

# INDEX

	PAGE
Petition for Divorce .....	1
Answer .....	5
Affidavit of Inquiry .....	6
Amended Petition .....	10
Answer .....	14
Replication and Answer to Counter-claim	17
Order of Reference .....	18
Decree Nisi .....	19
Memorandum of Advisory Master .....	22
Notice of Appeal .....	26
Petition of Appeal .....	28
Amended Notice of Appeal .....	31
Amended Petition of Appeal .....	33
Substitution of Attorney .....	35

## TESTIMONY.

### *For Petitioner.*

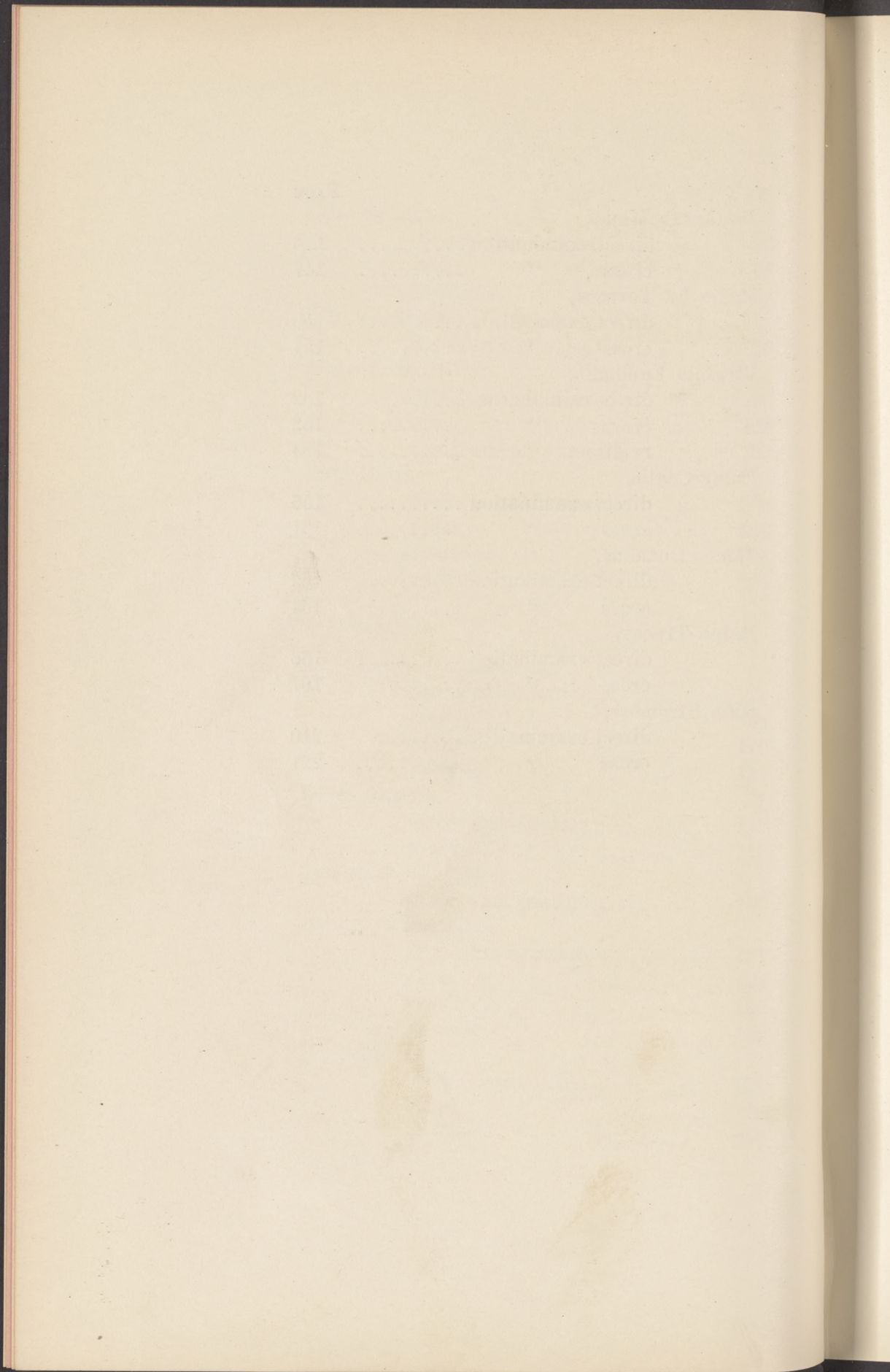
Idea Restaino,		
direct examination .....		36
cross “ .....		42
re-direct “ .....		57
(recalled) direct “ .....		172
cross “ .....		183
Delia Bersano,		
direct examination .....		58
cross “ .....		59
Prospera Quattrini,		
direct examination .....		61
cross “ .....		67
re-direct “ .....		71
re-cross “ .....		71
(recalled) direct “ .....		195
cross “ .....		196
re-direct “ .....		198
re-cross “ .....		200

	PAGE
Gilio Stramese,	
direct examination .....	72
cross " .....	74
re-direct " .....	77
William Mackey,	
direct examination .....	170
Miss Norma Kopp,	
direct examination .....	200
cross " .....	202
re-direct " .....	203
Paul Gatti,	
direct examination .....	204
cross " .....	207
re-direct " .....	208
re-cross " .....	208

*For Defendant.*

Dr. Charles F. Restraino,	
direct examination .....	79
cross " .....	84
re-direct " .....	110
re-cross " .....	112
Peter Guarno,	
direct examination .....	113
cross " .....	115
Joseph A. Chickene,	
direct examination .....	120
Salvatore Restaino,	
direct examination .....	121
cross " .....	122
re-direct " .....	123
re-cross " .....	124
Sol Schlitzie,	
direct examination .....	124
cross " .....	126
re-direct " .....	144

	PAGE
Jerahnach Maude,	
direct examination .....	145
cross " .....	147
Mario La Torraca,	
direct examination .....	150
cross " .....	151
Virginia Laudadio,	
direct examination .....	152
cross " .....	153
re-direct " .....	154
Patsy Ceglia,	
direct examination .....	156
cross " .....	157
James Donahue,	
direct examination .....	162
cross " .....	164
Ralph Tracey,	
direct examination .....	166
cross " .....	167
Gilia Stramese,	
direct examination .....	210
cross " .....	221



**PETITION FOR DIVORCE.**

Filed December 11, 1930.

**In Chancery of New Jersey**

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

The petition of IDEA RESTAINO, of the Borough of North Arlington, County of Bergen and State of New Jersey, respectfully shows that:

(1) The petitioner was lawfully married to her present husband, Charles F. Restaino, the defendant in this cause, on the second day of July, 1925, by Adam A. Smith, Recorder of West New York, County of Hudson and State of New Jersey. 20

(2) The defendant, on or about December 15, 1928, began a course of cruel and abusive treatment towards petitioner and did continue the same, until June 11, 1929, when, by reason of his cruelty towards her, she was compelled to leave him.

Particularly specifying the acts of extreme cruelty committed by the defendant, petitioner says that: Defendant did, on numerous occasions, beat her and did swear at her and call her vile and indecent names such as prostitute, whore, bastard, bitch, street walker and parasite, and often he called her these names in the presence of other persons; sometime in the early part of December, 1928, the defendant, without provocation, struck, slapped and punched petitioner about the face, body and limbs and did, at the same time, call her vile and indecent names 30 40

*Petition for Divorce.*

such as above described; one day in the latter part of December, 1929, the defendant beat, kicked and punched petitioner about the face and body and called her a whore, bastard and son-of-a-bitch, thereby inflicting upon her great mental and physical pain and suffering; sometime in  
10 February, 1929, the defendant bruised the face and body of petitioner by punching her with his fists, causing her to suffer great pain and he also, at the same time, called her vile and indecent names, such as above described, thereby causing her to suffer great mental pain and anguish; one day in March, 1929, the defendant beat the petitioner about the face and body and called her vile and indecent names; on June 11, 1929, defendant struck petitioner by punching her with  
20 his fists about the face and body and called her a street walker and a whore and a bastard and, not being able to stand his cruel and abusive treatment any longer, the petitioner did, on this day, leave defendant and thereafter lived separate and apart from him until about January 10, 1930, when, on his promise not to abuse petitioner again and to treat her as a husband should treat his wife, she returned to him, but about a week  
30 later, he again began to abuse petitioner; on or about January 20, 1930, he told petitioner, in the presence of others, that he thought she ought to leave him and called her a whore, bitch, bastard, prostitute and other names of like character; on or about February 1, 1930, defendant kicked petitioner with all his might, in the leg, thereby inflicting a bruise and, at the same time, he called her vile and indecent names and told her that she ought to get the hell out of his house; thereafter, defendant called petitioner  
40

*Petition for Divorce.*

vile and indecent names, impugning her chastity and told her to get out of his home practically every day until about March 20, 1930, when petitioner was compelled to leave him because of his abusive conduct; on this day, that is, on about March 20, 1930, he called petitioner a son-of-a-bitch, a whore, a bastard, a prostitute and other names of a like character and told petitioner to get out of his home and that if she didn't, he would knock her head off between the two walls. 10

(3) By reason of said acts of cruelty, petitioner's health became impaired and her life was rendered one of utter wretchedness and misery.

(4) Petitioner and defendant were bona fide residents of the State of New Jersey when this cause of action arose, and they have ever since, and for more than two years next preceding the commencement of this action, continued to be such bona fide residents, the petitioner residing at 70 Prospect avenue, North Arlington, New Jersey, and the defendant at 376 Roseville avenue, Newark, New Jersey. 20

(5) More than six months have elapsed since the last act of cruelty complained of was committed. 30

(6) One child was born of the said marriage, to wit: Yvonne Restaino, aged three years. Said child is in the custody of the petitioner.

(7) Her maiden name was Idea Stramese.

(8) She prays that the marriage between her and the defendant may be dissolved for the cause aforesaid, according to the statute in such case made and provided; that she may be awarded 40

*Petition for Divorce.*

the custody of said child; that she may be allowed to resume her maiden name, and that she may have such further relief as may be just.

And your petitioner will ever pray, etc.

10

HENRY MARELLI,  
Solicitor of Petitioner.

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

20

IDEA RESTAINO, of full age, being duly sworn according to law upon her oath, deposes and says, that she is the petitioner named in the foregoing petition; that her said petition is not made by any collusion between her and the defendant, but in truth and good faith for the causes set forth in the petition, and that the facts, matters and things set forth in the petition, so far as they relate to her acts, are true, and so far as they relate to the acts of others she believes them to be true.

IDEA RESTAINO.

30

Sworn and subscribed to before me  
this 10th day of December, 1930.

PHOEBE E. WARD,  
Notary Public of New Jersey.

A true copy,

FERD GARRETSON,  
Clerk.

40

**ANSWER.**

Filed January 17, 1931.

IN CHANCERY OF NEW JERSEY.

---

*Between*

IDEA RESTAINO,

*Petitioner,**and*

CHARLES F. RESTAINO,

*Defendant.*

---

10

*On Petition  
for Divorce.**Answer.*

The defendant, answering the Petition filed in this cause by the petitioner, says:

1. Paragraph 1 is admitted.

20

2. Paragraph 2 is denied.

3. Paragraph 3 is denied.

4. Paragraph 4 is admitted except that part in which it is stated that petitioner resides at 70 Prospect avenue, North Arlington, New Jersey, which is denied because this defendant has no knowledge or information sufficient to form a belief as to the truth of the same.

5. Paragraph 5 is denied.

30

6. Paragraph 6 is admitted.

7. Paragraph 7 is admitted.

8. Defendant prays that the petition be dismissed; that he may be awarded the custody of the child of the marriage, to wit: Yvonne Restaino, age three years; and that he may have such further relief as may be just and equitable under the circumstances.

LUKE A. KIERNAN, JR.,

Solicitor of Defendant.

40

**AFFIDAVIT OF INQUIRY.**

Filed January 28, 1931.

IN CHANCERY OF NEW JERSEY.

10 *Between*

IDEA RESTAINO,

*Petitioner,**and*

CHARLES F. RESTAINO,

*Defendant.**On Bill, &c.**Affidavit of  
Inquiry.*STATE OF NEW JERSEY, }  
COUNTY OF PASSAIC. } ss.:

20

HENRY MARELLI, of full age, being duly sworn according to law upon his oath, deposes and says:

30

I am the solicitor of Idea Restaino, the above named petitioner. At the time this action was begun I was informed by the petitioner that Charles F. Restaino, the defendant, was 32 years of age, that he was a physician by occupation and that he lived at No. 376 Roseville Avenue, in the City of Newark, County of Essex and State of New Jersey and that he had an office at No. 1 Garside Street in the said City of Newark.

40

Petitioner also told me that defendant had a sister named Columbia La Toraca, the wife of Anthony La Toraca, who lived at No. 457 North 7th Street, Newark. The address of Anthony La-Toraca is given in the Newark Telephone Directory as No. 457 North 7th Street, Newark, and his telephone number is therein set forth as

*Affidavit of Inquiry.*

Branch Brook 3-2346. I called on this day on the telephone said last mentioned number and the person who answered my call told me, in answer to my questions that she was Mrs. La Toraca and a sister of Dr. Charles F. Restaino and that the latter lived at No. 376 Roseville Avenue, Newark. That he has an office at No. 1 Garside Street, Newark, and was 32 years old. I stated that the purpose of my inquiry was to give said Dr. Charles F. Restaino notice that his wife, Idea Restaino had begun an action for divorce against him in the New Jersey Court of Chancery.

10

The name Charles F. Restaino, M. D., appears in the Newark Telephone Directory. His residence is therein given as No. 376 Roseville Avenue, Newark, and his telephone number at this address is therein given as Humboldt 2-4134. I tried to get said last mentioned number by the telephone, but without success. There was no answer.

20

As a result of my inquiries, I believe that Charles F. Restaino, the defendant, is a physician by occupation, that he is 32 years of age, that he resides at No. 376 Roseville Avenue, Newark, N. J., and that he has an office at No. 1 Garside Street, Newark, N. J.

30

I did on this day mail to the Sheriff of Essex County together with the citation and certified copy of the petition in this cause, a description of this defendant, a copy of which is hereto annexed.

HENRY MARELLI.

Sworn to and subscribed before me.

PHOEBE E. WARD,  
Notary Public of New Jersey.

40

*Affidavit of Inquiry.*

STATE OF NEW JERSEY, }  
 COUNTY OF PASSAIC. }SS.:

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

10 I am the petitioner in this cause.

The defendant, Charles F. Restaino, is a duly licensed physician of the State of New Jersey. I know of my own knowledge that the defendant lives at No. 376 Roseville Avenue in the City of Newark, County of Essex and State of New Jersey; that he is the owner of the property at this address; that he has been living there ever since June, 1927; that his office is at No. 1 Gar-  
 20 side Street in said City of Newark; that he is half owner of the property at this address, and that he has had his office there ever since June, 1927. He has a sister, Columbia La Toraca, who lives at 457 North 7th Street, Newark, New Jersey. Her husband is Anthony La Toraca. The defendant has been a practicing physician in said City of Newark ever since June, 1924. He is well known and enjoys a large practice among the Italian people of Newark. He is 32 years of age.

30 He calls at the place where I am living occasionally to take our child and to bring her back. The last time he was at my home was on Friday the 5th of this month.

IDEA RESTAINO.

Sworn to and subscribed before me.

PHOEBE E. WARD,  
 Notary Public of New Jersey.

*Affidavit of Inquiry.*

## IN CHANCERY OF NEW JERSEY.

To: Harry L. Huelsenbeck, Esq., Sheriff of  
Essex County.

SIR:

With the citation and certified copy of the  
petition in the above-entitled cause I herewith  
deliver to you the following description of  
Charles F. Restaino, the defendant upon whom  
service of process is to be made, viz.: 10

Age—32 years.

Occupation—Physician.

Residence—376 Roseville Avenue, Newark, Es-  
sex County, New Jersey. His office is located at  
No. 1 Garside Street, in said City of Newark.

Respectfully, 20

HENRY MARELLI,  
Solicitor of Petitioner.

Dated December 12, 1930.

30

40

**AMENDED PETITION.**

Filed April 30, 1931.

## IN CHANCERY OF NEW JERSEY.

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

The petition of Idea Restaino, of the Borough of North Arlington, County of Bergen and State of New Jersey, respectfully shows that:

(1) The petitioner was lawfully married to her present husband, Charles F. Restaino, the defendant in this cause, on the second day of July, 1925, by Adam A. Smith, Recorder of West New York, County of Hudson and State  
20 of New Jersey.

(2) The defendant, in about July, 1925, began a course of cruel and abusive treatment towards petitioner and did continue the same until June 11, 1929, when, by reason of his cruelty towards her, she was compelled to leave him.

Particularly specifying the acts of extreme cruelty committed by the defendant, petitioner says that: Defendant did, on numerous occasions, beat her and did swear at her and call her vile and indecent names such as prostitute, whore, bastard, bitch, street walker and parasite, and often he called her these names in the presence of other persons; sometime in the early part of December, 1928, the defendant, without provocation, struck, slapped and punched petitioner about the face, body and limbs and did, at the same time, call her vile and indecent names such as above described; one day in the latter  
30 part of December, 1929, the defendant beat, kicked  
40

*Amended Petition.*

and punched petitioner about the face and body and called her a whore, bastard and son-of-a-bitch, thereby inflicting upon her great mental and physical pain and suffering; sometime in February, 1929, the defendant bruised the face and body of petitioner by punching her with his fists, causing her to suffer great pain and he also, at the same time, called her vile and indecent names, such as above described, thereby causing her to suffer great mental pain and anguish; one day in March, 1929, the defendant beat the petitioner about the face and body and called her vile and indecent names; on June 11, 1929, defendant struck petitioner by punching her with his fists about the face and body and called her a street walker and a whore and a bastard and, not being able to stand his cruel and abusive treatment any longer, the petitioner did, on this day, leave defendant and thereafter lived separate and apart from him until about January 10, 1930, when, on his promise not to abuse petitioner again and to treat her as a husband should treat his wife, she returned to him, but about a week later, he again began to abuse petitioner; on or about January 20, 1930, he told petitioner, in the presence of others, that he thought she ought to leave him and called her a whore, bitch, bastard, prostitute and other names of like character; on or about February 1, 1930, defendant kicked petitioner with all his might, in the leg, thereby inflicting a bruise and, at the same time, he called her vile and indecent names and told her that she ought to get the hell out of his house; thereafter, defendant called petitioner vile and indecent names, impugning her chastity, and told her to get out of his home practically every day until about March 20, 1930,

10

20

30

40

*Amended Petition.*

when petitioner was compelled to leave him because of his abusive conduct; on this day, that is, on about March 20, 1930, he called petitioner a son-of-a-bitch, a whore, a bastard, a prostitute and other names of a like character, and told  
10 she didn't, he would knock her head off between the two walls.

