred.

The keynote of her conduct is contained in her testimony on page 47:

> "Q Then why did you wait from April, 1920, to 1921, before you brought your suit? A I waited to see if he would support us without taking the matter into court.
>
> Q And without your going back to him? A Yes, without my going back to him."

This, taken in connection with the testimony, page 62:

> "Q Apparently when he met you he was sincerely desirous that you should come back and live with him? A Yes."

tells the story.

This woman has made up her mind that she no longer desires to live with this man; she is quite content to live apart from him and receive his support. She desires that support without paying anything for it. She leaves because she says the gas was turned off when it appeared that there was a dispute between her husband and the gas company. She rejects his overtures for no apparent reason. There is no evidence that she cannot live with her husband under the circumstances existing at the present time without endangering her life or making her life one of such extreme discomfort and wretchedness as to incapacitate her to perform her duties, and if the evidence should tend to that effect the cause is not the fault of the husband, but her own mental condition and she is responsible for the result or effects of her mental condition.

In the language of Vice-Chancellor Leaming, affirmed by this court in *Taylor* v. *Taylor,* 73 N. J. E. 745—the question is not whether defendant was a model husband, or, whether he fell short of the standard which the good of society demanded of a husband in his treatment of a wife, but whether his conduct was of such an unjustifiable nature "as would reasonably convince the Court that her life or health was in danger, or her life rendered one of

such extreme discomfort and wretchedness as to incapacitate her to discharge the duties of a wife."

And further whether the conduct of the husband has been such as to indicate that she now would be unsafe in resuming cohabitation with him within the language of *Csanyi* v. *Csanyi,* 115 Atl. 76, and *Burlingham* v. *Burlingham,* 116 Atl. 494.

The question presented to the Court under the facts of this case, is not whether it is better that these parties live apart and better that the husband should support his wife separate and apart from him, but whether the wife is to be put in the position where she can irrevocably hold her husband to the obligations of the marital relation without any of the benefits thereof.

It is respectfully submitted the decree below should be reversed and that the bill should be dismissed.

Respectfully submitted,

MERRITT LANE,
Solicitor for and of Counsel with Appellant.