

New Jersey Court of Errors and Appeals.

Between

MATHILDA GOERZ,
Complainant-Respondent,
and
EDWARD V. GOERZ,
Defendant-Appellant,

On Bill,
&c.

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Between

EDWARD GOERZ,
Petitioner-Appellant,
and
EDWARD V. GOERZ,
Defendant-Respondent.

On Petition,
&c.
On Appeals
From Chan-
cery.

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**BRIEF ON PART OF EDWARD V.
GOERZ.**

The above causes were heard together by Hon. Charles H. Hartshorne, Advisory Master, on June 20, 1913. The bill of complaint of Mathilda Goerz was actually filed before the petition of the husband to annul the marriage, but this fact was not known by him at the time his action was commenced.

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The wife's bill of complaint alleges abandonment by the husband on September 28th, 1912; the defendant admits that he removed his clothing and left their home at that time, but denies abandonment.

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In the petition filed by the husband he asserts the impotency of the wife and she in her answer "denies that at the time of the said marriage she was physically and incurably impotent to consummate the same by reason of the defect in the petitioner's petition alleged, but on the contrary says that if the petitioner has not consummated said marriage it was on account of his own physical defects and that this defendant was at the time of said marriage and from thence hitherto has been and still is apt for coition, as will appear on inspection."

In the above first mentioned cause the question involved is whether the defendant abandoned his wife or not.

In the other cause the question involved is the impotence of the wife.

The parties were married on May 8, 1909, and lived together until September 28, 1912. During all that time the husband, according to the testimony of the wife, was a considerate man and the only trouble between them related to the inability of the wife to have sexual intercourse with him (p. 39). This, as she says, was the one and only trouble between them.

Her answer as to impotency was a gross perversion of the truth, coupled with a mean insinuation reflecting on the physical ability of the husband. Her own testimony shows that from the time of the marriage until the month of September, 1912, she was absolutely impotent, and a fair conclusion from her testimony is that she did not become capable until the early part of the year 1913, long after her husband left the house.

The Advisory Master in his memorandum found that the wife had commenced treatment to remedy her condition before Mr. Goerz left his home, and advised a decree in favor of Mrs. Goerz on the abandonment charge; he also found that it was

the duty of the husband to wait and ascertain whether there would be a cure. In the suit brought by the husband for annulment he held that not only was Mrs. Goerz's condition curable but was actually cured within a few months after the separation, and advised a decree dismissing the husband's petition without prejudice. It is from these two decrees that Mr. Goerz has appealed.

The questions involved here are:

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(1) Whether a husband who leaves his wife after living with her for over three years, because she is impotent and has never been able to have sexual intercourse with him, is guilty of abandonment of her within the meaning of the statute:

(2) Whether a husband leaving his wife under such circumstances is justified on the ground that her refusal to remedy or attempt to remedy her condition by having a suitable operation performed constitutes extreme cruelty by her towards him, or a desertion of him:

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(3) Whether or not where the wife is impotent at the time of the marriage and the fact is unknown to either party at the time and the wife persistently refuses throughout the course of her married life to remedy the condition or seek advice looking towards the remedying of her condition, the husband may leave his wife and bring suit for annulment:

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(4) What effect is to be given the testimony of a witness who changes his testimony in a material point over recess in the trial?

It is perhaps needless to say that there were no children as a result of this marriage. It is admitted by both husband and the wife that at no time did the husband ever have sexual intercourse with his wife; that he tried frequently and that he was unable to effect penetration, because of her physical defect. Dr. Stellwagen, plaintiff's

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witness, testified that at the time he examined the plaintiff the hymen had not been broken, because it was thick and heavy (p. 60). He also states that the vaginal cavity was very small (p. 63).

The wife admits that her husband was at all time attentive and considerate, but it is apparent that there was great trouble between them because of their inability to have intercourse. The husband persisted throughout the three and one-half years that they lived together, in his efforts to consummate the marriage. At one period of their married life, shortly after their marriage, he tried for fifteen nights in succession but was unable to effect penetration. Repeatedly during the period when they were living together the husband tried to induce his wife to go to a physician to obtain the benefit of medical advice, but each time she refused. The wife insisted that her refusal was because she did not think that such relations were necessary.

Apparently matters came to a crisis in the latter part of September, 1912. Mr. Goerz's vacation commenced September 9th of that year; he and his wife went to Albany, the day after his vacation began, and they returned on Friday, about ten days later. The next Sunday Mr. Goerz went to Unionville, Connecticut, to visit his parents. The next morning Mrs. Goerz, with her sister, Mrs. Rippe, followed him, and there was a discussion at the home of the husband's parents about these difficulties between Mr. Goerz and his wife. When they had returned from Albany there was a serious discussion between them in a hotel in New York where they stopped temporarily, and Mr. Goerz told his wife that this condition of affairs had to stop and he again insisted that she have an examination made, because he said, "We simply cannot get on in this way."

Mrs. Goerz's principal witness cannot be believed insofar as his testimony when changed differs from that given before conferences at recess.

Mrs. Goerz called as her witness Dr. Frederick B. Stellwagen, who practices surgery in North Hudson, and whose reputation was known to Mr. Goerz, who had objections to his wife being treated by this physician. This witness changed 10 his testimony on a material point in this case over the noon recess and after he had at recess conferred with the members of Mrs. Goerz's family and her counsel. Dr. Stellwagen had examined Mrs. Goerz with a view to ascertaining the cause of her condition, which made coition with her husband impossible. Before recess (p. 58) he stated that he went to attend Mrs. Goerz about two days before the separation took place, which was September 28; that he remembered that 20 Mr. Goerz left his wife on September 28th, and at the bottom of page 58 he again testified "I did know the exact date I first examined her; the exact date that I first examined her was about two days before they separated, and if I remember correctly, that was the only time that I was asked to examine her." On cross-examination (p. 62) he testified that he had a talk with Mr. Goerz some time between the 25th and 30th of September, which was before he had taken any means to 30 operate on Mrs. Goerz. On page 58 he testified that he examined Mrs. Goerz between the 25th and the 30th of September, and on page 57 he testified that he was called in to attend Mrs. Goerz around the 20th, and between the 25th and 30th of September. This makes five different times that on direct examination and cross-examination before the recess he testified that he first examined Mrs. Goerz between the 25th and 30th 40 of September. On page 65, which was testimony

before recess, he testified that he commenced to dilate the parts which were too small for copulation *after* Mr. Goerz left Mrs. Goerz, on the insistence of the wife; and asked this question, "All that you did in the way of dilation took place after he (Mr. Goerz) had gone away?" he answered "Yes, sir."

10 The importance of this testimony is that Mr. Goerz testifies that he left his wife before she had taken any means to correct her impotency, and this contention was supported by the testimony of the physician as given before recess. Had the case rested here, Mr. Goerz's leaving his home before his wife had taken any steps to have her condition corrected (if that were possible) was a justifiable leaving, both because her refusal to correct her deformity was extreme cruelty toward him, and because it created a desertion on her part of her husband, and indicated that within
20 the terms of the statute she was physically and incurably impotent as to her husband. There can be no doubt but that after Mr. Goerz left home his wife visited Dr. Stellwagen for the purpose of being treated, with a view to having her impotency corrected, if possible. Therefore, we say that it was important to Mrs. Goerz to establish that the corrective treatment was begun before her husband left home. Her counsel probably
30 knew this fact, and during the course of the trial it undoubtedly became impressed on the minds of Mrs. Goerz and her relations who were witnesses on her behalf.

With these facts in mind it becomes important to note what transpired after recess (pp. 65 and 66). Mr. Weller asked the following question:

40 "Doctor, since being on the stand this morning have you had your memory refreshed as to the date when you first examined Mrs. Goerz the day that you performed your first dialation, as you call it? A. Yes, sir; I have.

"Q. Well, can you tell us now when you first dilated her hymen, about, as nearly as you can?"

Counsel objected on the ground that the witness, being an intelligent man, having been examined and cross examined at great length before recess, and now brought on after an opportunity for conference and consultation during recess, any testimony tending to change the testimony given before recess was improper. The witness was examined as to how his memory had been refreshed and he said he talked with Mr. Weller and the complainant at noon and being asked as to how his memory was refreshed said "In this way. I had objected to Mrs. Goerz taking a trip to Hartford, Connecticut; that was previous to Mr. Goerz having left her; on the day that I objected to her taking that trip on the ground that she was in no fit condition to take that trip from the treatment that I had given her the night previous." This further statement of how he refreshed his recollection was introduced p. 67.

"BY MR. WELLER:

"Q. Who called your attention to that about your having told her not to go to Hartford? A. Why, Mrs. Rippe told me that she was going to go to Hartford to Mrs. Goerz and I mentioned the fact to Mrs. Rippe."

On page 68 he said that he did not talk with Mrs. Rippe in relation to the matter since recess, but with Mr. Rippe. The latter obviously had no knowledge of this conversation. He was then asked "You heard what Mrs. Rippe said in the hall when we came downstairs in relation to the trip to Hartford?" and he answered, "Yes, sir." The Master then asked, "Your memory has been refreshed by conversation which you had with Mr. and Mrs. Rippe since we adjourned at lunch time?" and he answered, "Yes, sir". And he was questioned, "And this is the only way that your memory has been refreshed?" and he answered,

“Yes, sir.” “Q. And only by your conversation with these two persons? A. Yes, sir, in relation to the time.” This, on its face, is untrue, for at the top of this page he stated that he did not talk with Mrs. Rippe in relation to the matter but only with Mr. Rippe. Mrs. Rippe denies ever having spoken with the witness before the trip to Hartford p. 83. Again on this page, at line 20, he was asked by Mr. Weller, “Did Arnold Rippe call any fact to your attention at noon that refreshed your memory, anything that you had said to him,” and he answered, “I do not recollect it now.” And the last three questions on this page show that the witness’ recollection had not been refreshed by anything that Mr. Rippe or Mrs. Rippe said during recess. And we therefore say that the testimony given after recess was given under conditions to invite severe criticism and smacks of perjury, and given for the sole purpose of assisting the complaint in this case, after having been informed by some person that the testimony he gave before recess was detrimental to Mrs. Goerz’s case, for he had talked with counsel and the complainant during recess; they had dinner together (p. 69, lines 28 and 29).

The following testimony was given by this doctor after recess:

“Q. (By the Master.) Do you or do you not remember yourself independent of what had been told since noon the fact as to when this examination took place? A. Since that incident was brought to my mind, I remember very distinctly, *but I was under the impression that Mr. Goerz had separated from his wife before I began the dilation.*

“Q. (By Mr. Weller.) When was it that you performed the first dilation? A. On Sunday evening.

“Q. How long before they separated? A. It must have been possibly a week or ten days” (p. 71).

(p. 72) "Q. (By Mr. Weller.) To whom did you make this objection? A. Mrs. Rippe.

"Q. What day of the week did Mrs. Goerz go to Hartford? A. Monday.

"Q. Is that the Monday after the first dilation? A. After the first dilation."

At the bottom of page 72:

"Q. How long before she went did you know that she was going? A. Well, only a couple of hours, I presume it was; Mrs. Rippe called at the house." 10

On page 72, line 20, Dr. Stellwagen had testified that Mrs. Goerz was present when Mrs. Rippe spoke to him about this trip, but at the bottom of the page he testified that it was Mrs. Rippe who called.

The statement of Dr. Stellwagen that he commenced the operation after the husband left must be believed. Mrs. Rippe testified on her direct examination (pp. 82 and 83), that she had not spoken to the Doctor but she knew that Mrs. Goerz had treatment the night before she went to Hartford from what Mrs. Goerz had told her the next morning, and on page 83 she testified: 20

"I know the Doctor said that she was not in any condition to go; no, she told me that the Doctor did not want her to go."

In reply to the following question asked by the Master she answered:

"Q. Did the Doctor have any conversation with you about her going? A. No, sir." 30

Therefore, when the Doctor said that his recollection was refreshed as to the date the operation commenced from a conversation which he recalled having with Mrs. Rippe, he refreshed it from a circumstance that never existed, and hence never refreshed it at all.

On page 62, and in the morning, the doctor had testified: 40

"Q. You had a talk with Mr. Goerz some time between the 25th and the 30th of September? A. Yes, sir; somewhere along there.

"Q. Before you had taken any means to operate on Mrs. Goerz? A. Yes, sir."

On page 58 at the bottom he testified that the first date when he *examined* Mrs. Goerz was about two days before they separated, "and if I remember correctly that was the only time that I was asked to *examine* her." We submit that the
 10 above shows that this doctor purposely changed his testimony in a highly material matter. His testimony before that time was to the effect that there was first an examination of Mrs. Goerz when he discovered that she was a virgin (p. 58, ll. 33 to 40, p. 59, ll. 15 to 30). And two weeks or a month after that the commencement of the dilations (p. 65, ll. 20 to 30). After recess he
 20 endeavored to create the impression that on the time he examined her he began the operation.

It is now important to consider what this so-called operation of the doctor consisted of. He says that he found the hymen thick and heavy with an opening about the size of the end of the little finger; that this could be remedied in one of two ways, either by putting the patient under an anæsthetic and removing the obstruction with a knife or by dilation without the use of an anæsthetic; this could be done either quickly,
 30 which would result in considerable pain, or by what he called dilation extending over a period of several months; the latter method was employed, at the request of Mrs. Goerz. On page 61 he says at Mrs. Goerz's request he dilated the hymen gradually, first with a pair of dressing forceps and then with a small speculum and later on with a larger speculum, until two
 40 fingers could be introduced into the hymen without giving any pain or distress; that took "*possibly two or three months to accomplish*; it

could have been done in five or ten minutes under an anæsthetic." On page 63 he testified:

"Q. The result of this long protracted examination or treatment of the hymen was the result, at the end of that, to better the condition? A. Yes, sir; it dilated the hymen and the vaginal cavity to a normal condition where in my best judgment copulation could take place.

"Q. And that was completed by you about how long ago? A. I should say I passed the second sized speculum in the latter part of December or the fore part of January. 10

"Q. January, 1913? A. Yes, sir; but I have from time to time given her a treatment and inserted a cotton tampon with medicine.

"Q. Leaving out these supplemental treatments, you think she became potent in January? A. Somewheres along there I should say." 20

Now Dr. Stellwagen testified that he had a conversation with Mr. Goerz, in which he told him of this examination, and that this was between the 25th and 30th of September, 1912 (p. 62). Before he had taken any means to operate on Mrs. Goerz (p. 62), he explained the character of the operations; Mr. Goerz replied that he would prefer not to have the dilation because it was, in his opinion, inhuman. He says that he did not understand that he had the husband's sanction to perform the operation and that the dilation took place after he left, under the insistment of the wife, and all that he did in the way of dilation took place after he had gone away (p. 65). This fact, on his cross examination before recess was testified to positively without any doubt being expressed as to his recollection of when this event took place. Mr. Goerz testified that when he left Mrs. Goerz he did not know that she had been treated by a doctor; and he wanted her to be treated by a doctor that he would recommend. He says, (p. 133, l. 29): 30 40

10 “Dr. Stellwagen told me ‘I find that this is a most unusual case; it is the worst case I have ever seen; I have seen cases where women have been married for three to four weeks and they have come to me and I have been able to fix them up with my fingers, but I never had a case that has gone so long, for three and a half years; I think it is a very unusual case and I will be obliged to use an instrument if I get into her to force that part which has grown over’” (p. 134, lines 10 to 12).

He says the doctor added,

“Now, what you ought to do—you don’t want to bother your wife—why don’t you go out on the outside and get another woman and jolly your wife along?”

Dr. Stellwagen never denied this statement.

20 After Mr. and Mrs. Goerz returned from Albany and their serious quarrels about her condition commenced Mr. Goerz on the following Sunday afternoon went to Unionville to discuss the matter with his parents. The following morning Mrs. Goerz and Mrs. Rippe, her sister, followed Mr. Goerz to Unionville and arrived on Tuesday morning. Mr. Goerz was there. There was considerable discussion between the members of the family and the younger Mr. and Mrs. Goerz about the troubles that the young people were having, and Mrs. Goerz made the statement that

30 she did not think it was necessary for her to have sexual intercourse with her husband, that they had had a nice home for a long while and that they should not be bothered by this circumstance (p. 119). Mr. Goerz insisted that he could stand it no longer.

40 Mr. and Mrs. Goerz stayed until Friday of that week, or until September 27th, and occupied the same room. The first night that Mrs. Goerz was undressing she wore a rag and smiling and in a joking way she said to Mr. Goerz that he should gather that she had something done to

her. He says that she did not tell him what had been done (p. 126). The word "operation" however was never used by her (p. 129). Mrs. Goerz testified that on this occasion she invited her husband to have intercourse with her, although she wore rags at the time (p. 139, l. 25). These rags were worn to stop a discharge. Mr. Goerz replied that he did not want to get a disease and refused. No one could blame the husband for this refusal and it would have failed
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anyhow, because Mrs. Goerz did not become competent until January, 1913, some months afterward (p. 63, l. 30). The couple reached home on the 27th and on the 28th of September Mr. Goerz left.

.. B.

THE NIGHT OF THE SEPARATION.

This night Mr. Goerz came home, packed his trunk and had dinner with his wife (p. 24). His wife exchanged lockets with him; he gave her his wedding ring and she gave him her engagement ring (page 24). 20

After dinner he finished packing his effects and said that he would send for the things he could not take, the following week. He finished about quarter after eight and Mrs. Goerz was lying on a couch and he went over and kissed her and said that he hoped the step that they were both taking would be for the best. Mrs. Goerz replied "Not
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for me, yourself." He said, "It will be better for both of us," to which Mrs. Goerz made no reply. He went to the servant and said good bye to her and told her to stay with Mrs. Goerz and take good care of her. As he passed through the door, he said, "Well, I don't know where I am going to sleep to-night." This was the last that Mrs. Goerz saw of him until the trial. He sent
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for such personal effects as he did not take

with him and Mrs. Goerz delivered them to the expressman. Her bill of complaint was filed January 8th, but Mr. Goerz's petition for annulment was filed February 24, before he had knowledge of her suit. Mrs. Goerz also swore out a warrant for her husband's arrest on a charge of abandonment and he was arrested in New York on this charge before his petition was filed.

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POINT I.

There was no abandonment by Mr. Goerz of his wife, for at the time he left she was incompetent.

Until Mr. Goerz left his home he had never had intercourse with his wife, although they had lived together for three and one-half years. During this time he had repeatedly urged her to be examined by a physician. He had suggested the names of several physicians and each time she absolutely refused, basing her refusal on the ground that she did not think that this was a necessary part of married life and urging her contention that "nature would take its course."

Section 26 of the Divorce Act provides that "in case a husband *without any justifiable cause* shall abandon his wife or separate himself from her, and refuse or neglect to maintain or provide for her, &c., it shall be lawful for the Court of Chancery to decree suitable support and maintenance to be paid by the husband for the wife and her children." In this case we contend that the husband left his wife with justifiable cause, for he had lived with her for three and one-half years and urged her repeatedly to see a doctor and she had consistently refused. He testifies, and his testimony is not shaken in any respect, that at the time he left he did not know that his wife had taken any treatment, although he knew that she had been examined and that an operation was

necessary, to which he had not been asked to give his consent. We say that because of her repeated refusals to have an operation made and her frequent statements that she did not consider sexual intercourse a necessary part of the married relations the husband was justified in assuming that his wife would not have performed the necessary operation. He stated that his health was impaired b reason of the conditions under which he was living with his wife. It is natural to suppose that this is so. 10

At all events whether the dilation treatments had been commenced or not the wife at the time the husband left was incapable of having intercourse with him, p. 63, l. 30; p. 32, l. 34. All of the witnesses agree that Mrs. Goerz was not cured until several months after the husband left. We think it proper to assume that Mrs. Goerz commenced the treatment after her husband left and continued with it until, as she says, she was competent, because her husband had left her, and she wanted to have her condition corrected so that she might perform her functions. 20

In *Yawger v. Yawger*, 86 At. Rep. 419, the Court of Chancery held that the refusal of the husband to remove a curable impediment to the consummation of the marriage by aid of medical skill where such refusal was persisted in against the wishes of the wife, made the husband guilty of matrimonial desertion. 30

Unquestionably constructive desertion was made out by Mr. Goerz in his suit, for there was proved the cessation of cohabitation for the period of more than two years.

Raymond v. Raymond, 79 Atl. Rep. 430.

This being so, an absolute defense to the abandonment suit was proved. 40

POINT II.**The wife was incurably impotent as to Mr. Goerz at the time of the marriage.**

10 Bishop defines impotence as the irremediable physical incapacity of one of the parties to a marriage for any reasonable sexual relation with the other, where no intercourse too imperfect to satisfy this rule has resulted in actual pregnancy.

Vol. 1, Sec. 766.

The statute permits decrees for annulment where the parties or either of them was at the time of marriage physically and incurably incompetent. P. L. 1907, p. 474, Sec. 1, par. 3.

20 Mr. Goerz and Mrs. Goerz agree that at no time have they ever had sexual intercourse. This is corroborated by the doctor, who says that when he made his examination Mrs. Goerz was a virgin and that vaginal cavity was unusually small and the hymen thick and tough, with an opening not larger than the end of the small finger. During the period of three years and a half that these people had lived together Mr. Goerz was persistent in urging his wife to interview a physician with a view to having her trouble corrected. She
30 had persistently refused. Although he made every effort he was unable to effect penetration and it is evident that surgical skill was required to correct the deformity if to do so were possible. The physician who performed the so-called operation by dilation testified that he could not even pass the second size instrument until the latter part of December and that she was not apt for coition until January, 1913 (p. 63). His suit
40 was started February 24th, and Mrs. Goerz never notified him of any change in her condition (p. 140, l. 10), and she admits (p. 140), that the treatment continued for several months.

The Advisory Master held in effect that the word "incurable" as used in the statute means incurable in fact. We contend that if there was impotence which could be removed by an operation and the wife wilfully refused to permit such an operation that the impotence is as incurable under such conditions as if no operation could remove it. It is certainly as incurable to the husband under such condition as though science could make no correction; for the husband cannot force his wife to undergo the operation, neither can the Courts do so. We submit, therefore, that Mrs. Goerz was incurably impotent as to her husband from the time of her marriage up to the time when he left her. 10

"It appears to be an accepted physiological truth that parties may be impotent as to each other, while both, differently mated, would be capable, as, where the development of the man is abnormally large, and that of the woman abnormally small. In a union of this sort the ends of matrimony are frustrated, to the injury, not simply of one party as in the ordinary sense, but of both. Hence this impotence is ground for nullity." Bishop on Marriage and Divorce, Vol. 1, Sec. 779. 20

"Extreme sensitiveness in the woman, by whatever name medically called, has sometimes rendered consummation impossible; in which case, after the lapse of proper time and trial, if found to be incurable, it is adequate in a suit for nullity." Bishop on Marriage and Divorce, Sec. 781. 30

In a note to this section Bishop gives a number of instances where decrees for nullity have been entered in similar cases. In the following case there had been more than three years' cohabitation and as the marriage had not been consummated and could not be practicably, the prayer of the petitioner was granted. *H. v. P.*, Law Rep. 3, P. & M., 126; *S. v. A.*, 3 P. D., 72; *Merrill v. Merrill*, 126 Mass., 228. In *S. v. S.*, Maine, 77 N E. Rep., 40

1025, sexual intercourse was impossible without causing the wife such physical distress as endangered her health. Though the parties lived together for nearly seven years the physician advised that they must absolutely separate, that sexual intercourse between them could not be continued and they accordingly separated. The Court ruled that the libel for divorce could not be maintained and ordered it dismissed. This was reversed on appeal to the Supreme Court of Maine, on authority of *G. v. G.*, L. R. 2 P. & D., 287, *Payne v. Payne*, 46 Minn., 467, *Deane v. Aveling*, 1 Rob. Eccl., 279, 1 Bish. on Mar. & Div., Par. 781, note 2.

In this case Dr. Stellwagen advised Mr. Goerz when he made his first examination that this was a very peculiar case and said, "What you want to do, you don't want to bother your wife; why don't you go out on the outside and get another woman and jolly your wife along?" This advice of a professional man that Mr. Goerz commit the crime of adultery, which stands undenied, not only discloses the character of this witness, but shows also that at the time Mr. Goerz left his wife the Doctor knew she was incompetent and regarded her as incurably impotent and in a condition where she must be let alone. Whether or not this Court holds that there must be a nullity decree certainly it must hold that Mr. Goerz's leaving his wife was justified; not unjustifiable abandonment within the meaning of the statute.

POINT III.**It was the duty of the wife to notify her husband when a cure was effected.**

On page 140 Mrs. Goerz testified that the treatment which was started was continued for several months.

“Q. And after these several months you never told him of any change in your condition? A. No, sir.” 10

It would seem that if Mrs. Goerz was acting in good faith when having this dilating done and if it was done with the purpose of enabling her to fulfill her marital obligations that as soon as she was in a condition for copulation she would have invited her husband to return to her or would have indicated her desire to resume relations with him. She not only failed to do this but immediately commenced a criminal suit against him for abandonment and then filed her bill for maintenance. These actions indicated her desire to live apart from her husband, rather than a willingness upon her part to resume married life. If it is the duty of a husband in a desertion case who leaves his wife without just cause or who closes his home to his wife, to offer her a suitable home before he can charge her with desertion, a similar rule should be laid down in this cause to the effect that it was the duty of Mrs. Goerz to invite her husband to return to her after he left because of her impotence, and this invitation should have been made as soon as her physical defect was cured. We have repeatedly called attention to the fact that Mrs. Goerz was not competent when her husband left her and was not competent until January, 1913. Can it be said as a matter of law that he abandoned her without cause in September, 1912, when at that time and for three and 20 30 40

one-half years previous thereto she had not been in a condition to fulfill her marital obligations? Perhaps had she invited him to return after the cure was effected, if in fact it was effected, she could have charged him with abandonment from that date or with a desertion of her from that date, but until she made such an invitation she was not the party to complain. On the contrary, she had deserted him during all the years of her married life. Mrs. Goerz was financially independent and did not need the support of her husband during the period he was away from her.

For these reasons we submit, first, that Mr. Goerz did not abandon his wife at the time alleged; second, that she on the contrary constructively deserted him, and third, that there should be an annulment.

Respectfully submitted,

McDERMOTT & ENRIGHT,

Solicitors for Edward V. Goerz.

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New Jersey Court of Errors and Appeals.

Between,

MATHILDA GOERZ,

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On Bill **10**
for
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Between,

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Petitioner-Appellant,

and

MATHILDA GOERZ,

Defendant-Respondent.

On Petition **20**
for
Annulment
of Marriage.

RESPONDENT'S BRIEF.

The parties to the above causes are husband and wife. They were married on the eighth day of May, 1909, and lived together in this State until the twenty-eighth day of September, 1912, when the husband abandoned his wife at the Town of Union. She thereafter filed her bill in the Court of Chancery praying for support and maintenance on the ground that he had abandoned her without justifiable cause and refused and neglected to maintain and provide for her, and he filed an answer admitting the abandonment, but setting up as a justification therefor that the complainant was physically and incurably impotent **30**

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at the time of the marriage. At about the same time, the defendant in that action, Edward V. Goerz, filed his petition in the Court of Chancery, against the respondent Mathilda Goerz, praying for an annulment of the marriage between them on the ground that his wife, the defendant in the latter cause, was physically and incurably impotent at the time of their marriage, and she filed an answer thereto denying the charge.

10 Both causes were referred to Charles H. Harts-
 horne, Esq., an Advisory Master of the Court
 of Chancery, and as they both depended upon the
 question of the impotency of the wife, they were
 tried together on the twentieth day of June, 1913.
 A decree was thereafter made on the twenty-third
 day of June, 1913, dismissing the petition for the
 annulment of the marriage, with costs; and on
 the same day a decree was made in the suit for
 maintenance in which the defendant therein, Ed-
 20 ward V. Goerz, was adjudged guilty of abandon-
 ing the complainant without justifiable cause, and
 refusing to maintain and provide for her, as al-
 leged in her bill, and directing him to pay to her
 the sum of \$14 a week as permanent alimony in
 said cause, and a counsel fee of \$200 and costs.
 The defendant in the first cause, and petitioner
 in the second, Edward V. Goerz, has appealed
 from both of these decrees and the causes will be
 argued together.

30 The respondent has had an operation performed
 upon her to rectify her condition which has proven
 entirely successful, but the appellant urges that
 he was justified in leaving her because she did
 not seek surgical aid sooner. The respondent,
 however, did not wilfully refuse to have her con-
 dition remedied, nor did the appellant insist up-
 on her consulting a physician. She was ignorant
 of the cause of their inability to consummate the
 40 marriage until the fifth day of September, 1912,
 when she was examined by a physician who told

her the trouble could be easily remedied; then the husband forbade her to undergo treatment, but notwithstanding his admonition she had the first operation performed upon her on Sunday, September the fifteenth, 1912, and on the twenty-eighth day of that month he left her.

Much of the appellant's brief is devoted to argument to discredit the testimony of Dr. Frederick B. Stellwagen. So zealous is the appellant in his effort to discredit his testimony that he insinuates that the doctor is a man of questionable character. He even went so far at the hearing, after the doctor had been called away and he knew he would not be there to contradict him, to swear that the doctor had advised him "to go outside and get another woman and jolly his wife along."