(3) By reason of said acts of cruelty, petitioner's health became impaired and her life was rendered one of utter wretchedness and misery.

(4) Petitioner and defendant were bona fide residents of the State of New Jersey when this cause of action arose, and they have ever since, and for more than two years next preceding the  
20 commencement of this action, continued to be such bona fide residents, the petitioner residing at 70 Prospect avenue, North Arlington, New Jersey, and the defendant at 376 Roseville avenue, Newark, New Jersey.

(5) More than six months have elapsed since the last act of cruelty complained of was committed.

(6) One child was born of the said marriage,  
30 to wit: Yvonne Restaino, aged three years. Said child is in the custody of the petitioner.

(7) Her maiden name was Idea Stramese.

(8) She prays that the marriage between her and the defendant may be dissolved for the cause aforesaid, according to the statute in such case made and provided; that she may be awarded the custody of said child; that she may be allowed to resume her maiden name, and that she  
40 may have such further relief as may be just.

*Amended Petition.*

And your petitioner will ever pray, etc.

HENRY MARELLI,  
Solicitor of Petitioner.

STATE OF NEW JERSEY, }  
COUNTY OF PASSAIC. } ss.: 10

IDEA RESTAINO, of full age, being duly sworn according to law, upon her oath, deposes and says, that she is the petitioner named in the foregoing amended petition; that her said amended petition is not made by any collusion between her and the defendant, but in truth and good faith for the causes set forth in the amended petition, and that the facts, matters and things set forth in the amended petition, so far as they relate to her acts, are true, and so far as they relate to the acts of others she believes them to be true. 20

IDEA RESTAINO.

Sworn and subscribed to before  
me this 28th day of April,  
1931.

PHOEBE E. WARD,  
Notary Public of New Jersey. 30

**ANSWER.**

Filed May 1, 1931.

IN CHANCERY OF NEW JERSEY.

81/655

10

*Between*

IDEA RESTAINO,

*Petitioner,**and*

CHARLES F. RESTAINO,

*Defendant.**On Petition  
for Divorce.**Answer.*

20 The answer of Charles F. Restaino, defendant,  
to the petition of Idea Restaino, petitioner:

1. Defendant admits that he and petitioner  
were married as in said petition alleged.

2. The defendant denies that on or about  
July, 1925, or any other time he began a course  
of cruel and abusive treatment towards peti-  
tioner, which is alleged to have continued until  
June 11, 1929, and he denies that by reason of  
30 his cruelty she was compelled to leave him. De-  
fendant denies that he ever beat her or swore  
at her or called her vile and indecent names when  
alone or in the presence of any other person:  
He denies that in the early part of December,  
1928, or any other occasion he struck or slapped  
or punched the petitioner, or called her vile and  
indecent names. He denies that in the latter  
part of December, 1929, or any other time, that  
he beat, kicked or punched the petitioner or called  
40 her vile and indecent names or caused her any

*Answer.*

mental or physical pain. He denies that in February, 1929, or any other time, he bruised the face and body of petitioner by punching her with his fists or caused her to suffer mental or physical pain. He denies that in March, 1929, or any other time, he beat the petitioner about the face and body or called her vile and indecent names. He denies that on June 11, 1929, or any other time, he struck the petitioner or called her vile and indecent names, and he denies that on June 11, 1929, the petitioner left the defendant and lived apart from him until January 10, 1930, because of his cruel and abusive treatment of her. He denies that she returned on January 10, 1930, to live with him, on his promise not to abuse her again and to treat her as a husband should treat his wife, and he denies that about a week later, he began to abuse petitioner. He denies that on or about January 20, 1930, or any other time, he told petitioner in the presence of others, that he thought she ought to leave him and called her names impugning her chastity or any other vile and indecent names. He denies that on or about February 1, 1930, or any other time, he kicked the petitioner in the leg or any other parts of her body, or called her any vile and indecent names or told her that she ought to leave the house. He denies that he ever called petitioner vile and indecent names impugning her chastity, or told her to get out of his home at any time, or that the petitioner was compelled to leave home because of his abusive conduct. He denies that on March 20, 1930, or any other time, he called the petitioner vile and indecent names or names impugning her chastity or told petitioner to leave or threatened her if she did not leave. The defendant denies that

10

20

30

40

*Answer.*

he at any time beat or abused the petitioner, or was guilty of any of the acts of cruelty or matrimonial misconduct charged against him in said petition.

3. Defendant denies paragraph 3.

10 4. Defendant neither admits nor denies paragraph 4, because he has no knowledge sufficient to form a belief as to the allegations in paragraph 4.

5. Defendant denies paragraph 5.

6. Defendant admits paragraph 6.

7. Defendant admits paragraph 7, to the best of his knowledge and belief.

20 The defendant further answering the petition says in the alternative:

30 That after the date of the alleged acts of cruelty complained of in the petitioner's petition, the said petitioner did condone said acts alleged by resuming or continuing matrimonial cohabitation with this defendant, since which condonation, this defendant has at all times treated the said petitioner kindly, and he has been guilty of no matrimonial misconduct since said condonation. He denies that petitioner is entitled to the relief sought, and prays that said petition be dismissed, that he may be awarded the custody of the child; and that he may have such further relief as may be just.

LUKE A. KIERNAN, JR.,  
Attorney for Defendant.

**REPLICATION AND ANSWER TO  
COUNTER-CLAIM.**

Filed May 2, 1931.

IN CHANCERY OF NEW JERSEY.

*Between*

IDEA RESTAINO,

*Petitioner,*

*and*

CHARLES F. RESTAINO,

*Defendant.*

*On Petition  
for Divorce.*

*Replication  
and Answer  
to Counter-  
claim.*

10

Petitioner joins issue on the answer of the defendant.

20

As to the counter-claim contained in the answer, petitioner denies that after the date of the alleged acts of cruelty she did condone the said acts alleged by resuming or continuing matrimonial cohabitation with the defendant, and that the defendant has at all times since said alleged condonation treated petitioner kindly and has not since committed any matrimonial offense.

HENRY MARELLI,  
Solicitor of Petitioner.

30

40



**DECREE NISI.**

Filed June 3, 1931.

## IN CHANCERY OF NEW JERSEY.

<p><i>Between</i></p> <p>IDEA RESTAINO,</p> <p style="text-align: center;"><i>and</i></p> <p>CHARLES F. RESTAINO,</p>	}	<p><i>Petitioner,</i></p> <p><i>Defendant.</i></p>	<p><i>On Petition for Divorce.  Decree Nisi.</i></p>	10
---	---	--	--	----

This cause coming on to be heard in the presence of Henry Marelli, of counsel with the petitioner, and Nicholas La Vecchia, of counsel with the defendant, on petition, answer and proofs taken in open court, and the Court having duly considered the pleadings and proofs and having heard and considered the argument of counsel, from all of which it appears to the Chancellor that the petitioner and the defendant were lawfully married on the second day of July, 1925, as alleged in said petition, and that the defendant has been guilty of extreme cruelty committed against the said petitioner, the last occasion occurring more than six months prior to the filing of the petition in this cause, as alleged in said petition, and that, at the time the cause of action for divorce for the said cruelty arose, the petitioner was a bona fide resident of this State, and that the said petitioner has continued so to be down to the time of the commencement of this action, and that the petitioner has been, for the two years next preceding the commencement of

*Decree Nisi.*

this action, a bona fide resident of this State; and it further appearing that jurisdiction herein has been acquired by personal service of process upon the defendant within this State;

10 IT IS, THEREUPON, on this third day of May, 1931, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor, by virtue of the power and authority of this court, and of the acts of the legislature in such case made and provided, does hereby order, adjudge and decree, that the said petitioner, Idea Restaino, and the said defendant, Charles F. Restaino, be divorced from the bond of matrimony, for the cause aforesaid, and the said parties, and  
20 each of them, be freed and discharged from the obligations thereof, unless within three months from the date hereof, sufficient cause be shown to the Court why this decree should not be made absolute.

And it is further ordered, adjudged and decreed, that the said defendant do pay to the said petitioner her costs of this suit incurred and to be incurred, to be taxed, with a counsel fee of \$650.00, and that the said petitioner have  
30 execution therefor, according to the practice of this court.

And it is further ordered, adjudged and decreed that the custody of Yvonne Restaino, the minor child of the marriage, be and the same is hereby awarded to the petitioner.

And it is further ordered, adjudged and decreed that the defendant pay to the petitioner the sum of \$32.50 per week, beginning on the day

*Decree Nisi.*

hereof, for her support and maintenance and that  
of said minor child, Yvonne Restaino.

E. R. WALKER,  
C.

Respectfully advised,

EDWARD THOMAS MOORE,  
A. M.

10

20

30

40

## MEMORANDUM OF ADVISORY MASTER.

IN CHANCERY OF NEW JERSEY.

	<i>Between</i>	}			
10	IDEA RESTAINO,			<i>Petitioner,</i>	<i>On Petition for Divorce.</i>
	<i>and</i>				
	CHARLES F. RESTAINO,			<i>Defendant.</i>	<i>Memoran- dum.</i>

Suit for divorce by Idea Restaino against Charles F. Restaino. Decree for petitioner.

Henry Marelli of Paterson, for petitioner.

20 Luke A. Kiernan, Jr., of Newark, for defendant.

Moore, Advisory Master. This is a suit for absolute divorce based on charges of extreme cruelty under the 1923 Supplement of the Divorce Act (P. L. 1923, p. 494).

The petition was filed December 11, 1930.

30 The acts of cruelty complained of in said petition took place six months prior to the date of the filing of the petition.

The defendant filed an answer and counter-claim on January 17, 1931. In the counter-claim the defendant denies the allegations of extreme cruelty and as a separate defense alleges condonation.

40 The parties cohabited from the date of the marriage and up and until June 12, 1929, at which time the petitioner left the defendant because of a brutal assault committed upon her on

*Memorandum of Advisory Master.*

the previous day. The petitioner returned to live with the defendant in January, 1930, and lived and cohabited with the defendant until about March 20, 1930, at which time the petitioner left the defendant because of extreme cruelty accorded her by the defendant. The parties have not lived or cohabited together since that date. 10

There is credible testimony that the defendant's ill temper spent itself in a number of brutal assaults upon the petitioner by throwing her down to the floor and by beating her, and as a result thereof she suffered considerable pain.

Credible testimony was had to the effect that on several occasions the defendant unjustly accused the petitioner of unchastity and that the defendant used vile language toward the petitioner. To these acts of extreme cruelty, as well as to the effects thereof upon the petitioner's health, the petitioner testified in great detail. 20

The petitioner is supported by her mother and cousin who gave proof of the defendant's oppressive conduct toward her, and of certain brutal assaults and attacks made by the defendant upon the petitioner; also as to the defendant's swearing at the petitioner and making unjust accusations of infidelity to the petitioner in their presence, and as to the effect thereof upon the petitioner. In addition thereto the mother testified in substance that on two occasions the defendant admitted beating the petitioner. The mother further testified that the defendant stated that the petitioner "deserved more." 30

The petitioner is corroborated in her testimony by witnesses as to certain of the acts of extreme cruelty and the effects thereof upon the peti- 40

*Memorandum of Advisory Master.*

tioner, and also as to her run-down physical and mental condition. I am convinced that their testimony is worthy of belief.

10 The brother of the petitioner, an attorney-at-law of New Jersey, testified to the effect that he had on two occasions seen the bruises and marks on the petitioner's face, one of these occasions being in June of 1929, at which time the brother observed the hysterical condition of the petitioner.

There is no credible or convincing testimony offered in support of the contention of the defendant that the alleged cruelty had been condoned by reason of sexual cohabitation since March, 1930.

20 The petitioner denies having had sexual relationship with the defendant since March, 1930, which was the date on which the petitioner left the defendant, and further testified that the last sexual relationship took place probably a month before March, 1930.

30 The conduct of the husband toward the petitioner justifies the belief that as a result of such conduct a condition existed of extreme discomfort and wretchedness which incapacitated the petitioner to discharge her duties and seriously endangered her health, and that for the petitioner to be compelled to live under such conditions with her husband, the petitioner will be rendered so uncomfortable as to incapacitate her from discharging her matrimonial duties.

40 The testimony of the wife makes out a clear case of extreme cruelty. The rule of corroboration only requires that belief in its truthfulness must find support in the testimony of others, or

*Memorandum of Advisory Master.*

of surrounding established circumstances. This requirement has been met.

Accordingly, I shall advise a decree for the relief prayed for in the petition and for a dismissal of the counter-claim. See *Lasker v. Lasker*, 91 N. J. Eq. 352; *Meek v. Meek*, 92 N. J. Eq. 23; *Orcutt v. Orcutt*, 94 N. J. Eq. 303; *Wines v. Wines*, 127 Atl. Rep. 28; *Ross v. Ross*, 147 Atl. Rep. 193, affirmed 148 Atl. Rep. 920; *Hauenstein v. Hauenstein*, 95 N. J. Eq. 34, 122 A. 241; *Hill v. Hill*, 97 N. J. Eq. 237, 127 A. 584; *Coe v. Coe*, 97 N. J. Eq. 59, 127 A. 39; *Foote v. Foote*, 71 N. J. Eq. 273, 65 A. 205; *Cavileer v. Cavileer*, 94 N. J. Eq. 160, 119 A. 101. 10

Respectfully advised,

EDWARD THOMAS MOORE, 20  
A. M.

30

40

## NOTICE OF APPEAL.

Filed June 23, 1931.

IN CHANCERY OF NEW JERSEY.

81-655.

10

*Between*


---

 IDEA RESTAINO,  
*Petitioner-Respondent,*
*and*
 CHARLES F. RESTAINO,  
*Defendant-Appellant.*


---

*On Petition  
for Divorce.**Notice of  
Appeal.*

20 The defendant hereby appeals from so much  
 of the decree nisi made in this court, in the above  
 entitled cause, on the third day of June, 1931,  
 as orders, adjudges and decrees, that the peti-  
 tioner, Idea Restaino, and the defendant, Charles  
 F. Restaino, be divorced from the bonds of matri-  
 mony for the cause of extreme cruelty, and that  
 the said parties, and each of them, be freed and  
 discharged from the obligations thereof, unless  
 within three months from the date thereof, suf-  
 30 ficient cause be shown why said decree should  
 not be made absolute; and also from so much of  
 said decree nisi, as orders, adjudges and decrees,  
 that the said defendant pay to the said peti-  
 tioner a counsel fee of \$650.00;

And also from so much of said decree nisi, as  
 orders, adjudges and decrees that the custody of  
 Yvonne Restaino, the minor child of the mar-  
 riage, be awarded to the petitioner, Idea Res-  
 taino;

40

*Notice of Appeal.*

And also from so much of said decree nisi, as orders adjudges and decrees that the said defendant pay to the said petitioner the sum of \$32.50 per week for her support and maintenance and that of said minor child, Yvonne Restaino, to the Court of Errors and Appeals in the last resort in all causes.

10

NICHOLAS LA VECCHIA,  
Solicitor for and of Counsel with Defendant.

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

NICHOLAS LA VECCHIA,  
Of Counsel with Defendant.

20

30

40

**PETITION OF APPEAL.**

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

10	<i>Between</i>  IDEA RESTAINO, <i>Petitioner-Respondent,</i>  <i>and</i>  CHARLES F. RESTAINO, <i>Defendant-Appellant.</i>	} <i>On Petition for Divorce.</i>  } <i>On Appeal from Chancery. Petition of Appeal.</i>
----	--	--

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

20       The petition of Charles F. Restaino, the appellant in the above stated cause, respectfully shows that your petitioner finds himself aggrieved by a decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date the 3rd day of June, 1931, in a cause above entitled, to wit, an action brought by the said Idea Restaino against your petitioner for divorce upon the

30       ground of extreme cruelty, in this respect, to wit, that the said decree orders, adjudges and decrees that the said Idea Restaino and your petitioner be divorced from the bonds of matrimony for the cause of extreme cruelty adjudicated to have been committed by your petitioner, and that the parties to said suit, and each of them, be freed and discharged from the obligations thereof, unless within three months from the date of said decree sufficient cause be shown why the said decree

40       should not be made absolute. And petitioner

*Petition of Appeal.*

also finds himself aggrieved by the said decree in that it orders, adjudges and decrees, that the custody of Yvonne Restaino, the minor child of the marriage, be awarded to the petitioner, Idea Restaino. And petitioner also finds himself aggrieved by the said decree in that it orders, adjudges and decrees that he pay to the petitioner, Idea Restaino, a counsel fee of \$650.00. And petitioner also finds himself aggrieved by the said decree in that it orders, adjudges and decrees that he pay to the petitioner, Idea Restaino, the sum of \$32.50 per week for her support and maintenance, and that of said minor child, Yvonne Restaino.

Your petitioner appeals from that portion of the decree which decrees, as aforesaid, upon the ground that the same is erroneous in that, the evidence did not warrant the Court in finding that your petitioner was guilty of the charge of extreme cruelty.

That the said Court should have dismissed the petition filed by the said Idea Restaino against your petitioner.

That the said Court should have awarded the custody of Yvonne Restaino, minor child as aforesaid, to petitioner.

That the evidence did not warrant an allowance of \$32.50 for support and maintenance as aforesaid, and a counsel fee of \$650.00.

Your petitioner therefore prays, that the said decree of the said Chancellor may be in the particulars aforesaid reversed, set aside and for nothing holden, and that the record may be remitted to the said Court of Chancery with direction to dismiss the petition filed by the said Idea

10

20

30

40

*Petition of Appeal.*

Restaino against your petitioner, and that your petitioner may have such other and further relief in the premises as to this Honorable Court shall seem meet.

NICHOLAS LA VECCHIA,

10 Solicitor for and of Counsel with Appellant.

20

30

40

**AMENDED NOTICE OF APPEAL.**

IN CHANCERY OF NEW JERSEY.

81-655.