There might be some sense to this attack of the doctor's veracity, were it not for the fact that the appellant himself corroborated the doctor in every material detail. He admitted, as we shall point out hereafter, that he was fully aware two weeks before he deserted the respondent that she was not incurably impotent, and that she was then undergoing an operation to remedy the defect complained of.

POINT I.

The Respondent was not physically and incurably impotent at the time of her marriage, and therefore the appellant was not justified in abandoning her.

10 The statute provides that the marriage may be annulled when "The parties, or either of them
"was at the time of marriage, physically and in-
"curably impotent; provided the party making
"the application was ignorant of such impotency
"or incapability at the time of the marriage, or
"*has not subsequently ratified the marriage.*"

20 Marriage casts upon a husband the obligation to maintain and provide for his wife according to his station in life, and therefore the burden is on the appellant to show that he was relieved of that obligation by the physical and incurable impotence of the wife, before he can justify his abandonment of her. There is no evidence to show that the respondent was physically and incurably impotent. On the other hand there is plenary proof to show that she was not physically and incurably impotent.

As we understand the law, a justifiable cause is such cause as would support a matrimonial action.

30 "What is justifiable cause for such desertion? While there has been some variance in the authorities at different periods, and in different jurisdictions, as to the proper answer to this question, it now seems to have become the settled doctrine of the American Courts and in this State, that, in order to justify a wife's desertion of her husband, he must have been guilty of such a course of conduct towards her as would, under the law, entitle her to a decree of separation or absolute or limited divorce against him. Mr.
40 Bishop, after an exhaustive examination of the authorities on this subject both in Eng-

land and in this country, reaches a conclusion expressed in these words: 'The doctrine most favored in our American courts, not in every instance settled in a way absolutely excluding the criticism that it is dicta, already spoken of, affirms our proposition that except that where there is quasi consent, acquiescence, or estoppel, only the ill conduct which would authorize a judicial separation or dissolution will justify a desertion.' 1 Bish. Mar. Div. & Sep. Sec. 1753. The late Vice-Chancellor Van Fleet, in *Weigand v. Weigand*, 41 N. J. Eq., 202, 3 Atl. 699, which was also a suit for alimony by the wife under this statute, discusses this doctrine with his accustomed vigor and ability, and gives it his approval.' "

Dummer v. Dummer, 41 Atl. Rep., 150.

Rogers v. Rogers, 81 Eq. 479.

"Alimony is only allowed when the husband has been guilty of a matrimonial offence, and impotency is not such an offence." G. v. G. 67 Eq., 30.

The respondent and appellant lived together about three years and four months after their marriage. On account of the respondent having a "thick and heavy hymen" (60-4) and possibly on account of the physical weakness and indifference of the appellant the marriage had never been fully consummated when he abandoned her. Dr. Rector (110-6) says thick hymens are very common. He also says (110-15) that there are men strong enough to break any hymen.

From the appellant's own testimony (114-8) he was physically weak.

The following testimony was offered:

MATHILDA GOERZ:

(44-4). "Q. Why did you say it was his fault as much as yours? A. Because I think it was his fault as much as mine.

"Q. Why did you think—just what did you observe when he tried to have intercourse with you? A. I simply thought it was his fault as much as mine."

There is no evidence in the cause to show that respondent was incurable. It was appellant's second matrimonial venture; he had become infatuated with some other woman and had grown tired of the respondent. She had advanced him \$4,000 (26-16; 120-22), and as he saw he could get nothing further from her he abandoned her in cold blood.

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(22-10). "Q. Just tell us about it, tell us how the husband acted? A. Well, the beginning of his vacation was the 9th of September, and two months before that he had been working very late never came home to supper for several nights. I suppose two or three nights a week he would be working very late; of course I never seemed to understand that there was anything wrong. Now then, as I stated, his vacation started the ninth of September, and that morning he said to me he would have to go to the office; I said 'What for?' 'Well,' he said he had a certain man to see about some papers in his business and I naturally thought that it was all right; he had left about 20 minutes when a telegram came; It was addressed to him; I opened it and it said—

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"Q. When the telegram came—what happened when the husband came home? A. He came home at one o'clock that night; I was in a nervous state and I showed him the telegram and he snatched it out of my hand and said, 'That is nothing, it is only one of the women I have been going around with.' I said, 'Ed. I can forgive you now, but I want you to be true to me.'

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"Q. What did he say? A. He said I can't do it and I am not going to say it. (46-21). A. And he spoke of going around with this woman; she was a woman who had a child of seven or nine years old; he said, 'Do you think I am a damn fool to be going around with that woman for nothing'; I said, no; I don't think you are a damn fool'; he said 'do you want to know who the woman is? I said all right, you can tell me, and he said it was

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the woman who came down in the parlor car with us, and because you said she was so nice, that is the reason I flirted with her."

As to this occurrence the defendant testified as follows:

(130-5). "Q. Do you remember a telegram that came to your house? A. Yes, I remember a telegram that came to my house.

"Q. Do you remember telling your wife that was one of the women you were going out with? A. I certainly do. I said that is one of my lady friends. 10

"Q. Was it one of your lady friends? A. It was not, it was a bluff."

The above testimony points to a motive for the defendant's conduct.

The only medical testimony offered was that of Dr. Frederick B. Stellwagen. Respondent, however, was examined by Dr. Frank D. Grey on the part of the appellant, but Grey was not produced as a witness. 20

MATHILDA GOERZ:

(43-21). "Q. Have you been examined for the purposes of this case by any other doctor? A. Yes, sir.

"Q. By whom? A. By Dr. Frank D. Grey."

At this juncture it was admitted by counsel for the appellant that the respondent had been examined on his behalf, and the following was placed upon the record: 30

"It is admitted that an examination was made by Dr. Grey on June 2nd, 1913."

POINT II.

Even if the respondent had been incurably impotent, the Appellant's conduct would have amounted to a ratification of the marriage.

10 The Legislature could only have used the word "ratified" in one sense. If a wife is physically and incurably impotent, the marriage cannot be ratified by sexual intercourse. If, however, a marriage may be "ratified" or confirmed by a husband by his continuing to live with his wife after he knows that she is impotent, then the appellant in these causes ratified the marriage by living with the respondent three years and four months after the marriage. According to his testimony he was aware of the fact shortly after his marriage.

20 "His delay of even sixteen months has occasioned suspicion and we have intimations that lapse of time, it not appearing how long a time, may operate as an absolute bar to his suit."

Bishop on M. D. & S., 2 Vol., p. 1274;
Harris v. Ball, cited in *Norton v. Serton*,
 3 Phillim, 147;
 1 Eng. Ec., 384, 386.

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POINT III.

The parties hereto did not part by mutual consent.

It is true that the respondent returned to the appellant his engagement ring and locket, but not until she had exhausted every effort to induce him to remain with her and he had thrown his wedding ring across the table to her.

Appellant's answer to the respondent's bill of complaint will be found on pages 10, 11 and 12 of the printed book. By paragraph 3 he admits that he removed some of his clothes and other belongings, and went away from the respondent and told her he would not return to her, and that he could not continue to live with her because she was impotent. 10

Paragraph 4 is as follows:

"This defendant denies that he has since the 28th day of September, 1912, abandoned the complainant without justifiable cause, and insists that his conduct was justifiable in view of her condition as stated in this answer." 20

Respondent testified (page 22) that the appellant had threatened to leave her; that she had pleaded with him not to leave her, but that he had said he would not live with her. 30

(24-1). "Q. Go right ahead and tell us what took place after that? A. Then I said don't you know you will wreck my life by leaving me, and I pleaded with him for two weeks and then he insisted on going still; he told me on Friday he would come home and pack his trunk; that he was going to see a lawyer and he would pack his trunk" &c. 30

Anna Gardner, a servant in their home, also testified (p. 50) that the respondent pleaded with him not to go. 40

POINT IV.

At the time the appellant abandoned the respondent he knew she was under treatment by a doctor of his own choice and knew that she was curable.

MATHILDA GOERZ:

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(19-14). "Q. Did he tell you whom to go to, to be examined? A. Yes, sir.

"Q. Whom? A. Dr. Stellwagen.

"Q. And did you go to Dr. Stellwagen? A. I had him come to the house.

"Q. Did he examine you? A. Yes, sir.

"Q. At your house? A. Yes, sir.

"Q. Did you afterward tell your husband what he said to you? A. Yes, sir.

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"Q. What did you tell your husband? A. I told him that the doctor said it was nothing serious; that it could be remedied in a few months.

(19-35). "Q. What else did you tell him, or what did he say? A. Why, he said something about me—that it was nonsense to have a thing done of that sort; he said that that was not nature."

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(20-16). "Q. What did you say to your husband about what had been done? A. I simply told him how happy I was it was done, *and he said he didn't feel inclined that way* and that was all.

"Q. Did he attempt to have anything to do with you after that? A. No, he didn't, he frankly refused."

(21-27). "Q. Now then after this examination or after you went to Dr. Stellwagen, how long did your husband stay with you? A. Two weeks.

"Q. You say he positively declined to have sexual intercourse with you? A. Absolutely.

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"Q. Did he continue that up to the time when he left you? A. Yes, sir, absolutely.

"Q. That is he continued to refuse? A. Yes, sir.

"Q. Did you request it of him? A. I did.

On page 137 respondent's testimony is made to read as follows:

"A. Yes distinctly; that was the second night I was up there, he tried to have intercourse with me, and he said he didn't want to get a disease."

What respondent actually said was that she requested the appellant to have intercourse with her but he refused saying he did not want to get a disease.

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This construction is supported by the context itself. Why should he have said he did not want to get a disease if she had not made such request? In that very sentence she says, "I said it had been started and it was up to you to do the right thing; what are you going to do, and he said I want to live alone."

It is also supported by the first question on cross-examination.

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BY MR. McDERMOTT:

(139-19). "Q. Mrs. Goerz, on this occasion in Hartford, do you mean to say that you invited him to have intercourse with you while these rags were on your person? A. Yes, sir, I did."

It is also supported by the letter from the Special Master on the last page of the printed book.

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FREDERICK B. STELLWAGEN:

(59-18). "Q. Now in what condition did you find her parts generally? A. I found her a virgin. I found her hymen in contact.

"Q. I mean the condition of her other organs; were they normal or abnormal? A. The parts were absolutely normal, but I found the hymen in contact."

(60-12). "Q. At whose request did you examine her, her's or her husband's? A. At her request.

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"Q. Did you speak to the husband about it? A. I did.

"Q. When, and just tell us what was said?

A. The day after the examination—I talked to the husband in relation to the matter and I told him that I could remedy that condition, that is the small hymen. I told him it could be dilated, and stretched so that he could have natural intercourse, either by placing the patient under an anaesthetic and dilating forcibly at once or dilating it very gradually; a small amount at various times.

"Q. You say the hymen could be dilated?

10 A. Yes, sir; the hymen could be dilated.

"Q. If the hymen had been dilated would it have been possible to have had sexual intercourse with Mrs. Goerz? A. Yes, sir.

"Q. What did he say? A. He said he thought it would be inhuman to do anything like that and he would prefer not to have it done."

On page 61, line 13, he testified that she had been cured.

20 It appears from the testimony that the respondent was examined by Dr. Stellwagen on the fifth day of September, 1912; that the appellant's vacation that year commenced on the ninth day of September (122-11); that about two days later they went together to Albany and stayed there two days until September 14th, when they returned home; that on the following Sunday the appellant left home to visit his parents who lived on a farm at Unionville near Hartford, Connecticut; that on that Sunday night the doctor dilated respondent's hymen to some extent, and on the following day, Monday, she followed her husband to the farm. She took her sister, Mrs. Rippe, with her, and they went together to the home of the appellant's sister in Hartford and remained over night (78-1), and the next day the respondent, Mrs. Rippe and the appellant's sister all three went together to the farm. Here they all talked over the marital differences of the parties to these causes and respondent informed

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the appellant of her operation. The appellant and respondent remained at the farm until Saturday, September 21st, when they returned home and lived together until the twenty-eighth day of that month when he abandoned her.

FREDERICK B. STELLWAGEN:

(72-22). "Q. What day of the week did Mrs. Goerz go to Hartford? A. On Monday.

"Q. Was that the Monday after the first dilation? A. After the first dilation. 10

"Q. Which you said was on a Sunday, and it was on the Monday following that she went to Hartford? A. Yes, sir.

"Q. And you say you objected to her going? A. Yes, sir."

(71-16). "Q. On what ground? A. On the ground that she was unfit to travel after having undergone treatment."

MATHILDA GOERZ:

(91-4). "Q. Mrs. Goerz, did you in the Fall of 1912, make any other trip to Hartford except the one that has just been spoken of? A. No, sir. 20

"Q. When did you go home from Unionville? What date? A. Why, it was just exactly a week from the day he left home; he left on the 28th of September, that must have been the 21st."

JANE VICTORIA RIPPE:

(84-24). "Q. What did you say if anything about her having had this operation? A. Why she told him that she had had this operation and he told her he would not think of having anything to do with her because he was not going to be a murderer." 30

JULIA GOERZ, mother of the defendant, sworn in his behalf.

(98-31). "Q. She said he could not have intercourse with her? A. That is what she said; she didn't know why. 40

"Q. She told you how she found out—she

had been to a doctor; didn't she say that? A. Well, she spoke about a doctor and hinted—

“Q. Didn't she tell you that she had been to Dr. Stellwagen? A. Well, my son didn't want her to go to Dr. Stellwagen.

“Q. Didn't she tell you that she had been to Dr. Stellwagen? A. Yes, sir.

“Q. And didn't she tell you that it was a very simple operation? A. Well, she spoke that way.

10 “Q. Didn't she say he was making her all right and now she could live happily? A. She thought so.

“Q. What did you say to that? A. I told her that my son wanted to have her examined by another doctor, not by Dr. Sellwagen, because he didn't care for Dr. Stellwagen, and she said she was going to do as she pleased about that.

20 “Q. She told you that Dr. Stellwagen had already commenced the operation? A. She said something; I don't know what she said.”

(100-7). “Q. Didn't she complain of being sore at that time, from the treatment? A. Well, she said something to that effect, she did.”

The appellant's own testimony shows that he knew when he abandoned the respondent that she was not incurably impotent, and that he knew she was then undergoing treatment to remedy her condition.

30 EDWARD V. GOERZ:

(24-16). “Q. She told you she had called the doctor to your home? A. Yes, sir.

“Q. And she told you that he had examined her? A. Yes, sir.

“Q. And she told you it was a very slight thing? A. It would be a very slight thing.”

40 (126-6). “Q. When did you first learn what he had done for her? A. Why that first night, I think, that we were at the farm, when she was undressing or something like that, that is my recollection.

“Q. What did she say to you when she was undressing? A. It was the first time of her saying anything about it, and if I can remember rightly she said in a smiling and joking way and she pointed to herself down here (indicating) and she had a rag from which I would gather that she had had something done to her.

“Q. Didn’t she tell you what was done? A. I don’t remember.

“Q. Do you say that she didn’t say that to you? A. Yes, sir, I don’t remember. 10

“Q. Now she pointed to that rag and said what? A. She pointed to the rag and in a joking way, laughing, said, see I have had something done to me.”

So he knew just what ailed the respondent; that she was not incurably impotent and that she was being treated by a physician 10 days or more before he abandoned her.

POINT V. 20

The respondent did not refuse to consult a physician nor did the appellant insist upon it.

The appellant does not set up in his pleadings either extreme cruelty or desertion. He merely sets up the physical and incurable impotence of the respondent as a justification for his abandonment. And as before shown she was not incurably impotent. 30

The case of *Yawger v. Yawger* 86 Atl. Rep. 419, cited by the appellant was, we believe, under the circumstances of that case, correctly decided. That case was for desertion for the statutory period, and under the facts proven in that case the defendant’s conduct was wilful. He absolutely refused to have an operation performed to remove a curable impediment, after he was aware of the cause of his infirmity, and that it could be cured by a slight operation; and as an excuse, said, “I don’t want any kids.” 40

In the case before the Court the respondent did not know just what ailed her until she had been examined by Dr. Stellwagen, and was at all times under the impression that time would eradicate the difficulty. In other words, she says she thought nature would take its course. How, under the circumstances, could that be a wilful desertion? She was ashamed to mention her troubles to a physician. The appellant never insisted upon her being examined but at times after they had lived together from a year and a half to two years, he suggested such a course and then dropped the subject. Just as soon as she learned that the matter was serious she went to a doctor and when the appellant learned that the difficulty was slight and could be easily remedied, he forbade her having an operation performed and told her, (38-23) the doctor (60-32) and Mrs. Rippe, her sister, (84-24) that an operation of that kind would be inhuman and he did not wish to have it performed.

MATHILDA GOERZ:

(20-27). "Q. Up to the time that he told you to go to Dr. Stellwagen, had he ever asked you to submit to an examination? A. Yes, sir.

"Q. When. A. On several slight occasions, but the matter was dropped.

"Q. How long before the time, before you did have an operation by Dr. Stellwagen, did your husband advise you to do so? A. Why, we talked it over for quite a while after we were married and it worried us both very much *and I thought nature would take its course.*

"Q. Did you ever refuse to have an operation performed? A. I did according to what he said."

(By this she meant that she followed his directions.)

"Q. Before that did you ever refuse to have an operation performed; did he ever ask you

and you refused? A. Well, an operation would come up in the matter; I did not think it was that serious; *I thought that nature would take its course.* I didn't know what he thought, but that is just what I thought.

"Q. What was said about an examination before this time that you did go to the doctor? A. Well, he asked me one time; I remember very distinctly if I would go to a woman doctor, and I said no, I didn't think it was necessary; if we tried this ourselves we could eventually have it just the same in the proper way." 10

(31-5). "Q. And the woman doctor you turned down? A. I turned her down because we didn't speak very much about the matter, he just insinuated that I could have a woman doctor, and the thing passed off in such a way that it was not serious.

"Q. Isn't it a fact that he did seek that (sexual intercourse) during the whole time you were living with him? A. Yes, sir.

"Q. And you didn't consider it a necessary part of marital relations? A. Yes, I did, but I thought that nature would take its course." 20

"Q. Have you not said repeatedly that you did not think it a part of your marriage relations? A. No, sir.

"Q. Didn't you say that to his father or to his mother? A. No, sir; I said that it was nature and that would take its course; if I had thought it was going to end so serious as all that perhaps I would have done it before, but having no mother I did not have anyone to go to, &c." 30

(35-14). "Q. And at no time was he ever successful in having sexual intercourse with you? A. No only two weeks before he had not.

"Q. Nothing like that? A. He could have two weeks before he left.

"Q. I understand that this operation was not complete until some months after he had gone away? A. It was not complete on account of the treatment, that which was neces- 40

sary, but when it is begun, that is all that is necessary."

(45-28). "Q. How long after you were married was it that he spoke of that woman doctor? A. I don't know, possibly a year or two, it must have been a year and a half or two years."

EDWARD V. GOERZ:

(121-10). "Q. Why didn't you speak to a doctor? A. Because she asked me not to say anything about it.

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"Q. And you didn't insist upon it? A. I did not; I asked her to go and do it in as nice a way as possible."

(121-21). "Q. You never asked her to go with you to a doctor? A. I did in September.

"Q. When? A. Last September."

(122-5). "Q. What time in September did you speak of this woman doctor? A. In September, 1912, etc."

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(135-5). "Q. You told him (Dr. Stellwagen) not to do anything to your wife? A. Yes, sir."

MATHILDA GOERZ:

(38-22). "Q. You just chose this protracted method for some reason or other; what was it? A. Why when I told my husband what could be done, he said, 'I would not hear of such a thing; if anything happens to you, why, I would never forgive myself,' that was his answer."

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(38-31). "Q. Now, if you knew it was to be a protracted operation * * * why didn't you when the operation or treatment was complete, tell him that it was done? A. Because I thought he could have done his part when he lived with me, and he went away and never wanted to come back for that reason."

(27-3). "Q. Did he after the 23th day of September, 1912, ever come back to see you? A. No, sir.

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"Q. Has he since that time ever written you any letter? A. No, sir."

Counsel for appellant have cited several cases in an endeavor to support their contention that the respondent was impotent in the legal sense of that term. It becomes important in examining such decisions to examine the statutes of the jurisdictions in which they were rendered.

In Massachusetts, Section 1 of the divorce act, which may be found on p. 1352 of Vol. 2 of the Revised Statutes, provides several causes for absolute divorce, one of which is "impotency." The court will note that the act does not say "incurable impotency." 10

In the case of *Merrill v. Merrill*, 126 Mass., 228, the facts show that the parties lived together for about ten years, and that in all that time the wife persistently refused to permit the husband to attempt to have sexual intercourse with her; that she told a young woman that the husband had better go ahead and get his divorce, and added, "I could not have intercourse with any "man"; that she refused to submit to an examination by two physicians who had been called in for the purpose of examining her; that the libel was dismissed and exceptions to the ruling of the court were sustained. 20

But we also found at the bottom of the page, the following note, viz:

"At the April term, 1879, the case was heard by the Chief Justice, and the libel dismissed." 30

In the case of *S. v. S.*, 77 N. E. Rep., 2025, which is also a Massachusetts case, it was found that sexual intercourse was impossible without endangering the health of the wife and for that reason the physician had ordered them to separate.

In the case of *Payne v. Payne*, 46 Minn., 467, cited by the appellant the Court found as a fact that the wife's deformity was incurable. This 40

finding was based upon the undisputed evidence that she had been for years under the care of a noted physician named Phillips, and had submitted to numerous surgical operations without any beneficial result.

10 The case of *Dean v. Aveling*, 2 Rob. Ecl. 279, was never decided and therefor can not be cited as authority. In that case the defendant submitted to an examination by two physicians who gave their testimony. The court then appointed a third physician to act with them but so far as appears by the case no report was ever submitted by them.

On the other hand many courts hold that a divorce will not be granted where the impediment may be removed.

20 "A divorce will not be granted on account of the impotence of one of the parties, if there is good ground to believe that the disability may be relieved by a slight surgical operation without danger."

Devenbath v. Devenbath, 6 Paige, 175.

The court is restricted in its jurisdiction to annul the marriage by the legislation on that subject. Therefore it cannot annul the marriage unless it finds that the respondent is physically and incurably impotent.

30 "Impotence, it is true, may be regarded as a species of fraud in law, but it is to be borne in mind, that in annulling marriages for causes not specified in the statutes giving it jurisdiction over matrimonial causes, the Court of Chancery has confined itself to such marriages as were not *de facto* marriages. The distinction is between marriages void because there is no contract, and those which are voidable merely. Over the former this court has jurisdiction, but not over the latter."

40 Anonymous, 24 Eq., 23.
Carris v. Carris, 24 Eq., 516.

We may summarize as follows:

(1) The pleadings only set up as a justification for the abandonment by the appellant that the respondent was physically and incurably impotent, while the evidence shows she was curable;

(2) The appellant did not insist upon even an examination of the respondent by a physician, but fully acquiesced in the course pursued by her; **10**

(3) The respondent was not wilful in her reticence to seek medical aid;

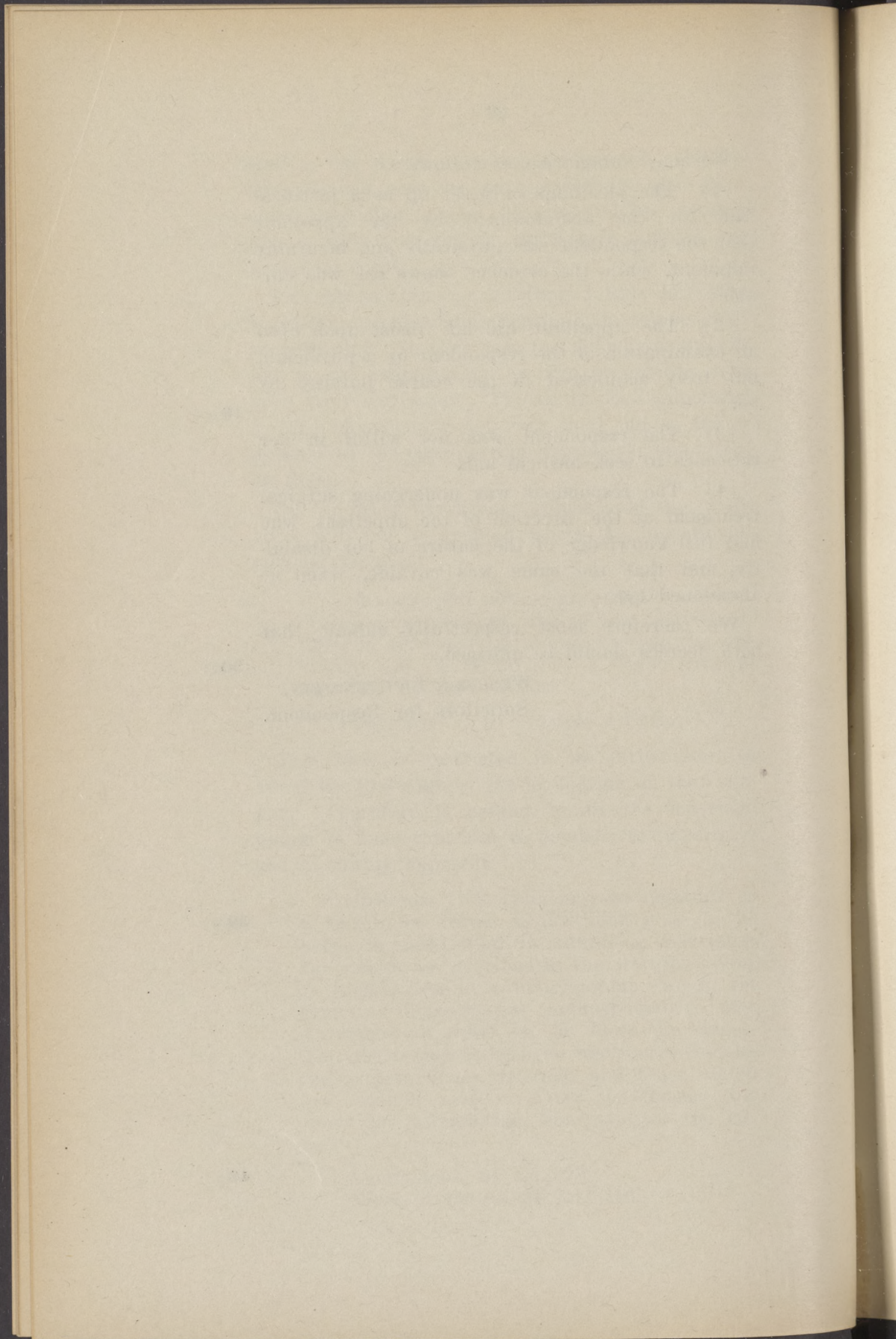
(4) The respondent was undergoing surgical treatment at the direction of the appellant, who had full knowledge of the nature of her disability, and that the same was curable, when he abandoned her.

We therefore most respectfully submit that both decrees should be affirmed. **20**

WELLER & LICHTENSTEIN,
Solicitors for Respondent.

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Notice of Appeal.

(Filed June 28, 1913).

In Chancery of New Jersey. 10

Between :

EDWARD V. GOERZ,

Complainant,

and

MATHILDA GOERZ,

Defendant.

On Bill &c.
Notice of
Appeal.

20

The defendant, Edward V. Goerz, hereby appeals from the final decree made in this Court in the above stated cause on the twenty-third day of June, Nineteen hundred and thirteen, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

30

Dated, June 28th, 1913.

MCDERMOTT & ENRIGHT,
Solicitors of Defendant.
FRANK P. MCDERMOTT,
Of Counsel.

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

FRANK P. MCDERMOTT,
Of Counsel with Defendant. 40

Petition of Appeal.**New Jersey Court of Errors and Appeals.**

(Filed July 16, 1913.)

Between :

EDWARD V. GOERZ,

*Complainant-Respondent,**and*

MATHILDA GOERZ,

*Defendant-Appellant.*On Appeal
from Chan-
cery.
Petition of
Appeal.

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

The petition of Edward V. Goerz, 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 twenty-third day of June, nineteen hundred and thirteen, in a certain cause wherein Mathilda Goerz was complainant and your petitioner was defendant, in this respect, to wit: that the decree adjudges that your petitioner without any justifiable cause abandons the said Mathilda Goerz, complainant therein, and separates himself from her and refuses and neglects to maintain and provide for her, and orders, adjudges and decrees as follows, to wit: "that the defendant, Edward V. Goerz, do pay to the complainant, Mathilda Goerz, or to her solicitor, the sum of Fourteen Dollars (\$14) payable in equal weekly installments on the Monday of each and every week from and after the signing of this decree and until the further order of the court to the contrary," *

Petition of Appeal.

* * , and "that the said defendant do further pay to the complainant or her solicitor, the costs of this suit to be taxed, and also a counsel fee of Two hundred Dollars (\$200) payable in installments of Twenty-five dollars per month, and that the said complainant do have execution therefor according to the practice of this Court."

And your petitioner humbly appeals from that part of the said decree which adjudges and decrees as aforesaid, and from the whole and every part thereof, upon the ground that the same is erroneous for that, as appears by the proofs in said cause your petitioner did not abandon the said complainant and separate himself from her without any justifiable cause, but on the contrary separated himself from her for good and sufficient cause, the said complainant having been impotent to consummate the marriage between her and your petitioner, and having for over three years refused to submit to an examination to ascertain if she might be cured by an operation to effect a cure, if such were possible, and because the said complainant was at the time of her marriage to your petitioner physically and incurably impotent to consummate the said marriage, of which fact your petitioner was ignorant at the time of said marriage and said marriage was never subsequently ratified by them.

And for that the said decree awarded to the said complainant the sum of Fourteen Dollars per week as alimony, when as appears by the proofs in said cause the said complainant was not entitled to alimony, and that under the proofs, even if entitled to alimony, the amount awarded is excessive.

Your petitioner therefore prays that the said decree of the said Chancellor may be in the par-

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.

MCDERMOTT & ENRIGHT,
Solicitors of appellant.
FRANK P. MCDERMOTT,
Of counsel with appellant.

10

Notice of Appeal.

(Filed, June 28, 1913).

In Chancery of New Jersey.

Between :

MATHILDA GOERZ,

Petitioner,

and

EDWARD V. GOERZ,

Defendant.

On Petition
for Nullity.
Notice Of
Appeal.

20

30

The above named petitioner, Edward V. Goerz, hereby appeals from the whole and every part of the final decree made in this Court in the above stated cause bearing date and filed on the twenty-third day of June, Nineteen hundred and thirteen, to the Court of Errors and Appeals in the last resort in all causes.

Dated, June 28th, 1913.

MCDERMOTT & ENRIGHT,
Solicitors of Petitioner.
FRANK P. MCDERMOTT,
Of Counsel.

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

40

FRANK P. MCDERMOTT,
Of Counsel with Petitioner.

Petition of Appeal.

(Filed, July 16, 1913).

New Jersey Court of Errors and Appeals.

Between :

MATHILDA GOERZ,

*Petitioner-Appellant,**and*

EDWARD V. GOERZ,

*Defendant-Respondent.*On Appeal
from Chan-
cery.
Petition of
Appeal.

10

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

The petition of Edward V. Goerz, 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 the State of New Jersey, bearing date the twenty-third day of June, nineteen hundred and thirteen, in a certain cause wherein your petitioner was petitioner and the said Mathilda Goerz was defendant, in this respect, to wit: That the said decree adjudges that your petitioner was not entitled to the relief prayed for in his said petition and that the said petition be and the same was thereby dismissed, but without prejudice, and that your petitioner do pay to the said defendant her costs of suit incurred and to be incurred, to be taxed, and that said defendant do have execution therefor according to the practice of this Court.

20

30

And your petitioner hereby appeals from that part of said decree which adjudges and decrees

40

Petition of Appeal.

as aforesaid and from the whole and every part thereof upon the ground that the same is erroneous, for that, as appears by the proofs in said cause, your petitioner was entitled to the relief prayed for in his said petition and a decree in accordance with the prayer of said petition should have been made in his favor, declaring the pretended marriage between your petitioner and the

10 said defendant to be null and void, for the reason that said defendant at the time of said marriage was physically and incurably impotent to consummate the said marriage, of which impotence your petitioner was ignorant at the time of said marriage, which marriage was never subsequently ratified.

And for that the said decree awarded to the said defendant her costs of said suit, and directed that she have execution therefor, when it

20 appears by the proofs in said cause that the said defendant was not entitled to her costs of suit.

Your petitioner therefore prays that the said decree of the said Chancellor may, in the particulars aforesaid, be 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.

30

MCDERMOTT & ENRIGHT,
Solicitors of appellant.
FRANK P. MCDERMOTT,
Of counsel with appellant.

40

Bill of Complaint.

(Filed, Jan. 8, 1913.)

In Chancery of New Jersey.

To his Honor, EDWIN R. WALKER,
Chancellor of the State of New Jersey.

Humbly complaining, showeth unto your Honor, your oratrix, Mathilda Goerz, of the Township of Weehawken, in the County of Hudson and State of New Jersey: 10

1. That she was lawfully joined in the bonds of matrimony to her present husband, Edward V. Goerz, at the City of Jersey City, in the County and State aforesaid, on the eighth day of May, nineteen hundred and nine, by Henry Mahnken, a Justice of the Peace.

2. That after their said marriage, your oratrix and her husband lived together at various places in the County of Hudson, until the twenty-eighth day of September, nineteen hundred and twelve, when he abandoned your oratrix at Number 37 Pleasant Avenue, in the Town of Union, and has never since returned to her. 20

3. That he at that time packed up all of his clothes and other belongings and went away from your oratrix and told her that he would not return to her. 30

4. Your oratrix charges that ever since said twenty-eighth day of September, nineteen hundred and twelve, her husband, the said defendant, has abandoned your oratrix without justifiable cause, and has refused and neglected and still refuses and neglects to maintain and provide for her.

5. That said defendant is employed at the City National Bank of the City of New York, where he receives a salary of Fifty Dollars (\$50) a week, and that he is abundantly able to maintain and support your oratrix in a manner suitable to their station in life. 40

Bill of Complaint.

6. Your oratrix was a bona fide resident of the State of New Jersey when this cause of action arose and has lived continuously in said State of New Jersey all her life, where she still resides.

In tender consideration whereof, and forasmuch as your oratrix can only obtain relief in this Honorable Court.

- 10 To the end thereof, that the said Edward V. Goerz may answer the premises, but without oath, and that he may be ordered and decreed to provide such suitable support and maintenance, to be paid and provided by him, or made out of his property, for your oratrix, and for such times as the nature of the case and the circumstances of the parties render suitable and proper; and that the said defendant may be compelled to give reasonable security for such maintenance and
- 20 allowance, and to pay the same from time to time under the compulsory order of this Court, as provided by statute, and that she may have such further and other relief as may be equitable and just.

- 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
- 30 Edward V. Goerz, commanding him by a certain day and under a certain penalty thereto 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 will ever pray, &c.

- 40 WELLES & LECHTENSTEIN,
Solicitors for and of Counsel with Complainant.

Bill of Complaint.

STATE OF NEW JERSEY, }
 County of Hudson. } ss. :

MATHILDA GOERZ, of full age, being duly sworn according to law, upon her oath deposes and says that she is the complainant in the foregoing bill of complaint named, and that her complaint is not made by any collusion between her and the defendant for the purpose of dissolving their marriage, but in truth and good faith for the causes set forth in said bill. 10

Deponent further says that she was lawfully joined in the bonds of matrimony to her present husband at the City of Jersey City, on the eighth day of May, 1909, as set forth in said bill of complaint; that deponent and her husband, said Edward V. Goerz lived and co-habited together at various places in the County of Hudson as set forth in the said bill of complaint until the twenty-eighth day of September, 1912, when he abandoned her as therein set forth at Number 37 Pleasant Avenue, in the Township of Weehawken, and has never since returned to her. 20

Deponent further says that since said twenty-eighth day of September, 1912, her husband, the said Edward V. Goerz has abandoned deponent without justifiable cause and has refused and neglected and still refuses and neglects to maintain and provide for her. 30

Deponent further says that said defendant is employed in the City National Bank of the City of New York, where he receives a salary of Fifty Dollars (\$50) a week as set forth in said bill of complaint.

MATHILDA GOERZ.

Sworn and subscribed to before me }
 this 19th day of December, 1912. } 40

RICHARD W. GUTHEIL,
 Notary Public, of New Jersey.

Answer.

(Filed, May 5, 1913).

In Chancery of New Jersey.

Between :

MATHILDA GOERZ,

10

*Complainant,**and*

EDWARD V. GOERZ,

*Defendant.*On Bill &c.
Answer.

The Answer of Edward V. Goerz, defendant, to the bill of complaint of Mathilda Goerz, complainant.

20 This defendant, for answer unto the said bill of complaint or unto so much thereof as he is advised it is material or necessary for him to make answer unto, answering says.

(1) He admits that a form or ceremony of marriage took place between the complainant and this defendant at the City of Jersey City in the County of Hudson on the eighth day of May, nineteen hundred and nine, such ceremony having been performed by Henry Mahnken, a Justice of the Peace, but denies that the complainant was lawfully joined in the bonds of matrimony to this defendant and says that the said pretended marriage between the complainant and this defendant was, and should be declared, null and void for the reason that the said complainant at the time of said pretended marriage was physically and incurably impotent to consummate a marriage.

30

40 (2) This defendant admits that the complainant

Answer.

and this defendant lived at various places in the County of Hudson after said pretended marriage, until the twenty-eighth day of September, nineteen hundred and twelve, but he denies that they lived together as husband and wife, the said complainant being impotent and unable to perform her functions as a wife.

This defendant admits that he left the house in which he and the complainant had lived at No. 37 Pleasant Avenue, in the Town of Union, and has not since returned to the complainant, but denies that such leaving, under the circumstances, amounted to an abandonment of the complainant. 10

(3) Defendant admits that he removed his clothes and some of his other belongings and went away from the complainant and that he told her he would not return to her, but states that at that time and previously he had stated to her that he could not continue to live with her because of the fact that she was impotent and unable to perform her duties as a wife. 20

(4) This defendant denies that he has since the twenty-eighth day of September, nineteen hundred and twelve, abandoned the complainant without justifiable cause, and insists that his conduct was justifiable in view of her condition as stated in this Answer. 30

(5) This defendant admits that he is employed by the National City Bank of the City of New York, where he receives a salary of about \$48, not \$50, per week, but he states that he has been obliged, since his employment in said bank, to use a large part of his salary in the payment of indebtedness which existed before he was employed at said bank, and that the actual amount of his income available for the payment of living 40

Answer.

expenses is much less than the amount of his salary. Defendant has no means or property outside of his salary. Complainant, on the other hand, is possessed of large means and property of great value, and is abundantly able to maintain and provide for herself, in a manner suitable to her station in life.

- 10 (6) And this defendant, further answering, says that on or about the twenty-fourth day of February, nineteen hundred and thirteen, and before any papers in this cause were served upon him or he had any knowledge of the filing of the bill of complaint herein, he filed a petition in this Honorable Court praying that the said pretended marriage between the complainant and this defendant might be declared by the decree of this Court to be null and void, alleging as cause there-
 20 for that the said complainant herein was physically and incurably impotent to consummate a marriage.

And your petitioner prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

EDWARD V. GOERZ,
 Defendant.

McDERMOTT & ENRIGHT,
 Solicitors of Defendant.

30

(Replication in common form duly filed.)

Petition for Divorce.

(Filed, Feb. 24, 1913).

In Chancery of New Jersey.

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

The petition of Edward Valentine Goerz, of the Borough of Brooklyn in the County of Kings and State of New York, respectfully shows: 10

(1) That on the eighth day of May, nineteen hundred and nine, a form or ceremony of marriage took place between your petitioner and one Mathilda Symes, the defendant in this suit, at the City of Jersey City in the State of New Jersey, the said ceremony having been performed by Mahnken, a Justice of the Peace of Hudson County, New Jersey. 20

(2) At the time of said marriage the defendant was physically and incurably impotent to consummate the said marriage by reason of a malformation of the parts of generation or some other physical cause, the exact nature of which is to your petitioner at present unknown. Petitioner was ignorant of defendant's impotence at the time of his marriage to her and has not subsequently ratified the said marriage. 20

(3) Petitioner and defendant were bona fide residents of the State of New Jersey at the time of said ceremony, residing at Weehawken in the County of Hudson, and defendant has continued to be and now is a resident of the State of New Jersey, residing at 547 Gregory Avenue, Weehawken, Hudson County. 30

(4) Your petitioner prays that said pretended marriage between your petitioner and the said defendant may be declared by the decree of this honorable Court to be null and void for the 40

Petition for Divorce.

cause aforesaid, pursuant to the statute in such case made and provided; and that your petitioner may have such other relief as shall be just.

And your petitioner will ever pray &c.

McDERMOTT & ENRIGHT,

Solicitors for and of Counsel with petitioner.

10 STATE OF NEW YORK, }
County of New York. } ss.:

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

EDWARD VALENTINE GOERZ.

20

Sworn and subscribed before me, }
a Notary Public, duly commis- }
sioned and sworn, and qualifed to }
take oaths and affirmations in the }
County and State aforesaid, this }
twentieth day of February, nine }
teen hundred and thirteen. }

FREDERICK N. GILBERT,

Notary Public,

30

New York County, No. 196,

New York, Register No. 3216.

(Notarial Seal)

40

Answer.

(Filed, Mar. 14, 1913),

In Chancery of New Jersey.

Between :

EDWARD VALENTINE GOERZ,

*Petitioner,**and*

MATHILDA SYMES GOERZ,

*Defendant.*On Pet. &c.
Answer.

10

The answer of Mathilda Goerz, styled above as Mathilda Symes Goerz, defendant, to the petition of Edward Valentine Goerz, petitioner.

1. This defendant admits it to be true that a form or ceremony of marriage took place between the petitioner and defendant as is alleged in the petition.

2. This defendant denies that at the time of the said marriage she was physically and incurably impotent to consummate the same by reason of the defect in the petitioner's petition alleged, but on the contrary says that if the petitioner has not consummated said marriage it was on account of his own physical defects, and that this defendant was at the time of said marriage, from thence hitherto has been and still is apt for coition as will appear on inspection.

30

3. Defendant admits that she and the petitioner were both bona fide residents of the State of New Jersey at the time of said ceremony, residing in the County of Hudson, and defendant has continued to be a resident of said County of Hudson and is now residing at 547 Gregory Avenue, in the Township of Weehawken.

This defendant prays that she may be hence dismissed with her reasonable costs and charges in this behalf most wrongfully sustained.

40

MATHILDA GOERZ,
Defendant.

WELLER & LITCHTENSTEIN,
Solicitors for Defendant.

Testimony.
In Chancery of New Jersey.

	Between		
		MATILDA S. GOERZ,	
		<i>Complainant,</i>	}
10		<i>and</i>	
		EDWARD V. GOERZ,	
		<i>Defendant.</i>	On Bill, etc.

	Between		
		EDWARD V. GOERZ,	
		<i>Petitioner,</i>	}
20		<i>and</i>	
		MATILDA S. GOERZ,	
		<i>Defendant.</i>	On Petition, Etc.

30 Transcript of testimony taken in the above entitled causes before me, Charles H. Hartshorne, Advisory Master, at my offices, No. 239 Washington Street, Jersey City, New Jersey, on the 20th day of June, 1913, at ten o'clock A. M. in the presence of:

JOHN WELLER, E:Q., solicitor for Mathilda S. Goerz, and
FRANK P. McDERMOTT, ESQ., solicitor for Edward V. Goerz.

40 It is agreed that the testimony shall be taken stenographically and the signatures of the witnesses waived.

Mathilda S. Goerz—Direct.

MATHILDA S. GOERZ, SWORN.

DIRECT EXAMINATION BY MR. WELLER:

Q. Mrs. Goerz, where do you live? A. 710 Hudson Street, Hoboken, N. J.

Q. You are the complainant in this cause? A. Yes, sir.

Q. And your full name is Mathilda Symes Goerz? A. Yes, sir. 10

Q. How old are you? A. Twenty-eight.

Q. How long have you lived in the State of New Jersey? A. All my life.

It is stipulated and agreed by and between the counsel for the respective parties in the above entitled cause and in another cause pending in this Court and referred to Charles H. Hartshorne, Esq., Advisory Master, under the title of Edward V. Goerz, Petitioner, and Mathilda Symes Goerz, Defendant, that the testimony already taken in the above entitled cause shall, so far as the same is germane to the issues in the last mentioned cause, be considered as taken in said last mentioned cause and used and considered therein. 20

BY MR. WELLER: 30

Q. Are you married? A. Yes, sir.

Q. When were you married? A. May 8th, 1908.

Q. 1909? A. Yes, sir.

Q. Where? A. Henry Mankin; I don't know if his first name is "Henry."

Q. Where? A. In Paterson Street.

Q. Jersey City? A. Yes, sir.

Q. By Henry Mankin, what was he? A. Justice of the Peace. 40

Mathilda S. Goerz—Direct.

Q. Who was by when you were married? A. Miss Maria Harvey.

Q. Miss Harvey, is she in Court? A. Yes, sir.

Q. Well, now, when you were married, your husband, had he been married before?

10 MR. MCDERMOTT: I object to that, and move that it be stricken out as irrelevant and immaterial.

THE MASTER: Strike it out.

BY MR. WELLER:

Q. Where did you live immediately after your marriage? A. No. 8 Fulton Street, Weehawken, New Jersey.

Q. How long did you live on Fulton Street, about? A. Eleven months.

20 Q. And then where did you go to live? A. We moved then to Nutley, New Jersey.

Q. How long did you live in Nutley? A. One year and seven months.

Q. Then where did you go to live? A. Then we moved back to Hauxhurst Avenue.

Q. Where? A. Weehawken.

Q. How long did you live there? A. Six months.

30 Q. And then where did you go to live? A. 37 Pleasant Avenue, Union Hill.

Q. And you lived there until what time? A. Until October 24th.

Q. October or September? A. October.

Q. What year? A. Nineteen hundred and twelve.

Q. I mean, how long did you and your husband live there together? A. Until September 28th.

40 Q. Did you have a servant girl at that time? A. Yes, sir.

Mathilda S. Goerz—Direct.

Q. On September 28th? A. Yes, sir.

Q. What was her name? A. Annie Gardner.

Q. Had you been having any trouble with your husband before that time, if so, tell us just what it was? A. Well, we had trouble.

Q. Tell us what it was? A. Well, he failed to have sexual intercourse with me, and that was our main trouble. 10

Q. Well, what advice did he give you at any time? A. To be examined by a physician.

Q. What time was that, about, as near as you can remember? A. Well, I should say, about four weeks before he left me.

Q. Did he tell you who to go to to be examined? A. Yes, sir.

Q. Who? A. Dr. Stellwagen.

Q. And did you go to Dr. Stellwagen? A. I had him come to the house. 20

Q. Did he examine you? A. Yes, sir.

Q. At your house? A. Yes, sir.

Q. Did you afterwards tell your husband what he said to you? A. Yes, sir.

Q. What did he say to you?

MR. McDERMOTT: I object to the question, what he told her. 30

THE MASTER: I will sustain the objection.

BY MR. WELLER:

Q. What did you tell your husband? A. I told him that the Doctor said that it was nothing serious; that it could be remedied within a few months.

Q. That was after the examination, was it? A. Yes, sir. 40

Q. What else did you tell him, or what did he

Mathilda S. Goerz—Direct.

say? A. Why, he said something about me, that it was nonsense to have a thing done of that sort; he said that that was not nature.

Q. Did you go on and have it done? A. I did.

Q. You mean that you had an operation, or something done by the Doctor? A. Yes, sir.

10 Q. After you had this done by the Doctor, did you inform your husband? A. Yes, sir.

Q. Did you request him to again have sexual intercourse with you?

MR. McDERMOTT: I object to that question as leading.

Question withdrawn.

BY MR. WELLER:

20 Q. What did you say to your husband, about what had been done? A. I simply told him how happy I was that it was done, and he said he didn't feel inclined that way, and that was all.

Q. Did he attempt to have any thing to do with you after that? A. No, he didn't he frankly refused.

30 Q. What did he say and what did you say? A. He said, that he didn't feel inclined that way, to have sexual intercourse with me, and that was all that was said. I tried to induce him that way because I felt it was my duty, but he didn't seem to want to at all.

Q. Up to the time that he told you to go to Dr. Stellwagen, had he ever asked you to submit to an examination? A. Yes, sir.

Q. When? A. On several slight occasions, but the matter was dropped.

40 Q. How long before the time, before you did have an operation by Dr. Stellwagen, did your husband advise you to go? A. Why, we had

Mathilda S. Goerz—Direct.

talked it over for quite a while after we were married and it worried us both very much, and I thought that nature would take its course.

Q. Did you ever refuse to have an operation performed? A. I did according to what he said.

Q. Before that, did you refuse to have an operation performed; did he ever ask you and you refused? A. Well, an operation would come up in the matter; I didn't think that it was that serious; I thought that nature would take its course; I didn't know what he thought, but that is just what I thought. 10

Q. What was said about an examination before this time that you did go to the Doctor? A. Well, he asked me at one time, I remember very distinctly if I would go to a woman Doctor, and I said no, I didn't think it was necessary, if we tried this ourselves we could eventually have it just the same in the proper way. 20

BY THE MASTER:

Q. The request for you to go to a woman doctor was only for an examination and advice? A. Yes, sir.

BY MR. WELLER:

Q. Now, then, after this examination, or after you went to Dr. Stellwagen, how long did your husband stay with you? A. Two weeks. 30

Q. You say he positively declined to have sexual intercourse with you? A. Absolutely.

Q. Did he continue that up to the time when he left you? A. Yes, sir, absolutely.

Q. That is, he continued to refuse? A. Yes, sir.

BY THE MASTER:

Q. Did you request it of him? A. I did. 40

Mathilda S. Goerz—Direct.

BY MR. WELLER:

Q. Now, tell us, in your own way what took place before he left and what led up to his leaving? A. Just what?

Q. Was there anything about a letter or telegram?

10 MR. McDERMOTT: I object to the question as leading.

THE MASTER: I will allow the question.

A. Oh, yes, sir.

Q. Just tell us all about it, tell us how the husband acted? A. Well, the beginning of his vacation was the ninth of September, and two months before that he had been working very late, never came home to supper for several nights, I suppose
20 two or three nights a week he would be working late; of course, I never seemed to understand that there was anything wrong.

MR. McDERMOTT: I ask to have that stricken out.

THE MASTER: No.

A. (Witness continuing). Now, then, as I said, his vacation started the ninth of September, and on that morning he said to me that he
30 would have to go to the office; I said, what for, well, he said, he had a certain man to see about some papers in his business and I naturally thought that it was all right; he had left about twenty minutes when a telegram came; it was addressed to him; I opened it and in it, it said—

Q. When the telegram came—what happened when the husband came home? A. He came home at one o'clock that night; I was in a nervous state
40 and I showed him the telegram and he snatched it out of my hand and said, that is nothing, it

Mathilda S. Goerz—Direct.

is only one of the women I have been going around with; I said "Ed, I can forgive you now but I want you to be true to me."

Q. What did he say? A. He said, I can't do it and I am not going to say it.

Q. Go on and tell us the whole conversation at that time? A. Then, I telephoned his sister; I thought perhaps she could do something with him, because I realized that he was on the wrong road, and I felt that I was going to do everything in my power. 10

MR. McDERMOTT: I object to that.

THE MASTER: Strike that out.

BY THE MASTER:

Q. Tell us what you said yourself to your husband, but not any conversation you had not in his presence? A. Well, I kept on pleading with him, and he said in the beginning that he was going away; he said he was not going to live with me, and that he had better live apart; I said there was no necessity of that, I was always true to him and I expected him to be true to me; I said I was willing to do what I had done and he said he would not live with me. 20

Q. When did he tell you that he would not live with you? A. He had been acting strangely, as I said, for a month before, and then he said this—I said "Ed, what are we going to do", he said, "I am going to leave you." 30

Q. When did he say that? A. Why, after September 9th, on some day I don't just know the date; it was during his vacation.

BY MR. WELLER:

Q. Was it before or after the operation? A. It was after the operation. 40

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Q. Go right along and tell us what took place after that? A. Then I said to him, don't you know you will wreck my life by leaving me, and I pleaded with him for two weeks, and then he insisted on going still; he told me on Friday that he would come home and pack his trunk; that he was going to see a lawyer and he would pack his trunk. In the afternoon he came home from the lawyers, and while he was packing his trunk; I didn't seem to really realize what he was doing.

10 Q. What day was that? A. That was on the 28th, the day that he left, September 28th; while he packed his trunk, Anna, the girl said that dinner was ready and I said I didn't care for anything to eat; he said, that he would not eat unless I ate something, so I went in and had something to eat with him; that is I sat at the table, and while he was sitting there, he took his wedding ring off and threw it at me across the table.

20 Q. His wedding ring? A. Yes, sir, his wedding ring.

BY THE MASTER:

Q. That was on the 28th of September? A. Yes, sir, and also a locket, and then when we got up from the table and we went in the dressing room and he finished packing his trunk, and I said to him, well, as long as you want to give me back the locket you gave me I will give you back my engagement ring, and he took it, he handed me back the locket I gave him and I gave him back the locket he gave me.

30 Q. You each had a locket that you had received from the other and you each gave it back? A. Yes, sir.

Q. You say you gave back to him your engagement ring? A. Yes, sir.

40

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BY MR. WELLER:

Q. Did you think at that time that he was going away?

MR. McDERMOTT: I object to that.
Objection overruled.

Q. Go on with your story. A. When I handed him the engagement ring it kind of affected me for a moment, but it was over in the fraction of a second, and then he finished packing his things, and he said, that he was going to pack his books, that is most of them, that he could get in a valise, and the rest of them that were on the shelf were sent to him the following week; then it was about a quarter after eight o'clock when he finished packing and I was lying on the couch and he came over and he kissed me, and he said, that he hoped that this step that we were both taking was for the best, and I said, not me, yourself; he said, it would be better for the both of us and I didn't make a reply and he also went up to Anna and said good-by to her, and told her to stay with me and take good care of Mrs. Goerz, meaning myself, and she said she would, and he passed out through the door, and he said, well, I don't know where I am going to sleep tonight and then he went out of the door and that was the last time that I saw him.

Q. Now, that time when he was getting ready to pack, did you or did you not try to get him to remain?

MR. McDERMOTT: I object to the question.

THE MASTER: I sustain the objection.

BY THE MASTER:

Q. Did you do anything to induce him to remain there? Tell what it was? A. I pleaded

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with him, and I cried and I begged him not to leave me and that I was willing to do anything I could for him as I always had done; then, before he went, he said he would pay for the moving expenses providing I would move into town and would have Richter as the mover and I said I would, I said, Ed, what are you going to do about giving me money every week, he said the lawyer
 10 would take care of that; he said I will pay you off all the money I owe you if God will only spare me.

Q. What did he owe you?

MR. MCDERMOTT: I object to the question.

THE MASTER: I will allow it.

A. Why, he owed me; do you want the exact amount? One note that I helped him with was a
 20 matter of \$2500 and the other was \$1500.

Q. Did you ever get that back? A. No, sir.

BY THE MASTER:

Q. When you say "You helped him"; what do you mean? A. I gave him the money for his debt.

Q. At two different times? A. Yes, sir.

Q. \$2500 at one time and \$1500 at another time? A. Yes, sir.
 30

BY MR. WELER:

Q. Now, these things that you sent afterwards, some things were sent to him after he went away? A. Yes, his pictures.

Q. Who sent them? A. I did, and the chiffonier and his trunk.

Q. Where did you send them? A. In Montague Street, I am pretty sure it was No. 116.

Q. Why did you do that? A. Because he wanted them; he wanted more, but I refused and told
 40

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him no, those things were given to me and they ought to be mine.

Q. Did he after the 28th of September, 1912, ever come back to see you? A. No, sir.

Q. Has he since that time ever written you any letter? A. No, sir.

Q. Did he pay the moving man? A. No, I had to call him up, and he said absolutely no; that was the answer; she got this, that is Mrs. Richter. 10

Q. Where did your husband work? A. At the National City Bank, New York City.

Q. Did he tell you how much his salary was? A. Yes, sir.

Q. How much was it? A. \$2500 a year.

Q. What income have you got, Mrs. Goerz? A. A year, it was about \$400. 20

BY THE MASTER:

Q. Your income is about \$400? A. Yes, sir.

BY MR. WELLER:

Q. You don't know the exact amount? A. No, sir, it is about \$400.

Q. Who manages your affairs for you? A. My brother-in-law, Mr. Rippe.

Q. He is here? A. Yes, sir. 30

Q. Mrs. Goerz, I forgot to ask you what was your maiden name? A. Mathilda Symes.

Q. You are a daughter of the former Captain James H. Symes? A. Yes, sir.

BY THE MASTER:

Q. The National City Bank of New York, your husband is in? A. Yes, sir.

Q. What division is he in? A. I know he is in a foreign position; I know he holds a high position. 40

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BY MR. WELLER:

Q. I think I asked you if he had ever given you any money since he left you? A. You did not ask me that, but he did not.

CROSS EXAMINATION BY MR. McDERMOTT:

10 Q. Mrs. Goerz, on this occasion, on September 28th, had his vacation terminated? A. Yes, sir.

Q. Was it in his vacation? A. It was a week after the end of his vacation.

Q. He had two weeks' vacation? A. Yes, sir.

Q. What sort of a locket was it which you gave back to him on that occasion? A. Why, it was a round locket with a diamond in the center.

Q. That was a locket, I understand you to say, which he had given you? A. No, sir.

20 Q. The locket which you gave back to him? A. I thought you meant the locket that I gave to him.

Q. I meant the locket that he returned to you? A. It was just a plain locket.

Q. It was just a plain locket? A. Just a plain locket with a monogram on it.

30 Q. And that is the locket which you returned to him, or he returned to you? A. He gave it to me originally.

Q. And on the 28th of September he returned it to you? A. Yes, and he gave it back to me.

40 Q. I thought he gave you another one which he had? A. He gave me his locket which I gave back to him as a present, and I said, since you have done that I will give you the locket you gave to me, and he said, well, we will call it square, and he gave me back his locket and I gave him back the locket which he gave me.

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Q. So that was merely an offer to exchange on both sides? A. Yes, sir.