---

*Between*

IDEA RESTAINO,  
*Petitioner-Respondent,*

*and*

CHARLES F. RESTAINO,  
*Defendant-Appellant.*

---

*On Petition  
for Divorce.*

*Amended  
Notice of  
Appeal.*

10

The defendant hereby appeals from so much of the decree nisi made in this court, in the above entitled cause, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, on the advice of Advisory Master, Edward T. Moore, Esq., on the third day of June, 1931, as orders, adjudges and decrees, that the petitioner, Idea Restaino, and the defendant, Charles F. Restaino, be divorced from the bonds of matrimony for the cause of extreme cruelty, and that the said parties, and each of them, be freed and discharged from the obligations thereof, unless within three months from the date thereof, sufficient cause be shown why said decree should not be made absolute; and also from so much of said decree nisi, as orders, adjudges and decrees, that the said defendant pay to the said petitioner a counsel fee of \$650.00;

20

30

And also from so much of said decree nisi, as orders, adjudges and decrees that the custody of Yvonne Restaino, the minor child of the mar-

40

*Amended Notice of Appeal.*

riage, be awarded to the petitioner, Idea Restaino;

10 And also from so much of said decree nisi, as orders, adjudges and decrees that the said defendant pay to the said petitioner the sum of \$32.50 per week for her support and maintenance and that of said minor child, Yvonne Restaino, to the Court of Errors and Appeals in the last resort in all causes.

NICHOLAS LA VECCHIA,  
Solicitor for and of Counsel with Defendant.

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

20 NICHOLAS LA VECCHIA,  
Of Counsel with Defendant.

30

40

**AMENDED PETITION OF APPEAL.**

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

<i>Between</i>		<i>On Petition for Divorce.</i>	10
IDEA RESTAINO, <i>Petitioner-Respondent,</i>	}	<i>On Appeal from Chancery.</i>	
<i>and</i>			
CHARLES F. RESTAINO, <i>Defendant-Appellant.</i>	}	<i>Amended Petition of Appeal.</i>	

To the Honorable, the Court of Errors and Appeals, in the last resort in all causes: 20

The petition of Charles F. Restaino, the appellant, in the above-stated cause, respectfully shows that your petitioner finds himself aggrieved by a decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, on the advice of Advisory Master, Edward T. Moore, Esq., bearing date the 3rd day of June, 1931, in a cause above entitled, to wit, an action brought by the said Idea Restaino against your petitioner for divorce upon the ground of extreme cruelty, in this respect, to wit, that the said decree orders, adjudges and decrees that the said Idea Restaino and your petitioner be divorced from the bonds of matrimony for the cause of extreme cruelty adjudicated to have been committed by your petitioner, and that the parties to said suit, and each of them, be freed and discharged from the obligations thereof, unless within three months from the date of said 30 40

*Amended Petition of Appeal.*

decree sufficient cause be shown why the said decree should not be made absolute. And petitioner also finds himself aggrieved by the said decree in that it orders, adjudges and decrees, that the custody of Yvonne Restaino, the minor child of the marriage, be awarded to the petitioner, Idea Restaino. And petitioner also finds himself aggrieved by the said decree in that it orders, adjudges and decrees that he pay to the petitioner, Idea Restaino, a counsel fee of \$650.00. And petitioner also finds himself aggrieved by the said decree in that it orders, adjudges and decrees that he pay to the petitioner, Idea Restaino, the sum of \$32.50 per week for her support and maintenance, and that of said minor child, Yvonne Restaino.

20 Your petitioner appeals from that portion of the decree which decrees, as aforesaid, upon the ground that the same is erroneous in that, the evidence did not warrant the Court in finding that your petitioner was guilty of the charge of extreme cruelty.

That the said Court should have dismissed the petition filed by the said Idea Restaino against your petitioner.

30 That the said Court should have awarded the custody of Yvonne Restaino, minor child as aforesaid, to petitioner.

That the evidence did not warrant an allowance of \$32.50 for support and maintenance as aforesaid, and a counsel fee of \$650.00.

Your petitioner therefore prays, that the said decree of the said Chancellor may be in the particulars aforesaid reversed, set aside and for nothing holden, and that the record may be remitted to the said Court of Chancery with direction to dismiss the petition filed by the

40

*Substitution of Attorney.*

said Idea Restaino against your petitioner, and that your petitioner may have such other and further relief in the premises as to this Honorable Court shall seem meet.

NICHOLAS LAVECCHIA,  
Solicitor for and of Counsel with Appellant.

10

**SUBSTITUTION OF ATTORNEY.**

Filed July 22, 1931.

IN CHANCERY OF NEW JERSEY.

81-655

*Between*

IDEA RESTAINO,

*Petitioner,*

*and*

CHARLES F. RESTAINO,

*Defendant.*

*On Petition  
for Divorce.*

*Substitution  
of Attorney.*

20

I hereby consent to the substitution of Nicholas LaVecchia as solicitor for Charles F. Restaino, the defendant in the above-entitled cause of action.

30

LUKE A. KIERNAN, JR.,  
Solicitor of Defendant.

40

*Idea Restaino, for Petitioner, direct.*

IN CHANCERY OF NEW JERSEY.

No. 81-665.

10	<p><i>Between</i></p> <p>IDEA RESTAINO,</p> <p style="text-align: right;"><i>Petitioner,</i></p> <p style="text-align: center;"><i>and</i></p> <p>CHARLES F. RESTAINO,</p> <p style="text-align: right;"><i>Defendant.</i></p>	}
----	--	---

Hackensack Court House, Hackensack, New Jersey.

20 Friday, March 27, 1931.

Before: Edward Thomas Moore, Esq., Advisory Master.

Appearances:

Henry Marelli, Esq., Second National Bank Building, Paterson, New Jersey, solicitor for the petitioner.

30 Luke A. Kiernan, Jr., Esq., 790 Broad street, Newark, New Jersey, solicitor for the defendant.

IDEA RESTAINO, being duly sworn on her oath according to law, deposes and says as follows:

*By Mr. Marelli.*

Q Mrs. Restaino, are you the petitioner?

A Yes.

Q When were you married to your husband, Charles F. Restaino? A April 2, 1925.

40 Q Where? A West New York.

*Idea Restaino, for Petitioner, direct.*

Q By whom? A Reverend Adam Smith.

Q What was your maiden name? A Idea Strames.

Q Where did you live after you were married? A Ridge street, Newark, 374, something like that.

Q Whose house was it? A My own, we had 10  
an apartment.

Q How long did you stay there? A Until the baby was born.

Q When was that? A May 15, 1927.

Q What is the child's name? A Yvonne Restaino.

Q Who has the custody of the baby? A I have.

Q Was that the only child? A Yes.

Q Where did you live after that? A My 20  
husband bought a house at 376 Roseville avenue, Newark.

Q How long did you live there? A Till I left.

Q When was that? A June 12, 1929, the first time.

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

Q What did you do? A I went back to 376 30  
Roseville avenue.

Q To what date did you live with him? A March, 1930.

Q Where did you live then? A 70 North Prospect avenue, Arlington, Bergen County.

Q Do you live there now? A Yes.

Q How long have you resided in the State of New Jersey? A Since I was 12.

Q What is your age now? A 26.

Q After you were married how did your husband treat you? A Two weeks after I was 40  
married—

*Idea Restaino, for Petitioner, direct.*

*By Mr. Kiernan.*

I object to any acts of cruelty before the date alleged.

*By Mr. Marelli.*

I ask permission to amend the petition, even if it is not amended it could be.

10

*By the Court.*

The acts of cruelty before the alleged date can be used for corroboration but not a basis of action. Note Mr. Kiernan's objection against any cruelty prior to the alleged date.

*By Mr. Marelli.*

I ask that the petition be amended to read the cruelty to date from July, 1925, instead of December, 1928.

20

*By the Court.*

I will hold your motion in abeyance until we see if the proofs conform to the motion.

*By Mr. Marelli.*

Q What did he do? A He beat me and called me vile names.

Q What names? A Son-of-a-bitch, whore, parasite, bastard.

Q What did he hit you with? A His fists.

30 Q On what part of your body? A My head and limbs.

Q Was there any one present? A My cousin.

Q When was the next time? A Around Christmas in the presence of his mother and sister. His sister fainted.

Q What year was that? A 1925.

Q His sister fainted? A Yes, she was so excited.

40

Q Who was present? A His mother.

*Idea Restaino, for Petitioner, direct.*

Q Tell us who was present in December when he beat you? A His mother, sister and brother.

*By the Court.*

Q Were you present? A I got the beating in his home.

10

*By Mr. Marelli.*

Q When after that? A There was so many times, in 1927, February 20th, it was my brother's birthday and he beat me so bad I had to have my wedding ring removed, I went over to show my mother my finger, it was so swollen the ring would not come off. His brother came up and intervened.

Q What language did he use? A Son-of-a-bitch, bastard, whore.

20

Q This was on what date? A February 20, 1927.

Q Was there an occasion before or after this that your mother was present? A Yes, the baby was 4 months old and I had just come home from the hospital, he beat me and called me names.

Q When was the baby born? A May 15, 1927.

Q Did he come down at a later date and beat you after September, 1927?

30

*By Mr. Kiernan.*

I object, the question is leading.

*By Mr. Marelli.*

I withdraw the question.

Q Did you receive a beating after December?

A Yes, in 1928 he beat me up and my brother had to take me home, my head was all bruised.

40

*Idea Restaino, for Petitioner, direct.*

Q When was that? A The baby was 10 or 11 months old, it was February or March and would be in 1928.

Q What did he do to you? A He struck me on the head, and I had marks on my head and bruises on my body. I cried and I went to my  
10 mother's home and I decided next morning to go back.

Q Did he beat you any other time? A On June 11, 1929, he struck me on the head, I was standing by the window and he said that I took a telephone call the wrong way and he punched me on the head, and I had a mark on my forehead.

Q What was the date? A June 11, 1929.

Q 1929? A Yes.

20

*By the Court.*

Q Did you return? A Six months after he came to the house and I went back.

Q Did you resume cohabitation? A Yes, and he treated me so bad I went back to my mother's.

*By Mr. Marelli.*

30 Q When? A I went back January, 1930, and lived with him to the middle or end of March, 1930.

Q Did he abuse you then? A He said get the hell out and called me vile names.

Q What names? A Son of a bitch, whore, bastard and said get the hell out.

*By the Court.*

40 Q Was there any one present? A Several people were present and heard him call me the names.

*Idea Restaino, for Petitioner, direct.*

*By Mr. Marelli.*

Q Why did you go away? A My health was bad, I had to go to my mother's. I lost weight, and my brother told me I should go home.

Q Where did you go? A To my mother's in North Arlington.

Q What is the occupation of your husband?  
A Physician. 10

Q How long has he been practicing? A Practicing 7 years.

Q Do you know his income? A \$12,000.00 to \$15,000.00 a year.

Q Since you left him what has he contributed to your support and the child? A \$160.00 a month last year.

Q For your support and the child? A Yes. 20

Q Have you had marriage relations with him since March, 1930? A No.

Q Was there any cause for his abusing you, was there any provocation? A February 20, 1928, I asked him where he was going. He always neglected me and I asked him where he was going and he came over and struck me. That was the time my brother came over.

Q Did you give him any provocation? A No. My brother came over because he broke the baby's bottle in the sink and I asked him to go over to mother's for milk and he struck me. 30

*By the Court.*

Q Did you give him any provocation? A Personally I don't think I did.

Q Did you strike him? A In self defense I lost my head and picked something up. 40

*Idea Restaino, for Petitioner, cross.*

*Cross examination by Mr. Kiernan.*

Q Mrs. Restaino, after you married your present husband you went to live in your own home? A Yes.

Q Where? A Ridge street, Newark.

10 Q Did you live there with your husband? A Yes.

Q In an apartment? A Yes, 6 rooms.

Q Did your husband provide for you? A Yes.

Q He furnished the rent and the necessities? A Yes.

Q You rented the apartment? A Yes.

Q How long did you stay there? A 2 years.

Q Then you moved to Roseville avenue? A 376 Roseville avenue.

20 Q Was that home bought by your husband? A Yes.

Q Did your husband's relations live with you? A Yes.

Q And yours? A My mother and father lived there 4 months.

Q Where was the baby born? A In the hospital and I went to the home he bought against my consent. He negotiated for the home when I was in the hospital.

30 Q Was that the first you knew about the home on Roseville avenue? A No, I knew he was going to buy it.

Q You objected? A I wanted a home by ourselves; no house is big enough for two families.

Q You didn't want his family? A Yes, and I got slapped.

Q Did the doctor's mother and father live there? A Yes, and his brother and sister.

40 Q You didn't like them being there? A No, I wanted my own home.

*Idea Restaino, for Petitioner, cross.*

Q Did you tell the doctor? A Yes, I told him; I complained. I said I would like to be by ourselves.

Q Did you tell the doctor in the presence of his relations? A I may have.

Q You did say something though in the presence of his mother and father? A I might have; I made it no secret. I had to run upstairs every time to see the baby. 10

Q How long did you and your husband live at Roseville avenue? A Until I left him; he is still there.

Q What year did you go there? A 1927.

Q You left in 1930? A Yes.

Q Your mother lived there? A After I came home from the hospital mother lived there. 20

Q Your brother lived there? A Yes, for a few months.

Q When was the first time you left your husband? A June 12, 1929.

Q How long did you stay away? A 6 months.

Q When you came back did you say anything about his people living in the house? A No.

Q How long did you stay? A 2 months. 30

Q What was the matter that you didn't like them? A I don't know.

Q Did it make a difference to you? A They were not mean to me.

Q It did make a difference? A I wanted my own home.

*By Mr. Marelli.*

I object; he brought that out before.

*Idea Restaino, for Petitioner, cross.*

*By Mr. Kiernan.*

Q That was in your mind from the time you went there until you left? A Yes.

10 Q You told us on direct that there was one occasion when your husband was going out and you asked him where he was going and there was an argument? Do you remember striking him on the head with a candlestick? A No; anything I did to him was in self defense.

Q You did strike him with a candlestick? A No, I threw a shoe; it didn't strike him.

Q You struck him? A He struck me first.

Q I ask you again, you say you threw something at him in defense; what did you throw at him? A Yes, but it didn't hit him.

20 Q You missed? A Yes.

Q He angered you so that your temper forced you to throw things at him? A No; I was very calm. When anyone strikes and you can't beat him. If I was near something I threw it at him.

Q Mrs. Restaino, I ask you again, did not your temper almost oblige you to strike him or to throw something at him? A No.

30 Q You would throw something at him? A If a man strikes me, shouldn't I defend myself? I would be justified in self defense.

Q Every occasion of difference you and your husband had, your attitude was defense of yourself? A Not every time.

Q Most every time? A No, probably only the one occasion when I threw the candlestick at him.

40 Q You felt that way every time he struck you? A No, many times I would cry and go by myself, lock myself in my bedroom.

*Idea Restaino, for Petitioner, cross.*

Q There was only one of these occasions? A One occasion I flung anything at him.

Q When was that occasion? A February 20, 1929.

Q Did he touch you then? A That night was the last that I took anything from him.

Q Did he strike you before you threw the candlestick? A Yes. 10

Q You remember that? A I never struck anyone.

Q You never had occasion to strike your husband? A No, not then. I think you can reason with a person.

Q Did you have occasion to strike your husband except the time when you threw the candlestick? A He did.

Q What he did, is that occasion? A He struck me. 20

Q That is no occasion? A Surely.

Q What did you do? A I took his beating and cried and probably talked to him; that was all I could do.

Q He actually struck you the time you threw the candlestick? A His brother Salvatore came up, when he was on top of me punching me.

Q Did you get up from the floor? A Yes, I got on the couch. 30

Q Did he go out? A He called up a man he had an appointment with.

Q Did he go to the office hours he had? A Yes.

Q He went to his office? A Yes.

Q Did you say anything to him about his going to his office before he struck you? A I asked him why he was getting dressed.

Q You did say something about his going out? A Yes. I asked him if he was going out without telling me. 40

*Idea Restaino, for Petitioner, cross.*

Q What part of the house was this? A Upstairs.

Q He put you on the floor? A Yes.

Q He was on top? A Yes.

Q Was he dressed? A Partly.

10 Q Do you remember what he had on? A No.

Q Was he dressing when you spoke to him about going out? A He was putting on a shirt. I asked him where he was going and he went upstairs to the room and I asked him where he was going and he said it was none of my business. I told him, "You never have time to take me." He said it was none of my God damned business, he was earning the living. I said I had a right to know where he was going, other men talked to their wives.

20

*By the Court.*

Q Was that all he said when he struck you?

A Yes.

Q What effect did it have on you? A He didn't seem to mind it at all; it was the natural course to use in married life.

*By Mr. Kiernan.*

30 Q Do you know whether you deserved what you got? A No.

Q You are sure? A Positive.

Q You were on the floor when his brother came up? A Yes.

Q What did the brother say to your husband?

A He said he shouldn't use his hands on a woman.

40 Q What was the last time you lived with your husband? A March 20, 1930.

*Idea Restaino, for Petitioner, cross.*

Q Have you been out with him since? A I was up to see him and begged him to come back.

Q When was the last time? A Two weeks Tuesday. He came up to see the baby.

Q How many times has he been up since March, 1930? A Several times.

Q Was it more than once or twice a week? A 10 He came to see the baby once a week.

Q Did you talk to him? A Yes.

Q Did you go out with him? A Yes, Christmas he said he had some trains for the baby.

Q What time was it? A Late.

Q At night? A 11:30.

Q What time did you leave the office? A I waited outside; he went in to get the trains in the drug store.

Q Have you been with him in the office since 20 March, 1930? A No.

Q Have you been to his home? A Yes, to see his mother.

Q Was he home? A No.

Q Have you been with him? A He came along in the car to drive the child and myself up to the mountains; the child had whooping cough. I saw the doctor when we went to the mountains.

Q How long did you stay? A Two weeks. 30

Q How long did he stay? A He went home the same day. I knew he was trying to trick me. My mother saw him come up.

Q You thought he was going to trick you? A Yes.

Q How did you know? A When he appeared with his chauffeur.

Q In the Catskills? A Yes.

Q Did you talk to him? A I rode four hours with him; Schnitzer drove my husband.

*Idea Restaino, for Petitioner, cross.*

Q Where did the ride take place from? A  
Arlington.

Q It took four hours? A Yes.

Q What time did you leave? A Five o'clock  
in the morning.

10 Q What time did you get there? A In the  
afternoon.

Q Did he stay? A One hour and left.

Q Did you take a room? A Yes, with the  
child.

Q What hotel? A Gutrens boarding house.

Q What month of the year? A July or  
August.

Q When did you see your husband? A He  
came up when we were to go home.

20 Q How long before you went? A Not over  
two hours.

Q Were you in communication with him? A  
I probably let him know about the child's whoop-  
ing cough.

Q Are you sure you did not stay with your  
husband? A Positively.

Q Did anybody talk to you about cohabiting;  
in the last two weeks did you tell your lawyer?  
A I told my lawyer there was no cohabiting.

30 Q Did you talk to him at all about it? A  
There wasn't any.

*By the Court.*

Q When you retained counsel did you tell him  
all the facts? A Yes.

*By Mr. Kiernan.*

Q You read the petition with the affidavit and  
stated the facts were true? A Yes.

40 Q Is it true or not that about December 15,  
1928, the defendant began a course of cruel

*Idea Restaino, for Petitioner, cross.*

treatment? A I made a mistake; he became cruel two weeks after I was married.

Q When you alleged that it was about December 15 that was incorrect? A The date is incorrect; it began two weeks after I married him.

Q Then that's a mistake? A Yes. 10

Q You knew that when you signed it?

*By Mr. Marelli.*

I object; it is a trivial matter. Counsel might make a mistake.

*By Mr. Kiernan.*

A I thought Mr. Marelli got all the facts straight; this thing upset me and I don't know about the dates. 20

Q Mrs. Restaino, did you ever tell anyone the first time your husband's course of cruel treatment was before December, 1928? A I didn't have to; his brother seen it.

Q Did you tell anyone? A No.

Q This is the only petition you filed? A No.

Q You know that isn't so? A There was a petition filed and Mr. Marelli said it was no good; it was not six months after leaving my husband. Yes, I did. 30

Q Who paid the bills in the mountains? A My husband.

Q Were they paid in advance? A One week.

Q When was the next week paid? A He sent me a check.

Q Did you receive it? A When the other rent was due.

Q After December, 1928, was there anyone present at any of these times that it is alleged your husband beat you? A Sometimes. 40

*Idea Restaino, for Petitioner, cross.*

Q Were your relations present? A I left him in 1930. My brother saw bruises.

Q Was there anybody present from 1928 to 1930, from the first time you left to the last time? A Yes; when the baby was 11 months old, my mother heard him call me names.

10 Q Did he beat you in 1928? A So many times I don't remember.

Q You were married in July, 1925? A Yes.

Q When was the first time you left? A 1929.

Q You lived with him for a period of four years? A Yes.

Q You had no occasion to leave him from 1925 to 1929? A Yes.

Q But you didn't leave him? A No.

20 Q There was no reason? A Yes, the child was small and I made the best of it.

Q The baby was born 1927? A Yes.

Q The baby was 2 years old when you left? A Yes.

Q In 1929 you received medical attention? A Yes, I had a miscarriage.

Q When? A The child was 11 months old.

30 Q Did you have a doctor other times? A I had a boil on my face, and any medical attention I needed I didn't go to a doctor, I went from 129 pounds to 116 pounds.

Q Did you go for medical attention as a result of your husband's beating you? A I didn't dare go.

Q Did he support you? A He gave me \$10.00 a week for provisions for myself and child.

Q Was that the only money you received from your husband? A Yes.

40 Q After you left him and was through with your husband? A Yes, he supported me. I had

*Idea Restaino, for Petitioner, cross.*

more from him since I left hlm. He never thought of me in the future. He had life insurance and I am not named as the beneficiary. The home is in his people's names.

Q Did you ever say anything to him? A No, never, I am not mercenary.

Q Then why did you bring it out? A Because you spoke about his providing for me. 10

Q You mean my mentioning it brought it to your mind to bring it out? A No.

Q Did you think about it before? A No. That just came in my mind, he never provided luxuries.

Q Did you look for luxuries? A No. When I needed shoes I went around with holes in my shoes for weeks. We had a colored maid he gave \$12— 20

Q You had a colored maid? A Yes, for his mother.

Q Did you do the work? A Yes, I did my room and the wash.

Q Did the maid help you? A Yes, once a week.

Q The maid helped you? A Yes.

Q Isn't that a luxury? A No. I took care of the child. 30

Q Did you have a maid before you were married? A No.

Q You were not used to a maid? A No.

*By Mr. Marelli.*

I object to this course of cross examination, evidently he is trying to humiliate the witness.

*By the Court.*

It is a question of credibility.

*Idea Restaino, for Petitioner, cross.*

*By Mr. Kiernan.*

Q Mrs. Restaino, how many times did you go back to your husband? A Once.

Q After the first time you left? A Yes.

Q What month did you leave? A June.

10 Q His mother and father lived with you and your husband? A Yes.

Q Did your relations live there? A No.

Q Did you say anything to him about his mother and father? A No, I had trouble of my own.

Q When was the last time you spoke to your husband about his parents living there? A Probably when the baby was small; it was hard going up and down stairs.

20 Q Mrs. Restaino, between the time you first left your husband and went back, did you cohabit with him, had you been out with him? A Yes, he called and took me and the baby out. He came up to dinner, the only reason he didn't want me to go back was a reason of his own.

Q Did you go to the movies with him? A Last Tuesday, two weeks ago.

30 Q You knew that the divorce case was set down for today? A Yes. His brother came in and he wanted me to go back and I wouldn't and he went home angry.

Q Where did you go? A The State Theatre.

Q What time did you get home? A 11 o'clock.

Q Mrs. Restaino did you see your husband New Year's eve, 1930? A Yes, I went back January and I saw him New Year's eve, 1930.

40 Q Did you see him New Year's eve, 1929? A No, I didn't see him.

*Idea Restaino, for Petitioner, cross.*

Q Did you see him New Year's eve, 1931?

A No, I stayed home all evening; mother can verify that.

Q You actually lived with your husband the early part of January, 1930? A I went back probably the first week of January, 1930.

Q You had been out with him New Year's eve? A Yes, 1929, my brother was with me, my husband called on me as soon as his plans were finished, I couldn't say he was courting me.

10

Q Where did you go with him that night? A Villa Francais.

Q Your brother went along? A Yes, with his friend.

Q Where were you living? A At my mother's.

Q Did the doctor stay? A Yes.

20

Q Did he sleep with you? A Yes, it was understood I was to go back.

Q How long had he been courting you? A It started in October when he came up to see me.

*By the Court.*

Q Why did you go back? A For the baby's sake.

30

*By Mr. Kiernan.*

Q He courted you from October to January, 1930? A Yes.

Q How many times did you see him a week? A One or two times.

Q Where was your husband's office located? A Garside street, Newark.

Q Did you at any time after March, 1930, go to his office? A I sat outside and waited for the baby's train.

40

*Idea Restaino, for Petitioner, cross.*

Q How many times did you stay out? A Once.

Q His office was on the second floor? A I was never in his office, I waited in his car.

Q Was there anyone there that you knew?

A Yes, Mr. Brian.

10 Q Did you see anyone else there? A No.

Q Whose auto was it? A My husband's.

Q Where did you go in the car? A My home.

Q He sent the car? A He came up.

Q Was the baby with you? A No, in bed.

Q What time did you get to the doctor's office? A I was outside.

Q What time? A 10:30 or 11:00 o'clock.

Q How long did you wait in the automobile?

20 A Until he got the trains, he got a call, that gentleman, Joseph De Palma in the third row, came to call him, said he had a call.

Q Were you upstairs when he got the telephone call? A No, outside.

Q Was the doctor outside when the telephone rang? A He was outside.

Q You are positive about never being in the doctor's office in 1930? A Yes. I have not since I left him, March, 1930.

30 Q You were never at his home when he was there? A No.

Q Mrs. Restaino, the first divorce action which was later disposed of in some way, that was filed by your brother? A Yes.

Q In the first petition you filed you told us that the defendant was guilty of extreme cruelty beginning December 14, 1928, is that correct? A No.

40 Q You swore that it was true? A When I thought it over it really didn't start in 1928 but in 1925.

*Idea Restaino, for Petitioner, cross.*

Q Your mind has changed respecting your husband's treatment? A Just when it began.

Q You spoke to Mr. Marelli and determined that it started in 1925 and you signed an affidavit and said it started 1928? A Mr. Marelli was mistaken.

Q You read it? A Yes. 10

Q You knew you signed an affidavit that the facts were true? A Yes.

Q Did you read the petition? A Yes, I did.

Q You knew after retaining Mr. Marelli that it started in 1928? A I told Mr. Marelli 1925.

Q You were mistaken about 1928 in both petitions? A I must have been.

Q Do you know how much your husband took in in his business? A Yes. 20

Q When was the first time he told you? A I don't keep dates.

Q Did you put down anything? A My brother told me after I left him that I should have kept dates.

Q Did you tell your brother when he beat you? A Yes.

Q Your brother is a lawyer? A Yes.

Q What did you ask your brother? A I asked him what I should do. 30

Q Did you ask your brother to get you a divorce? A No, I engaged Mr. Marelli. I went to Lawyer Serangel first.

Q Do you know that the home that you and your husband and his in-laws lived in, is mortgaged? A I didn't know anything about his business, he never told me.

Q Did he tell you any of his business? A He told me when he was making money. He has property on Seventh and Garside streets. 40

*Idea Restaino, for Petitioner, cross.*

Q How do you know he makes \$12,000.00 a year? A He has three cars, a Pierce Arrow, a Chrysler and a Whippet.

Q How do you know they are paid for? A The Chrysler is paid for, it was back over a period of two years that the Chrysler was paid.

10 Q Do you know what he made as a doctor? A \$12,000 to \$15,000 a year.

Q How do you know? A By his practice. He has the best practice in Newark of any of the Italian physicians.

Q Did you talk to your attorney about what he made before commencing this case? A He may have asked me.

Q You never said anything about it? A No.

20 Q Do you know in whose name the Pierce Arrow car is? A His brother's and his name.

Q Did your husband support his mother and father and you and the baby? A He supported me and I know they lived there.

Q Do you know if they have any source of income? A A drug store.

Q Who takes care of the drug store? A His father and his father's son.

Q Your father and mother lived there 4 months? A Yes.

30 Q Did your brother work? A Yes, he studied law and worked in the Western Union and made \$60.00 a week.

Q What did he do? A He was night manager.

Q He made \$60.00 a week? A What he made was his business.

Q You didn't know what he made? A No.

40 Q Mrs. Restaino, assuming that in March, 1930, you and your husband were living alone, do you really think that you would have lived with your husband? A Yes, positively.

*Idea Restaino, for Petitioner, re-direct.*

Q You saw your husband last Tuesday evening when you went to the movies? A Yes.

Q Did you say that if it was not for his mother and father you would go back? A No.

Q Did you tell that to any one else? A No.

Q Do you remember the date in March, 1930, that you left? A March 20th. 10

*By Mr. Marelli.*

Q Would you live with him if he had been living alone with you? A If he treat me the way he was.

Q He called you a whore, was there any justification?

*By Mr. Kiernan.*

I object that is new matter. 20

*By the Court.*

Where facts brought out in the petition, if something is left out on direct all that Counselor has to do is to state that he left it out.

Q In your petition you state he impuned your chastity, was there or was there not any statement accusing you of infidelity? A He called me a whore. 30

*By Mr. Marelli.*

Q Was there any justification? A No, he has called me a whore in front of a third party.

Q He called you it in front of who? A Dr. and Mrs. Breistadter.

Q Did this treatment affect your health? A I became so thin none of my clothes would fit me.

Q Was there any reason or cause? A None. 40

*Delia Bersano, for Petitioner, direct.*

Q You testified you threw a candlestick when did that occur? A February 20th.

Q Did he do anything to you? A He put me on the floor and punched me.

10 Q Reference was made to the ownership of the Pierce Arrow. You said it was in his name and some one elses, why was that if you know?

A Yes.

Q Do you know of your own knowledge?

A Yes.

*By Mr. Kiernan.*

Q You told us that the doctor put you on the floor after you threw the candlestick at him?

A Yes.

20 *By Mr. Marelli.*

Q Did your husband do anything before you threw the candlestick? A Yes, he punched me, first.

*By the Court.*

Q Was there any cruelty before the time you went back? A Yes.

30 Q Was that a resumption or a beginning?  
A Resumption.

---

DELIA BERSANO being duly sworn on her oath according to law, deposes and says as follows:

*By Mr. Marelli.*

40 Q Are you a cousin of Mrs. Restaino, the petitioner? A I am.

*Delia Bersano, for Petitioner, cross.*

Q Were you present at the marriage? A I was.

Q To the defendant? A I was.

Q Do you recall when the marriage was?

A July, 1925.

Q Where were they married? A West New York in Jersey.

10

Q You were there? A I was one of the witnesses.

Q Did you visit their home after the marriage? A Yes, I went there week-ends.

Q Did you observe the defendant's conduct towards his wife? A I did.

Q Will you tell us if you heard him use unusual language? A Yes.

Q What language did he use. A He called her a bastard, whore, son-of-a-bitch, prostitute, and all the rest.

20

Q Were you present? A Yes.

Q Did you see him do anything? A Yes, he struck her.

Q When? A Two weeks after they were married.

*By Mr. Kiernan.*

I object to cruelty not alleged in the petition.

*By the Court.*

Objection noted, question allowed.

30

*By Mr. Marelli.*

Q Did you hear him at other times use improper language or see him beat her? A After that I saw them very rarely.

*By Mr. Kiernan.*

Q Where do you live now? A Mendham Heights, Massachusetts.

40

*Delia Bersano, for Petitioner, cross.*

Q Between December, 1928 and 1930, did you live in Newark? A Yes.

Q Were you at the home of the petitioner and the defendant between 1928 and 1930? A I was.

10 Q When was the last time you saw them together? A May, 1929.

Q Where did you see them that time? A In their home on Roseville avenue.

Q Did you see Mr. and Mrs. Restaino during the month of March, 1930? A No.

Q The month previous? A No.

Q How long before did you see them? A May.

Q 1929? A Yes.

Q Were you invited to the house? A Yes.

20 Q By who? A Mrs. Restaino.

Q Did you see the doctor? A I don't remember.

Q Did you see him any part of your visits? A Yes.

Q Where? A At the house.

Q Nothing out of order going on? A Not that I personally knew.

Q How long were you there? A One day.

Q How long before that time were you there?

30 A I don't know.

Q Was it a year? A No.

Q Half a year? A No.

Q How long? A A couple of months.

Q There was nothing out of the way between them? A No, I was only there a few hours. I saw them on and off.

Q Between December, 1928, and March, 1930, there was nothing out of the ordinary between them? A I very seldom saw the doctor.

40 Q When you did see them there was nothing in particular to draw your attention? A No.

*Prospera Quattrine, for Petitioner, direct.*

*By Mr. Marelli.*

Q How long did you stay? A One day.

Q You seldom saw the doctor? A Yes.

10

PROSPERA QUATTRINE, being duly sworn on her oath according to law, deposes and says as follows:

*By Mr. Marelli.*

Q Are you the mother of the petitioner? A Yes.

Q Where do you live? A 70 Prospect avenue, North Arlington.

Q Were you present at the marriage? A Yes. 20

Q Was your attention called to the treatment to which the defendant subjected the petitioner? A After the baby was born about four and one-half months I was there in the morning at breakfast; I don't remember the words, he jumped on her and hit her and grabbed her by the hand and threw her to the floor. I took my apron off and went home. She said, "Don't go home; the baby is four and one-half months old. Stay and help me." He was mad and said, "Get the hell out, both of you." Just for her, I stayed. 30

Q What did you hear him say? A Bastard and parasite.

Q Did you finally go away? A I stayed a couple of months after.

Q You stayed and lived with them? A I stayed for four months after she came home from the hospital. 40

*Prospera Quattrine, for Petitioner, direct.*

Q Four months after the baby was born you continued to remain at her home? A For her sake.

Q Did you see any marks on her? A Around her face.

10 Q Did you see any marks any other time? A Yes.

Q Did she tell you how she received the marks?

*By Mr. Kiernan.*

I object.

*By Mr. Marelli.*

Q Did she tell you? A She told me many times.

*By the Court.*

20 Objection sustained.

*By Mr. Marelli.*

30 Q When you saw the marks on her four months after the child was born? A I remember one night there was no milk for the baby, the baby was 11 months old and she called me and asked me if I had any milk. She said she would come over. Her husband had broken the baby's bottle of milk. I heard my son coming from the Western Union. I said, "Gelio, take the milk to Idea, my daughter." I called her and told her that Gilio would be over in 15 minutes. Her and my son came with the baby.

*By Mr. Kiernan.*

I object to any acts of cruelty before 1928.

*By Mr. Marelli.*

40 Q Continue? A I don't remember the date she came over with the baby and said she was

*Prospera Quattrine, for Petitioner, direct.*

going to stay. The morning after he called me on the telephone and said I didn't do the right thing by my daughter that I should have sent her back home. I said you beat her, after she stayed home until 10:30 or 12 o'clock she said she was going back home.

10

*By the Court.*

Q Was the defendant present? A No.

Q Did you ask her what the trouble was? A I asked her why he beat her and she said there was an argument about the milk.

Q When she came home to you you saw that she was covered with bruises? A On her face and hands.

Q What did you say? A I asked her what happened and she told me. 20

*By Mr. Marelli.*

I think that came within the rule.

Q How did this happen that she came to you and you saw that she was bruised? A Yes. I asked her the manner he beat her.

*By Mr. Kiernan.*

I object. 30

*By the Court.*

Q Did you talk to him about the bruises? A Yes.

*By Mr. Marelli.*

Q What did he say to you? A He said he gave her a beating and she deserved more.

40

*Prospera Quattrine, for Petitioner, direct.*

Q Did you see the mark on her hand from the ring? A That was after she went back another time.

Q When did you see the bruise on the finger? A She told me she got a beating and she could stand no more. I saw the ring inside the flesh.

10 Q Can you fix the date of the ring incident? A When she left him.

Q She came to you on this occasion and you telephoned the doctor? A Yes.

Q Did she go back to him after that? A No.

Q Do you recall when she called you and you had a conversation with the husband? A That was the time she came home and didn't go back. He said that he wanted to talk to you and that you should send her back home. She said if I would not take care of her she would go else-  
20 where; she had the baby with her.

Q Do you recall the incident 11 months after the baby was born, you continued to live there, you spoke about the incident four months after the baby was born? A Yes.

Q What time was that? A A month or so.

Q Where did you live? A North 7th street.

Q Do you remember anything of the occasion  
30 11 months after the baby was born? A About the milk.

Q Did the doctor call up? A No.

Q Where were the bruises? A Face, arm, and there was a lump on her head.