Q. I understood you to say that you gave him back an engagement ring at the same time? A. Yes, sir.

Q. And that I suppose you had had for several years? A. Yes, sir.

Q. And then he kissed you good-by and he said that he hoped that you would both be happier for the step that was taken? A. Yes, sir. 10

Q. Then he asked Anna to take care of you? A. Yes, sir.

Q. And he went out of the house? A. Yes, sir.

Q. When did you say you were married? A. May 8th, 1909.

Q. And you were married by a Justice of the Peace? A. Yes, sir. 20

Q. Do you think that you have told us all that took place during that vacation time? A. No, sir, I have not told you all.

Q. Part of that vacation you and he spent together up at Albany? A. Yes, sir.

Q. And a part of it you spent at his father's home somewheres near Hartford, Connecticut. A. Yes, sir.

Q. You know his father and mother? A. Yes, sir. 30

Q. You saw them here in Court this morning? A. Yes, sir.

Q. That was towards the end of his vacation? A. That was the last week of his vacation.

Q. And a few days before this incident of leaving, that you have mentioned? A. Yes, a week before, just. 40

Q. Who was your family physician in Weehawken? A. Dr. Stellwagen.

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Q. Was he the physician for some other members of the family, too; I mean your family? A. Yes, sir.

Q. How long had you known him? A. I have known him, not socially quite a long time, but I never knew him, I just knew him only a year previous to when I had him attend me.

10 Q. Was that before your marriage? A. This was a year before the examination.

Q. I understood that he was physician to not only yourself but some other members of the family? A. Yes, sir, he has been.

Q. And he has attended for a number of minor troubles? A. Yes, sir.

Q. You have known him about how many years? A. I should say about seven years.

20 Q. Did you know this woman physician that Mr. Goerz suggested to make this examination? A. No, sir.

Q. Didn't it seem to you a delicate way to have this examination to have a woman instead of a man; didn't it seem more delicate to you to have the examination made at that time by a woman than by a man? A. It would not be so humiliating.

30 Q. You would not consent to it? A. No, sir.

Q. On another occasion, he mentioned a New York Doctor, a man doctor, Doctor Cussler? A. No, sir.

Q. You remember another doctor being mentioned besides the woman doctor? A. I remember this distinctly, that my husband said, we want to go to someone that does not know us well because, in part it would be more or less a disgrace, but Dr. Cussler was not mentioned then.

40 Q. But it was some doctor? A. No, I don't

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remember any other Doctor's name, only my own Doctor's.

Q. But you know on several occasions that he did want you to go to some doctor? A. Yes, sir.

Q. And the woman Doctor you turned down? A. I turned her down because we didn't speak very much about the matter, he just insinuated that I could have a woman doctor, and the thing passed off in such a way that it was not serious. 10

Q. Didn't he say that he wanted an examination made by a reputable physician? A. No, sir.

Q. Or a physician in whom he had confidence? A. No.

Q. Nothing like that? A. No, nothing like that.

Q. You knew something of Dr. Stellwagen's record, didn't you? A. Oh, yes, sir.

Q. You know that he had been up at the North Hudson Hospital, didn't you? A. That had nothing to do with the matter. 20

Q. You knew that? A. Yes, sir.

Q. And his reputation in that neighborhood generally, you knew something about that, didn't you? A. I did.

Q. When did you say, Mrs. Goerz, that you had this operation, or whatever it was by Dr. Stellwagen? A. Why, it was before his vacation, possibly a week before his vacation; I don't remember the date. 30

Q. Can you tell me the date? A. No, sir, I can not. I know it was just about a week before his vacation; it was during that week previous to this vacation.

Q. When did you say that you told him about this? A. Told him about the examination?

Q. Yes. A. Why, he told me to have it done that day. 40

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Q. When did you tell him that you had had it done? A. On the day of the examination he called me up at half past seven o'clock and told me that he could not get home and I told him that the Doctor had examined me, and I told him how happy I was about it.

10 Q. You said the Doctor had examined you on that day? A. Yes, sir.

Q. Subsequently there was some sort of an operation or was it just an examination? A. It was just an examination.

Q. Was it after that, at some later time an operation? A. Well, I don't know whether I would call it an operation.

Q. Well, whatever it was? A. But whatever necessary was done.

20 Q. But not on that occasion? A. No, not on that occasion.

Q. On that occasion there was an examination only? A. Exactly, on that occasion there was an examination only.

Q. When was this examination or whatever was necessary as you described it, performed? A. Why, I don't know the date.

30 Q. How long after the day of the examination, after the first examination? A. Well, it was done two weeks before he left, almost to the day after he left; it was started then and it was done gradually, not all at once.

Q. When was it completed? A. Well, it took several months, because I had it done gradually.

Q. Then it was completed, the operation was completed, some months after he left you? A. Yes, sir, all the treatments.

40 Q. So that you were through with it? A. Yes, sir, I was through with it.

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Q. Can you give me the time when that was completed? A. No, sir.

Q. You said several months? A. All the winter months of 1912 and 1913.

Q. Since that operation was completed have you sent any word to Mr. Goerz that it was completed? A. No, sir,—

Q. No, I don't want that; have you sent him any word? A. No, sir. 10

Q. I gather from your testimony, Mrs. Goerz, that you and your husband lived pleasantly, in most respects, that is a fact? A. Why, yes, we lived together; we had little disagreements but they didn't amount to anything.

Q. All of your disagreements except this one thing were very trivial? A. Yes, sir.

Q. And this one thing did stand between you? A. Yes, sir. 20

Q. The one thing which I refer to, was this failure to have this sexual intercourse? A. Yes, sir.

Q. That did? A. Yes, sir.

Q. And he attempted to have such intercourse? A. Not so very frequent.

Q. He attempted it frequently? A. Yes.

Q. You and he occupied the same bed? A. Yes, sir. 30

Q. Isn't it a fact that he did seek that during this whole time that you were living with him?

A. Yes, sir.

Q. And you didn't consider it a necessary part of marital relations? A. Yes, I did, but I thought that nature would take its course.

Q. Have you not said repeatedly that you did not think it a part of your marriage relations?

A. No, sir. 40

Q. Didn't you say that to his father or to his

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mother? A. No, sir, I said that it was nature and that it would take its course; if I thought it was going to end so serious as all that perhaps I would have done it before, but having no mother I did not have any one to go to and his mother I did not care to go to.

Q. You have a married sister, haven't you?

A. Yes, sir.

10

Q. She has children, hasn't she? A. Yes, sir, one.

Q. And your relations with her are pleasant?

A. Yes, sir.

Q. And there was no reason why you should not have gone to her? A. Why, I would have if I had thought it was going to be so serious.

20

Q. You didn't look upon it as a serious part of your marriage relation? A. No, I thought that nature would take its course.

Q. But for over three years there was nothing in the course of nature, to make the situation any better? A. No, sir.

Q. Do you remember the visit to the farm where Mr. and Mrs. Goerz, the father and mother of your husband lived? A. Yes, sir.

Q. Your sister went down there with you? A. Yes, sir, my sister went down there with me.

30

Q. And met at Hartford, isn't that a fact? A. Yes, sir.

Q. And then went down to the farm? A. Yes.

Q. And you did have a talk with his father and mother? A. Yes, sir.

Q. About this very thing? A. Yes, sir.

40

Q. And you remember telling them that he had tried and tried and that he was unable to have any relations with you? A. Well, I said to him that it was not my fault nor was it his fault, that

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it was equal, that it was not my fault any more than his, because I thought that nature would take its course, and his father made the reply that that was nothing, that he had heard of that thing in Germany, he made that remark right after I told him, on some young friend of his in Europe and the Doctor had performed the necessary operation.

10

Q. You had talked with both of them about his impotency to have these relations? A. Yes, sir.

Q. And you also said that your husband had tried? A. Yes, sir, that my husband had tried.

Q. And he had been unsuccessful? A. Yes, sir.

Q. And at no time was he ever successful in having sexual intercourse with you? A. No, only two weeks before he had not.

Q. Nothing like that? A. He could have two weeks before he left.

20

Q. I understood that this operation was not completed until some months after he was gone away? A. It was not completed, on account of the treatment, that which was necessary, but when it is begun, that is all that is necessary.

Q. You were told that? A. Oh, no, I knew that.

Q. Why did you continue the treatment if all that was necessary was done so long before? A. On account of my health.

30

Q. On account of your health? A. Yes, sir.

Q. This treatment was by this same Doctor? A. Exactly.

Q. And was accompanied with manifestations of affection on his part? A. No.

Q. Have you not said so? A. No, my husband said it.

40

Q. Have you not said he kissed you? A. No.

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Q. The operation or treatment which he performed consisted of some kind of dilation of the vagina, I understand? A. Yes, sir.

Q. And you say that continued for all those months after your husband went away? A. Yes, sir, over all the winter months.

10 Q. You said that your husband said something about this manifestation of affection? A. He said, when I told him what the examination amounted to, he says, well, why didn't you let him try; that is what he said; those were his words, and he said, I suppose he tried to hug you and kiss you, and I said, Ed, that is the first thing you think of, and he said why didn't you let him try to get there; that is just the expression that he used.

20 Q. When did you say that was? A. That was the next day after the examination at the breakfast table in the morning.

Q. The first examination? A. Yes, sir, the first examination.

Q. He didn't like the Doctor much? A. He did until I told him that there was nothing in the examination; he told me to have Dr. Stellwagen; if he hadn't told me I would not have had him.

Q. He was your family physician? A. Yes, sir.

30 Q. And all the rest of these Doctors you would not have? A. He didn't mention any other Doctors; he did not mention only Dr. Cussler.

Q. But without hearing the name of the woman Doctor, you refused to have her? A. Yes, sir, because I didn't think it was necessary.

Q. Without hearing the names of those other doctors you refused to have them? A. He didn't mention the names of any other Doctors.

40 Q. I understood you to say in your direct ex-

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amination that your husband wanted you to be examined by a physician, and that afterwards Dr. Stellwagen examined you, and you told your husband that the matter could be remedied in a few months, that the Doctor had said that it could be remedied in a few months? A. Yes, sir.

Q. And yet you say the treatment ran on for months? A. That is because I didn't use any chloroform; I could have had it done right away if I had taken chloroform. 10

Q. If you had used an anæsthetic, it could have been performed immediately? A. Yes, sir.

Q. You chose the slow method of treating it for several months? A. Yes, sir.

Q. After this treatment had been completed some time in the winter, why didn't you send word to Mr. Goerz that it had been completed? A. Why, because before he left, he said that he wanted to live alone; that was his first idea, that he was going away and I thought that it would not be necessary to have it done immediately, that is using an anæsthetic, I didn't see any use of an anæsthetic for that reason. 20

Q. For what reason? A. Because he said he was going away; he wanted to live alone.

Q. You have already described your parting? A. Yes, sir. 30

Q. And it was a tender and in a way an affectionate parting was it not? A. Yes, sir.

Q. And the only thing of any seriousness between you and your husband was this one thing that you have referred to? A. Yes.

Q. After you had decided to adopt a slow treatment rather than a quick treatment with an anæsthetic, and that treatment had gone on for several months with some good effect, as you say, why 40

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didn't you tell your husband that that had gone on and that you had gained the benefit of his treatment?

10 MR. WELLER: I object to that question on the ground that the complainant has already testified that it was possible for the husband to have sexual intercourse with her, while her husband was living with her and she had asked him to have sexual intercourse with her and he had refused.

MR. McDERMOTT: In view of the language of the objection I will not press the question.

BY MR. McDERMOTT:

Q. Who told you that this operation could be more quickly performed with an anæsthetic? A.
20 Why, the Doctor told me.

Q. Did he indicate that it was dangerous to perform it with an anæsthetic? A. No, sir.

Q. Had you fear of an anæsthetic yourself? A. No, sir.

Q. You just chose this protracted method for some reason or other; what was that? A. Why, when I told my husband what could be done, he says, I would not hear of such a thing; if any
30 thing happened to you, why, I would never forgive myself, that was his answer.

Q. You say that he knew it was to be a protracted operation extending over some time? A. Yes, sir.

Q. Now, if he knew it was to be a protracted operation, and to extend over several months, and when he left you in the manner that you have described, or after he had left you in the manner
40 that you had described, why didn't you, when the operation or treatment was completed tell him

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that it was done? A. Because I thought he could have done his part when he lived with me and he went away and never wanted to come back for that reason.

Q. That is the only reason so far as you know?

A. He wanted to live alone; that is what he said.

Q. The only trouble you had was this one trouble? A. Yes, sir. 10

Q. And outside of that he was a considerate man about the house? A. Yes, sir.

Q. And the only thing he was impatient about was this one trouble he was not irritable or cross about it? A. No, he was not irritable.

Q. It was the one trouble between you? A. Yes, sir.

Q. Now, that having been the one trouble between you, after this long protracted operation or series of operations why didn't you send him word? A. Because I thought that when he acted so queer before he left that he didn't love me any more and would not live with me for no reason at all. 20

Q. You knew where he was? A. Yes, sir.

Q. Instead of that you brought this suit against him for maintenance? A. Yes, sir.

Q. And you got a writ against him to have him arrested? A. Yes, sir. 30

Q. A writ to keep him from going out of the state, if he happened to come in the state?

THE MASTER: Strike that out.

BY MR. McDERMOTT:

Q. When did you first see your counsel in relation to this matter? A. I think it was in November, some time in November. 40

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Q. Didn't you see a lawyer in September? A. No, sir.

Q. You think it was on November? A. Yes, in November.

Q. From that time on you have had the benefit of Counsel? A. Yes, sir.

10 Q. Seen him frequently, I suppose? A. Yes, sir.

Q. How did you come to go to his father's house, his father's home? A. Up at the farm?

20 Q. Yes? A. Why, the day that he came back from Albany, when we arrived in New York, we stopped at the Grand Union Hotel, and while we were having dinner, he says, now, this has got to be stopped, and I said what do you mean; he said, we simply cannot go on this way. In the meantime, I had begged and pleaded with him to try and have what he wanted, which he could have had very easily if he wanted to.

Q. When you came back from Albany? A. Yes, sir.

Q. Do you mean to say that nothing had been done before you went to Albany? A. No, sir.

Q. There was nothing done at Albany? A. No, sir.

30 Q. So, when you had this talk, you were in just the same condition that you always had been? A. Yes, but I was examined and I was all right.

Q. Do you say that you were examined before you went to Albany, are you not mistaken about that? A. No, I do not think I am, no I am not mistaken.

40 Q. You and he had been up to Albany together? A. Yes, sir, during his vacation.

Q. Living together in the same room and in the same bed? A. Yes, sir.

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Q. And yet you say when he came down from Albany he insisted that this thing had to stop, referring to this very condition of yours? A. Yes, sir.

Q. Well, that was the same old story, I suppose, very much the same old story? A. What do you mean?

Q. His insistence that something would have to stop, that he could not live without having these relations with you? A. Yes, sir. 10

Q. And yet you say before that, you had had something done? A. I told you I do not really know whether I was examined before I went to Albany, or after, I would not consciously answer that question; I don't remember what date I was examined, but I know I was examined and started on my treatment before I went up to the farm, to his father's at Unionville, Connecticut. 20

Q. Mrs. Goerz, a word about your income; you say your income is about \$400 a year? A. Yes, sir.

Q. You don't know what securities it is in, do you? A. Yes, sir.

Q. What is the whole amount of your fortune? A. Mr. Rippe takes charge of it and he is here; I can give you an idea if I think a minute. 30

Q. What do you think it is, if he has charge of it all; you have no real estate? A. No, sir.

Q. It is all in securities which he has? A. Yes, sir; I have two lots, but he manages the lots, too.

RE-DIRECT EXAMINATION BY MR. WELLER:

Q. How did you happen to give your engagement ring to your husband; why did you do it? 40

MR. McDERMOTT: I object to that question, she has already told us why.

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THE MASTER: You may ask the question.

Q. (Last question repeated.) A. Why, he had given me that ring; it was a ring with a stone in, one of his own rings that was given to him by his father and mother, and during the course of our married life, why, his mother had made several remarks to me about this ring, and she said that
 10 she thought it was very mean of her son to give away that ring; that they had given it to him, I think, when he was sixteen years old, so I thought, when he threw back his wedding ring at me, I said to him, if that ring bears any weight to you why don't you give it back, I shall give you back the ring that bears some real weight to you and for that reason I gave him back the engagement ring, because I knew his father and mother
 20 wanted to have the original stone and for that reason I gave it back to him; I had many times conversed with him to have it put in another setting, because they gave it to him.

Q. You said, your husband said, that he thought you would both be happier for the step he was taking? A. Yes, sir.

Q. I understood you to mean both of them? A. Yes, sir, that is what he did say; I said, not me, it is you that is taking this step.

30 Q. Who first mentioned the name of Dr. Stellwagen as the person for you to go to? A. It was mentioned in this way; my girl was operated on by Dr. Stellwagen and on that day she was not feeling very well, and I said I was going to have the Doctor for her, and he said, why don't you have him examine you; on that day I didn't have it done; that was in the beginning of the week, and two days after I had made up my mind that
 40 I was going to have it done, because he wanted me to have it done and I did.

Mathilda S. Goerz—Re-Direct.

Q. Did he or did he not, know that you were undergoing treatment with Dr. Stellwagen, when he left you? A. Yes, sir, he knew it.

Q. How long had he known of it? A. Two weeks before.

Q. Do you know whether he had talked with Dr. Stellwagen or not? A. Yes, I knew it.

MR. McDERMOTT: I object to that.

10

BY THE MASTER:

Q. Do you know that your husband knew at this time when he left you, that you were undergoing treatment with Dr. Stellwagen? A. Yes, sir.

Q. How did he know it? A. Because I told him so.

BY MR. WELLER:

20

Q. My next question is: Do you know whether he talked to Dr. Stellwagen or not? A. Yes, sir, I do know that he talked to the Doctor before he left me.

Q. Have you been examined for the purposes of this case by any other doctor? A. Yes, sir.

Q. By whom? A. Dr. Frank D. Gray.

It is admitted that an examination was made by Dr. Grey on June 2nd, 1913.

30

BY MR. WELLER:

Q. You said in the conversation you had with the parents of the defendant that you told them that you did not know whose fault it was? A. Yes, sir.

Q. What do you mean by that?

MR. McDERMOTT: I object to that question as immaterial.

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Mathilda S. Goerz—Re-Direct.

THE MASTER: Suppose you ask her what she meant by saying that it was his fault.

BY MR. WELLER:

Q. Why did you say that it was his fault as much as yours? A. Because I think it was his fault as much as mine.

10 Q. Why did you think, just what did you observe when he tried to have intercourse with you? A. I just simply thought it was his fault as much as mine; I can't give any reason.

Q. I want you to describe how long it was when he tried to have intercourse with you each time? A. Why, he would not allow me to do anything.

20 Q. How much time would he take when an attempt was made? A. He would say he never could get close enough to me to have any decent satisfaction.

Q. Did he enter you some? A. A little.

Q. Did he hurt you or not? A. Yes, sir.

Q. You say that you told him when he first suggested a physician that you thought nature would take its course. A. Yes, sir.

Q. What did you mean by that?

30 MR. McDERMOTT: I object to that question on the ground that it is an improper question.

Q. Did you state to him that nature would take its course; did you tell your husband what you thought would happen? A. Yes, sir, that nature would take its course.

Q. What did you think would happen? A. I didn't think anything would happen.

40 BY THE MASTER:

Q. You have said that you told him that you

Mathilda S. Goetz—Re-Direct.

thought nature would take its course? A. Yes, sir.

Q. Now, explain what you mean by this term?

A. Well, I meant to say if he tried, he would eventually obtain what he wanted.

BY MR. WELLER:

Q. You answered Mr. McDermott when he asked you if your husband didn't try to have intercourse with you, you said seldom, what did you mean by that? 10

MR. McDERMOTT: I object to that.

THE MASTER: Strike that out. It appears sufficiently Mr. Weller, according to the testimony of this lady that he occasionally from time to time, not so frequently, sought to have sexual intercourse with her. I do not see any necessity of going any further on that point. 20

BY MR. WELLER:

Q. How frequently did he try? A. Well, I don't know as I can say how frequently, except to say that he tried frequently; that is all I can say.

Q. What do you mean by frequently? A. It was not once a week; it was once in two weeks. 30

Q. Upon an average or regular? A. About an average of once in two weeks.

Q. How long after you were married was it that he spoke of that woman doctor? A. I don't know, possibly a year or two, it must have been a year and a half or two years.

Q. You were asked a question by Mr. McDermott as to whether you knew of any other reason for his going away except an inability to perform this sexual act? A. He said he wanted to live alone. 40

Mathilda S. Goerz—Re-Direct.

Q. Was there any other reason that you know of? A. No, when I told him that he had no reason for leaving me, he said, he wanted to live alone.

Q. Did he say anything about any other woman?

10 MR. McDERMOTT: I object to the question.

THE MASTER: I will allow the question.

A. Yes, sir.

20 Q. When and what did he say? A. Why, he said, that he was going with the woman that had come down in the train with us a year or a year and a half ago; it was on Decoration Day, this woman was in the parlor car with me and he said, that this is Miss Harvey, and I got up to go with her to wash her hands and that the meeting happened that way, and that she was perfectly grand; he also spoke to her of his sister.

30 Q. How do you know that he had spoken of his sister? A. And he spoke of going around with this woman; she was a woman who had a child of seven or nine years old; he said, do you think I am a dam fool to be going around with that woman for nothing; I said no; I don't think you are a dam fool; he said, do you want to know who the woman is, I said, all right, you can tell me, and he said, it was the woman who came down in the parlor car with us, and because you said she was so nice, that is the reason I flirted with her.

Q. When was this? A. This was Decoration Day, 1911, the day before Decoration Day.

40 Q. That he met her or that he told you this? A. He told me this about two weeks before he left me.

Mathilda S. Goerz—Re-Direct.

Q. It was on Decoration Day, 1911, that he saw her in the parlor car? A. Yes, sir.

Q. And it was about four weeks before he left you? A. Yes, sir.

MR. McDERMOTT: I move to strike out the testimony just given by the witness as not being re-direct examination as there was nothing asked about it on the cross-examination and on the further grounds of its being immaterial and irrelevant. 10

THE MASTER: On the first ground I do not think it ought to be stricken out; I think it is relevant to the issue in the case; the question as to whether there was any justifiable cause for the husband leaving his wife, and her conduct and his conduct as bearing upon any reason for leaving; I suppose it is relevant; I overrule the objection. 20

BY MR. McDEMOTT:

Q. This story you have just been telling, you didn't tell us about on your direct examination, at all? A. No, sir.

Q. You detailed the conversation which took place on this occasion, this morning, didn't you? A. I detailed it. 30

Q. You went over and detailed the conversation which took place within two weeks before he left? A. Yes, sir.

Q. And you said to him, that you would forgive him? A. Yes, sir, I would forgive him.

Q. Is that the same time that this other conversation took place? A. What other conversation do you mean? 40

Q. Was this conversation that you have just given a minute ago on the occasion when the

Mathilda S. Goerz—Re-Direct.

telegram was received that you testified to on your direct examination? A. What conversation?

Q. The conversation which you just gave a minute ago, was that on the same occasion as the conversation which you gave an hour or so ago relating to a telegram? A. I don't understand you.

BY THE MASTER:

Q. On your direct examination you said something about receiving a telegram one day, and upon your husband coming home you showed it to him, and he tore it up and he said, "That is nothing, it is only one of the women that I have been going around with." Now, a few minutes ago you told about a conversation with your husband with respect to a woman whom he had met in the parlor car? A. Yes, sir.

Q. And the question is whether this same conversation occurred at the same time as the conversation when you showed him this telegram? A. No, sir.

Q. They were two different occasions? A. Yes, sir.

BY MR. McDERMOTT:

Q. He did not attempt to conceal from you the fact that he had met this woman? A. Up to that time he did conceal it.

Q. Didn't you know at this time that he had met her in the parlor car? A. I did not know that he met her in the parlor car. He told me this about two weeks before he left that he met her on that date; we had gotten up to go and wash our hands and while we were washing our hands the meeting happened.

Q. That is what he told you? A. Yes, sir, that is what he told me.

Anna Gardner—Direct.

MR. WELLER: I have not applied regularly. We will submit without any order of the Court, I suppose you will do the same, that the defendant will agree to a physical examination.

MR. MCDERMOTT: Yes.

ANNA GARDNER, SWORN.

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DIRECT EXAMINATION BY MR. WELLER:

Q. Miss Gardner, where do you live? A. 916 Castle Point Terrace, Hoboken, New Jersey.

Q. You lived with the Goerz family for some time? A. Yes, sir.

Q. How long did you live there while Mr. and Mrs. Goerz were living together? A. I came to them on the 10th of June. 20

Q. 1912? A. Yes, sir.

Q. Did you live with them all the time while Mr. and Mrs. Goerz were living together? A. Yes, sir.

Q. Do you remember when he left the place? A. Yes, sir.

Q. When was it? A. The 28th of September, 1912. 30

Q. What did you see take place there between them, see and hear at that time? A. Well, they seemed to get along very well, only Mr. Goerz stayed out; he didn't come home to supper.

MR. MCDERMOTT: I move to strike that out.

THE MASTER: Strike it out.

BY MR. WELLER:

Q. At the time he was going away, what did 40

Anna Gardner—Direct.

you hear and see between them; that was about September 28th? A. I don't understand you.

Q. Did you see him do anything, like packing his trunk? A. Yes, sir.

Q. Did you hear any talk between them? A. Yes, sir.

Q. Tell us what you heard Mr. and Mrs. Goerz say to each other? A. He said, the step that they were taking, he hoped that that was for the best.

Q. What did she say? A. She pleaded with him to stay; she says to him, now, Ed, don't you think you better think this over, and she pleaded with him.

Q. Tell us, as nearly as you can remember the words that both of them said; what time of the day did he leave? A. Around eight o'clock.

Q. In the morning or in the evening? A. In the evening.

Q. Had he been home all that day? A. No, sir, he came home around four or five o'clock; I think it was four o'clock.

Q. What was the first talk you heard that afternoon between him and Mrs. Goerz; can you remember what he said to her and what she said to him? A. I was not in the room when they were talking together, but I saw him packing his trunk.

BY THE MASTER:

Q. When you were in the room, were they together? A. When he left.

Q. Now, tell us as nearly as you can just what he said? A. He says, when he went out, I hope that this step that I am taking is for the best.

Anna Gardner—Direct.

Q. What did she say? A. She pleaded with him to stay.

Q. What did she say? A. Well, you better think over what you are doing.

Q. Can you think of anything he said? A. No, I cannot; that is all I can think of: "I hope that this step that I am taking is for the best."

10

BY MR. WELLER:

Q. What state was Mrs. Goerz in? A. A very bad state; she was very nervous and she was sick.

Q. How did she act when he went away, was she laughing? A. No, sir, she was crying.

BY THE MASTER:

Q. Tell us just how she acted; how did she act; you said she was crying? A. Yes, and she was very sorry about it; she felt very bad.

20

BY MR. WELLER:

Q. Where was she sitting down, on a chair, or what was she doing? A. She was lying on the lounge because she was sick.

Q. Did you hear her pleading with him any time before that time when he was going away on that day? A. Yes, sir.

30

Q. On that day do you remember her pleading with him at any other time than when he went away? A. (No answer).

Q. You say he came home at four or five o'clock? A. Yes, sir.

Q. What did the place consist of; what did you do there? A. What do you mean, the furniture?

Q. The place where they lived on the 28th of

40

Anna Gardner—Direct.

September? A. It is a very nice little home, a very nice place.

Q. Oh, no; was there one room in this nice little home or were there thirty-six, now, just tell us what they were, how many rooms? A. A living, eight rooms, a kitchen, a dining room, parlor and bath room.

10 Q. Where was the kitchen located? A. In the back of the house.

Q. And were the parties when you heard this conversation, when he first went home, where were they talking together, in what room? A. You mean when I first heard them talking or quarreling?

Q. You said he was in a room? A. When he came in why he asked me to go out.

20 Q. What room were you in? A. In the dressing room where he packed his trunk.

Q. Was he packing his trunk when you first went in? A. No, sir; I went to the store and when I got home he was getting his trunk from the attic and taking it down stairs.

Q. Where was Mrs. Goerz? A. She was in the dressing room.

Q. Did she stay in the dressing room? A. Yes, sir.

30 Q. He was in the dressing room, too, when he got his trunk downstairs? A. Yes, sir; he packed his trunk there.

Q. What was the first talk you heard between them that afternoon? A. Well, I don't remember that.

Q. She was crying when you came home from the store? A. Yes, sir.

40 Q. When was she crying; when did you first see her crying that day? A. She was crying almost all that day.

Anna Gardner—Cross.

Q. Was she? A. Yes, sir.

Q. Now, what conversation or talk did you hear after you came home from the store and went in the dressing room? A. I didn't hear any talk then, because I was preparing supper for them.