Q Did she go back to the doctor? A Yes, she said she was going to get clothes for the baby, but she didn't come back; she stayed with her husband.

Q When next did you hear of difficulties with  
40 her husband? A No answer.

*Prospera Quattrine, for Petitioner, direct.*

Q What did you observe about her condition when you went there? A I saw that she had gotten thin. She was sick and crying all the time. He was never home and she couldn't stand it any longer.

Q Did you observe anything about her physical condition? A Thin and sickly, not sickly in bed; kind of sad and depressed. 10

Q Was there anything else about her physical condition? A Another time I saw the rings inside her finger, and the black and blue marks and the lump on her head.

Q What time was that? A The time she stayed away and came home.

Q The first time? A The baby was two months old.

Q What month was it? A June or July. 20

Q How long did she stay with you? A Six months.

Q When she came to your house, did you notice anything about her condition in June? A Her wedding ring was in her finger and she had other marks.

Q That was in June when she left him and the child was two years old? A Yes.

Q 1929? A Yes. 30

Q Why did she come that time? A Because she would stay with him no more. She got a beating and she came home to stay.

Q You got a telephone call from the doctor? A Eight o'clock in the morning.

Q She went back? A After six months.

Q How long did she live with him after that? A Two months.

Q Where did she go then? A She came back home. 40

*Prospera Quattrine, for Petitioner, direct.*

Q Has she lived with your ever since? A Yes.

Q She left in June, 1929, and went back around December or January? A January.

Q 1930? A Yes.

Q When did she come back to you? A When  
10 she came back it must have been April or March.

Q What was her condition? A She was crying and she had a truck with the bedroom furniture; she came in crying.

Q Did you observe her physical condition? A No.

Q She was crying? A Yes.

*By the Court.*

Q What was the condition of her health? A  
20 How did she look? A Depressed and crying.

Q How did she look physically? A Thin.

Q Was she nervous? A Very.

*By Mr. Marelli.*

Q Did you talk to her husband? A Not for a long while.

Q When was the last time? A This morning in court.

Q When before that? A When he came to  
30 see the baby.

Q Did you have a conversation with him? A Not that I remember.

*By the Court.*

Q Did you talk to the husband at any time?  
A I said I would get the baby ready, and he called he called up on the 'phone and I said I would get the baby ready.

40 Q Did he ask about his wife? A No.

*Prospera Quattrine, for Petitioner, cross.*

Q Did you ever discuss with him the reasons why she wouldn't go back? A I told him once that he was more educated than my daughter and I told him he should argue with her and not beat her.

*By Mr. Marelli.*

10

Q What did he say? A That she deserved more.

Q How many times did he say that she deserved more? A Twice.

*By the Court.*

Q Do you mean that he beat her? A Hit her.

*By Mr. Kiernan.*

20

Q How long did you live with your daughter and her husband at Roseville avenue? A Five or five and a half months.

Q Was the defendant good to you? A Yes.

Q Isn't it true that you had no complaint until your daughter came home? A Yes.

Q During the five and one-half year period you had no personal complaint? A No.

30

Q Do you remember your daughter going to the Catskill Mountains? A Yes.

Q Who went with her? A Her husband sent her up. They got up at 4:30 and the baby said, "Hello, papa"; and I saw them go down with a valise. She wrote me and said she was surprised Carl was with her.

Q They went up for two weeks? A Yes.

Q Did she tell you she met the doctor there? Did your daughter say anything to you about

40

*Prospera Quattrine, for Petitioner, cross.*

staying at the mountains with the doctor? A  
No.

Q Did you see the doctor after? A Every  
week.

Q Did you see him during the two weeks that  
your daughter was up in the mountains? A  
10 No.

Q Do you know where he was? A No.

Q You heard the defendant use the word  
parasite? A Yes.

Q What made you remember it? A The  
word I remembered.

Q Do you know what the word means? A  
Yes, something that eats you alive, something  
that wants something from you.

Q Did your son live there with you at that  
20 time? A He slept on the couch.

Q Did he eat there? A Once in a while.

Q You were there four and one-half months;  
did your son give you any money during that  
time? A \$10.00 for my personals, shoes or  
something.

Q This took place three years ago? A Four  
years.

Q Is it hard for you to remember all that  
30 took place four years ago? A It comes to my  
mind.

Q Do you remember better what you did  
three years ago? A About the same.

Q Did you talk to someone about this case as  
to what took place three or four years ago? A  
No.

Q Do you remember the occasion in March,  
1930, the day your daughter went to see her hus-  
band at his office in Newark? A No.

Q Did she tell you she was going? A No.  
40

*Prospera Quattrine, for Petitioner, cross.*

Q Did she ever tell you she met him in Newark? A Never.

Q Did you know it? A Only this morning in court.

Q Your daughter lived with you? A Yes.

Q How long? A Since she left.

10

Q A year ago? A Yes.

Q She never told you she had been out? A No.

Q Did she speak to you about the doctor? A Yes.

Q She never said anything about going out? A No.

Q Did she come home alone 11 o'clock at night? A Sure.

Q Did you ask her who she had been with? A It was not my business; she was not under age.

20

Q Do you remember her going out with the doctor New Year's Eve last year? A Yes.

Q Your son went out, too? A Yes.

Q They came back early in the morning and he stayed at the house? A Yes.

Q He slept with your daughter? A I don't know that it was in the morning I saw them.

Q The only place he could sleep was with your daughter? A Yes.

30

Q The doctor came home after that? A Yes.

Q He stayed overnight? A Yes.

Q He brought her home 11 o'clock at night? A Yes.

Q Then you do know that he had been out with her? A Yes.

Q During last year did your daughter live with you? A Yes.

40

*Prospera Quattrine, for Petitioner, cross.*

Q During the last year has the doctor driven your daughter home? A Once he wanted to take her out driving.

Q Do you know what time it was? A No; I go to bed early.

10 Q When did you first learn about it? A By her.

Q Did she tell you where she and the doctor had been the previous night? A No.

Q Did you have reason to believe that the doctor and your daughter had been to his office? A No.

Q He never spoke to you about your daughter being at his office? A No.

20 Q Your daughter lived with you at the doctor's house? A Yes.

Q Your son slept there every night? A Occasionally.

*By the Court.*

Q How did your daughter treat her husband?

30 A If he would come home late she would ask him why, and he would say it was his business, and she would say, "No, you are going to the coffee house place with men."

*By Mr. Keirnan.*

Q Did she have a fight with him? A Argue, yes.

Q Did she say bad words? A After he said bad words she said, "You no good to treat me that way."

Q Did you hear him call her names? A Yes, he called her a bastard.

40 Q Did that make her happy? A Unhappy.

*Prospera Quattrine, for Petitioner, re-direct—re-cross.*

Q Compare her health before marriage and after she left? A She was nervous and run-down.

Q Did you ever tell the doctor that she deserved what she got? A I don't believe in beatings.

Q Did your daughter ever say anything about not going back to live with the doctor's relations? A She said she didn't know what home was herself. 10

Q She said that first? A Yes.

Q Was that statement made when she left him? A Many times.

Q She told you that from the time on Roseville avenue to the time when she left? A Yes.

*By Mr. Marelli.*

20

Q What is the condition of her health now and the time she left? A Better she has gained in weight.

Q Since March, 1930? A Yes.

*By the Court.*

Q Is she nervous now? A Not so bad.

Q How is her health compared now? A Better.

30

*By Mr. Marelli.*

Q Is she nervous now? A Not so much.

Q You said she didn't like to live with the doctor's parents? A She said she wished she had a home by herself.

*By Mr. Kiernan.*

Q Was your daughter treated by a doctor for her nerves? A Not that I know of.

40

*Gilio Starmese, for Petitioner, direct.*

Q Do you know if she had to go to a doctor in the last three months? A No. Yes.

Q Do you know what she went for? A Hives.

Q How long did she go to a doctor? A Two months; maybe three months.

10 Q What was the doctor's name? A I don't know.

Q Where is his office? A East Orange.

---

GILIO STARMESE, being duly sworn on his oath according to law, deposes and says as follows:

20 *By Mr. Marelli.*

Q Judge, are you a practicing lawyer? A Yes.

Q Where do you live? A 70 Prospect street, North Arlington.

Q Do you hold a position there? A Police Magistrate.

Q Is the petitioner your sister? A She is.

30 Q Were you present at the wedding? A I was the defendant's best man and a witness.

Q Where did they go to live? A Ridge street, Newark.

Q Did you visit them? A I lived with them.

Q How long? A Until they left there, I was going to law school in Newark and it was handy and my brother-in-law asked me to live there.

40 Q Did you observe the conduct of your brother-in-law towards his wife? A I worked in the Western Union in New York and I got in late and I left in the early morning.

*Gilio Starmese, for Petitioner, direct.*

Q At any time did you observe his conduct?

A I believe it was 11 months after the child was born, I arrived at the house about midnight and my mother told me that my sister wanted some milk and I took it over and rang the bell, my sister was in terrible shape, she was crying, she was in her nightgown and I asked her what was the matter and she said look what he did to me, and she had a lump on her head the size of an egg. I said this is no way to do and I took the baby and my sister home, and she slept at home. 10

Q Did you see the doctor? A No.

Q Did you talk to him the next day? A I didn't talk to him after that except on New Year's eve.

Q Did you see your sister on any occasion when she had a swollen hand and couldn't get her rings off? A I didn't see that. 20

Q Did you hear the defendant use unusual language after that? A I was not over to the house after that. I work days and am at school at night, I rarely saw anybody.

Q Do you know anything about how he treated her in June, 1929, do you recall her coming to the home? A Yes. 30

Q Did she come early in the evening? A She was home when I came in.

Q Did you observe her condition? A Yes, she was crying and hysterical, she had lost a lot of weight.

Q Were there any bruises or marks on her?

A She had marks on her face.

Q In June, 1929, did she live with you at the home? A I don't remember the dates.

Q Did she stay a while? A 6 months. 40

*Gilio Starmese, for Petitioner, cross.*

Q During that period did you talk to the doctor? A Over the telephone and he told me to go to hell.

*By the Court.*

10 Q What provoked that? A Nothing about this case.

*By Mr. Marelli.*

Q You did talk about this case? A No.

Q You knew that she had returned? A Yes.

Q Did you visit him after her return? A No.

Q Your sister lived at your home after that?

A For a couple of months.

20 Q Were you at home when she came? A That night.

Q Did you observe her condition? A She was run down, hysterical and very nervous.

Q You live with your mother? A Yes, I own the home.

Q Where did your sister live? A With us.

30 Q What month did she leave her husband again? A A couple of months after she went back. I put some office furniture in the house, I opened up early in March and I had to move the furniture out for her.

Q Did you hear the defendant swear at the petitioner? A I don't recollect, I was not much in their company.

Q Did you see bruises on her? A I testified to that before.

Q On many occasions? A Twice.

*By Mr. Kiernan.*

40 Q How long did you live on Ridge street? A A year or so.

*Gilio Starmese, for Petitioner, cross.*

Q Could it be two years? A Probably.

Q Did you pay the doctor? A He asked me over.

Q Were you present any time when the doctor called your sister any names that were out of order? A No.

Q Did you see the doctor strike your sister? A No. 10

Q When your sister came home the first time what time did you get home? A 7 o'clock.

Q Do you know the time your sister came there? A Yes.

Q Did she have anyone with her when she came home? A I came home after her.

Q She was there when you came home? A Yes. 20

Q During your two-year stay at Ridge street, you saw nothing out of the ordinary? A I only slept there.

Q Was the doctor ever up when you came home? A I don't remember.

Q During this period of two years, did your sister say anything about the treatment she received at the hands of her husband? A No.

Q After your sister came home, when was the first time you were in touch with the doctor; after the time she went back, were you in touch with him? A I don't remember. 30

Q Do you remember going to a roadhouse on New Year's Eve? A I remember that was quite a number of years after. That was New Year's Eve of 1929.

Q How long did your sister stay away the first time? A Six months.

Q The doctor, your sister and yourself came home? A Yes, I had my sweetheart. 40

*Gilio Starmese, for Petitioner, cross.*

Q Did the doctor stay there? A I believe he did.

Q Did you see him next morning? A No.

Q Where were you? A Asleep.

Q Do you know if he stayed there? A Only hearsay.

10

*By the Court.*

Q Was there any discussion about a reunion?

A I didn't talk to my brother-in-law.

Q Wasn't there some discussion between them? A I didn't hear them. I had the reservation and they came up with us; it was like two parties; they had their guests.

*By Mr. Kiernan.*

20

Q Did your sister have any conversation with you about going back? A Not with me.

Q Was there anything said to you about reconciliation the week before the New Year's Eve party? A No.

Q Did your sister talk to you? A We might have discussed it.

Q Did your sister, during the discussion, say that she didn't like the idea of living with his in-laws? A She complained.

30

Q When was the first time she complained? A My memory is not that good.

Q This happened three or four years ago? A No.

*By the Court.*

Q What did your sister complain about her husband? A That he beat her.

Q Did you discuss reconciliation with her? A No; we discussed the divorce case.

40

*Gilio Starmese, for Petitioner, re-direct.*

*By Mr. Kiernan.*

Q After she discussed the divorce case, did she give you all the facts? A All I could get.

Q You had your sister sign an affidavit that was annexed to the petition? A Yes.

Q You had the cruelty starting in 1928? A That was my error. 10

Q You had your sister swear under oath that the defendant was guilty of extreme cruelty on or about December 15, 1928, did your sister swear to that? A Yes.

Q Do you remember your sister and her husband making their home on Roseville avenue? A Yes.

Q Did she say she didn't like to live with his mother and father? A Yes.

Q How many times? A Once or twice. 20

Q Do you remember the last time she said it? A No.

*By Mr. Marelli.*

Q Your sister never said she disliked his mother and father? A No.

*By Mr. Kiernan.*

I object. 30

*By the Court.*

Cross examination of new matter.

*By Mr. Kiernan.*

I would like to have my objection noted.

*By the Court.*

Your objection is noted on the record.

*By Mr. Marelli.*

Q What did she say to you about remaining away from her husband? 40

*Gilio Starmese, for Petitioner, re-direct.*

*By Mr. Kiernan.*

I object to hearsay.

*By Mr. Marelli.*

You opened the door.

*By the Court.*

10 Question allowed, objection noted.

*By Mr. Marelli.*

Q What is your answer? A She said he beat her and threw her around and treated her cruelly.

*By Mr. Marelli.*

I ask the Court for permission to amend the petition so as to have the date that the cruelty began July, 1925.

20

*By the Court.*

Dictate your motion.

*By Mr. Marelli.*

I make the motion that the acts of cruelty shown in paragraph 2 be amended so as to make the date of cruelty begin July, 1925, instead of about December 15, 1928.

*By Mr. Kiernan.*

30 I object, we can't be surprised by changing the date, and we have lack of preparation as to the cruelty dating back to 1925.

*By Mr. Marelli.*

Corroboration of cruelty doesn't have to be categorical.

---

*Charles F. Restaino, for Defendant, direct.*

DR. CHARLES F. RESTAINO, being duly sworn on his oath according to law, deposes and says as follows:

*By Mr. Kiernan.*

Q Are you a practicing physician in the State of New Jersey? A I am. 10

Q Where is your office? A 137 Seventh avenue, Newark, New Jersey.

Q Where do you live? A 376 Roseville avenue, Newark.

Q How long have you been there? A Since June, 1927.

Q You were married to the petitioner in 1925? A July 2, 1925.

Q Where did you first live together? A 249 Ridge street, Newark, N. J. 20

Q How long did you live there? A One year, 11 months.

Q Who lived with you? A My wife and brother-in-law.

Q Did you have trouble with your wife? A There was some trouble.

Q You continued to live there with your wife for one year and 11 months? A Yes.

Q Did you have any trouble? A Slightly. 30

Q Where did you move to? A 376 Roseville avenue.

Q Your own place? A Yes, it's mine, but my mother and father have a life interest in the property.

Q Did your wife know you moved there? A Yes.

Q Did you tell her your mother and father were living there? A Yes.

Q Did she say anything about that? A No. 40

*Charles F. Restaino, for Defendant, direct.*

Q When she returned from the hospital did she say anything about living with your mother and father? A No.

Q When? A A little time after we lived together.

10 Q How long? A Five or six months.

Q What did she say? A She didn't want to live in the house. I said that I had given a life estate to my mother and father and they took care of the cooking and the eats and the gas and electricity.

Q Did your wife say she would leave because she had to live with your parents? A Yes, she said when the baby was two years old she would leave.

20 Q Why? A She didn't want to live there.

Q Because of your mother and father? A Yes.

Q Did she leave you when the baby was 2 years old? A 2 years and 1 month.

Q Did she say why? A She couldn't get along with me.

Q What did she say about your family? A No home was big enough for 2 families.

30 Q Where did she go? A 457 North 7th street.

Q How long did she stay away? A Six months and three months after she separated she called me and I asked her what she wanted and she wanted me to kiss her and she begged me to take her back.

Q Do you know where she went that time? A Her mother's house.

40 Q Did you talk to her? A I told her I couldn't put my people out, I took care of her people when they were almost starving.

*Charles F. Restaino, for Defendant, direct.*

Q You got together again in January 1929?

A Yes.

Q From December 1928 to the time she first left in 1929, did you ever strike your wife? A I did not.

Q Did you have a quarrel? A February 10  
20th I was called to attend a banquet to the Overseer of the Poor in Newark, she questioned me and I said I was going to the banquet and she made a fuss and I sat on the chair, and she threw a candlestick and hit me directly on the head.

Q Did you go out? A No.

Q Where was the baby? A Home.

Q Did you at any time between December 15, 1928, and the first time your wife left you in 1929, did you strike her? A No. 20

Q Did you attempt to strike her? A I just held her back when she attempted to strike me.

Q What was your reason? A She was nervous and would go into a fury.

Q You practise medicine? A Yes.

Q Did you know her nervous condition when you married her?

*By Mr. Marelli.*

I object, the question is incompetent. 30

*By Mr. Kiernan.*

Q Was she nervous at the time of the marriage? A Yes.

Q Did you have occasion to treat her during your married life? A She was not nervous, she was more hot headed, it was more temper than disposition.

Q Did you at any time beginning December 15, 1928, to the time your wife first left you in 40

*Charles F. Restaino, for Defendant, direct.*

1929 did you ever call your wife a parasite? A No.

Q Or a whore? A I had no occasion to call her that.

Q A bastard? A Probably a word like that may have slipped out.

10 Q Did you call her a bitch, street walker, or parasite? A No.

Q Did you ever call her any of the names mentioned? A Just bastard.

Q March 1930 had you been in touch with her? A Constantly.

Q What was the purpose? A Reconciliation if I would get my people out of the house.

Q She would become reconciled if you would get your people out of the house? A Yes.

20 Q Was there any reason why they shouldn't get out? A I had to support them.

Q What was the first time you communicated with her after March 1930? A Two weeks after she left.

Q What was the purpose? A We talked and went out together.

Q Did you try to affect a reconciliation? A Always. I have seen her from the middle of April 1930 up to a week ago Tuesday night.

30 Q Have you gone out with her since March 1930? A Yes.

Q Did your wife stop at your office in Newark? A Yes, I called her to take her to the movies, and she stopped at the office.

Q What for? A Cohabitate.

Q Did you do that often? A Yes.

*By Mr. Marelli.*

That is not alleged in his petition or answer.

*By Mr. Kiernan.*

40 I ask permission to amend the answer.

*Charles F. Restaino, for Defendant, direct.*

*By Mr. Marelli.*

That is a complete surprise to me.

*By Mr. Kiernan.*

Q After your wife left you March 1930 you say you met your wife constantly? A Yes.

10

Q You took her to the movies and to the office and cohabited with her? A Yes and also at her home.

Q When was this? A February 21st.

Q What time did it take place? A After my brother closed the store, I took her home.

Q How many times a week did this occur? A Once or twice.

Q When was the last time you cohabited with your wife? A February 11, 1930.

20

Q Did you go to the Catskills with your wife? A Yes.

Q Did you drive her up? A Yes.

Q Were you friendly? A Yes.

Q When did you get there? A In the morning.

Q When did you leave? A At night.

Q Who brought her back? A Myself.

Q Did you cohabit with her when you took her up? A I did.

30

Q What time was this? A The last week in July and the first week in August.

Q 1930? A Yes.

Q Did your wife tell you why she left March 1930? A She did not specifically, she always said she would leave when the child was 2 years old.

Q Did you support your wife except for the 6 months she was away? A Always.

40

*Charles F. Restaino, for Defendant, cross.*

Q What is your average in your practice? A On the existing conditions today it is small, on the average of 5 years about \$3,500.00.

Q Net or gross? A Gross.

Q Do you own property? A Over where the office is, it is a partnership.

10 Q What mortgages on the property? A \$20,000.00 first and \$8,000.00 second.

Q What is the property worth? A The property is worth \$35,000.00 but you couldn't get \$20,000.00 for it today.

Q How about the one where the house is? A There is a Building and Loan of \$15,000.00 and a second mortgage of \$3,000.00, the first mortgage has been paid on for 5 years and the second mortgage was discounted \$2,000.00.

20 Q When I spoke to you about cohabiting do you know what I meant? A Intercourse.

*By Mr. Marelli.*

Q Where is the \$15,000.00 Building and Loan? A 376 Roseville avenue.

Q I mean what Building and Loan? A The Watson Building and Loan. It was put out in June, 1927, and the payments are \$150.00.

30 Q Do you know if you paid more than \$5,000.00 that time, did you receive more than \$5,000.00 credit? A No, four years and a few months back shares, it would have been 5 years in September.

Q You paid \$1,000.00 on account of the second mortgage? A Yes.

Q Who pays the \$150.00 a month Building and Loan? A I do.

40 Q On your \$3,000.00 a year gross income? A Yes.

*Charles F. Restaino, for Defendant, cross.*

Q How much did you pay for the property?

A \$20,500.00.

Q \$20,500.00? A Right.

Q How much cash down? A \$1,000.00 given by my brother.

Q How much cash? A \$2,000.00.

Q Where does the other \$500.00 come in? A \$2,500.00 was paid down, there was \$500.00 back shares in the Building and Loan.

10

Q You didn't pay \$2,500.00, the shares were given you? A No, I paid for the shares.

Q How many shares did you have? A I paid \$75.00 a month and saved over a year.

Q How many months? A A year and five months.

Q How many shares? A That is the question.

20

Q How many shares did you have? A I don't recall.

Q 5 shares? A No, 75 or 80 shares.

Q 75 or 80 shares or was it \$75 or \$80 a month? A Yes.

Q Do you mean that on \$3,500.00 a year gross income you paid \$75 or \$80 a month? A No, I made more before.

Q Do you know how much you made 3 years ago? A No.

30

Q Do you know what you made this year? A Yes.

Q Can you tell us what you made 4 years ago? A No.

Q How long have you been practising? A 6 years.

Q What did you make the first year \$5,000.00? A No.

Q \$3,000.00 a month? A No.

Q \$2,000.00? A Probably.

40

*Charles F. Restaino, for Defendant, cross.*

Q Gross or net? A Gross.

Q What did you make the next year? A \$3,000.00.

Q The third year? A \$4,000.00.

Q Fourth year? A \$5,000.00.

10 Q Did you make a return of income tax? A Yes.

Q What was it? A It is on file.

Q Do you know how much tax you paid? A I didn't pay, I didn't go over \$5,000.00.

Q Do you own three cars? A I have one car for business and that is the only car.

Q Which car? A Pierce Arrow.

Q Who holds the title of the car? A It has never been in my brother's name, he bought it.

Q Where? A Washington Motors.

20 Q What is his business? A Cigar business.

Q Isn't he as responsible to your mother and father as you are?

*By Mr. Kiernan.*

I object.

*By Mr. Marielli.*

He said he had to support his mother and father and I am testing his credibility.

30

Q Your brother works isn't he responsible to your mother and father? A Yes we all are, there are two sisters married, one smaller brother, three altogether.

Q Do they contribute? A Yes.

Q Your father has a drug store? A Yes.

Q Does he work every day? A Yes, for a few hours.

40

Q How much does your brother contribute to the support of your mother and father? A As

*Charles F. Restaino, for Defendant, cross.*

much as he can, anything they can they give, they have a heavy mortgage, on the place.

Q Do you know how much your brother contributes to your mother and father? A No.

Q Did you make any inquiry? A No.

Q In the face of your wife's request didn't you think it necessary to find out? A No, I had to keep my agreement. 10

Q What agreement? A I took care of the Building and Loan and the taxes and they took care of the eats and cooking and lived up to their agreement.

Q Which do you think of more, your wife or your mother and father? A All equal.

Q The wish of your wife to live separate and apart from your mother and father did not receive your consideration or take any weight with you? A It has. 20

Q Why didn't you accede to your wife's request? A Financially it can't be done, I know my people lived up to the agreement.

Q Your only reason is that you didn't want to break the agreement with your mother and father? A No, if I could I tried to sell the place, my father was willing to sign the deed.

Q Whose property was this property described in Exhibit "P," whose property was it before it was conveyed to your father and mother? A My wife and myself. 30

Q You conveyed it to your mother and father? A I gave them a life estate immediately after we moved into the house.

Q Then as long as they live it is provided that they give board to you and your wife and child? A Yes.

Q You insisted on the agreement being kept? A Yes. 40

*Charles F. Restaino, for Defendant, cross.*

Q That is the reason you don't want to move out? A No, I own the home at Roseville avenue, the house has 13 rooms.

Q Couldn't you support them besides giving the home? A No.

10 Q You contribute? A No, they live there.

Q Do they contribute to your support? A Yes.

Q You don't pay them a 5 cent piece? A No.

Q If you lived away it would be a less burden on them? A Yes.

Q Do you mean to say, doctor, that on your gross income of \$3,000.00 a year you can't afford to keep your wife and child in a separate home? A Yes.

20 Q Isn't it the reason that you don't want to do it? A I can't do it at this time.

Q She asked you to do it? A Yes.

Q You refused? A I did not refuse I told her to hold up the divorce until I could sell the house.

Q You refused to live with her apart from your father and mother, until you sold the house? A Yes.

30 Q Don't you pay your wife \$40.00 a week? A \$160.00 a month since last March 13th.

Q And then you say you can't afford to have a home by yourself? A No, not on \$160.00. I pay the \$160.00 so as to not deprive my wife and child of anything.

Q You pay your wife \$160.00 a month that is \$1,920.00 a year? A Yes.

Q How much is the Building and Loan? A \$150.00 a month.

40 Q \$1,800.00 a year? A Yes.

*Charles F. Restaino, for Defendant, cross.*

Q Do you pay the taxes? A They have not been paid in 2 years.

Q Did you pay taxes on any property? A One property that is a partnership and it was paid out of collections.

Q Did you pay the insurance? A That is slight. 10

Q This totals \$3,720.00? A Yes. I said I may make over \$3,000.00.

Q You make \$3,720.00, don't you? A No.

Q You said your gross income was not over \$3,500.00? A That was the last year or so.

Q Do you want to change your testimony and say \$3,500.00 is correct? A I don't know.

Q Did your gross income average \$5,000.00? A This last year I had to put a note in the bank to meet obligations. 20

Q You said your gross income was \$3,000.00 after you said \$3,500.00 and now you say \$5,000.00 is that right? A Yes.

Q She says you beat her, is that a lie? A Yes.

Q Did you call her a bastard, whore and son of a bitch? A Bastard I may have.

Q This is untrue, isn't it?

*By Mr. Kiernan.* 30

Objection. He can't characterize testimony of other witnesses on cross examination.

*By Mr. Marelli.*

Q What she says is untrue? A It is not.

Q You continued to go to her and urged her to return? A Yes.

Q In spite of the allegations you are anxious to have her return? A Yes. 40

*Charles F. Restaino, for Defendant, cross.*

Q You are willing to forget her untrue accusations against you? A Yes.

Q Are you willing to go back now? A Yes.

Q You believed that she would discontinue the case? A Yes.

10 Q What did she say? A She would think it over.

Q Did she tell you she wouldn't? A Last Tuesday night.

Q Did she tell you that she was afraid to live with you? A No.

Q When did you go up to the Catskills with her? A The latter part of July and the first of August.

Q What year? A 1930.

20 Q When did you go up? A On a Friday morning, we left North Arlington about five o'clock.

Q With your chauffeur? A Sol Schlitze.

Q How long did it take you to get to your destination? A Four hours.

Q How long did you stay? A Until 8:30 when I left for Newark.

Q Did you go back? A Yes.

Q When? A 2 weeks after.

30 Q What time did you get up there? A 9 o'clock in the morning.

Q What time did you return? A About 8:30 or 9:00 o'clock at night.

Q With her? A With her and the child.

Q There were only two times that you were up there? A Yes, in the meantime I sent the car up there for her to use.

Q Whose car? A My brother's.

Q What kind of a car? A A Whippet.

40 Q Who does the Pierce Arrow belong to? A Julius Restaino.

*Charles F. Restaino, for Defendant, cross.*

Q Who does the Whippet belong to? A Ameo Restaino.

Q What was the matter with your car? A I needed it in my business.

Q Did you have a chauffeur? A No.

Q Did you have a nurse? A About a month only it was too expensive. 10

Q By the way you said you were anxious to have your wife return to you, but you wouldn't have her return any where but to your mother and father's home? A No, financially I couldn't.

Q When you lived at Bridge street, Newark, did you have any trouble with your wife? A Usual troubles.

Q You had troubles after that? A Yes.

Q What kind of trouble? A Little quarrels. 20

Q Tell us about it. A She would go up-stairs without helping my mother with the dishes and I told her several times, after all my mother was not her servant.

Q Then there was some trouble over your mother? A The conversation was between the two of us.

Q You referred to this as trouble, you did have trouble? A It was a dispute.

Q You had a little dispute about your mother? A Yes. 30

Q Tell about the others. A That was the only one.

Q There was no trouble at any other time? A That's all.

Q And that was about your mother? A It was not trouble it was a dispute.

Q Did you have any other arguments? A Only that dispute.

Q How did she treat you? A She was always nagging and on my back. If I went out on 40

*Charles F. Restaino, for Defendant, cross.*

a call she was suspicious. If I got a call to go on a maternity case she said it was a frame-up.

Q She was always nagging? A Yes.

Q When you lived at Ridge street who did the cooking? A I did.

10 Q You said she didn't like to cook? A No, I prepared the breakfast, and we didn't eat at noon and I came home 3:45 and cooked, we did that until we got back to my mothers.

Q What part of Italy do you come from? A Malima.

Q The south? A Yes.

Q Did your wife come from the north? A Yes.

20 Q Doesn't the cooking of the people of the south and north differ?

*By Mr. Kiernan.*

I object.

*By Mr. Marelli.*

I withdraw the question.

Q Did she do the cooking for you? A No.

30 Q Was it because you didn't like her cooking? A No, she didn't know how. She and her brother would send out to the delicatassen store.

Q Was he there all the time? A Yes, all the time.

Q When your wife threw the candlestick at you what did you do to her? A I tried to appease her and calm her, I held her hands to keep her from striking me.

Q You didn't knock her down? A No.

40 Q Do you remember the ring incident? A No.

*Charles F. Restaino, for Defendant, cross.*

*By the Court.*

Q Did you see black and blue marks on her body? A No.

*By Mr. Marelli.*

Q You didn't see the marks? A No. 10

Q Did you say that you cohabited with the petitioner? A Yes.

Q When was the first time? A Two weeks after she left March 20th.

Q Where? A In my office after my brother closed the drug store.

Q Don't you think that's a cheap way?

*By Mr. Kiernan.*

I object. What he thinks. 20

*By the Court.*

Objection sustained.

*By Mr. Marelli.*

Q Did you tell that to your solicitor, about this? A I told my own personal attorney, Mr. Massini.

Q Where did you do it that night in your office? A On the couch.

Q Didn't you ask her to go to the bedroom? 30  
A There was no bedroom there.

Q Did you ask her to go home with you? A No.

Q When was the next time? A It was almost a weekly occurrence.

Q At your office? A Yes, and at her home.

Q Were you in her home? A Yes.

Q When? A Month of January.

Q This year? A Yes. We sat around the parlor and then went in the sun parlor. 40

*Charles F. Restaino, for Defendant, cross.*

Q Was her mother there? A Upstairs asleep.

Q What was the time? A 12:30 at night.

IN CHANCERY OF NEW JERSEY.

10

No. 81-665.

*Between*

IDEA RESTAINO,

*Petitioner,*

*and*

CHARLES RESTAINO,

*Defendant.*

20

Paterson Court House  
Paterson, New Jersey.  
Wednesday, April 8, 1931.

Before Edward Thomas Moore, Esq., Advisory Master.

Appearances:

Henry Marelli, Esq., 2nd National Bank Bldg., Paterson, New Jersey. Solicitor for the petitioner.

30

Luke A. Kiernan, Jr., Esq., 790 Broad street, Newark, New Jersey. Solicitor for the defendant.

DR. CHARLES F. RESTAINO, testimony continued.

*By Mr. Marelli.*

Q Do you recall what day you went to your wife's home? A No.

40

*Charles F. Restaino, for Defendant, cross.*

Q What day in January? A I don't remember the day I saw her frequently.

Q Was it the late or early part of January?

A I can't recall the day, it was a common occurrence.

Q Would you say you went there at night, or in the morning? A No, at night. 10

Q You said 12:30 in the morning? A That's night.

Q What time did you enter the home? A I was out with her and came home 11:30.

Q Where did you go? A Probably to a movie.

Q Do you remember particularly what movie you went to? A I don't know, we may have gone for a ride.

Q Was that the last time you went to the home? A No. 20

Q When was the last? A Friday before coming to court.

Q When was the last time before that? A Tuesday night before coming to court.

Q At her home? A No, I picked her up at her home and drove her back.

Q Did you go in? A No.

Q When before that did you go in the house? A A Friday night in March. 30

Q The late or early part? A The middle.

Q When was the last time? A Saturday I picked her up and took her to a dance at Dr. Forbes' home.

Q Where were you Friday night before the trial? A I was inside her home.

Q How long did you stay? A From 9:30 to 1:00 o'clock.

Q Who was present? A No one, her mother was upstairs, the baby woke up and came 40

*Charles F. Restaino, for Defendant, cross.*

down and I held the baby a while and then she took the baby upstairs and we sat on the settee and talked.

Q You went there at 11:30? A 9:30.

Q You stayed until 1:00 o'clock? A Yes.

Q Who was there? A No one.

10 Q Was her brother there? A No, she wanted me to go home because she expected her brother.

Q You fixed the date as the middle of March?  
A Yes.

Q Did you see her mother? A No.

Q When was the next time before that at her home? A I had been to the house to give her money.

Q When was the next time? A I can't give you the date.

20 Q Was it the week before? A Yes, Saturday, I went to give her money, her mother was present.

Q When did you see her before that? A Sunday night I had been up to the house with two boy friends; we went to get her about 8:00 or 8:30.

Q Who was present when you got her? A Nobody.

30 Q Where did you take her? A I brought her down first and we looked in a speakeasy and then I drove back to North Newark to the For rest Club.

Q How long did you stay? A We went in at 9:00 o'clock and stayed until 12:00 o'clock. Mr. Chickena, the band master, was there.

Q What time did you leave? A 12:00 o'clock.

Q You took your wife? A Yes.

Q Where did you go? A To her home.

Q Did you stay with her? A No.

40 Q Did you go in? A No.

*Charles F. Restaino, for Defendant, cross.*

Q When was the next time that you went inside her home? A On Christmas Eve I took her home; she came up to my office; I had an electric train for the child.

Q What time did you go? A I went to her home and picked her up at 9:30.

Q Where did you go? A We took a ride around and waited until the drug store closed and then we went to my office; I showed her the trains and then we had intercourse. 10

Q Where did you have intercourse? A In my office.

Q Did you have a couch? A Yes, and I had three rooms.

Q Where did you have intercourse? A On the couch.

Q Where do you receive your patients? A 20  
In the waiting room.

Q Is the couch in the waiting room? A No.

Q Did you use the other room? A The sun ray therapy room.

Q You saw her Christmas Eve and took her to some country club? A Yes.

Q And you brought her back but you didn't go inside? A Yes.

Q The next time was the middle of February; did you go in her home then? A I think I testified that I did. 30

Q Did you go to her home in the middle of February? A Yes.

Q You went there 9:30? A That was March.

Q The middle of February you went to her home at what time? A 8:30.

Q Then you didn't see her at her home from the middle of February up to the time you talked to her at the Forrest Club? A Yes, in the month of January I saw her in her home. 40

*Charles F. Restaino, for Defendant, cross.*

Q Did you see her in her home at night between Christmas Eve and February 15th? A I did.