Q. How long did it take you to get the supper ready? A. I don't know. 10

Q. Did they eat supper? A. He ate supper, but she didn't.

Q. When was it that she pleaded with him, before or after supper? A. Before she asked him to come to supper.

Q. Was that before supper or after supper? A. It was after supper.

Q. What did she say, and what did he say, what talk did you hear? A. None, I told you, nothing. 20

Q. After supper you went in the room, did you? A. Yes, sir.

Q. When was it that you heard Mrs. Goerz pleading with him? A. I don't remember whether it was before or after that.

THE MASTER: I think you have exhausted this witness, Mr. Weller. 30

CROSS EXAMINATION BY MR. McDERMOTT:

Q. Miss Gardner, do you remember his bidding her and you good-by? A. Yes, sir.

Q. And did he ask you at that time to take good care of Mrs. Goerz? A. Yes, sir.

Q. And he left you in a pleasant way, did he? A. Yes, sir.

Q. You saw him packing his trunk, you say? 40
A. Yes, sir.

Anna Gardner—Cross.

Q. And bringing it downstairs? A. Yes, sir.

Q. How did it get away from the house; how did the trunk get away from the house, do you know that? A. Yes, sir.

Q. How did it get away? A. An expressman came and got it.

10 Q. He went away that night and Mrs. Goerz sent the trunk away the next day? A. Yes, he sent for it.

Q. You didn't see him send for it? A. No, sir.

Q. She went out for the expressman right away? A. Yes, sir.

Q. Now, the first thing he asked you to do was to go out of the room? A. Yes, sir.

Q. And you went out? A. Yes, sir.

20 Q. Was the supper served in the same room or in the dining room? A. In the dining room.

Q. So that what took place was in this living room or whatever you call it? A. Yes, sir.

Q. But you didn't hear it? A. No, sir.

Q. Where was this says; where was this talk in which he said he hoped the step he was taking was for the best? A. When I was going out from the dressing room to the hall.

30 Q. You were still there? A. Yes, sir; I was by Mrs. Goerz, he bid me good-by in the kitchen and told me to take good care of her.

Q. And then he was going away? A. Yes, sir.

Q. And then he said that he hoped the step he was taking was for the best? A. Yes, sir.

Q. And that is the conversation that you heard? A. Yes, sir.

40 Q. That is all the conversation that you heard? A. That is all the conversation that I heard, but I heard them quarreling.

Anna Gardner—Cross.

Q. On that occasion? A. Yes, sir.

Q. Now, what did Mrs. Goerz say when he said, he hoped the step he was taking was for the best?

A. She didn't say anything after, as I remember, I don't think she said anything.

Q. Why did you use the expression, that she pleaded with him? A. She did plead with him.

Q. When did she plead with him? A. All along. 10

Q. How long before this conversation? A. I could not tell you.

Q. A week before; do you mean; how did you happen to say several times, every time she had a chance, she pleaded with him; who told you to say that? A. No one told me to say that.

Q. Why don't you tell us exactly what she said; I would like to have from you exactly what you heard Mrs. Goerz say on that occasion? A. (No answer). 20

Q. I would like to have you tell us all that you heard Mrs. Goerz say to her husband. A. She said, don't you think this step that you are taking is wrong, you had better think it over; I heard her say that.

Q. You heard her say that? A. Yes, sir; I heard her say that. 30

Q. More than once, or once? A. I heard her say that once.

Q. That was just before he went away? A. Yes, sir.

Q. And he said that he hoped it was best for them both? A. Yes, just before he went out.

Q. Was there any conversation while they were at dinner or supper that you heard? A. Well, I didn't hear anything. 40

Anna Gardner—Re-Direct.

Q. And you didn't hear what took place, because you had been asked to go out of the room?

A. No, sir.

Q. So that the one conversation that you heard that day was this one, that he bid you good-by and bid his wife good-by and kissed her good-by and made this statement? A. Yes, sir.

10 Q. And then she stated what you have already said? A. Yes, sir.

RE-DIRECT EXAMINATION BY MR. WELLER:

Q. How long did you continue to live with Mrs. Goerz after her husband left? A. Until the 7th of this month.

Q. You moved away from 37 Pleasant Avenue? A. Yes, sir.

20 Q. Where did you move to? A. 547 Gregory Avenue.

Q. Now during the time that you lived there, did Mr. Goerz ever come to the house? A. No, sir.

Q. Have you got a telephone in the house at 547 Gregory Avenue? A. No, there is no telephone at 547 Gregory Avenue.

Q. That is all.

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Frederick B. Stellwagen—Direct.

FREDERICK B. STELLWAGEN, sworn.

DIRECT EXAMINATION BY MR. WELLER:

Q. Doctor, what is your full name? A. Frederick Byron Stellwagen.

Q. Are you a practising physician? A. Yes, sir.

Q. Where? A. In the northern part of Hudson County and the adjoining towns. 10

Q. How long have you been a physician? A. Eighteen years, I graduated in 1894.

Q. You are also a surgeon? A. Yes, sir.

Q. Have you had an extensive surgical practice, or not? A. I have been doing surgical work since I have been in practice.

Q. Now, you have attended Mrs. Goerz for some genital trouble? A. I was called to Mrs. Goerz's house about the time that the separation took place owing to an affection that she— 20

MR. MCDERMOTT: I object to that part of the answer.

THE MASTER: Strike it out.

Q. You can state when you were called there and any conversation? A. I was called there around the 20th and between the 25th and the 30th of September, I was there at those dates; I may not be absolutely correct on these dates; it was around that time, that they had that trouble and I was called in frequently. 30

Q. Do you remember the little girl that was on the stand just now having an operation performed? A. Yes, sir.

Q. How long was that before the 1st of September? A. Well, really, I don't know just the month that she was operated upon, possibly June 40

Frederick B. Stellwagen—Direct.

or July, I don't remember the month the operation took place.

Q. Do you remember how long it was before you examined Mrs. Goerz? A. No, I do not; I examined Mrs. Goerz around between the 25th and the 30th of September, if I am not mistaken; Miss Gardner was operated upon for appendicitis in August.

10

Q. Do you remember the husband, Mr. Goerz, leaving his wife on September 28th? A. I do.

Q. How long before that was it that you went there to attend Mrs. Goerz? A. About two days before the separation took place.

Q. Why do you say that it was two days? A. Well, there had been some trouble that came up between them; this trouble had been brewing, and Mrs. Goerz called me in to find out whether there was anything wrong with her.

20

MR. McDERMOTT: I object to that statement and move to strike it out.

THE MASTER: I will let it stand.

BY MR. WELLER:

Q. Now, you say that he left there on September 28th? A. Yes, sir.

Q. And do you remember treating Anna Gardner? A. I remember treating Anna Gardner previous to that, yes, sir.

30

Q. When were you first asked about the examination of the complainant, Mrs. Goerz? A. They might have spoken to me in relation to that matter, but I don't remember the date.

Q. Do you know the exact date when you first examined her? A. I did know the exact date I first examined her; the exact date that I first examined her was about two days before they

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Frederick B. Stellwagen—Direct.

separated, and if I remember correctly that was the only time that I was asked to examine her.

Q. Do your books show the exact date? A. I do not know as I recorded it.

Q. Well, how did you happen to examine her? A. She was sick and nervous from the unpleasantness that had taken place.

MR. McDERMOTT: I object to that and ask that it be stricken out. 10

THE MASTER: Strike that out.

BY THE MASTER:

Q. Doctor, state the condition that you found her in, but as to the cause for that condition, that is another matter. A. Well, she was sick and nervous and at that time she asked me to examine her and I did so. 20

BY MR. WELLER:

Q. Now, in what condition did you find her parts, generally? A. I found her a virgin; I found the hymen in contact.

Q. I mean the condition of her other organs; were they normal or abnormal? A. The parts were absolutely normal, but I found the hymen in contact.

Q. Go on and explain that? A. The hymen was in contact, the uterus, the ovaries and tubes were in a normal, healthy condition. 30

Q. How large was the opening in the hymen? A. Why, the opening in the hymen at that time was no larger than the tip of the little finger.

Q. Could you tell by examination why it had not been broken?

MR. McDERMOTT: I object to that question as calling for something which is 40

Frederick B. Stellwagen—Direct.

based on no fact which is now before the Court and as being incompetent.

THE MASTER: I will allow the question.

A. In my judgment from the examination and because of the hymen not having been broken, and the fact that the hymen was thick and heavy.

10 Q. You knew at that time that the patient was a married woman? A. Yes, sir.

THE MASTER: Strike that out.

BY MR. WELLER:

Q. At whose request did you examine her, her's or her husband's? A. At her request.

Q. Did you speak to the husband about it? A. I did.

20 Q. When, and just tell us what was said? A. The day after the examination—I talked to the husband in relation to the matter and I told him that I could remedy that condition, that is the small hymen; I told him that it could be dilated and stretched so that he could have natural intercourse either by placing the patient under an anæsthetic or dilating forcibly at once, or dilating it very gradually, a small amount at various times.

30 Q. You say the hymen could be dilated? A. Yes, sir; the hymen could be dilated.

Q. If the hymen had been dilated, would it have been possible to have had sexual intercourse with Mrs. Goerz? A. Yes, sir.

Q. What did he say? A. He said, he thought it would be inhuman to do anything like that and he would prefer not to have it done.

40 Q. Did you tell her what he had said? A. I did.

Frederick B. Stellwagen—Cross.

Q. Did he say anything to you about living with her? A. Why, he said he had lived with her for three years and had never had intercourse in the natural way and he said she was not a proper wife for him under these conditions.

Q. When you told him that it could be remedied, he said it was "inhuman"? A. Yes, sir.

Q. Did he say anything then? A. We had a general conversation in relation to the matter; he decided on what I have stated, the material facts; I don't remember what other things took place. 10

Q. Did you go on treating her? A. At Mrs. Goerz's request I dilated the hymen gradually, first with a pair of dressing forceps, then with a very small speculum, and later on with a larger speculum until I stretched it to the size that two fingers could be introduced through the hymen without giving her any pain or distress; that took possibly two or three months to accomplish; it could have been done in ten minutes under an anæsthetic. 20

Q. Did you tell the husband at the time you talked with him of the two ways to do this? A. I did, yes, sir.

Q. That is all. 30

CROSS EXAMINATION BY MR. McDERMOTT:

Q. Dr. Stellwagen, you have a large surgical practice? A. Well, I have a fair practice.

Q. You meet a great many people? A. Yes, sir.

Q. You talk with a great many people? A. Yes, sir.

Q. And in these instances that you were speaking of, what you have already testified to; you don't recall the date of the operation on the 40

Frederick B. Stellwagen—Cross.

Gardner girl very accurately? A. No, sir, I do not remember just the exact date, but I could find it out on the books by looking; I didn't think that that matter would be brought up or I might have had the dates.

Q. You had a talk with Mr. Goerz some time between the 25th and the 30th of September?

10 A. Yes, sir, somewheres along there.

Q. Before you had taken any means to operate on Mrs. Goerz? A. Yes, sir.

Q. And he told you then that he had never been able to have intercourse with his wife? A. Yes, sir.

Q. The examination you made tended to show that to be so? A. Yes, sir.

20 Q. And on the occasion of this examination which you made, you found her to be a virgin?
A. Yes, sir, I found her to be a virgin.

Q. And not capable of copulation without some operation? A. Without some interference of surgery.

Q. And about this time you say you made the examination? A. Yes, sir.

30 Q. What took place between you and Mr. Goerz was not in the presence of Mrs. Goerz? A. It was not.

Q. Was the operation you spoke to Mr. Goerz about, this speedy operation or this gradual operation? A. I told him either; I explained it both ways.

40 Q. And do you mean to say that you explained the character of the operations to him? A. I explained what could be done, and how it could be done as nearly as I could to a person, what you have to do under those conditions.

Q. And this gradual operation, that extended over several months, you say would have the

Frederick B. Stellwagen—Cross.

same effects as the quick operation? A. Yes, under an anæsthetic, the only difference between the two is to put the patient under an anæsthetic, they would not feel anything, and they might be very sore for a week or ten days after, the other would be more or less suffering, but persons usually prefer some suffering than to undergo the use of an anæsthetic and gas, the part of the operation the patient dreads most is the taking of the anæsthetic and gas or either or both. 10

Q. The result of this long protracted examination or treatment by the dilation of the hymen, was the result at the end of that to better the condition? A. Yes, sir; it dilated the hymen and the vaginal cavity into a normal condition, where in my best judgment copulation could take place.

Q. And that was completed by you about how long ago? A. I should say, I passed the second size speculum in the latter part of December or the fore part of January. 20

Q. January, 1913? A. Yes, sir; but I have from time to time given her a treatment and inserted a cotton tampon with medicine.

Q. Leaving out this supplemental treatment you think she became competent in January? A. Somewheres along there, I should say. 30

Q. I mean capable? A. I understand what you mean.

Q. Capable of copulation? A. Yes, sir, capable of copulation.

Q. You spoke about the vaginal canal, did you dilate the vaginal? A. The vaginal canal, before intercourse or coition is also very small and by introducing an instrument into the vaginal canal you dilate it as well as the hymen. 40

Q. I understood you to say that the vaginal canal had already been dilated? A. I said dur-

Frederick B. Stellwagen—Cross.

ing my dilation of the hymen the vaginal canal was also dilated.

Q. Doctor, speaking of this conversation with Mr. Goerz on this occasion, you had only one conversation about this matter after the examination? A. Yes, sir.

10 Q. What was it that made you understand him to say that it would be "inhuman"? A. He told me that he would prefer not to have the hymen dilated because in his opinion it would be "inhuman."

Q. Which of these operations was he referring to? A. To either of them, as I grasped his idea, the very fact that you had to dilate the hymen so that copulation could take place was an inhuman condition, no matter how you went about it.

20 Q. Didn't he ask you to give him time to think about that; it was all news to him? A. I don't know how new the matter was to him.

Q. You had never broached it to him before? A. No, but it is an old established fact in surgery, but those conditions are frequent where a hymen has to be dilated.

30 Q. We are dealing now with the layman, and you were making some sort of a statement to a layman, Mr. Goerz; I want to get what took place between you and him, whether his attitude was not that he wanted an opportunity to think about it? A. He did not say that to me.

Q. Or see what sort of an operation ought to be made? A. He did not express that opinion to me at that time.

Q. All he said was that it was "inhuman"? A. In his mind it was an inhuman procedure.

40 Q. Did you understand that you had his sanction to make the operation? A. I didn't under-

Frederick B. Stellwagen—Re-Direct.

stand anything about it; the dilation took place after he left under the insistent of Mrs. Goerz.

Q. All that you did in the way of dilation took place after he had gone away? A. Yes, sir.

RE-DIRECT EXAMINATION BY MR. WELLER:

Q. Have you any record of that Doctor, when the dilation took place; any record of when it took place, when it commenced? A. A written statement of the fact? 10

Q. Have you anything by which you can tell the exact date? A. No; I have no notes in relation to it.

Q. Where was the family living at the time when you examined Mrs. Goerz? A. They were living at 37 Pleasant Avenue.

Q. Is there any way by which you can tell us the exact dates when these dilations occurred? 20

A. Do I understand that you want the date of each treatment? I have no means of telling you just the date; I went there for the first time to begin to dilate the hymen, I should judge to the best of my memory, it was about two weeks later; two weeks from the time after the separation took place; it might have been two weeks and it might have been a month.

Q. You spoke about one quick and one slow operation? A. Yes, sir. 30

Q. Will you explain what that quick operation is? A. By giving an anæsthetic, and at that time dilating the hymen to the full extent.

Q. Is the vaginal canal in a pure woman always small? A. Yes, sir.

THE MASTER: We will now take a recess until 2.15 P. M. 40

AFTER RECESS:

Frederick B. Stellwagen—Direct.

FREDERICK B. STELLWAGEN, resumed.

BY MR. WELLER:

Q. Doctor, since being on the stand this morning have you had your memory refreshed as to the date when you first examined Mrs. Goerz, the day that you performed your first dilation, as you call it? A. Yes, sir, I have.

10 Q. Well, can you tell us now, when you first dilated her hymen, about, as nearly as you can?

MR. MCDERMOTT: I object to that question on the ground that the witness being an intelligent man, having being examined at great length before recess, cross-examined at length before recess and is now brought on after an opportunity for conference and consultation during recess, I

20 object to any testimony tending to change the testimony given this morning before recess. I object to it further on the ground because he was fully examined this morning and his examination was closed and I submit that he cannot be recalled now.

THE MASTER: The recalling of him is in the discretion of the Court, and it is the duty of the Court to find out the facts

30 in the case; I think, however, before he is examined upon this point you should find out how he refreshed his memory.

BY MR. WELLER:

Q. Did you talk to me at noon? A. Yes, sir.

Q. And also to the complainant? A. I did.

Q. Tell us now, how your memory is refreshed.

MR. MCDERMOTT: I object.

40 A. In this way, I had objected to Mrs. Goerz

Frederick B. Stellwagen—Direct.

taking a trip to Hartford, Connecticut, that was previous to Mr. Goerz having left her, on the day that I objected to her taking that trip, on the ground that she was in no fit condition to take that trip from the treatment that I had given her the night previous.

MR. MCDERMOTT: I object to that and ask that the answer be stricken out, if it is intended to be evidential of anything, because it was not made in the presence of the defendant. 10

THE MASTER: What was not made in the presence of the defendant?

MR. MCDERMOTT: What I want to do is, I am objecting now, first to its having no evidential value. I object to it on that ground and move to strike it out. It is obvious that the witness has talked to other persons during the recess and before he was brought back to the stand, and it is obviously improper conduct on his part and one which has received uniformly the severe criticism of the Court. 20

THE MASTER: I do not think your objection is sufficient for striking out the answer. 30

BY MR. WELLER:

Q. Who called your attention to that about your having told her not to go to Hartford? A. Why, Mrs. Rippe told me that she was going to go to Hartford to Mrs. Goerz and I mentioned the fact to Mrs. Rippe.

MR. MCDERMOTT: I object to that.

BY MR. WELLER: 40

Q. Was that conversation with Mrs. Rippe

Frederick B. Stellwagen—Direct.

since we took our recess? A. No, sir; I have not talked with Mrs. Rippe in relation to the matter; I have talked with Mr. Rippe.

Q. You heard what Mrs. Rippe said in the hall when we came downstairs in relation to the trip to Hartford? A. Yes, sir.

BY THE MASTER:

10 Q. Your memory has been refreshed by conversation which you had with Mr. and Mrs. Rippe since we adjourned at lunch time? A. Yes, sir.

Q. And that is the only way that your memory has been refreshed? A. Yes, sir.

Q. And only by your conversation with these two persons? A. Yes, sir, in relation to the time.

BY MR. WELLER:

20 Q. Did Arnold Rippe call any fact to your attention at noon that refreshed your memory, anything that you had said to him? A. I don't recollect now.

Q. When he met you out there by the automobile, did he tell you something that you had said to him after the first dilation? A. Nothing more but my objecting to the complainant going away.

30 Q. When we went out of the building at noon, and Mrs. Goerz and I went ahead, and Arnold Rippe came back and talked to you did you recall about any fact that you had said to him? A. Not that I remember of now.

Q. What did he go back there for? A. I don't know, really.

Frederick B. Stellwagen—Re-Cross.

RE-CROSS EXAMINATION BY MR. McDERMOTT:

Q. You were examined this morning? A. Yes, sir.

Q. Before the recess? A. Yes, sir.

Q. And there is an intimation that you have had your memory refreshed during the recess?
A. Yes.

Q. And this conversation was with interested parties? A. Yes, sir. 10

Q. Who were they, Mr. and Mrs. Rippe? A. Yes, sir.

Q. Mr. Rippe was not present when you made this examination? A. No, sir, he was not.

Q. And Mr. Rippe was not present when Mr Goerz went away; as far as you know, nobody has testified to that? A. No, sir.

Q. Under the stimulus of what Mr. Rippe has told you, you have refreshed your memory? A. Yes, sir. 20

Q. He is the only man you have talked with about this to refresh your memory? A. He is the only man.

Q. Have you not talked with the counsel and the complainant during recess? A. Yes, sir; we had dinner together; I have talked with them.

Q. And the reason you want to change your testimony now is, by reason of what somebody told you this noontime, is it? A. Well, in relation to the time, yes, sir; if you remember my testimony this morning— 30

Q. You were sure about it this morning? A. I might have been sure; I said I have no notes and could not be positive as to dates.

Q. You have not any notes now? A. No, sir.

Q. You knew you were going to be a witness? A. Yes, sir. 40

Frederick B. Stellwagen—Re-Cross.

Q. How long have you known that? A. For a long time.

Q. You have had conversations with counsel and the complainant before you were sworn this morning as to what your testimony was to be? A. Not necessarily a conference.

10 Q. Didn't you tell him what you knew about the case and what he was going to ask you? A. Yes, sir.

Q. And he examined you before as to what you knew? A. Yes, sir.

BY MR. WELLER:

Q. I didn't examine you as to the time, did I Doctor? A. No, sir.

BY THE MASTER:

20 Q. Do you or do you not remember yourself independently of what you had been told since noon, the fact as to when this examination took place? A. Since that incident was brought to my mind, I remember very distinctly, but I was under the impression that Mr. Goerz had separated from his wife before I began the dilation.

30 THE MASTER: Mr. McDermott, I do not think the grounds of your objection are sufficient ground for excluding it.

BY MR. WELLER:

Q. When was it that you performed the first dilation? A. On Sunday evening.

Q. How long before they separated? A. It must have been possibly a week or ten days.

Q. Now, you say, you recall her trip to Hartford? What was she going to Hartford for?

40 MR. McDERMOTT: I object to the question.

Frederick B. Stellwagen—Re-Cross.

THE MASTER: I will sustain the objection.

Q. Do you know who she was going to meet?
A. She expected to meet her husband.

Q. Do you remember when she came back from Hartford? A. I do not.

Q. Do you remember the fact of her having come back from Hartford? A. Yes, sir, I heard about it; when she came back it was possibly several days, it was two or three days that she was away. 10

Q. Did you object to her going to Hartford?

MR. McDERMOTT: I object to the question.

THE MASTER: I will allow the question.

A. I did. 20

Q. On what ground? A. On the ground that she was unfit to travel after having undergone treatment.

Q. Did she go? A. She went.

Q. After she came back did you treat her again?
A. Yes, sir, I did.

Q. Now, you testified this morning to a conversation that you had with the husband and in which you said that he said, that it was inhuman to perform the operation; was that before you performed the operation or after the first dilation? 30

MR. McDERMOTT: I object to that question.

THE MASTER: He has already testified that that was the day after he made the first examination, but you may ask the question. 40

Frederick B. Stellwagen—Re-Cross.

A. Previous.

10 MR. MCDERMOTT: I object on the ground that the witness was distinctly recalled to give testimony as to something, as to which his memory had been refreshed during recess, to wit: the date of the operation; this is a different matter and unless his memory was refreshed about this I submit that he ought not to be examined again about it.

THE MASTER: I will overrule the objection.

BY MR. WELLER:

Q. To whom did you make this objection? A. To Mrs. Rippe.

20 Q. In the presence of Mrs. Goerz? A. Yes.

MR. MCDERMOTT: I move to strike out the answer and object to it as being incompetent.

THE MASTER: Yes, strike it out.

BY MR. MCDERMOTT:

Q. What day of the week did Mrs. Goerz go to Hartford? A. On Monday.

30 Q. Is that the Monday after the first dilation? A. After the first dilation.

Q. Which you said was on a Sunday and it was on the Monday following that she went to Hartford? A. Yes, sir.

Q. And you say you objected to her going? A. Yes, sir.

40 Q. How long before she went did you know that she was going? A. Why, only a couple of hours, I presume it was, Mrs. Rippe called at the house.

Frederick B. Stellwagen—Re-Cross.

Q. What time of the day was it? A. It was in the morning.

Q. That is the way you heard about it, somebody called and told you? A. Yes.

Q. Do you know how long she stayed? A. Mrs. Goerz stayed at Hartford?

Q. Yes? A. No, I do not know how long she stayed. 10

Q. Now, the only reason you have for changing your testimony is the fact that somebody told you something this noon? A. It was brought about in a conversation this noon.

Q. And you think that that is a sufficient reason for coming back and changing the testimony that you gave us so positively?

MR. WELLER: I object to the question.

THE MASTER: I will overrule the objection. 20

A. Yes, I do.

Q. Now, were you as accurate about other things that you testified about this morning?

MR. WELLER: I object to the question.

THE MASTER: Objection overruled.

A. In relation to the times and dates I admit I have not been accurate; I testified to that this morning that my mind was cloudy on the time, and during noon recess, during the conversation that Mr. Rippe and I had I recollected the fact that I had treated Mrs. Goerz on a Sunday evening and I had objected to her going to Hartford; she was expected to meet Mr. Goerz; and I objected to her going on the ground of her condition after the treatment on that evening. 30

Q. Now, because somebody who was not present at all, when the examination took place, told 40

Frederick B. Stellwagen—Re-Cross.

you when it happened you accepted his statement in preference to your own, you being present at the time it took place?

10 THE MASTER: I don't think that is quite a proper question, and I don't see how it is of any value. Isn't that question argumentative? I don't see how your question here tends to advance this theory.

MR. WELLER: I object to the question on the ground that it assumes something that is not in evidence.

THE MASTER: I will sustain the objection.

BY MR. McDERMOTT:

20 Q. Was Mr. Rippe in Court this morning when you were examined? A. No, sir.

Q. Was Mr. Rippe present at the house when this dilation was performed? A. No, sir.

Q. Was it Mr. Rippe who advised you about her going to Hartford? A. Mrs. Rippe.

Q. But not Mr. Rippe? A. Not Mr. Rippe.

Q. You say that this first dilation was made on a Sunday evening, Doctor? A. I have stated that, yes, sir.

30 Q. Was that after the conversation you narrated this morning as having taken place between you and Mr. Goerz? A. Yes, sir.

Q. Was Mr. Goerz present when it took place? A. Yes, sir.

Q. You said that he spoke to you about it being "inhuman?" A. Yes, sir.

40 Q. Was this the sort of an examination that he spoke to you about being "inhuman? A. Yes, sir.

Q. And you say you went on and made the

Frederick B. Stellwagen—Re-Cross.

dilation notwithstanding what was said to you in his absence? A. Yes, sir.

Q. I mean you made the dilation in his absence?

A. I gave her treatment at that time.

Q. Doctor, you keep books of account, do you not? A. I do, in a measure.

Q. You have some plan by which you collect bills? A. I have a plan to put down all collections that I make; that are not collected at the time I make them; that is, charging the account, 10

Q. Do you mean to say that this was paid in cash at the time? A. Up to that time Mr. Goerz had always paid me when I made calls.

Q. How about this call? A. It was paid in cash before I went to the house; up to the time that Mr. Goerz left his home I was always paid.

Q. While Mr. Goerz was there? A. Yes, sir. 20

Q. Still you say you kept no record at all? A. Not of those calls.

Q. How about your cash book, wouldn't that show? A. I don't keep a cash book.

Q. Do you mean to say that you have no record to which you can turn which will aid you in this connection? A. No, sir.

Q. That is all. 30

BY MR. WELLER:

Q. How long have you known Mrs. Goerz to be a resident of this State, doctor? A. Why, possibly five years.

Q. That is all.

40

Maria Harvey—Direct-Cross.

MARIA HARVEY, sworn.

DIRECT EXAMINATION BY MR. WELLER:

Q. Miss Harvey, where do you live? A. 1126 Park Avenue, Hoboken.

Q. Do you know Mathilda Symes Goerz? A. I do.

10 Q. And her husband? A. Yes, sir.

Q. Do you remember the fact of their having been married? A. Yes, sir.

Q. Where did the marriage take place? A. In the Justice's of the Peace home in Paterson Street, Hoboken.

Q. Do you remember his name? A. Mahnken, I think it was.

20 Q. Who was the other witness? A. I guess the Justice's wife was the other witness.

Q. How long have you known Mrs. Goerz to live in this State continually? A. Why, I should imagine about eight years.

Q. Has she lived out of the State since that time or always in the State?

A. I guess she has lived out of the State since that time.

Q. Where? A. In New York.

30 Q. How long have you known her to live in this State continually? A. Maybe five years.

Q. About five years? A. Yes, sir.

Q. The last five years? A. Yes, sir.

CROSS EXAMINATION BY MR. McDERMOTT:

Q. She is still living here in the State of New Jersey? A. Yes, sir.

40 Q. That is all.

Jane Victoria Rippe—Direct.

JANE VICTORIA RIPPE, SWORN :

DIRECT EXAMINATION BY MR. WELLER :

Q. Where do you live? A. On First Street, Weehawken, New Jersey.

Q. You are the wife of Arnold Rippe? A. Yes, sir.

Q. And the sister of the complainant in this case? A. I am. 10

Q. Do you remember when your sister and her husband lived together at 37 Pleasant avenue? A. I do.

Q. Do you remember when she and her husband separated from each other? A. I do.

Q. When was it? A. The 28th of September.

Q. 1912? A. Yes, sir.

Q. Just before that do you know of your sister's going anywhere away from her home? A. Well, I know she took a trip with her husband up to Albany. 20

Q. Do you remember of having gone anywhere else? A. Well, she went to Hartford.

Q. When was that; how long before he left her; how long before September 28th, 1912? A. It was on a Monday, and I believe on the following Saturday he left, or perhaps a week; let me see; I know that it was on a Monday that she went to Hartford, because I went with her, and we were up there about a week at Hartford. 30

Q. Where did they go from there? A. We went to Hartford and then on the following day we went out to Unionville, Connecticut.