Q When? A I didn't take down the dates.

Q Between Christmas Eve and February 15th did you see her at her home; doctor, will you tell me any time between Christmas and February 11th that you called there at night? A On Sunday night I went there for my wife and took her to the Forrest Club, and then I took her home.

Q What was the date? A February 7th.

Q You fix February 7th as the date that you took her to the Forrest Club? A Yes.

Q You testified before that it was March? A February.

Q We come to February 7, 1931, the date that you took her to the Forrest Club; did you have sexual relations that night? A No.

Q You took her out Christmas Eve and then took her back, at what time? A 11:30.

Q No one was there? A No.

Q When was the next time after that Christmas Eve that you went there at night to her home? A I don't remember.

Q You don't remember? You remember you went on February 7th to the country club? A Yes.

Q Did you go in her home between February 7th and Christmas Eve? A I don't remember.

Q Did you go to her home after February 7th? A I did.

Q When was the first time after February 7th that at night you went to her home? A Friday, March 13th.

Q Did you go inside? A I did.

Q What time did you go there? A 9:30.

Q Who was there? A No one.

*Charles F. Restaino, for Defendant, cross.*

Q How long did you stay? A Until one o'clock.

Q When did you next go? A I picked her up Saturday, the 14th.

Q When did you go inside the house next? A Tuesday, March 17th.

Q Did you go inside? A Yes. 10

Q What time did you go in? A 11:30.

Q Who was there? A No one.

Q Did you have relations with her? A I did not.

Q When did you next go? A The last time.

Q When did she go to the office the last time? A February 11th.

Q How did she come to go to your office? A We were out.

Q What time did you get her? A I picked her up. 20

Q Where? A Near her home.

Q At what time? A Nine o'clock.

Q How did it come about that you picked her up? A I called her up on the phone.

Q You made arrangements to meet her? A I was there with my car.

Q Where did you go? A I don't remember if we went to a moving picture or out for a ride.

Q When was this? A February 11th, the day before Lincoln's Birthday. 30

Q At that time did you take her home? A I stayed with her until 12:15 or 12:30 at the office.

Q What time did you go to the office? A About 11 o'clock.

Q You don't know where you were before that? A I don't remember if we took a ride or went to the movies.

Q Were you sober? A I am always sober.

Q You were sober? A I was. 40

*Charles F. Restaino, for Defendant, cross.*

Q How long did you stay at the office? A Hour to an hour and a quarter.

Q With her? A My wife.

Q From the office you went to her home? A Yes.

10 Q Did you have relations with her? A I had relations in the office.

Q When was the next time before that? A Christmas Eve.

Q At what time did you go to the office? A We went to the office at 10:30.

Q Who? A My wife and myself.

20 Q Where had you been before? A Out for a ride, I think we took a ride around Rutherford, not as far as Hackensack. We went as far as Rut's Hut, a place just outside of Delawana; we sat and talked and she wanted a hot dog.

Q You are sure what occurred that night; you didn't go to the movies? A No.

Q You got to the office at 11 o'clock? A 10:30. People saw me coming out with bundles. I went up to the office and stayed there and then came down with her.

Q When you got the things for the children didn't she stay in the auto? A No, she came up with me.

30 Q When was the next time before that that she was in your office, before Christmas Eve? A A few days before around the 21st or 22nd.

Q Where did you meet her? A Around the school.

Q How did it come about that you met her? A I made an appointment.

Q What time did you call for her? A Between seven and eight o'clock.

40 Q You called for her on this date between 7 and 8 o'clock? A Yes.

*Charles F. Restaino, for Defendant, cross.*

Q Did you meet her with the automobile? A Yes.

Q What did you do? A We rode around to kill an hour or so and then went to the office.

Q What time? A 10:30 or 11 o'clock.

Q How long did you stay there with her? A We were there an hour and a half; my stay was interrupted by a telephone call. 10

Q Then where did you go? A I had to leave her in the office and make the call; I had to go out after I had been there about an hour, and then someone came in.

Q What time did you take her home? A 12:30.

Q Did you go in the home? A I left her at the door. 20

Q When was the next time before that? A I can say that in the month of August she was in the apartment with me, apartment belonging to Mr. Schlitze. It was in the month of August.

Q Did you have an apartment of your own there? A I did not.

Q When you went to the apartment what time did you get your wife? A Nine o'clock.

Q Did you go to her home for her? A Yes.

Q Did you go in the house? A No, she didn't want her mother to know she was going out with me. 30

Q What about the apartment house; what time did you take her in there? A Between 9:15 and 9:30.

Q Whose apartment was it? A Mr. Schlitze, Sol Schlitze.

Q Who is he? A A friend of mine.

Q Did you stay with her? A I did.

Q To what time? A 12:30. 40

*Charles F. Restaino, for Defendant, cross.*

Q What did you do? A I had sexual relations. Mr. Schlitze got sandwiches and we all ate and he drove me to my wife's house.

Q Who is he? A A professional ball player.

*By the Court.*

10 Q Did he know you had sexual relations? A Yes, he saw me.

*By Mr. Marelli.*

Q Was he here at the last hearing? A He wasn't here because he was in the hospital.

Q What hospital? A City Hospital. He had a hemorrhoidal and fistula operation.

Q He was there at the last hearing? A No.

20 Q Did you treat him? A No, he went to the City Hospital.

*By Mr. Kiernan.*

I object as being irrelevant, incompetent and hearsay.

*By the Court.*

Objection sustained.

*By Mr. Marelli.*

30 Q Have you any connection with the City Hospital?

*By Mr. Kiernan.*

I object.

*By Mr. Marelli.*

Are you through?

*By Mr. Kiernan.*

Yes.

*By Mr. Marelli.*

40 Thank you.

*Charles F. Restaino, for Defendant, cross.*

*By the Court.*

You two gentlemen should address one another through the Court; you both are clerks of the Court; make your addresses through the Court.

*By Mr. Kiernan.*

I have practiced 25 years and have always tried to show the Court respect. 10

*By the Court.*

I am censuring you both.

*By Mr. Marelli.*

Q Where is this Schlitze apartment? A 92-94 Broad street, Newark.

Q How many rooms in the apartment? A Living room, a small foyer, kitchen and bath and off that the bedroom. 20

Q Who does he live with? A By himself.

Q Did you arrange before? A I told Mr. Schlitze that I was going to take my wife there and to wait for me.

Q Did he wait? A Yes.

Q Did he leave? A He talked a while and then he left, and I said take the key with you.

Q Did he return? A A little after 11 o'clock.

Q Why did he take the key? 30

*By Mr. Kiernan.*

I object; question calls for a conclusion.

*By Mr. Marelli.*

Q Why did you tell him to take the key? A It was a latch door.

Q You could open the door from the inside?

A Yes.

Q After you wife left, March, 1930, when was the first time she went to your office? A I don't 40

*Charles F. Restaino, for Defendant, cross.*

recall exactly; it was a month or month and a half or two months after she separated.

Q Did you call to see her the first time or she call to see you? A The baby was sick and I went over in company with my cousin and I went frequently to see the baby.

10 Q Was she the one that called you? A Yes, about the baby being sick.

Q Did you take care of the baby? A No, I saw the baby had a doctor.

Q Did you go out with her? A No.

Q When after that was the first time you were intimate? A On June 11th or June 12th, in the afternoon; at night I drove out.

Q I asked you when was it? A About June 11th.

20 Q What time did you meet your wife? A A little after 8 o'clock.

Q At night? A Yes.

Q Where? A The corner of the school, Mount Prospect avenue.

Q How did it come that you met her there? A I called her up. I had to go on business to Northvale, New Jersey.

Q Did you take her? A Yes.

30 Q Where did you wind up? A I took her back home.

Q Did you go inside the house? A No.

Q Nothing intimate occurred? A We went to the office before and had sexual relations.

Q What time? A Very late. We got lost going to Northvale.

Q What time? A 1:00 o'clock.

Q How long did you stay there? A About an hour.

40 Q Then where did you go? A I took her home.

*Charles F. Restaino, for Defendant, cross.*

Q Did you go in the house? A No.

Q When was the next time? A The next day. Two o'clock in the afternoon Mr. Schlitze drove the car to Northvale and then I took her home at 5 o'clock.

Q You had no relations? A No.

Q When was the next time? A It was a common occurrence, the next time I distinctly remember was the time I took her to the mountains Friday in the last week of July, 1930.

Q Where did you go? A Mr. Schlitze and myself picked her and the baby up at 5 o'clock in the morning and we went to Green Lake Catskills.

Q How long did you stay? A All day and at night we drove back to Newark.

Q Did you have relations with her? A In her room.

Q What time? A Two times at 12 o'clock and in the afternoon.

Q Did you have dinner with her? A Yes.

Q Is he an intimate friend of yours? A It was a long drive.

Q Is he an intimate friend? A More or less.

Q You all sat at the table? A Yes.

*By the Court.*

Q Is Mr. Schlitze married? A He had no wife in Newark.

*By Mr. Marelli.*

Q When next did you see your wife? A I called for her in the mountains and got there about 7:30 we stayed all day and was going to stay over night but we changed our mind and left at 9:30.

*Charles F. Restaino, for Defendant, cross.*

Q Did you have relations? A Yes.

Q Where? A In her room.

Q When was that? A The first week in August.

Q When did you next see your wife? A I saw her in the month of August.

10 Q What part of August? A The second or third week.

Q Where? A I drove to Schlitz's apartment.

*By the Court.*

Do you want to amend the petition?

*By Mr. Kiernan.*

The petition was amended the last day of the trial.

20

*By Mr. Marelli.*

Q Where did you see her? A At the apartment.

Q Is that what you already discussed? A Yes.

Q That was in August? A The second or third week.

Q When did you next see her? A A number of occasions it was a weekly affair.

30 Q Did you see her at your office once a week? A I wouldn't be pinned down to that, I saw her every week or week and a half and sometimes twice a week.

Q Where did you get her? A At her home.

Q Her mother was never there? A No.

Q How many times between August and Christmas Eve 1930 did you see your wife at her home at night? A I don't recall.

40 Q Did you go there 5 times? A Probably more.

*Charles F. Restaino, for Defendant, cross.*

Q Did you go there 10 times? A Probably or more.

Q How many times did she go to your office?  
A Many times. I said every week or two weeks.

Q Every time you called for her and brought her back? A Yes.

Q And every time you called her up and asked her? A No, sometimes we would make appointments before.

Q Didn't you call her up? A Sometimes she would call me.

10

*By the Court.*

Q Did anyone see you? A Yes.

*By Mr. Marelli.*

Q Did you arrange to have some one see you? A No.

Q Was there anyone at the mountains that saw you? A Yes, Mr. Maude.

Q Where? A In the mountains.

Q Is he here? A Yes.

Q Is he a friend of yours? A He lives in Long Island.

Q Why was he in the mountains? A On account of his health.

Q Did you urge your wife to abandon the case? A Sure I told her we would live together.

Q You did your best to get her to withdraw?  
A I thought she was foolish.

Q Did you speak to her about the case? A I said she shouldn't do it.

Q Did you tell her that what she had alleged in her complaint was not true? A Yes.

Q What did she say? A I don't recall what she said.

20

30

40

*Charles F. Restaino, for Defendant, cross.*

Q You don't recall anything that she said about the case? A I never thought she would bring the action, I thought she was doing it to get an apartment. She said get a house and live separate and apart from my father and mother.

Q You knew everything was untrue? A  
10 Yes.

Q The accusations of cruelty? A There was no cruelty.

*By Mr. Kiernan.*

I object, that is a conclusion which the wife said, the Court must draw the conclusion.

*By the Court.*

The wife swear that it is so and the husband the opposite.

20 *By Mr. Marelli.*

Q Did you talk to your wife about the accusations of cruelty contained in her complaint?

A As soon as I got it I gave it to my lawyer.

Q Did you discuss it with your wife? A She said get me a home and I will withdraw the complaint, she not only said it to me but also sent word by a girl.

30 *By the Court.*

That affects the credibility of the wife.

*By Mr. Marelli.*

Q Did you speak to her definitely about the accusations of cruelty? A There was no cruelty, yes, I did.

*By Mr. Kiernan.*

40 I think the witness intended to give a full answer.

*Charles F. Restaino, for Defendant, cross.*

*By Mr. Marelli.*

Q Did you say anything to her about her conduct in bringing a charge against you; did you say anything to her about bringing such a charge against you; did you speak to her? A Yes.

Q What did she say? A She wanted a home. 10

Q What did you say? A I would like to get you a home, but conditions are bad; I have the house up for sale.

Q You were not prepared to supply a home for your wife? A I have a home.

Q You were not prepared to supply a home separate and apart from your mother and father? A I couldn't; I was not able.

Q You didn't want to because you couldn't? A I tried to sell the house. 20

*By the Court.*

Q Here are several pages of accusations against you; what did she say to you? A She said she had to do this to get a home for herself, before she came to court she sent word to my people.

Q In spite of the accusations she made against you; you are perfectly willing to live with her? A Yes, we have always been as man and wife. 30

Q You never offered to provide a home for her separate and apart from your mother and father? A Yes, I tried to provide a home for her.

*By Mr. Marelli.*

Q When? A When her brother got married he asked her to leave the house and I said the best thing I can do is to get you a little place. 40

*Charles F. Restaino, for Defendant, re-direct.*

Q Did you offer to look for an apartment?

A I asked her to come along and look for one.

Q Did you say that the only reason she brought the charge was because she wanted a home and then she would withdraw the charge?

A Yes.

10 Q Why didn't you provide a home? A It came so sudden.

*By the Court.*

Q Did you have the money? A No.

*By Mr. Marelli.*

Q What is your income? A \$5,000 last year.

Q And you are not able to provide a home?

20 A I have a home.

Q I mean separate and apart from your mother and father? A We were at the beginning of our marriage.

Q You couldn't do it? A No.

Q Are you willing to do it now? A As soon as I am able to sell the house.

Q Before you sell the house? A I will try hard; I am willing to do it.

30 *By Mr. Kiernan.*

Q Doctor, this home on Roseville avenue, your parents have an estate in that? A A life estate.

Q When was it conveyed? A Immediately after the house was bought, in the month January, 1927.

40 Q Did you talk to your wife about the arrangement? A Sure, and she signed it as the Court saw when I presented it last week.

*Charles F. Restaino, for Defendant, re-direct.*

Q What kind of a house is it? A 75 feet front and 100 feet deep, with a two-car garage, and on the first floor is the parlor, library and sitting room.

*By Mr. Marelli.*

I object as being immaterial.

10

*By the Court.*

He is probably trying to show that it is a suitable and comfortable place, you raised the question of the wife being entitled to a place separate and apart from the defendant's parents.

*By Mr. Kiernan.*

Q This plan was made and acquiesced in by the wife and she lived there and put her husband in that position. He has testified now that he is willing to dispose of the house and to live with her separate and apart from his parents.

20

*By the Court.*

Objection overruled.

*By Mr. Kiernan.*

30

Q Describe the balance of the house. A Then there is on the second floor a library belonging to them upstairs, her bedroom and mine and a library and office, and a bathroom distinctly ours. The only time we were with my family was when we ate. We were really distinct and separate from my people.

Q You said your income was a little over \$5,000 net or gross? A Gross.

40

*Charles F. Restaino, for Defendant, re-cross.*

Q What do you have to pay? A My office expenses, the building and loan, pay my wife and live myself.

Q Did you have to borrow any money? A Yes.

10 *By Mr. Marelli.*

I object.

*By the Court.*

You went into his faculties.

*By Mr. Kiernan.*

Q Has it been necessary for you to borrow money? A Yes.

Q Do you know the amount you borrowed?

20 A Yes.

Q What are the amounts in the last year and a half? A Over \$3,000.

Q It is paid off? A No.

Q How much is due? A There are two notes at the Federal Trust, one for \$1,300 and one \$700 and a note in the Colonial Trust Company for \$800.

Q Are you still living at Roseville avenue?

A I am.

30 Q Are you willing to take your wife back?

A Yes.

*By Mr. Marelli.*

Q Who lives there? A My father and mother and we have a niece whose mother is dead and four brothers.

Q How many persons eat there? A Whoever is invited and the family.

40 Q When your wife signed the deed conveying the property to your father and mother, she was

*Peter Guarno, for Defendant, direct.*

eight months pregnant? A No, she had delivered.

Q She was in the hospital at the time? A Yes.

Q Did you tell your mother and father that if she didn't sign it, she could get the hell out? A No.

10

---

PETER GUARNO, being duly sworn on his oath according to law, deposes and says as follows:

*By Mr. Kiernan.*

Q Where do you live? A 24 Peck avenue.

Q In Newark? A Yes.

Q How long have you lived in Newark? A All my life. 20

Q What is your business? A Physical education.

Q Where? A Newton street school.

Q For how long? A Nine years.

Q Do you know the petitioner? A I do.

Q Do you know the doctor? A Yes.

Q When did you first meet the petitioner, Mrs. Restaino? A Just about the time they were married. 30

Q Did you see the doctor and Mrs. Restaino at their home? A Yes.

Q Did you go to their home from the time of their marriage up to March, 1930? A Yes.

Q How many times did you visit their home in the period mentioned? A If I was not there she would be at my house.

Q You were friendly. A Close friends.

Q Did you see Mrs. Restaino after March, 1930? A Yes. 40

*Peter Guarino, for Defendant, direct.*

Q Where did you see her first? A In my house.

Q What month? A Around June or early July.

Q Who was with her? A Her baby.

10 Q July, 1930? A June or July.

Q Did she say anything to you about her relations with her husband? A Yes.

Q What did she say? A She said she was in love with the doctor and the only reason she was not living with him was his folks.

Q Did she say anything about the abuse of the doctor? A No.

Q Did you see her after that? A Occasionally.

20 Q Did you have occasion to take her for an automobile ride? A I did.

Q What time? A In the early summer, June or July.

Q Where did you go? A A trip to the mountains.

Q What mountains? A Schooleys mountains.

Q Did she talk about the doctor? A From the time we started to the end.

30 Q What did she say? A The conversation was that she adored the doctor and that he was very kind to her, and the only thing she objected to was she didn't care to live at home with the doctor's family.

Q Did she say anything about living in his home? A She said that she had seen the doctor and that they were living as man and wife but not under the same roof.

Q Was this July, 1931? A Yes.

40 Q Did you see her after that? A Occasionally.

*Peter Guarino, for Defendant, cross.*

Q Did you talk to her relative to the doctor after the automobile ride? A I can't say I did.