BY THE MASTER :

Q. When you say that he, Mr. Goerz, left about a week after you went to Hartford, or possibly the following Saturday, did you refer to the separa- 40

Jane Victoria Rippe—Direct.

tion of him and his wife? A. He left for Hartford the day before we left for Hartford and we went up there, and over at his sister's at Hartford, and the next morning we went out to Unionville; I left there that evening but my sister stayed there with her husband and his folks, and I don't know if they came back on the Saturday or Sunday; I know they were there three or four days.

10

BY MR. WELLER:

Q. This was the second Saturday after he left her? A. Yes, sir, I guess it must have been.

BY THE MASTER:

Q. Please tell me how long before he separated from his wife it was that you and Mrs. Goerz went to Hartford? A. Well, I will have to do a little thinking.

20

Q. Well, stop and think? A. Well, I cannot positively say if it was Saturday of that week that he left, or if it was a week after that.

Q. When you say he left, you mean when he separated from his wife? A. Yes, sir.

BY MR. WELLER:

Q. You say on a Monday you and your sister went up to Hartford? A. Yes, sir.

30

Q. What did you go to Hartford for? A. Well, we went up there with the intention of seeing his folks, and seeing if we could not get the young people together; to see if his people could not bring them together.

Q. They were together at that time, were they not? A. I don't know what you mean.

Q. They were living together then? A. Yes, sir.

40

Q. What do you mean by bringing them together?

Jane Victoria Rippe—Direct.

MR. McDERMOTT: I object to that question.

THE MASTER: I overrule the objection.

A. Well, they didn't seem to agree with one another, that is; he didn't seem to care for her any more; he seemed he could not live with her.

MR. McDERMOTT: I object to that unless it is something that he said. 10

THE MASTER: I will allow the answer to stand.

BY MR. WELLER:

Q. Now, you went with her up to Hartford?

A. Yes, sir.

Q. What time on Monday did you get there?

A. Well, we took the 12 o'clock train and I guess we got out there between two and three o'clock. 20

Q. You stayed there over night with your sister? A. Yes, sir.

Q. And you didn't see him there? A. No, we did not.

Q. And the next day you went to Unionville where his parents lived? A. Yes, sir.

Q. Unionville, Connecticut? A. Yes, sir.

Q. Did you find the defendant there? A. We did. 30

Q. How long did you remain with his parents and him? A. Why, we got there between 11 and 12 o'clock, around that time, and I believe I left in the afternoon to get the seven o'clock train.

Q. That was on Tuesday? A. Yes, sir.

Q. Now, when did your sister return from Hartford? A. I don't know if it was Saturday; I have to tell the truth, I don't remember, Mr. Hartshorne. 40

Jane Victoria Rippe—Direct.

Q. Well, did you see your sister after she came back? A. Yes, sir.

Q. Now, after she came home from Hartford did she and her husband live together after that at all? A. Well, of course, it just according to how long she stayed there; I knowed she stayed there three or four days.

10 Q. After they came home, how long did he stay there? A. You have got me again; I don't remember.

Q. Do you remember whether or not he worked any time after he came home? A. My belief is that he was on his vacation then; yes, he was on his vacation then.

Q. When his vacation was up, did he go back and work any before he and his wife separated, if you know? A. Yes, sir.

20 Q. How long did he work after that before they separated? A. I guess he must have worked a week, for he came home on the Saturday to begin work.

Q. Do you know that? A. No, sir, but my sister told me.

Q. On the following Saturday you learned that they had separated? A. Yes, sir.

30 Q. Did you go to see your sister? A. No, sir.

Q. Did she come to see you after that? A. Not that day; we were always in communication, we have a telephone.

Q. How soon after the separation did you see your sister? A. On Sunday.

Q. The next day? A. Yes, sir.

Q. Where did you see her? A. I believe she went out automobiling with us; we called for her.

40 Q. What condition was she in; what did you observe respecting her condition? A. Well, I

Jane Victoria Rippe—Direct.

knew she was not well, because she was not well the day she went to Hartford, she was not well at all.

THE MASTER: Strike that out.

BY THE MASTER:

Q. You can tell what you noticed about her, Mr. Weller asks you about after the separation, what did you notice about her in respect to her health? A. I knew she was not well, because she had been doctoring. 10

BY MR. WELLER:

Q. What did you notice as to her condition—whether she was lively? A. Oh, no.

Q. What did you notice? A. I noticed that she was sort of hysterical, and not well, and melancholy. 20

Q. What else did you see; did you see her laughing? A. Well, of course, when we have trouble, we laugh.

Q. What did she do; how did she seem to feel over his having gone away? A. Well, she was sick over it.

Q. How could you tell, how she looked? A. By looking at her.

Q. What made you think she was not well? A. Well, she was melancholy and would cry, and she stomach trouble, her stomach was in a weak condition. 30

Q. Did she cry the next day that you saw her? A. She cried so often when I saw her that I could not separate one time from another.

Q. You say you went with her up to Hartford? A. Yes, sir.

Q. Do you know if she had any treatment for her trouble before going to Hartford? 40

Jane Victoria Rippe—Direct.

MR. McDERMOTT: I object to the question.

A. Well, of course, I didn't see anything, but she told me that Doctor Stellwagen—

THE MASTER: Strike that out.

BY MR. WELLER:

10 Q. You didn't know only from what she told you? A. No.

THE MASTER: Strike that out.

Q. Do you know anything, any other way?

THE MASTER: She said she did not.

BY MR. WELLER:

20 Q. Did you or did you not talk to the doctor before going to Hartford? A. I knew Dr. Stellwagen was—

MR. McDERMOTT: I object to that question.

THE MASTER: I will overrule the objection.

30 Q. (Last question repeated). A. Well, I hadn't spoken to the doctor, but I knew that she had had her treatment that night from what she told me the next morning.

BY THE MASTER:

Q. You only know from what she told you? A. Yes, I only know from what she told me.

THE MASTER: The theory of the complainant's counsel is that on a certain date there was a conversation between the doctor and this lady respecting the fact that an operation had been performed.

Jane Victoria Rippe—Direct.

MR. McDERMOTT: I object and move to strike out that question and answer.

BY MR. WELLER:

Q. Did the doctor make any objection to your sister going to Hartford?

MR. McDERMOTT: I object to the question on the ground that it is immaterial, irrelevant and incompetent, and calling for hearsay testimony. 10

THE MASTER: I will allow the question.

A. I know the doctor said that she was not in any condition to go; no, she told me that the doctor didn't want her to go.

BY THE MASTER:

Q. Did the doctor have any conversation with you about her going? A. No, sir. 20

THE MASTER: Strike that out, and all the preceding part.

BY MR. WELLER:

Q. Did you hear your sister talk to her husband about her condition, or her treatment, after you got up to Unionville at the farm? A. Yes, sir.

Q. What did she say to him about it? A. Well, she said that she was treated, and she was made all right; that is the way she put it, and thought that they could come together on some understanding. 30

Q. What did he say? A. Well, he would not hear of anything, in fact.

Q. Go on and tell us all; what took place between you and her and the wife and him and the parents; all that took place; what you heard 40

Jane Victoria Rippe—Direct.

there yourself in the presence of Mr. Goerz? A. Well, it all took place on the front porch; his sister and mother and father all were present, and my sister and Mr. Goerz, and he wanted to know why she came up there.

10 Q. Who did? A. Mr. Goerz, and she said thought she had just as much right as he did she thought by coming up there to see his people they could come to some understanding, and they talked the case over, and he said he could not live with her.

20 Q. Did he say so? A. Yes, and his father wanted him to, and told him that she had been a good wife to him and had helped him and that he should go back and live with her, that she had always been a good wife to him; he said he knew it, he sat on the railing of the porch swinging his feet, and he said, he didn't know what had come over him, that he had to give it up; he threw his hands up in the air and he said he knew that she had been a good wife to him and that she was a good wife.

30 Q. What did he say, if anything, about her having had this operation? A. Why, she told him that she had had this operation and he told her that he would not think of having anything to do with her, because he was not going to be a murderer; he said he would not think of any such a thing, his sister tried to reason with him and told him that he should go back to his wife, and for him to think that way, but he could not see it that way; he said he did not know what came over him; he kept swinging his legs between the bars of the porch.

Q. That is all.

Jane Victoria Rippe—Cross.

CROSS EXAMINATION BY MR. McDERMOTT:

Q. What time did you get to Hartford, that Monday Mrs. Rippe? A. I believe it was between one and three o'clock.

MR. WELLER: I would like to ask one more question.

THE MASTER: Very well.

10

BY MR. WELLER:

Q. Did your sister, during the year 1912, make another trip to Hartford, that you know of? A. I know she was up there in the springtime last year, or the early part, around June, I believe.

Q. Did she last Fall, in August or September, make any trip to Hartford? A. Not that I know of.

20

BY MR. McDERMOTT:

Q. Then you went up by carriage from Hartford to Unionville? A. Yes, sir.

Q. You and Mrs. Backus and Mrs. Goerz? A. Yes, sir.

Q. What time did you get up to the place, the farm? A. I should judge between eleven and twelve o'clock.

Q. In the morning or night? A. In the morning; we went out Tuesday morning.

30

Q. You didn't go to the farm until Tuesday morning? A. No, sir.

Q. You got there up to the farm, about eleven o'clock? A. Yes, sir.

Q. When did you leave the farm at Unionville? A. I should judge between four and five o'clock the same day.

Q. You were there from eleven o'clock till four or five o'clock? A. Yes, sir.

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Jane Victoria Rippe—Cross.

Q. And the night that you spent away from home, you spent with Mrs. Backus, at her house?

A. Yes, sir.

Q. She lived in Hartford? A. Yes, sir.

Q. When you got up to the farm; you think that that was on Tuesday? A. Tuesday, yes, sir.

10 Q. How many days did you say that was before they came home from Unionville? A. Well, now, I could not tell you, if they came that week or if they came home on a Monday.

Q. Did you ever see Mr. Goerz after that, until recently? A. I don't think I did.

Q. That, as I recall it, was at Unionville? A. Yes, sir.

20 Q. Did you take any part in the conversation up at Unionville? A. Yes, I put my two cents in.

Q. You say his father and mother took part in it? A. Yes, sir.

Q. And Mr. Goerz himself? A. Yes, and his sister also.

Q. It was really quite a family gathering up there? A. Yes, sir.

30 Q. Did Mrs. Goerz say why she came up there? A. Yes, sir, she said she came up there to see if they could not get together or do something.

Q. They had not separated then? A. No, but he was ugly to her and went up there and would not take her with him, she wanted to go up with him, but he would not take her.

Q. Did you ever hear him complain to her about anything; did you ever hear him complain to your sister about anything? A. Yes, I heard him complain.

40 Q. To her? A. Yes, sir.

Q. Before that day? A. Yes, a week, about.

Jane Victoria Rippe—Cross.

Q. And was it about their inability to have marital relations? A. Well, yes, I might say it was.

Q. Did Mrs. Goerz refer to anything of that kind up there? A. Why, yes, sir.

Q. She talked about it before the father and mother? A. She said that she had had this operation.

10

Q. She had this talk before the father and mother? A. Yes, sir.

Q. And she referred to the fact there, that Mr. Goerz had had great difficulty in that relation, didn't she? A. Well, I didn't exactly hear her.

Q. I mean his sister; she would not begin talking about it the way you are saying it? A. There was certainly something said leading up to that conversation.

20

Q. No person would come in the company of four or five persons and blurt it out and say that she was operated upon?

MR. WELLER: I object to that question.

MR. McDERMOTT: I will withdraw the question.

Q. What did she do to open up the conversation, how did she open up this talk?

30

MR. WELLER: I object to that question.

THE MASTER: You may ask her who introduced the subject at this conversation.

BY MR. McDERMOTT:

Q. You say that something was said about this before your sister made this statement that you have referred to; how did the conversation open?

A. Why, talking about his leaving her, about his

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Jane Victoria Rippe—Cross.

going up to the farm without her, and she said she had a right to go up there and had a right to be there; that was the gist of the conversation.

Q. And then what did she say next after that; did she say they had never been separated a night before that? A. She didn't say that, no, sir.

10 Q. She did talk about this difficulty between them, about their marital relations? A. Well, that was not in public; she said that more to his sister and his mother.

Q. I want to get what she said to him; I understood that some of these things were said to him; what did she say to him that you heard, beginning with the first thing she said to him on that occasion? A. We were all talking, it was between all of us, and we were trying to reason with him about his being wrong.

20

Q. What was the talking about? A. Well, he said he could not live with her any longer, and we were trying to tell him where he was wrong, so many people make mistakes, he had a good home and a good wife; well he talked about other women.

Q. And he talked about his difficulty in his own home? A. Yes, he said he could not live with her.

30

Q. And because of that he didn't speak about it? A. He claimed that she was not like other women

Q. And your sister admitted that she was not? A. Well, she said she was made all right, and said let us live happy.

Q. She admitted before that time that she had not been all right, she surely did that? A. Well, she had that operation performed to make it right with him.

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Jane Victoria Rippe—Cross.

Q. She admitted before the operation that she mentioned she had not been right? A. Well, yes, sir.

Q. And she talked something about his efforts in that direction? A. Yes, sir.

Q. And then you say that she said that she had been made all right? A. Yes, sir.

Q. Did she say that? A. Yes, why she said, well, I won't say that it was the day before or Sunday, she said that she had been made all right, and then he said, no, he would not think of it. 10

Q. He said he was not going to be a murderer, you said? A. He said that was murdering.

Q. He said he was not going to be a murderer? A. Yes, sir.

Q. What was said to him that brought out such an expression as that; what did she say that made him say that he would not be a murderer? A. Well, she said he could try and that they could be all right; she said, that everything was all right, and he said, he would not think of being a murderer; he would not think of his wife being operated on. 20

Q. And this was said after she had said that she had been operated on? A. Yes, sir.

Q. There was nothing else said to indicate how he was going to be a murderer, after something had been said that she had been operated on? A. That is what he said. 30

THE MASTER: Isn't that argumentative, Mr. McDermott?

BY MR. McDERMOTT:

Q. Can you tell us anything more that took place between your sister and your husband on that occasion that you heard yourself? A. Why, 40

Jane Victoria Rippe—Cross.

he seemed to be all right; we went in and had dinner together and he seemed to be real contented and pleasant and very nice together, and we played tennis together and we thought everything would be all right.

THE MASTER: Strike out what she thought.

10 BY MR. McDERMOTT:

Q. His idea of being a murderer did not make much impression on her?

THE MASTER: I don't think that is necessary; strike that out.

BY MR. McDERMOTT:

Q. Did your sister state anything in detail as to what had been done to her, to her husband; 20 the expression was that she had been treated and made all right; did she state what had been done? A. I guess he understood it when she said she had been treated.

Q. What did she say; did your sister state anything in detail as to what had been done to her, to her husband? A. Yes, she said that Doctor Stellwagen had operated upon her.

Q. That is all.

30

MR. WELLER: I would like to recall Mrs. Goerz and ask her one or two questions.

Mathilda Symes Goerz—Direct.

MATHILDA SYMES GOERZ, recalled:

BY MR. WELLER:

Q. Mrs. Goerz, did you, in the Fall of 1912, make any other trip to Hartford except the one that has just been spoken of? A. No, sir.

Q. When did you go home from Unionville; what date? 10

MR. MCDERMOTT: I object to that question.

THE MASTER: I will allow it.

A. Why, it was just exactly a week from the day that he left home; he left on the 28th of September; that must have been the 21st.

Q. Have you since you have been married had your regular monthly menstruation? A. Yes, sir. 20

Q. That is all.

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Arnolda Rippe—Direct.

ARNOLDA RIPPE, sworn.

DIRECT EXAMINATION BY MR. WELLER:

Q. Mr. Rippe, where do you live? A. First street, Weehawken.

Q. What number? A. Number one.

10 Q. Your business? A. Insurance agent, 15 Exchange Place, Jersey City.

Q. You are the brother-in-law of the complainant in this case? A. I am.

Q. You married her sister? A. I did.

Q. Who has charge of her property? A. I have.

Q. Do you know what property she possesses?
A. I do.

20 Q. Tell the Court what it is, please? A. This land is partly in her name and partly in my name; it is her property; money in bank, \$2,244.70; mortgage on 15th street property West New York \$2,000; mortgage on Maple street property \$1,400; mortgage on Nutley property \$2,000; that is the income holdings that she has; then she holds two lots on 15th street, vacant lots, which I consider worth \$2,000, making, I figure it, gross, \$9,601.70.

Q. You are also in the real estate business?
A. I handle a little real estate.

30 Q. And have for a great number of years? A. Yes sir.

Q. Now, what is her entire income from this whole thing? A. Why, the gross income in mortgages and money in bank, about \$412.90 and less the taxes on the West New York property; less taxes, I presume, \$20 about, makes an income of \$392.90; I could not find the 1912 tax bill

40 Q. Has she any other property? A. That is all she has outside of wearing apparel, household furniture and jewelry.

Arnolda Rippe—Cross.

Q. Do you know anything about the time when the defendant left Mrs. Goerz? A. Why, I know this, that one Sunday Mrs. Rippe and I were going to visit some people in West Hoboken.

Q. When was that Sunday; how long before the separation? A. It might have been a week or ten days, and we stopped at Mrs. Goerz's house before we went to visit the people that we were going to visit, and we found Mr. and Mrs. Goerz there; I had a little talk with Mr. Goerz on the situation, and I saw that I could not do anything with him; he was very stubborn, so we went ahead on our visit, and the next thing I heard was that Mrs. Rippe and Mrs. Goerz were going to Hartford; that was on a Monday, the next day; Mr. Goerz in the meantime had gone to Hartford, and Mrs. Rippe thought possibly they could get together and fix things up.

BY THE MASTER:

Q. How did you learn of this, by what you were told? A. Mrs. Rippe told me about the visit.

THE MASTER: Strike that out.

BY MR. WELLER:

Q. Did you ever talk to Mr. Goerz after the separation? A. I don't believe I did.

CROSS EXAMINATION BY MR. McDERMOTT:

Q Mr. Rippe, a single question: You said that he was stubborn about something on that Sunday? A. Yes, sir.

Q. What was he stubborn about, he didn't want to go out in the automobile? A. No, sir, it was not about the automobile.

Q. He did not go out with you? A. We were

Julia Goerz—Direct.

not out with the automobile that day, we were visiting some people up in West Hoboken on foot; of course we go out automobiling on Sundays, but it was not about any automobile ride.

Q. You spoke about his being stubborn about it? A. Yes, sir, I talked to him about the position he was putting himself in.

10 Q. He was right home? A. Yes, sir.

Q. He had been at home every night? A. No, sir, not at respectable hours.

MR. WELLER: That is the complainant's case.

MR. McDERMOTT: I will call Mrs. Goerz, the mother of the defendant.

20

JULIA GOERZ, SWORN:

Q. Mrs. Goerz, you are the mother of the defendant, Mr. Edward V. Goerz? A. Yes, sir.

Q. Where do you live? A. Norton Heights, Connecticut.

Q. Where did you live in the Fall of 1912 a year ago? A. On a farm at West Haven, that is near Unionville, and both of them are near
30 Hartford.

Q. And you know your son's wife? A. Yes, sir.

Q. Has she ever been to the farm at Unionville? A. Yes, sir.

Q. How often has she been up there? A. Twice that I know of.

Q. During her married life? A. Yes, sir.

Q. And when was the last time she was there? A. It was in the Fall of 1912.

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Q. Can you remember about the month? A. September, I think.

Julia Goerz—Direct.

Q. Was she there with you more than once during that month? A. Only once.

Q. Was your son there at that time? A. He was there and she came after.

Q. He came first? A. Yes, sir, he came first.

Q. Do you remember the day of the week he came out? A. I think it was on a Friday, if I am not mistaken. 10

Q. How long after he came, did she come? A. Only a few hours; she came by train to Hartford.

Q. How did your son get to the farm, do you remember? A. Well, he rode over with the car from Hartford and to Unionville, and his father met him there.

Q. And his wife came after in a few hours? A. Yes, sir.

Q. Did any one come with her? A. Her sister and her husband. 29

Q. How long did Mrs. Rippe and her husband stay? A. Only a few hours.

Q. How long did Mr. and Mrs. Goerz stay? A. Until Monday.

Q. You said that Mrs. Goerz, your daughter-in-law, had been to the farm once before that? A. Yes, sir.

Q. How long before was that? A. If I am not mistaken, I think it was the summer before. 30

Q. Had you seen her anywhere in the meantime? A. Let me see; I am not positive whether I saw her not, whether I visited them or not that May, I won't be positive, but we were there.

Q. Who met her when she came up there to the farm, the last time in September? A. I don't know but what we both met her.

Q. Who? A. My husband and I, there was no one else there. 40

Julia Goerz—Direct.

Q. You were both at the house? A. Yes, sir.

Q. Was your husband around there at that time? A. Yes, sir.

Q. Did she have any conversation with you or with her husband and you at that time? A. At that time she did, just a little conversation, but that was all by ourselves.

10 Q. With whom? A. With my husband and I.

Q. Where did that take place, on what part of the property? A. In the dining-room on the farm.

Q. Was Mr. Goerz there? A. No, he did not hear that conversation; we were alone.

Q. How soon was that after she came there, Mrs. Goerz? A. Well, I don't think it was until the next day.

20 Q. What did she say to you at that time in relation to her husband? A. Well, she began to talk and say she did not think that married life was as it should have been.

Q. Whose married life? A. Why, everybody's married life.

Q. What did she think was the matter with married life; what did she say? A. Well, she said, she didn't know that—well, that the man had to go as far as he—

30 Q. How did she express it, Mrs. Goerz, what were the words she used? A. Well, she didn't know that a man had to get there, you see.

Q. What else did she say about it? A. That is all, I don't know what else I can tell you.

Q. Did you hear any conversation on the porch? A. No, I did not; I was not out on the porch, because I was in the kitchen cooking; I had to get supper ready for them.

40 Q. Mrs. Rippe has spoken of a conversation that took place on the porch while she was there?

Julia Goerz—Cross.

A. Well, my daughter was there and I had the cooking to attend to.

Q. You did not hear any conversation there?

A. No, sir.

Q. Won't you tell me a little more particularly what she said in the dining-room; I am obliged to ask you what she said to you, in Mrs. Goerz's words? A. I don't know as I can speak any plainer. 10

Q. Can you remember the words that she used; was she speaking about sexual intercourse between her and her husband? A. Yes, sir.

Q. Do you remember what she said? A. He was trying very hard to have sexual intercourse and could not.

Q. Now, give us as nearly as you can, her own words? A. Yes, sir I don't think she used any further words, only that she never thought that a man had to get there; that is all I can tell you; those are the words that she used. 20

Q. Did she use those words? A. Yes, sir; she said she didn't think a man had to get there.

Q. She didn't think that it was necessary for a man to get there? A. Yes, sir, she didn't think it was necessary for a man to get there. I cannot tell you any different. 30

Q. That is all.

CROSS EXAMINATION BY MR. WELLER:

Q. Mrs. Goerz, what time of the day was it that your son got there? A. Well, if I am not mistaken it was on a Friday, but I won't be positive.

Q. He came over there from Hartford? A. Yes, sir, from home to Hartford; he had to come that way. 40

Julia Goerz—Cross.

Q. Isn't it a fact that Mrs. Goerz and her sister, Mrs. Rippe, came to your place on a Tuesday? A. Well, I told you, I would not be positive.

Q. What did they come for? A. Well, just for that purpose, I suppose.

10 Q. For what purpose was it? A. To talk the matter over with my son.

Q. Your son had left you home and came up on a visit to your home, at that time? A. Yes, sir.

Q. And the wife appeared to be very much in love with him? A. I can't say that; I never saw any love; she never showed any love.

Q. She wanted him to go back and live with her? A. Yes, sir, but I never saw any love.

20 Q. How did this conversation start in the dining-room? A. How did it start?

Q. Yes. A. I don't know; I am sure I don't know, but what I might have asked her what the trouble was; I didn't know what the trouble was before.

Q. Your son never complained to you about the trouble? A. No, sir.

30 Q. And you asked her what the trouble was? A. Yes.

Q. And what did she tell you? A. Just what I told you before.

Q. Just tell me again; I don't recall the words? A. Well about married life.

Q. She said that he could not have intercourse with her? A. That is what she said; she didn't know why.

40 Q. She told you how she found out, she had been to a Doctor; didn't she say that? A. Well, she spoke about a Doctor, and hinted—

Julia Goerz—Cross.

Q. Didn't she tell you that she had been to Dr. Stellwagen? A. Well, my son didn't want her to go to Dr. Stellwagen.

Q. Didn't she tell you that she had been to Dr. Stellwagen? A. Yes, sir.

Q. And didn't she tell you that the Doctor said that it was a very simple operation? A. Well, she spoke in that way.

10

Q. And she said how she and your son might live happily? A. I don't know whether she said that; I was not there with her when she said that.

Q. Didn't she say that he was making her all right and now she could live happily? A. She thought so.

Q. What did you say to that? A. I told her that my son wanted to have her examined by another Doctor, not by Dr. Stillwagen, because he didn't care for him, and she said she was going to do as she pleased about that.

20

Q. She told you that Dr. Stellwagen already had commenced the operation? A. He did something, I don't know what she said.

Q. Did she speak of the Doctor already having done something? A. She said she had already been there to see the Doctor and he was going to treat her.

30

Q. Did she say whether or not the Doctor had treated her? A. I won't say that she did, and I won't say that she did not.

Q. Didn't you say a few minutes ago that the Doctor had already treated her? A. No, I didn't say that, because she had always traded with Dr. Stellwagen.

Q. Didn't you say on my first examination that Mrs. Goerz told you that the Doctor had told her

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Julia Goerz—Cross.

that it was a very slight operation; she said that, didn't she? A. I don't know if she said those words, it was something to this effect.

Q. That he had made her all right and that now she could live happy? A. Not that he had made her all right, that he was treating her.

10 Q. Didn't she complain of being sore at that time from the treatment? A. Well, she said something to that effect, she did.

Q. And she said, now that your son and she could live happily? A. Well, I don't know that she just said that.

Q. You talked to your son about it? A. I did after that.

Q. You told him that Mathilda had been a very good wife with him? A. Well, I would lie, if I
20 would say that, because she was not.

Q. Didn't you say that? A. No, sir.

Q. Didn't you say that she had helped him in his difficulties and had advanced money to him? A. I told her that I would try my best and see what I could do for them.

Q. Did you try? A. I did.

Q. Did you try with your son? A. I did, but I didn't know the situation; I spoke to my son
30 and he said, he could not live with her.

Q. Did you tell your son that she had had the Doctor perform an operation? A. No.

Q. You were trying your best to get them together; why didn't you tell him about it? A. That is his own business.

Q. Did you tell him about the wife being to the Doctor? A. Not one word.

Q. Why did he say that he could not live with
40 her? A. That he could not have any intercourse with her.

Julia Goerz—Cross.

Q. And when he told you that, he being your son, you didn't say a word about what she said, about being to the Doctors? A. No, sir.

Q. Why didn't you, you are a mother? A. I thought he would find that out himself.

Q. Do you know that he after that declined to have anything to do with her? A. I can't say that.

10

Q. Didn't he tell you then, that he would never try again, and never have anything to do with her? A. Not exactly.

Q. What did he say? A. He didn't say anything, only he wanted her examined by another Doctor and not Dr. Stellwagen.

Q. What other Doctor? A. I don't know what Doctor.

Q. He didn't name any other Doctor? A. No, sir.

20

Q. Did he say that to you or his wife? A. He said that to both of us, my husband and I.

Q. But he didn't say that to his wife? A. Not in presence I can't tell you that.

Q. Did he tell you at that time that he was going to leave her? A. No, sir, not at that time, he didn't.

Q. You knew at this time that your son was infatuated with another woman? A. No, sir, I don't believe it.

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Q. You didn't know anything about his going out with other women? A. No, sir, I did not. I think he is as innocent as that chair.

Q. That is all.

40

John Goerz—Direct.

JOHN GOERZ, SWORN.

DIRECT EXAMINATION BY MR. McDERMOTT:

Q. How old are you? A. Sixty-four.

Q. And where do you live? A. In Noroton, Connecticut.

Q. You lived at Unionville, part of the time?

10 A. Yes, sir.

Q. Where did you live last September? A. In Unionville on a farm.

Q. You had a farm up there? A. Yes, sir.

Q. You are the father of Edward V. Goerz?
A. Yes, sir.

Q. Do you know his wife? A. Yes, sir.

Q. How often has she been up to the farm, Mr. Goerz? A. Well, I guess twice.

20 Q. And when was she there the last time?

A. Last September.

Q. When she came up in September, did anybody come with her? A. Yes, sir they came with a team; there was a sister of her's, Mrs. Rippe and my daughter, Mrs. Backes.

Q. Was your son at the farm at that time?
A. Yes sir.

30 Q. How long had he been there? A. Only just a few hours.

Q. Do you remember the day of the week?
A. I think it was the twentieth, I don't know exactly the date.

Q. What, the twentieth of September you think it was? A. Yes, the 20th or 21st of September.

Q. You think that it was the 20th of September? A. Around there, the 19th, or the 20th, or the 21st of September.

40 Q. You say your son had been there a few hours? A. Yes, sir.

John Goerz—Direct.

Q. When the ladies came up, did you meet them or not? A. Yes sir, I did.

Q. You said yes? A. Sure.

Q. Did Mrs. Goerz the daughter-in-law have any talk with you? A. Not the same day I didn't talk very much.

Q. Not the same day? A. No, sir.

Q. When did you have a talk, the next day? **10**
A. Well, she stayed there a few days, you know.

Q. When did she talk with you Mr. Goerz?
A. Well, she talked to me, was it the same day or the next, about the trouble they had.

Q. Do you remember where she talked with you, what part of the house? A. Well, right in the kitchen, my wife was with me.

Q. You and your wife were there together? **20**
A. Yes sir.

Q. Do you recall any conversation or talk with Mrs. Goerz and your son the first day they came there? A. No, I never had any talk on the porch in the day time.

Q. As a matter of fact, did you have any talk out there? A. I heard them talking together.

Q. Were you present at any conversation on the porch? A. No, sir.

Q. Now this talk in the dining room that you have mentioned when your wife was present who started the conversation? A. Well I guess she did about the trouble; I said what is it. **30**

Q. The trouble he had? A. That my son went away and she said well such a thing as that is very hard to tell; she said, they could not sleep together they could not do anything, etc., and she said he tried and tried and tried and he could not succeed and she said then that she didn't think **40**
that it was necessary that a man needed, you

John Goerz—Cross.

know. She was trying to talk like—children know a lot more about this; I think so, so I could not say any more; well that is all; I told my son a year or two years ago —

Q. What was said while she was there?

A. Well, he said he could not succeed, that he had tried and tried it and could not succeed.

10 Q. That is all.

CROSS EXAMINATION BY MR. WELLER:

Q. What day of the week did they come up there Mr. Goerz? A. Well I think it was on a Friday.

Q. Your son came up before they came?
A. Yes, sir.

20 Q. Did he speak ever of Mrs. Backes before he came to your house, do you know? A. I don't think he did.

Q. How did he come to your place? A. Well, he came from Hartford with the car.

Q. Right to the place? A. To the place with the trolley car.

30 Q. How long did he stay at your place?
A. Well, he stayed there, I don't know how many days they did stay, but after that they went home together; they went away together.

Q. Who, the husband and wife? A. Yes, sir.

Q. Now, when she came there, her sister and your daughter were with her? A. Yes, sir.

Q. Wasn't that on a Tuesday? A. I think that Rippe said that she had to be home on Sunday, and she had to go away the next day, I don't know exactly if that is right.

40 Q. How long did Mrs. Rippe stay at your house?
A. She only stayed a few hours and she took the trolley to catch a train.

John Goerz—Cross.

Q. What time did they get there? A. Well, I don't know what time they got there; it was noon time, I think, I think.

Q. She went away that evening? A. Yes, sir.

Q. What did she come there for? A. Well, they come together with her sister.

Q. What did they come for? A. Well, they wanted to see if they could not fix it up on account of my son going away. 10

Q. What did they want to fix up; did they want to get him to come back? A. I suppose so.

Q. Was the son present when the wife talked to you and your wife? A. No, sir.

Q. She told you about the trouble? A. Yes, sir.

Q. She told you that she had been to a Doctor? A. No, sir. 20

Q. She didn't say anything about that? A. No, sir.

Q. She didn't say that she had been examined by a Doctor at all? A. I don't think she did.

Q. Isn't it a fact that she told you that she had been to the Doctor and that he had told her that it was a very simple operation to make it all right? A. I don't remember her saying that.

Q. Didn't she say that the Doctor had started the operation on her and that she would soon be all right; didn't she say that? A. Not that I know of. 30

Q. Didn't you tell her that you had heard of a case like that out in Europe and that it was easily remedied? A. What are you talking about?

Q. Didn't you tell her that? A. No, I ain't going to have anything like that.

Q. Did you tell her about any case anywhere? A. What did I know about such cases? 40

John Goerz—Cross.

Q. Did you tell her about any case anywhere?

A. No, I did not.

Q. Your wife was present when you were talking with her? A. Yes, sir.

Q. And you and your wife and her only had one conversation? A. They had more than one conversation.

10 Q. I asked you about how many conversations there were when your wife, Mrs. Goerz, your daughter-in-law, and yourself, when the three of you were together? A. Not together.

Q. Was there any other conversation where you and your wife and your daughter-in-law were present, other than the one that you have been talking about? A. Not when the three were together.

20 Q. Didn't you say at the conversation that you had with her, "Oh, pshaw Mathilda that will be all right don't worry"? A. Well I don't know what question she put to me, they already had a good deal to do; I could not say about a thing like the case is, I could not say anyhow that it would be all right, that is the Doctor's business.

Q. Well, you didn't say anything like that? A. No sir.

30 Q. That is all.

BY THE MASTER:

Q. Your daughter-in-law came there with your daughter? A. Yes, sir.

Q. And how long did your daughter stay? A. I don't know if they stayed a week or not.

Q. And Mrs. Rippe, how long did she stay? A. They went away the same day.

40 Q. Do you remember whether there was any conversation out on the porch while Mrs. Rippe

Joseph M. Rector—Direct.

was there between Mrs. Rippe and your son and your daughter-in-law while you were there within hearing? A. No, I heard some talking but I did not want to interfere.

Q. Were they sitting out on the porch talking?

A. Yes sir.

Q. And Mrs. Rippe was there then? A. Yes, sir.

Q. And your son and his wife? A. Yes, sir. 10

Q. And your daughter? A. Yes sir.

Q. Were you on the porch? A. I never stopped and sat down or anything like that; I had something to do in the garden, you know on the farm.

MR. McDERMOTT: I will now call Dr. Rector.

JOSEPH M. RECTOR: Sworn:

20

DIRECT EXAMINATION BY MR. McDERMOTT:

Q. Dr. Rector you are a physician and surgeon of this city? A. Yes sir.

Q. How many years have you been a physician and surgeon? A. Twenty years.

Q. Are you engaged in Hospital work anywhere in this city? A. Yes sir.

Q. Where? A. I am Surgeon to Diseases of Women in the Jersey City Hospital; I am surgeon in the North Hudson Hospital; I am a Surgeon for the Department of the Interior U. S.; I am Major Surgeon for the State of New Jersey; I have recently resigned as Chief of the Clinic of New York School of Clinical Medicine, Department of the Diseases of Women, and I was associated with the West Side Dispensary Department of Diseases of Women. 30

40

Joseph M. Rector—Direct.

Q. Do you know Edward V. Goerz the defendant in this suit? A. Yes sir.

Q. Have you at any time recently made an examination of Mr. Goerz in relation to his capacity as a man? A. Yes sir.

10 Q. Will you state the nature of the examination and the result? A. On the 13th of April he was in my office and I examined him for his capacity as to whether he was impotent or whether he was natural or sterile. I found that he was neither impotent or sterile, that is, he is perfectly capable of propagation, that is to begin the making of children.

20 Q. How was that examination made? A. As regards impotency, electric reactions were taken of the nerve which control the erection of the penis; I found by the electrical reaction, by placing the electrode upon the nerve, the genito crural, which controls the muscles, that the reactions were normal; that is, we get a contraction of the scrotum and the skin of the integument of the penis; with that alternating contraction of the penis itself; that nerve also has some control of the flow of fluid to the floor of the penis.

30 I found on examination of the prostate gland, that is one of the genital glands and the gland or structure which assists in sending the semen from the testicles called in medical terms the seminal vesicles that both were normal. During my manipulation of both these organs I held a sterilized glass which had been previously sterilized at the head of the penis and I also massaged his prostate gland and seminal vesicles which caused the semen to exude from the testicles, I then placed this semen under a microscope, and the slide which
40 I made then I have now here and I am able to say that the spermatozoa, which is necessary for the foundation of the family act, was present.

Joseph M. Rector—Cross.

Q. And you have the slide here? A. Yes, sir.

Q. And microscope? A. Yes, sir.

Q. You have examined that? A. I have examined it and find that he is capable of propagation of children; in other words he is not sterile.

Q. What did you find as to the power of erection? A. I found that his penis erected during the manipulations of the electrodes and massage of the prostate gland and seminal vesicles. 10

Q. From your examination of him in the way that you have mentioned, state in your judgment whether he is capable or incapable of coition as well as propagation, A. He is capable of coition, he is not impotent or sterile.

Q. That is all.

CROSS EXAMINATION BY MR. WELLER:

20

Q. He is not a very strong man? A. For his size he is, yes, sir, he is 5 feet 6 inches in height and I think he told me that he weighed 130 pounds; that is between the weight; the weight of the average man of his height would be 120 pounds.

Q. Is it not the fact that a great many men are weak sexually and still capable of propagation? A. Yes, sir, but if he was weak sexually, he would not possibly have an erection. 30

Q. Are there no decrease in generations?
A. Yes, sir.

Q. Isn't it a fact that some men have erections too soon? A. Yes, sir. Some men will inject the seminal fluid at the entrance; there is no stated time when the ejaculation will take place.

Q. When that does take place then the penis could no longer enter or force its way through a hard entrance? A. That would depend upon the continuity of the man. 40

Joseph M. Rector—Cross.

Q. A great number of individuals are able to have, one, two or three intercourses without cessation of the penis? You did not find that in his case? A. I could not tell you that.

Q. Were his testicles normal? A. They were.

Q. Is it quite a common thing for a young woman to have a thick hymen? A. It is common, it happens often.

Q. There are a great many thick hymens found in married women?

MR. MCDERMOTT: I object to that question as not proper cross examination.

THE MASTER: It does not seem to be proper cross examination; strike it out.

BY MR. WELLER:

Q. Isn't it a fact that there are men strong enough to break any hymen?

MR. MCDERMOTT: I object to that question as not proper cross examination.

THE MASTER: I will allow the question.

A. Yes, sir.

Q. And as to whether or not the man can enter a woman with a thick hymen it depends upon the strength of his genital parts? A. No, sir.

Q. How do you reconcile your last two answers? A. In the second case an entrance through the genital parts, that is, a hymen thickened by birth and not that by disease will depend upon two factors: First: The amount of tensability of the hymen, and Second: Upon the size and force of the impending organ. In other words the strength and force required to break an abnormally thickened hymen would depend upon two factors, not upon the impending organ alone, it depends also

Joseph M. Rector—Cross.

upon the size or the varied openings in this hymen and also the strength of the muscles of the vagina; there is a spasm which takes place in the muscles surrounding the vagina and the contractions render coition difficult and they remain perfectly hard contractions; especially, if the point on the orifice of the hymen attacked is too small to admit the head of the penis and thus to allow the discharge of the semen into the vagina. Thus with a vaginismus, as it is called, and a tough unyielding hymen, or hymen with several small openings, there would not be sufficient strength in any erected penis to force an opening into the vagina, or front passage in the woman. 10

Q. Has the defendant in this case paroxysms?

A. I don't remember; I don't believe that he has.

Q. What is varicocele? A. Enlargement of veins of scrotum. That has nothing to do with the bladder. 20

Q. The seminal vesicles that you speak of lies back of the bladder? A. Well, they lie in the perineum, the prostate gland surrounds the neck of the bladder and the seminal vesicles are posterior at the base of bladder between bladder and rectum and opens into the penis, on its floor, by their ducts.

Q. Could you examine it physically from the outside? A. Yes, sir; we would go into the rectum with the finger and with a gloved hand we catch both the prostate glands and we can bring out the secretions, that is how I examined this defendant and how we examine for this seminal fluid. 30

Edward V. Goerz—Direct.

EDWARD V. GOERZ, SWORN:

DIRECT EXAMINATION BY MR. McDERMOTT:

Q. Mr. Goerz, what is your full name? A. Edward Valentine Goerz.

Q. What is your age? A. I am thirty-one, I will be thirty-two on my next birthday.

10 Q. You were married at the time stated by Mrs. Goerz this morning? A. Yes, sir.

Q. And you and she lived together in New Jersey up to September 1912? A. September 28th, 1912.

Q. Mr. Goerz, after this marriage ceremony, where did you and your wife go? A. Where did we go?

20 Q. Yes? A. Immediately after the ceremony we went to New York to have some dinner at a restaurant and then to our own home; we had fitted up our apartments on Fulton Avenue.

Q. And you went to live there, you and she in your own home? A. Yes, sir.

Q. Did you continue to keep house there? A. Yes, we kept house at one place, we never boarded anywhere.

30 Q. And so you continued to keep house there until this time in September, 1912? A. Yes, sir.

Q. During that time who provided for the house? A. I did.

Q. And at one time your wife owned the house? A. Yes, sir, at one time we had a house in Nutley; we bought that house for \$4950; I signed the original contract.

THE MASTER: Strike that out.

40 A. (continued) I paid the interest on the mortgage and the maintenance; it was only her money

Edward V. Goerz—Direct.

that bought the house, only the first payment down.

Q. You said after the ceremony and this entertainment in New York, you went to this home that had been fitted up? A. Yes, sir, on Fulton Street.

Q. Speaking now of the relations between you and your wife, was any attempt at sexual intercourse made at that time, that night? A. You mean the first night; it is the first thing a man and a woman should think of, I certainly did; I tried, and when we got undressed, I shall talk very plain; after we had undressed ourselves and got to bed, after a number of caresses and after making all sorts of attempts, I discovered that Mrs. Goerz had her monthly period, the illness, you know what I mean, and she informed me of that fact, and I naturally didn't attempt to have anything to do with her; she said she was taken sick this morning, on May eighth. 10 20

Q. After this period was terminated was any further attempt made by you? A. Yes; I gave her six, seven or eight days after that, after this sickness was over, I went through the regular procedure which all women generally are familiar with and I tried to enter with my penis into Mrs. Goerz; just prior to that I brought on the subject in as gentle a way as any man could bring it on and told her how it was necessary and what has to be done to have sexual intercourse and both times, it is needless for me to tell you that I was in a state of great excitement, I will say that is sexual excitement, and the fact is that I was unable to enter her, and with the many attempts that I made that night is was impossible for me to enter her and I dismissed the subject from my mind with kind words and Mrs. Goerz said we will 30 40

Edward V. Goerz—Direct.

try to do so and we will try to-morrow night and I did so and about the fifteenth or sixteenth of May I again found the same difficulty, but I knew that she was a good girl; I thought it absolutely no fault of mine and I gave her the benefit of the doubt and continued the following night, and if I am not greatly mistaken I tried fifteen days in succession without any result. Of course, gentlemen, you will understand that while I tried and got up to a certain pitch, I naturally lost control of myself and I had my natural discharge, which meant that I had to go into the bathroom and wash up, and that was not a rare occurrence by any means. I tried that for fifteen days in succession or maybe a few days more and after that time that her sick period came on, approximately, the time that it was in the month of May, she was sick on the 8th of May, I think. I think it was about the second or third of June, one day I tried and tried and I could not succeed; I told her by reasoning with her, stating to her that it was one of the requisites; that that was not everything in married life, but I said it was one portion of the marriage tie; I made that very plain with her; it went on for several months and I intimated to her that it would be best for her to see a Doctor about it.

30 Q. Before you go into that, how long did these efforts on your part continue? A. You mean any one evening?

Q. No, throughout your married life? A. Why, I kept this up for the entire time of my married life.

Q. Was there any time during this entire period of your married life that it was possible for you to effect an entrance? A. No, sir.

40 Q. Before you were married, or at the time of

Edward V. Goerz—Direct.

your marriage, did Mrs. Goerz inform you of this condition of hers? A. She did not, no, sir.

Q. After you had been married some months, did you make any suggestion to Mrs. Goerz as to finding a remedy for this trouble? A. I made my first suggestion several months after our marriage. I suggested that she go to her sister; who was the only one near. I knew it was a delicate subject and could not be talked to by any one, and I begged of her to go to her sister and confide with her sister, which she absolutely refused to do; that was my first attempt. 10

Q. Was there any effort made to have her see a physician? A. Yes, sir.

Q. State your first effort in that direction? A. I cannot directly recall how many months, or if it was a year after we were married, and knowing that she had not seen her sister or talked to any one, I knew her sister would be the only one that she would confide in, so I advised that she be examined by a physician, and if I am not mistaken Mrs. Goerz had occasion to go to a Doctor about some marital trouble, and I said, there is your opportunity to mention that; I can't recall his name, he lived right opposite our house at the time; she went over to see the Doctor, but she told me she would not go to see a Doctor, she said Ed, I don't think those things are really necessary in married life; we have a nice home and everything we want, I don't think we want to dwell on this subject, we can be happy in this way and live nice, and have everything we want to eat, we eat good and sleep good. 20 30

Q. What did you say to that? A. I said you know well enough, that is so; with the exception of nice times; I said however I don't think it is a nice thing for me and it is hurting my health; I 40

Edward V. Goerz—Direct.

intimated that I could go out with and have a good time with other women, but I didn't do that and I told her so, but I said, I have every reason to go wrong and get it on the outside.

10 Q. What did you mean by that, you had every reason to go wrong? A. I should think that that would hardly be necessary to explain, because I could not have intercourse with Mrs. Goerz.

Q. Did you speak about a woman doctor?
A. Oh, yes, I mentioned a woman doctor to her in a casual way only. A year and a half after we were married in Nutley, I said to her, he is a very accomplished Doctor opposite us, why can't I try and arrange with some woman Doctor, some noted woman Doctor and she again objected, and said she would never go to any Doctor and be examined for that purpose, those words she said, "I will lay
20 myself down for no Doctor."

Q. How many times during these three years of your married life did you suggest that she be examined to see if something could be done to remedy this difficulty? A. I cannot recall exactly all; but the instances that I can recall I should say at least twenty or twenty-five times, at least that many times.

30 Q. How many surgeons did you suggest? A. I suggested two, Dr. Cussler, because Mrs. Goerz knew him; he is in New York at the Hotel Charlton, and the other was a woman doctor who had been recommended to me by a lawyer, whom I was going to have here in my case in New York.

Q. And you spoke about a Doctor in Nutley?
A. Yes, sir, I mentioned him already; he is the one that I just mentioned.

40 Q. Do you remember his name? A. I don't remember his name.

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Q. Now, we have the other two Doctors?
A. Yes, sir.

Q. Now, what other Doctors did you suggest to her? A. Not any other doctor; I only suggested Doctors to her that I actually knew and satisfied me.

Q. Did you ever suggest that she be examined by Dr. Stellwagen? A. No, sir, in fact I objected to Dr. Stellwagen examining Mrs. Goerz for obvious reasons. 10

Q. What was the result of those suggestions or efforts on your part to have her examined by those physicians? A. There was always one result, and that was an absolute refusal.

Q. Was there any change in her condition so far as you could see up to September 1912? A. None that I could see, no. 20

Q. Do you remember the occasion of your vacation in 1912? A. Yes, sir, I do.

Q. Did you and she go any place together? A. Yes, sir, we went to Albany and we stayed at the Hotel Hamilton; we returned by train; we went up by boat and came back by train.

Q. What was your habits as to being at home at night? A. I will state this, that I missed but one night home, that is not being with Mrs. Goerz at our home, during our entire married life. 30

Q. Up to September 28th, 1912? A. Yes, sir.

Q. What night was that? A. I told Mrs. Goerz that I would go to Unionville and tell my parents the trouble I have every night; I say to you that was the only night that I was away.

Q. After you came back from Albany did you stay home awhile? A. After we came home from Albany, I think we stayed home, well, I don't know, we must have stayed home a day or two and then I went up to the farm. 40

Edward V. Goerz—Direct.

Q. Did you go all alone? A. I went alone; I packed my little black bag; I only took a shirt and a collar, because I said I was only going to visit the folks and only stay a few days.

Q. Your expectation was to stay how long after you disclosed it to Mrs. Goerz? A. In fact I told her why I was going; I don't remember
10 whether I told her I would come back the next day or the following day after that.

Q. Do you know Dr. Stellwagen? A. Oh, yes, I have heard of him and I know him personally; I have been at his house.

Q. You knew that he was at your house? A. So I was told.

Q. Has Mrs. Goerz at any time since these operations or dilations to which she and the
20 Doctor have testified to this morning, informed you that this difficulty or impotency had been remedied? A. No, sir.

Q. Nor has she up to this time? A. Not until this morning; no, sir.

Q. Never wrote you or said anything about it to you? A. No, sir.

Q. Were you present at this conversation which your father and mother spoke about at Union-
30 ville? A. Yes, sir, as outlined by my father and mother, there were several conversations and I think I can remember that my mother and father were present when Mrs. Goerz was talking together, and I know I was there for a few minutes, and they have had other conversation that they had while I was out on the road or doing something outside of the house.

Q. What did she say to you at that time? A.
40 Who?

Q. Mrs. Goerz. A. To me?

Edward V. Goerz—Cross.

Q. Yes. A. I don't think she addressed me at that time; I think she was talking to my mother and father, not to me directly.

Q. Did she make any statement to you at that time as to any change in her condition? A. No, not at that time.

BY THE MASTER:

Q. Did she make any statements in your hearing as to any changes in her condition? A. Well, to tell the truth, I can't exactly say she did, because there was so much conglomeration going on that I cannot tell you definitely.

10

BY MR. MCDERMOTT:

Q. What was the matter that was talked about? A. It was the one thing that was talked about all the time; I know Mrs. Goerz said to mother and father in explaining this life that we had been living, that I could not get there; he had tried and tried several times, but he could not get there.

20

Q. Who said that? A. I heard her say that, I am positive of that, and that she did not think it necessary in married life that men and women should have intercourse; that if their homes and surroundings were nice, that would be sufficient for happiness in married life; I heard this.

30

CROSS EXAMINATION BY MR. WELLER:

Q. Mr. Goerz, you were married before? A. I certainly was.

Q. How long did you live with your first wife? A. How long?

Q. Yes. A. About three months.

Q. Did you have any children by her? A. No.

40

Q. You divorced her or she you? A. She divorced me.

Edward V. Goerz—Cross.

Q. You have said that you paid the interest on the mortgage, when you lived out at Nutley?

A. Yes, sir.

Q. How much was that mortgage for? A. That property was mortgaged for \$3,200.

Q. She had advanced \$400? A. She had advanced me an amount to that extent; I have on
 10 a number of times, when I offered her a promissory note, she said I do not want it, you don't owe it to me.

Q. Did you not get \$1,500 of this money from her in reference to your first wife's divorce? A. \$1,500.

Q. Yes? A. I don't agree with you; a member of the firm of Erwin and Company advanced me the sum of \$1,500 for the purpose of my proceeding.
 20

Q. And she paid it back? A. No, sir, I still owe them.

Q. Will you say that she did not advance you \$1,500? A. Not for that purpose.

Q. Will you admit that she advanced you \$4000?
 A. It might amount to that much.

Q. Now, you claim that when you lived in Nutley, you asked her to see a Doctor? A. Yes, sir.

Q. How long had you been married at that
 30 time? A. Well, we were married May 8th and we moved to Nutley on the first of June, and I think it was just a few weeks after we had settled in our new home.

Q. What did you say to her about going to this Doctor? A. As said before, this is your opportunity so long as you are going over, you can very nicely break in the subject of your married life and tell the Doctor everything about yourself
 40 and tell the Doctor that I had tried.

Edward V. Goerz—Cross.

Q. Didn't she tell you that nature would take its course? A. She did not say that.

Q. That nature would take its course? A. That was two years after we were married.

Q. Why didn't you say, I will go with you to the Doctor and have you examined in my presence? A. She refused to go.

Q. She did go? A. She went, in fact, the Doctor came on another occasion. 10

Q. Why didn't you speak to the Doctor? A. Because she asked me not to say anything about it.

Q. And you didn't insist upon it? A. I did not; I asked her to go and do it in as nice a way as possible.

Q. When next did you speak about it to her? A. It came so close in succession about going to a Doctor, perhaps I spoke about a Doctor every month or every six weeks. 20

Q. You never went to any Doctor with her? A. No, sir.

Q. You never asked her to go with you to a Doctor? A. I did in September.

Q. When? A. Last September.

Q. That was the last time that you asked her to go to a reputable Doctor? A. Yes. 30

Q. Was that the first time you ever asked her to go to the woman Doctor? A. No, when we were living in Nutley.

Q. Did you take any steps to find any woman physician? A. I did not because she turned me down completely and said this, if you get one, I won't go.

Q. Didn't she say that she would be all right and say that nature would take its course? A. No. 40

Edward V. Goetz—Cross.

Q. You didn't get any woman Doctor? A. No, I heard of one in September and it was all up to her to say, I will go over with you, and the appointment would have been made.

Q. What time in September did you speak of this woman Doctor? A. In September, 1912, it was early in September; it may have been in the latter part, because I am not so sure of that.

10

Q. Before your vacation? A. Much before my vacation.

Q. When did your vacation start? A. I believe it was, it started on Monday, September 9th.

Q. When did your vacation stop? A. Two weeks after; I was back on the morning of September 23rd.

20

Q. Then that time you went to Hartford? A. Yes sir, we went to Hartford; we also went on our trip to Albany.

Q. What day did you leave home to go to Hartford? A. As I recall it, it was on a Sunday night; I think my mother and father are both mistaken about the date.

30

Q. Wasn't it Friday night? A. I don't think it was. I think it was Friday night that we came back from Albany; I believe I went up to Hartford, and I left the house on a Sunday evening.

Q. It was Tuesday when your wife came there? A. I have been under the impression that it was on a Monday. I may be wrong about it, that is what I think.

40

Q. Where did you go when you were away from home? A. I think it was about half past eight o'clock. I went over to the Grand Central Depot and saw I could not get a train right away and I stayed in the Grand Central Depot and I took the 9:02 train to Hartford.

Edward V. Goerz—Cross.

Q. Did you stay over night with your sister?
 A. I did not; I went right out to the farm; took a trolley car from the station to the farm; I have an idea the eight o'clock train was the first train that I could get.

Q. How long had you been at the farm when your wife came in? A. If my wife came there on a Monday, then I was only—it would appear that they really did come up there on Tuesday; I am not sure of the date, because I don't remember. 10

Q. When she came? A. Yes, when she came.

Q. And she came there to see you? A. Well, presumably so.

Q. She told you that she had been to see Dr. Stellwagen? A. Well, she told me that she had been—no, she could not have told me that; she told me that she had called Doctor Stellwagen to my house and— 20

Q. And that he had examined her? A. Yes sir, and that he had examined her.

Q. And that he started the operation? A. No, the word "operation" was never mentioned in any conversation that Mrs. Goerz and I had.

Q. Well that he had started to treat her? A. I know she told me—nothing was told me; I would say this of Mrs. Goerz. 30

BY THE MASTER:

Q. Just tell me what you mean; did Mrs. Goerz tell you anything to indicate that she was under treatment with the Doctor or that he had begun treating her for this trouble? A. I must say that I don't remember that anything was told to me by her. 40

Edward V. Goerz—Cross.

BY MR. WELLER:

Q. Isn't it a fact that you got her a hot water bag and that she had got to use it in connection with that trouble? A. I bought her a hot water bag.

Q. But, didn't she tell you that that is why she wanted it? A. No.

10 Q. Didn't she tell you that she was very sore in these very parts? A. No, she did not.

Q. What did she say to you about being sore if anything? A. I would not know how to begin to tell you, just what she said, or how she talked about that matter.

Q. Don't you know what she said to you about this thing? A. I can't remember anything leading up to anything of that kind.

20 Q. She told you that she had called the Doctor to your house? A. Yes sir.

Q. And she told you that he had examined her? A. Yes sir.

Q. And she told you that it was a very slight thing? A. It would be a very slight thing.

Q. Did she tell you what the Doctor had told her? A. I don't remember; I think that was still before I went out to Hartford, that Mrs.

30 Goerz spoke of it.

Q. What did she say about having an examination before she went to Hartford? A. That she had called in the Doctor this afternoon.

Q. Did she tell you that he had treated her? A. No, not at that time.

Q. Did she tell you that he was going to treat her? A. No sir.

40 Q. Did you ask her; when she came up to the farm after that if he had treated her? A. I

Edward V. Goerz—Cross.

can't remember that at all; I remember only that the Doctor had been at my house and that I met him, I can answer that question.

Q. Do you remember being out on the porch one afternoon when you got up there on the farm? A. Yes sir.

Q. And Mrs. Goerz and your sister and Mrs. Rippe being on the porch, and you sitting on the railing? A. Sure, I do. 10

Q. What did Mrs. Rippe and her sister come there for? A. They came there for this purpose: I should imagine, I had said the night that I had left Mrs. Goerz, that I left; Mrs. Goerz wanted to accompany me to Hartford that Sunday evening and I said I wanted to go up there and see my folks alone; I wanted to spend a day or two with the folks and I packed my little grip and I went up there, so my imagination would only have to be stretched; Mrs. Goerz and Mrs. Rippe said, No, you don't go up there alone, I will go up there with you, I don't want you to be talking to your folks; I want to be there with you; so naturally they wanted to be where I was and have a talk about the whole matter. 20

Q. Didn't they have a talk with you and your sister on the porch? A. They were discussing the matter in a general way. 30

Q. What did they say? A. You can imagine there was quite a mixture.

Q. Tell me what it was? A. Entirely the one subject, why we could not get there, and why we didn't get there, and why we didn't do it as man and wife.

Q. Didn't she tell you that, now you and she could live happily? A. No, sir. 40

Edward V. Goetz—Cross.

Q. Didn't she tell you that she had been to the Doctor and that it was a trifling thing? A. No, she never told me that, absolutely no.

Q. She never told you what the Doctor had done for her? A. Not what he had done for her.

10 Q. When did you first learn what he had done for her? A. Why, that first night, I think that we were at the farm, while she was undressing or something like that, that is my recollection.

Q. What did she say to you when she was undressing? A. It was the first time of her saying anything about it, and if I can remember rightly she said in a smiling and joking way and she pointed to herself down here (indicating) and she had on a rag from which I should gather that she had had something done to her.

20 Q. Didn't she tell you what was done? A. I don't remember.

Q. Do you say that she didn't say that to you? A. Yes sir, I don't remember.

Q. How can you say that she did not say so, if you don't remember? A. Well, I will state that emphatically.

30 Q. Now she pointed to the rag and said what? A. She pointed to the rag and in a joking way, laughing, said, see I have had something done to me.

Q. Did you ask her who had done something to her? A. No sir.

Q. Why not? A. I don't know, I may have.

Q. Did you? A. I don't remember exactly.

Q. Why not, this is a very interesting thing in your life? A. I don't remember.

40 Q. Did you hear her talking to your mother? A. I said before, I did, when my mother and father were together.

Edward V. Goerz—Cross.

Q. And you heard her say that you had time and time again tried and could not get there?

A. She stated that.

Q. Did you hear her say to your mother that she had been to Dr. Stellwagen and that he had done something to her? A. No sir.

Q. You heard your mother testify here, did you? A. Yes sir. 10

Q. Did you hear that conversation between your mother and Mrs. Goerz? A. It might not have been that conversation; I went outside and was out in the garden.

Q. Now, that night on the farm was that the first night that she came out, that she pointed to the rag? A. Yes sir.

Q. She stayed there about how many days? A. It was either Friday or Saturday of next week. 20

Q. And you left her the following week? A. After I had been in business one week, September 28th.

Q. Did you and she talk on the train, anything about this? A. I think that seemed to be the uppermost subject on our minds.

Q. Did you talk that day on the train? A. Yes sir.

Q. Didn't she tell you on the train that day about the treatment that she was getting? A. No sir. 30

Q. Didn't you talk with her down in the Grand Union Hotel in New York? A. We talked while we were at dinner.

Q. Didn't you say, "that this thing cannot go on any longer"? A. I don't remember exactly that that expression was used.

Q. And did she not after that expression say 40
to you, "I think now, Ed., we can live happily,

Edward V. Goerz—Cross.

that the Doctor said that I am all right?" A. She did not; she was so angry over my talking to her the way I did that she threatened me and said "I will make it hot for you, I will get you." Nothing was said about that.

10 Q. How did she happen to say, "I will make it hot for you?" A. I don't know what led up to it; we were quarrelling more or less on the train.

Q. Was it not from the fact, that in reply to everything that she told you you told her that you could not live with her? A. Oh, no, you are entirely wrong there.

20 Q. Do you remember seeing a couple on the train, coming down on the car with a baby, on the trip from Hartford? A. Yes, will I tell you that; I don't want to deny anything, but so many times we spoke of a baby. I am naturally fond of babies.

Q. Didn't she say to you on that trip: That is what we ought to have, and didn't you say, no, never? A. No, never.

Q. Did she use this hot water bag on this trip to Albany or on the farm? A. No sir.

30 Q. Did she use it at the Grand Union Hotel? A. No sir, we came home that forenoon. I don't believe she had the hot water bag with her; I bought it in Riker's or Hegeman's and brought it home to her while she was sick.

Q. Isn't it a fact that she asked you for the money to buy that bag while you were up at the farm? A. Absolutely no.

Q. Did you know that during the week that you left home that she was getting treatment from Dr. Stellwagen? A. I never knew that.

40 Q. You never knew that Dr. Stellwagen was

Edward V. Goerz—Cross.

treating her? A. I knew that he had been there to examine her.

Q. Did you ask her what had been done? A. No sir, the word "operation" was never made by her.

Q. Was the word "dilation" used? A. No, I never heard of that word in this examination.

Q. What did she tell you the result of this examination was? A. She told me exactly what Dr. Stellwagen; she only told it to me briefly; he could see that I had never been there, and that it would mean an operation, that is what she told me, now, Dr. Stellwagen came to me and went a little further in detail; if you want me to tell you. 10

Q. She told you that the Doctor told her that it could be remedied by an operation? A. He thought that it could. 20

Q. That the only thing that was the matter with her was that she had a thick hymen? A. I never heard that she had a thick hymen until I came here to-day.

Q. Isn't it a fact that she told you that she would have to be dilated and you asked her what the word "dilated" meant? A. No, I deny it; I never heard the word mentioned. 30

Q. Were you anxious to find out the result of the examination? A. I was anxious to find the result of this examination; if she went to a physician of my choice or one with a greater reputation than Dr. Stellwagen; I had no confidence in Dr. Stellwagen.

Q. He had treated you before this time? A. I ain't had a physician since I had the measles.

Q. Where had you met him before that? A. Why, I met him at Mrs. Rippe's house. 40

Edward V. Goerz—Cross.

Q. Had you ever been to his house? A. Yes sir, and I met Mrs. Stellwagen.

Q. How often have you been to his house? A. Two or three occasions.

Q. Do you remember a telegram that came to your house? A. Yes, I remember a telegram that came to my house.

10 Q. Do you remember telling your wife that was from one of the women that you were going out with? A. I certainly do, I said that is one of my lady friends.

Q. Was it one of your lady friends? A. It was not, it was all bluff.

Q. Did you ever correct that bluff? A. The subject never came up again to correct; in fact I had forgotten it, I treated it so lightly.

20 Q. You had quite a conversation about it, didn't you? A. No, sir.

Q. Don't you remember coming down on the train and seeing a lady? A. I remember that incident.

Q. Did you tell her at the time that you got the telegram that that was the woman? A. No, sir.

30 Q. Didn't you tell her that she was very nice? A. No sir.

Q. Didn't you tell her that because you thought the woman was so nice was the reason that you went out with her? A. I don't understand you.

40 Q. Didnt you tell your wife that you did so because she thought the woman was nice, because she impressed her; that is why you took a nice time and went out with her? A. No, the only thing that Mrs. Goerz was impressed in this particular woman about was a lace waist that she

Edward V. Goerz—Cross.

had on and she said that the woman was dressed fine; she was a beautiful—

Q. Do you know who the woman was? A. No, sir.

Q. Do you know Georgie Koch from Unionville whom you met in Brooklyn two weeks ago Sunday? A. Georgie Koch, I don't know Georgie Koch. 10

Q. Were you not out with a woman in Brooklyn, two weeks ago Sunday?

MR. McDERMOTT: I object to that question.

THE MASTER: Strike it out.

BY MR. WELLER:

Q. You have tried to get your wife to get an absolute divorce from you since you left her? 20
A. Not to my knowledge.

Q. Have you had a woman telephone to Mrs. Rippe on two or three different occasions? A. I?

Q. Yes? A. Never.

Q. Have you not had this woman telephone over and tell your wife that you were going out with a woman? A. No, it is not true.

Q. Now, when you lived at 37 Pleasant Avenue, you had a telephone in your house? A. Yes sir. 30

Q. And there is a telephone in the bank where you are employed? A. Yes sir.

Q. After you left your home you never telephoned your wife at all? A. No sir.

Q. You never wrote her a letter. A. No, sir.

Q. You never communicated with her in any way? A. I never did. 40

Q. Why not? A. Why not?

Edward V. Goerz—Cross.

10 Q. Yes. A. In the first place I could not communicate with her if I wanted to, because I had the telephone discontinued; it was in my name, and I did not know where Mrs. Goerz lived for fully—I did not know where Mrs. Goerz lived until I was arrested at the bank, either, you know the cause. I did not know the address of Mrs. Goerz. Might I correct myself?

Q. You may. A. I used my telephone to tell Mrs. Goerz about my personal belongings; I simply called her up and informed her that an expressman would call for my trunk, and I further informed her that Stewart, the carpet man, would call for my Oriental rugs and I sent Stewart there.

20 Q. Don't you know that that telephone was not discontinued until October? A. I don't know when it was discontinued, but I can possibly trace that with the telephone statement that I received.

Q. Don't you know that she did not move until the 24th of October? A. I don't know.

Q. You didn't care where she lived, did you?

MR. McDERMOTT: I object to that.

30 THE MASTER: Strike it out.

Q. You also knew where her sister, Mrs. Rippe, lived? A. Yes sir.

Q. Now, why did you leave her after the Doctor had treated her and she told you she would be all right? A. She never told me that she would be all right.

THE MASTER: That is not a fair question. Strike it out.

40 Q. Why did you leave her after she commenced

Edward V. Goerz—Cross.

treating with the Doctor? A. I did not know that she had commenced treating with the Doctor; I wanted her to be treated by a Doctor that I would recommend, I never authorized any treatment by any Doctor.

Q. You called Dr. Stellwagen up that night?
A. The night I had the conversation with the Doctor. I certainly did.

10

BY THE MASTER:

Q. Was it before you went to him? A. We either returned on Thursday, Friday or Saturday and before I went to him.

BY MR. WELLER:

Q. What did you call him up for? A. At Mrs. Goerz's request.

Q. What did you want him to do? A. Because Mrs. Goerz told me that the Doctor had examined her the day before, and she had outlined what he said was the matter with her, that she had to undergo an operation and I would like to see what he had to say about it, and the Doctor came down about eight o'clock; he went in first as she was lying in bed; I offered him a cigar and got a bottle of beer, and we had a little talk, and Dr. Stellwagen told me; he says, Goerz, I find that this is a most unusual case.

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30

Q. Why, go on. A. And I said, how does it look to you; he says, it is the worst that I have ever seen; he said, I have seen cases where women have been married from three to four weeks and they have come to me and I have been able to fix them up with my finger, but I never had a case that has gone on for so long as three and a half years; I think it is a very

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Edward V. Goerz—Cross.

unusual case, and I will be obliged to use an instrument if I got into her, or whatever term he used, to force that part which is grown over, his own words, he called it a hardened membrane.

Q. What membrane was he referring to? A. On Mrs. Goerz.

10 Q. The womb? A. That word he did not use; at that same time in connection with this matter, he said, now, what you ought to do, you don't want to bother your wife; why don't you go out on the outside and get another woman and jolly your wife along; that is what Dr. Stellwagen told me.

Q. Why did you talk this matter over with him that night? A. Because I wanted to confirm what Mrs. Goerz had told me, that he had
20 examined her.

Q. In other words you didn't believe he had examined her? A. No, I didn't believe that he had examined her; I wanted some other Doctor that I knew and that could give me a further opinion.

Q. Why didn't you have him bring in another Doctor to your liking at that time? A. Because I would have absolutely no association with Dr.
30 Stellwagen.

Q. Why didn't you bring in some other physician with him? A. I suggested it to him but he absolutely refused to do that.

Q. Your wife had known Dr. Stellwagen for a number of years? A. For a great number of years, and I heard his record from hearsay and from my own record, he has an open record in the section up there.

40 Q. You treated him that night to a cigar and a glass of beer? A. I think either.

Edward V. Goerz—Cross.

Q. How long did he stay there and talk to you? A. For 40 or 45 minutes; I think he was only there for a short visit; he had his machine outside, he came in his machine.

Q. You told him not to do anything to your wife? A. Yes sir.

Q. What date was this when you told him that? A. I fix it as near as I can, Thursday or Friday or Saturday, just within a day, anyway. 10

Q. Will you say absolutely that you never learned until you and your wife separated that he commenced to treat her? A. Yes sir, I will say so absolutely.

Q. That you did not know anything about it? A. No, I did not know anything about it.

Q. And Dr. Stellwagen had visited your home and examined your wife before you went to Hartford? A. Yes sir. 20

Q. And when your wife spoke about that rag at Hartford, you didn't ask her what she meant? A. No, I did not.

MR. MRDERMOTT: I think that is all.

THE MASTER: Have either of you further evidence to offer.

MR. WELLER: Of course, I may have to rebut and I will have to bring Dr. Stellwagen back. 30

DEFENDANT RESTS.

Mathilda Symes Goerz—Direct.

MR. WELLER: I will call Mrs. Goerz in rebuttal.

MATHILDA SYMES GOERZ. recalled:

DIRECT EXAMINATION BY MR. WELLER:

10 Q. Your husband says he left home on Sunday night to go to Hartford, is that true? A. Yes sir.

Q. Was that Sunday night? A. Sunday at 4 o'clock.

Q. Your mother-in-law says that when you came up there you had a talk there with her and your husband? A. Yes sir.

20 Q. She said, you said that you didn't think married life was as it should be? A. I did not say that; she said to me, she thought it was a terrible thing; I said, yes, it is, but it is easily remedied.

Q. She said that you told her, that you didn't think men have to get there? A. I probably did say that, but I said it in a way of perfect innocence; I didn't really know how serious it was at the time.

30 Q. When you married your husband you did not know that you were not normal? A. No, how would I know that?

Q. That you could not have sexual intercourse with your husband? A. No sir.

Q. You arrived there on a Tuesday, you said? A. Yes sir.

Q. And you stayed there all day? A. Yes, sir.

40 Q. Now, your husband said that while you were out there you pointed to a rag on yourself, do

Mathilda Symes Goerz—Direct.

you remember that? A. Yes, distinctly; that was the second night that I was up there, he tried to have intercourse with me, and he said, he didn't want to get a disease; I told him when I arrived on the porch that I needed some money; I said, I need a hot water bag and the attachments; he said what for; I said, I had had the Doctor last night; he said, what for; I said, to do the necessary tricks; I said it had been started and it was up to you to do the right thing; what are you going to do, and he said, I want to live alone; those are his exact words. 10

Q. Is this the trick that the mother spoke of?
A. Yes sir.

Q. What was it? A. I said to her, I wish you would try and do something and talk to Ed, and talk to him before we go away; I said this right in front of him. 20

Q. Did she talk to him? A. No sir.

Q. Your husband says, that after you and he were married he asked you to go to your sister and take her advice about your condition and you absolutely refused to do so; is that true? A. I refused to go, but he never asked me that question; he never asked me to go to my sister; he felt it would be a great humiliation on both our parts. 30

Q. How did you come to think to go if he didn't ask you; did you refuse to go? A. Why my sister never—

Q. Did you tell your husband that you would not go to your sister? A. No sir; I did not tell him that.

Q. That when you were in Nutley he asked you if you would have a Doctor that it would be a good time and you refused, and said you would not lie down for any Doctor? A. I refused that 40

Mathilda Symes Goerz—Direct.

because I did not have the confidence in him, I would have to have one that I consider a real Doctor.

Q. He said you told him that you didn't think those things were necessary? A. I may have said it; I said more, that I thought nature would take its course and I really worried about it, I must say.

10

Q. He said you told him, that you would never go to any Doctor? A. No, he is mistaken.

Q. That he asked you about twenty-five times to go to a Doctor? A. I don't know how many times he asked me, quite a number of times.

20

Q. Did you refuse to go? A. I didn't refuse exactly, it was more of a shame, than a refusal, I wanted to go badly enough, but I didn't seem to think anything about it, and that nature would take its course if I had thought it was going to be so serious I would have corrected it.

Q. In September, the same month that he left you, did he ask you to go to a woman Doctor? A. He mentioned the woman Doctor but never gave a name.

30

Q. What did he say as near as you can tell us? A. He said this often; how would it be if you went to a woman Doctor; in other words it was not any more serious than that.

Q. What answer did you give him? A. I don't know if I gave him an answer, because I don't remember; I asked him at that time why he was going to leave me, after my doing what I should do; I asked him that question more than a thousand times.

40

Q. What did he say? A. He said he wanted to live alone.

Q. He said that you didn't loan him \$4,000; he

Mathilda Symes Goerz—Cross.

said that the firm of Erwin & Company loaned him \$1,500 for his other case? A. That is true, but his real divorce that he got was paid through my money, \$1,500; that is what I paid for the divorce in order to have him love me, and the matter between Erwin & Company was a matter that he had in the office.

Q. He said, the time that you came down from the farm when you got to the Grand Union Hotel, you told him that you would make it hot for him and fix him; is that true? A. Yes sir; I did. 10

Q. Why did you say that? A. Why did I say that?

Q. Yes? A. Because he acted so furious and said he would not live with me.

CROSS EXAMINATION BY MR. McDERMOTT: 20

Q. Mrs. Goerz, on this occasion in Hartford, do you mean to say, that you invited him to have intercourse with you while those rags were on your person? A. Yes sir, I did.

Q. The rags were on there for some purpose? A. Yes sir, but no serious purpose.

Q. To stop bleeding? A. No, I was not bleeding; for a little bit of discharge. 30

Q. Discharge of blood? A. No, not blood.

Q. And you were going about with them on? A. Not for the purpose of blood, for the purpose of the discharge which was caused by the nerves.

Q. And with those rags on you asked him to have these relations with you? A. Yes, I did.

Q. And you say he did not accept the invitation? A. And he made that answer to me.

Q. And you said to your husband also, that the 40

Mathilda Symes Georz—Cross.

treatment had started and it is up to you? A. Yes sir.

Q. And that treatment which was started is the treatment which was continued for several months? A. Yes sir.

Q. And after those several months you never told him of any change in your condition? A.

10 No, sir.

Q. That is all.

CASE CLOSED.

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30

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Memorandum of Advisory Master.
In Chancery of New Jersey.

Between

MATHILDA GOERZ,

Complainant,

and

EDWARD V. GOERZ,

Defendant.

On Bill,
etc. 10

Between

EDWARD V. GOERZ,

Petitioner,

and

MATHILDA GOERZ,

Defendant.

On Peti-
tion, etc. 20

CHARLES H. HARTSHORNE, Advisory Master,
(orally).

These two cases were tried, by consent, as one, 30
 The husband's suit against his wife is for an
 annulment of the marriage, upon the ground of
 her impotency. They were married in May, 1908,
 and he left her in September, 1912. He appears
 to have treated his wife with great forbearance
 and self restraint under most trying circum-
 stances, till shortly before the separation, but I am
 unable to find any ground for an annulment
 of the marriage. Impotency, to be such a ground,
 must be incurable; the evidence in this case, how- 40

Memorandum.

ever, shows that it was not only curable but was actually cured within a few months after the separation; and that, by a treatment which had been begun before the separation. I must advise a decree dismissing the husband's petition. The other suit is by the wife for maintenance and in this I am constrained to advise a decree in her favor. There is no dispute that the husband left his wife on September 28th, 1912, and has not contributed to her support since that time. He alleges, as justifiable cause for leaving her, her incapacity for sexual intercourse and her continued refusal, from the time of their marriage till shortly before the separation, to be treated, or even to be examined, by a physician for the purpose of cure. But he admits that before he left her he knew that she had submitted to such an examination and that both she and the physician told him that her physical defect was curable. In fact, she had begun to take treatment for cure about two weeks before the separation, and though he denies that he, at the time of separation, knew that fact, I am satisfied that he did know it or had good reason to believe it. The physician, Dr. Stellwagen, testified at first, from memory, that he thought the treatment began shortly after the separation, though he was not sure. Afterwards, having conversed with other witnesses, he was recalled and stated that he recollected that the first treatment began the night before the complainant went to visit her husband's father and mother because he remembered having advised against her going, the treatment having rendered her, in his opinion, unfit to travel. It is shown conclusively by the evidence that that visit occurred one or two weeks before the separation. His testimony upon this point was strenuously assailed by the husband's counsel,

Memorandum.

but apart from the Doctor's testimony it appears from the testimony of other witnesses that the treatment had actually begun before the separation. The wife's testimony to this effect is corroborated by that of her sister, Mrs. Rippe, who was present when the husband and wife were discussing the subject in their visit with his father and mother. It is also, in some degree, corroborated by his mother, the elder Mrs. Goerz, a witness for him, who upon cross-examination said that the wife at the time of that visit, had said something to her to the effect of being sore from the treatment. 10

I think that he was not justified in leaving his wife after being advised that the case was curable, even if the treatment had not been begun at the time of the separation. He says that he had no confidence in Dr. Stellwagen and was unwilling to have complainant operated upon by him; but the wife was willing to take the risk if there were any, and he had only to wait a few months to see, whether the doctor's advice would be confirmed by a cure. I think that it was his duty to wait. The wife's previous refusal to submit to examination and treatment was a great wrong, and his patient and kindly forbearance during more than four years is very creditable to him; but her refusal and this curable defect did not justify him in leaving her after she had submitted to examination and offered to submit to treatment to effect a cure. 20 30 40

Decree.

(Filed June 23, 1913).

In Chancery of New Jersey.

Between

MATHILDA GOERZ,

10

*Complainant,**and*

EDWARD V. GOERZ,

*Defendant.*On Bill,
etc.
Decree

20 This cause coming on to be heard in the presence of John I. Weller, of counsel with the complainant, and Frank P. McDermott, Esq., of counsel with the defendant, on bill, answer there-
to, replication and oral proofs taken in open court, whereupon and upon duly considering said pleadings and proofs, and hearing and considering the arguments of counsel, from all of which it now appears satisfactorily to the Chan-
cellor, that the complainant and defendant were lawfully joined in the bonds of matrimony on or about the eighth day of May, A. D., one thousand nine hundred and nine, and that the defendant
30 without any justifiable cause abandons the complainant and separates himself from her, and refuses and neglects to maintain and provide for her, and that the complainant has her domicile in this State, and that the defendant was personally served with process in this State;

40 IT IS THEREUPON, on this Twenty-third day of June, A. D., one thousand nine hundred and thirteen, by his Honor, Edwin R. Walker, Chancellor of the State of New Jersey, ORDERED, AD-
JUDGED and DECREED that the defendant, Edward

Decree.

V. Goerz, do pay to the complainant, Mathilda Goerz, or to her solicitor, the sum of Fourteen Dollars (\$14.) payable in equal weekly installments on the Monday of each and every week, from and after the signing of this decree, 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. 10

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 a counsel fee of Two Hundred Dollars (\$200.) payable in installments of Twenty-five dollars per month and that the said complainant do have execution therefor according to the practice of this court. 20

AND IT IS FURTHER ORDERED, ADJUDGED and DECREED that either party shall be at liberty to apply, upon a future change of circumstances of the parties or either of them, for a variance or modification of this decree, touching said alimony and maintenance.

Respectfully advised,

E. R. WALKER, 30
C.

Charles H. Hartshorne,
Advisory Master.

A true copy.

SAM K. ROBBINS,
Clerk.

Decree.

(Filed, June 23, 1913).

In Chancery of New Jersey.

Between :

10	EDWARD V. GOERZ,	}	On Petition for Nullity. Decree.
	<i>Petitioner,</i>		
	<i>and</i>		
	MATHILDA GOERZ,		
			<i>Defendant.</i>

20 This cause coming on to be heard in the presence of Frank P. McDermott, Esquire, of counsel with the petitioner, and John I. Weller, of counsel with the defendant upon petition and answer thereto, and upon oral proofs taken in open court; whereupon and upon duly considering the said pleadings and proofs and hearing and considering the arguments of counsel; from all of which it now appears satisfactorily to the court that the petitioner and defendant were lawfully joined in the bonds of matrimony on or about the eighth day of May, A. D. one thousand nine hundred and

30 nine, and that the petitioner is not entitled to the relief prayed for in his said petition, and that at the time of filing the said petition, the said defendant, Mathilda Goerz was a bona fide resident of this State; and it further appearing that jurisdiction herein has been acquired by personal service or process upon the defendant within this State.

40 IT IS THEREUPON, on this Twenty-Third day of June, A. D. one thousand nine hundred and thirteen, by his honor, Edwin R. Walker, chancellor

Decree.

of the State of New Jersey, ORDERED, ADJUDGED and DECREED, and the said Chancellor doth by virtue of the power and authority of this court, hereby ORDER, ADJUDGE and DECREE that the said petition be and the same is hereby dismissed, but without prejudice.

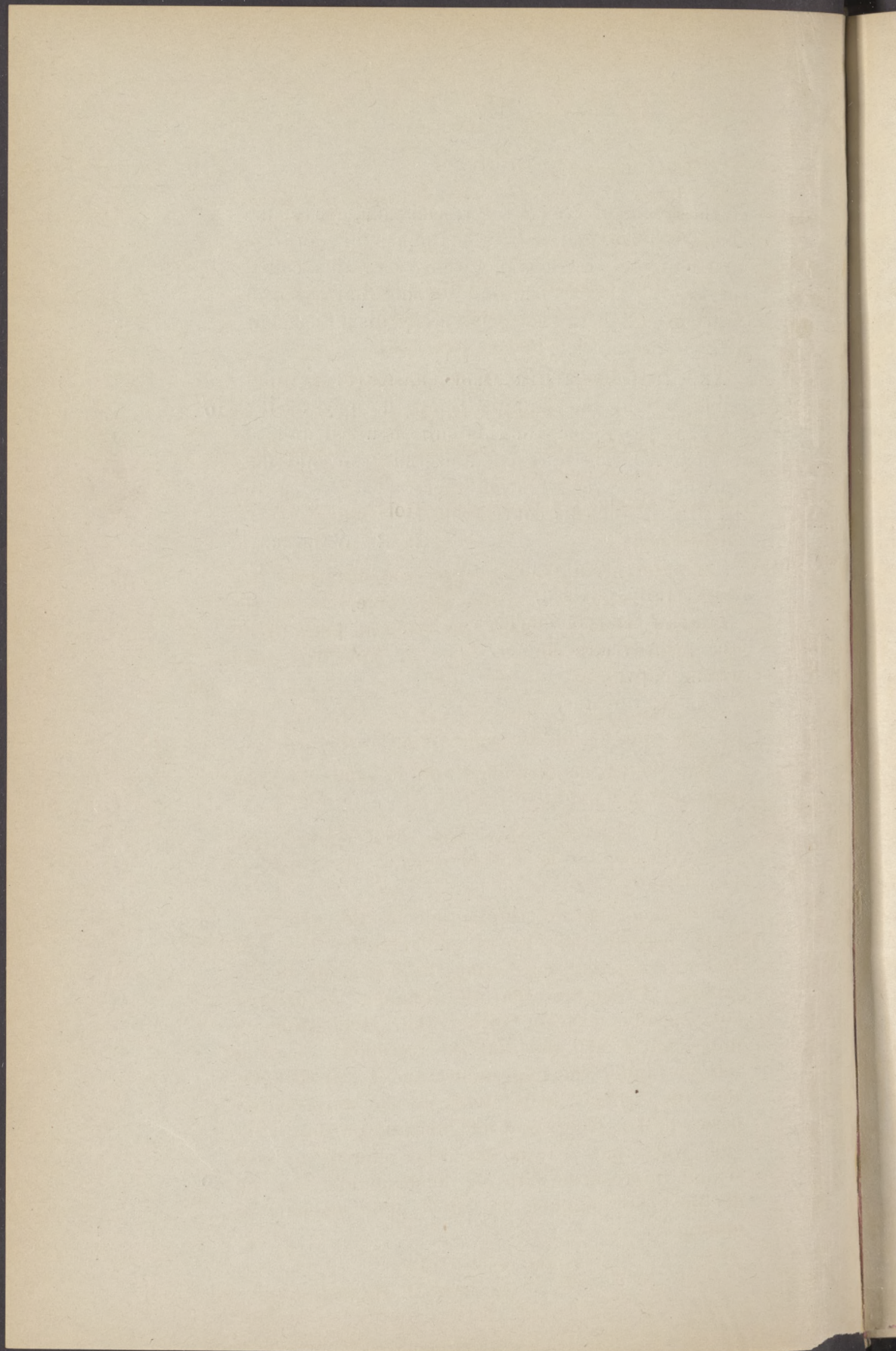
AND IT IS FURTHER ORDERED, ADJUDGED and DECREED that the said petitioner do pay to the defendant, her costs in this suit incurred and to be incurred, to be taxed, and that the said defendant do have execution therefor according to the practice of this court. **10**

E. R. WALKER,
C.

Respectfully advised,
Charles H. Hartshorne,
Advisory Master.

A true copy,
Sam K. Robbins,
Clerk

20**30****40**



Charles H. Hartshorne
 Earle Insley
 Engene W. Leake
 Gilbert M. Deats

Provident Institution Building
 239 Washington Street

HARTSHORNE, INSLEY & LEAKE
 COUNSELLORS AT LAW
 Telephones 1330-1331

Jersey City, N. J., November 8, 1913.

GOERZ V. GOERZ.

10

Messrs. McDermott & Enright, 75 Montgomery
 Street, Jersey City.

Messrs. Weller & Lichtenstein, Hoboken, N. J.

Gentlemen:

In reference to the question you discussed this
 morning before me about the correction of the
 testimony of Mrs. Goerz, appearing on page 137 of
 the printed case of the Court of Appeals, which
 reads as follows:

20

“He tried to have intercourse with me, and
 he said, he did not want to get a disease.”

Mr. Weller, as I understand it, contends that
 that sentence ought to read:

“I tried to have him have intercourse
 with me, and he said he did not want to get a
 disease.”

I have no distinct recollection of the exact lan-
 guage used by the witness, and therefore I do not
 feel warranted in correcting the testimony in the
 record. It appears that the language as printed
 corresponds exactly with the stenographer's
 notes, but I will say that the testimony as given
 left me under the impression, and I still believe,
 that the evidence in reference to the conversation
 between Mrs. Goerz and her husband on that occa-
 sion was, that it was she who offered to have
 sexual intercourse with her husband and that he
 declined, not making any effort upon his part to
 obtain it.

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Yours respectfully,
 CHARLES H. HARTSHORNE.