Q Do you remember how long you stayed at Schooley's Mountain or did you just go for a ride?

*By Mr. Marelli.*

10

I object; question is leading.

*By Mr. Kiernan.*

Q You went to Schooley's Mountain? A Yes.

Q How long did you stay? A It was a day trip; we came back that afternoon.

Q Were you on the New Year's Eve party, 1929, with your wife and yourself and the doctor and his wife? A I was; we went together.

20

Q Did you come home together? A Yes.

Q What was the conversation the doctor and his wife had? A Everything was love and sweetness.

Q Did they seem to be enjoying themselves? A They had a great time.

*By Mr. Marelli.*

Q What is your occupation? A Physical education.

30

Q Where? A Newark public school.

Q Which school? A Newton street.

Q When you took a trip to the mountains where did you go? A Schooley's Mountain.

Q What hotel did you stop at? A We didn't stop at a hotel.

Q Who was in the car with you? A Mrs. Restaino and her baby, my wife and babies.

Q When did you get back? A In the late afternoon.

Q Is your wife in court? A No.

40

*Peter Guarino, for Defendant, cross.*

Q Did you say she made a remark about her husband? A Yes.

Q What did she say? A That she was very much in love with the doctor and she liked him; the only objection was that she didn't want to live in the same house with his family.

10 Q Was that before or after the New Year's party? A After.

Q What year was the New Year's party? A December, must have been 1930.

Q January 1, 1930? A Yes.

Q After that you went to the mountains? A Yes.

Q What took place in the auto that made her talk?

20 *By Mr. Kiernan.*

I object.

*By Mr. Marelli.*

I will reframe the question.

Q What was said just before that? A A casual conversation.

Q What about? A Mr. and Mrs. Restaino.

30 Q What was said? A What I told you; she spoke about the family and the daily routine.

Q Who were you seated with? A My wife was in the back with Mrs. Restaino.

Q Who was driving the car? A I was.

Q Did you talk about anything but her family difficulties? A Yes.

Q Which took up the most time?

*By Mr. Kiernan.*

40 I object; that is immaterial.

*Peter Guarino, for Defendant, cross.*

*By the Court.*

It might test his powers of recollection and his credibility; it is not material to the issue.

*By Mr. Marelli.*

Q What is your answer? A Mostly about the doctor and Mrs. Restaino. 10

Q Then they did have trouble? A I don't know.

Q Couldn't you tell from the conversation?

A From the conversation I had there was no trouble.

Q Wasn't the conversation all about family affairs? A Yes.

Q There was some trouble talked about? A Not to speak of.

Q She did not live in the house with her husband's mother and father? A Yes. 20

Q Her husband was not on the trip? A No.

Q How old was her baby at that time? A I don't know.

Q Who invited her to go on the trip? A My wife.

Q There was you three and the child? A I think there was another couple.

Q Who? A Mr. and Mrs. Vitalie.

Q Do you know how many years it was after their marriage, do you know when they were married? A More or less. 30

Q When? A 1927, I believe.

Q You have no idea how old the child was?

A I can stop and figure it out.

Q Did you talk about the age of the child?

A I don't remember.

Q You are sure the trip was last summer?

A Yes.

Q Don't you know the trip was 1929? A No. 40

*Peter Guarino, for Defendant, cross.*

Q And you didn't go out with her in 1930?

A In was the early summer of 1930.

Q What car did you have? A My car.

Q What make? A Studebaker.

Q How long did you have it? A Since 1928.

10 Q Where was she living then? A I don't remember.

Q Didn't you take her home? A I don't remember.

Q Where did you leave her off? A I think I stopped at my house and somebody called for her.

Q Don't you know you took her to her mother's home? A I can't say I did.

20 Q You know where her mother lives? A Yes, she lives in North Arlington, I believe.

Q What street? A I don't know.

Q Didn't you get her at her home before you went to the mountains? A No.

Q Where did she meet you? A At my house.

30 Q When in relation to the purchase of the Studebaker did you go to the mountains, one year, two years, three years, how long after? A I bought the car in 1928 and this happened in June or July, 1930.

Q You know you took her to her mother's home? A I don't remember.

Q Do you remember taking her to North 7th street? A I said I don't remember.

Q You might have? A No.

Q You don't remember, but you might have and not remember it; you might have taken her to North 7th street? A I don't remember.

*Peter Guarino, for Defendant, cross.*

*By the Court.*

Q Did she sit in the front seat with you? A No.

Q There were two other parties and the children? A There was my two children and Mrs. Restaino and her baby; the other party had their car. 10

*By Mr. Marelli.*

Q How many children have you? A Two.

Q How old are they?

*By Mr. Kiernan.*

I object.

*By Mr. Marelli.*

Q How old were they when you went on this trip? A My boy was about one and the girl two. 20

Q You had a boy one and a girl three? A The girl was two.

*By the Court.*

Q This was one year after the boy was born? A Yes. He was born in March and this was June.

Q Are you sure about the date of the trip? A Yes. 30

Q Was that the only time you went to the mountains when you, your wife and your children and Mrs. Restaino went? A We took rides.

Q I mean to the mountains. A That was the only time.

*Joseph A. Chickene, for Defendant, direct.*

JOSEPH A. CHICKENE, being duly sworn on his oath according to law, deposes and says as follows:

*By Mr. Kiernan.*

- 10 Q What is your last name? A Chickene.  
 Q What is your occupation? A Orchestra leader.  
 Q Where is your specific place of business?  
 A At present at the Forrest Club.  
 Q How long have you been there? A Six months.  
 Q Were you there February, 1931? A Yes.  
 Q Do you know Mrs. Restaino? A Yes.  
 Q Did you know her at that time? A Yes.  
 Q Do you know the doctor? A Yes.  
 20 Q Did you see them at the Forrest Club that night? A I can't swear to the night, but I saw them there about two months ago.  
 Q What time did they come in? A About 11 o'clock.  
 Q Did you see the doctor and his wife? A Yes.  
 Q What time did they leave? A I don't know.  
 Q What did they do? A They ate and drank.  
 30 Q Did they dance? A That's about all.

*By Mr. Marelli.*

No questions.

---

*Salvatore Restaino, for Defendant, direct.*

SALVATORE RESTAINO, being duly sworn on his oath according to law, deposes and says as follows:

*By Mr. Kiernan.*

Q Mr. Restaino, are you a brother of the doctor? A Yes. 10

Q What business are you engaged? A Drug pharmacist.

Q How long? A I have been working with my father all the time.

Q Where is the place of business? A 137 7th avenue.

Q How long? A Since 1907.

Q Did you live at the home of the doctor on Roseville avenue, particularly during the month of February, 1929? A Yes. 20

Q You were staying there at that time? A Yes.

Q Were you in bed at that time, sick? A No.

Q You had some trouble with your throat? A I was staying home because I had been operated on some time in January.

Q Do you remember an argument Dr. Restaino and his wife had? A Yes, I think I was staying in his room, I had a bed there. 30

Q What year, 1929? A 1929.

Q February, 1929? A Yes.

Q What did you do? A I went to their room.

Q What did you find? A They were arguing and I told them not to argue any more.

Q Did you see your brother strike her? A No.

Q Did he have her on the floor? A No. 40

*Salvatore Restaino, for Defendant, cross.*

Q Did your brother leave at that particular time? A No.

Q Did he strike her? A No, sir.

Q Did you at that time call your brother an animal? A No.

10 Q How long had you lived there up to that time? A All the time, I was not married.

*By Mr. Marelli.*

Q You were not married? A Yes.

Q Where did you live? A 376 Roseville avenue.

Q Where was your wife? A At her home.

Q You were living apart? A Yes.

20 Q Did you say that you never saw your brother strike his wife? A No.

Q If you had would you admit it?

*By Mr. Kiernan.*

I object.

*By the Court.*

It only goes to his credibility.

*By Mr. Kiernan.*

I withdraw my objection.

30 *By Mr. Marelli.*

Q Would you have admitted it if you had? A Yes.

Q You would admit it if you had seen your brother strike his wife? A Yes.

Q What time did you get there on this occasion, at this altercation, did you see anything that happened? A No only the argument.

Q There was an argument? A Talk.

40 Q Where were you? A In the other room.

*Salvatore Restaino, for Defendant, re-direct.*

Q How long had you been in the other room?

A I was downstairs and I heard hollering and I went up.

Q Why did you go up? A To see what they were saying.

Q They were arguing loud enough for you to hear them? A I was in the same house. 10

Q Could you hear them talking in an ordinary tone of voice? A Yes.

Q They talked loud enough for you to go up? A Yes.

Q Did he have her by the throat? A No.

Q Did you say stop? A No.

Q Didn't you say, you animal? A No.

Q How long had you been out of the hospital? A I can't recall I know I was home and I had two operations. 20

Q You hear all that was said? A No, they stopped when I went in.

Q They were arguing before you got there? A Yes.

Q What did you do after that? A I went to my room.

Q Did you see any marks on her? A No. 30

*By Mr. Kiernan.*

Q You saw Mrs. Restaino when you went in the room? A Yes.

Q Did she have any marks on her? A Not that I saw.

*By the Court.*

Q Did you ask her what she was hollering about? A No. 40

*Sol Schlitzie, for Defendant, direct.*

*By Mr. Marelli.*

Q You say you are a druggist? A I work in a drug store, my business is a clerk, I am not a licensed pharmacist.

10 Q Were you in the hospital between September and October 1928? A Yes, then I went in again in 1929, January 4, 1929.

Q When did you come out? A I was there two weeks.

---

SOL SCHLITZIE, being duly sworn on his oath according to law, deposes and says as follows:

20 *By Mr. Kiernan.*

Q Where do you live now? A 37 Salem street.

Q What town or city? A Newark.

Q How long have you lived in Newark? A 24—25 years.

Q What is your occupation? A Professional baseball player.

Q Are you now engaged? A Yes.

30 Q How long have you been in this business?  
A 12 years.

Q During August, 1930, did you live at Broad street, Newark? A Yes.

Q Did you have an apartment? A Yes.

Q Did any one live with you? A No.

Q When did you first live there? A The middle of June, 1930.

Q How long did you live there? A 6 months.

40 Q Do you remember an occasion in August, 1930, when Mrs. Restaino and the defendant, Dr.

*Sol Schlitzie, for Defendant, direct.*

Restaino called on you at the apartment? A I do.

Q Do you remember the day in August? A I don't remember the day, it was the third week of August.

Q Were you at home when they came? A Yes.

10

Q What time of day was it? A 9:30 in the evening.

Q What took place? A The doctor came up with his wife and there was about 10 minutes conversation and I said I was going out. The doctor said will you go to the drug store for me and get me a douche bag, I did and then I said I see you later and I left and went down and talked to Mrs. Tracey, and I came back in an hour or two.

20

Q You were out 1 or 2 hours? A An hour to an hour and a half. When I opened the door everything was dark and I heard the doctor say is that you Sol, I said yes, and I put the kitchen light on and I could see Mrs. Restaino in bed, I pardoned myself and walked out, I could see the doctor's clothes on the chair and his wife's clothes on the dresser. The doctor said get some sandwiches, and I bought half a dozen sandwiches and some soda and we ate them and talked a while and then the three of us went to her house.

30

Q Did you know the doctor before August, 1930? A Yes.

Q How long before that? A I have known the doctor a long time and his wife for about 3 months.

Q Where did you go after the sandwiches? A Her home in North Arlington.

Q What time? A 12:00 or 12:15.

40

*Sol Schlitzie, for Defendant, cross.*

Q Describe the apartment? A As you open the door there is a long hallway is a parlor and following room kitchen and bathroom and along side is the bedroom, you can see everything go on in the bedroom, they both go together.

Q Where were you when you saw the doctor?  
10 A I put the light on in the kitchen and I could see what was going on in the bedroom.

Q Was the door open? A There was no door.

Q Was there a curtain? A No.

Q Was it an open passageway? A Yes, that's it.

Q Did you drive to Northvale, New Jersey?  
A I did.

Q When was that? A I don't know.  
20

Q Do you remember the month? A I know it was in the summer.

Q Was it before or after the apartment incident? A I think after.

*By Mr. Marelli.*

Q What is your occupation? A A professional baseball player.

Q Who do you play for now? A I am the  
30 property of a club in the Western League.

Q What is the name of the team? A Oklahoma City.

Q Who is the manager? A I can't recall.

Q Who engaged you? A The manager.

Q Then who is the manager? A I didn't receive a contract, I don't know who he is.

Q Then you are not engaged? A No.

Q Why did you say you were engaged? A I have not received a contract as yet.

Q How much do you get? A \$450.00.  
40

*Sol Schlitzie, for Defendant, cross.*

Q What do you mean by \$450? A A month.

Q When were you paid last?

*By Mr. Kiernan.*

I object.

*By the Court.*

It goes to test his credibility.

10

*By Mr. Kiernan.*

I object as being incompetent, irrelevant and immaterial.

*By Mr. Marelli.*

Q What was the last pay you received? A Last season.

Q You haven't received anything this season?

A Season's not started.

20

Q You are not engaged to play this season?

A Not until you get a proposition you are their property.

Q You have no contract? A No.

Q If you don't get a contract you don't play?

A You can play semi-professional.

Q You may play semi-professional ball? A Yes.

Q Then you are not their property? A Yes, you are always their property until they release you.

30

Q When was the last game you played last season? A October.

Q Where? A Washington, New Jersey.

Q Who for? A Meadowbrook team.

Q When were you first engaged to play with them? A 1929.

Q Did you ever play with them? A No.

Q Were you ever paid anything by them? A No.

40

*Sol Schlitzie, for Defendant, cross.*

Q How long did you play with the team in Washington? A That was the only game I played.

Q Was that the only game you played? A No, I played Chatham, New Brunswick and up around New York.

10 Q You received \$450.00 a month? A About that.

*By Mr. Kiernan.*

I renew my objection as immaterial, irrelevant and incompetent.

*By Mr. Marelli.*

I think we have a right to show what he was doing in 1930; that was the time he was taking this man out riding.

20 *By Mr. Kiernan.*

I withdraw my objection if that is what he wants to show.

*By Mr. Marelli.*

The other side brought out that the witness went places in 1930 with the doctor, and I have the right to examine him as to what he was doing.

*By the Court.*

As a question of credibility it is material.

30 *By Mr. Marelli.*

Q Did you receive \$25 a day a game? A Yes.

Q Did you play every day? A No.

Q Did you play four or five times a month?

A Yes.

Q Did you play ten times a month; how many times did you play a month? A Sixteen to seventeen times.

40 Q When does your season open up in New Jersey? A When the weather is good enough to play.

*Sol Schlitzie, for Defendant, cross.*

Q When did you drive the doctor to Northvale, N. J.? A I don't know.

Q Was it in the summer? A Yes.

Q You were engaged to play baseball? A Not that day.

Q Where were the teams for which you played New Jersey? A Yes. 10

Q Did you play last October? A Yes.

Q What have you done since October? A I worked for a firm in Salem, Massachusetts, cleaning and sporting goods company.

Q When did you start there? A Three months ago.

Q Was that the first work since baseball? A No.

Q What was the first job you had since you stopped in October? A The first job. 20

Q When did you get it? A A month after the baseball season.

Q Who did you work for? A James Donahue.

Q Where? A He lives in Bloomfield, Harrison street.

Q How long did you work for him? A Three months.

Q What did you do? A Cleaning and sporting goods. 30

Q Did you work steady for three months? A Yes.

Q How much did you get? A I was on commission.

Q What did you clean? A Sporting goods.

*By Mr. Kiernan.*

Your Honor, permit me to renew my objection to this line of questioning as not proper cross examination. 40

*Sol Schlitzie, for Defendant, cross.*

*By the Court.*

Q Your objection is noted. Mr. Marelli is trying to show that this man was not present; unless he connects it up, I will not allow it.

10 *By Mr. Marelli.*

And to test his credibility, too.

Q What was your commission? A It differs.

Q What was your average? A \$30, \$22, \$25.

Q What work did you do after leaving Donahue's? A Nothing at all.

Q Where was the apartment you had? A 92-94 North Broad street, Newark.

Q You engaged the apartment in June? A Around that time.

20 Q 1930? A Yes.

Q What rent did you pay? A \$16 a week.

Q What was the landlord's name? A Tracey.

Q What was his first name? A I don't know.

Q What was the number? A 92-94 Broad street.

Q Are you married? A Yes.

Q Where is your wife?

30 *By Mr. Kiernan.*

I object.

*By the Court.*

Q Was she with you? A No.

*By Mr. Marelli.*

Q Was she ever there? A No.

Q How long have you known the doctor? A  
40 A long while.

*Sol Schlitzie, for Defendant, cross.*

Q When you drove his car did he pay you? A  
No.

Q Were you in the City Hospital, Newark? A  
I was.

Q When? A The week of Palm Sunday.

Q A week ago last Sunday? A Yes.

Q Did you enter then? A Yes. 10

Q When did you get out? A In 10 or 11  
days.

Q You went in Palm Sunday? A I went in  
before that.

Q When? A Two weeks ago Sunday.

Q How long were you there? A 10 or 11  
days.

Q The City Hospital is free? A Yes.

Q Where do you live now? A With my  
people at 37 Salem street. 20

Q Did you live with your people in the sum-  
mer?

*By Mr. Kiernan.*

I object.

*By Mr. Marelli.*

Q You live with your people? A Yes.

Q How many rooms have they?

30

*By Mr. Kiernan.*

I object.

*By the Court.*

It is all a question of credibility. Objection  
noted.

*By Mr. Marelli.*

Q How many rooms are there in your  
people's house? A Six.

Q How many people live there? A Five. 40

*Sol Schlitzie, for Defendant, cross.*

*By Mr. Kiernan.*

Suppose the man doesn't want to live with his people does that impeach his testimony?

*By Mr. Marelli.*

10 Q How far apart from your house is your people's house? A Three or four miles.

Q Both houses are in Newark? A Yes.

Q Do you mean to say that your home is 5 or 6 miles away from your house? A Three or four miles.

Q Why did you get an apartment?

*By Mr. Kiernan.*

I object.

*By the Court.*

20 I allow the question.

*By Mr. Marelli.*

A My dad didn't want me to play baseball and that is why I got the apartment.

Q If you are not playing baseball it's all right? A I can't play baseball.

Q What is the matter? A I was operated on.

30 *By the Court.*

Q Did you have a lease verbal or written? A No.

Q How did you know the apartment was vacant? A I saw that it was vacant and I looked at it.

Q Did you talk to the agent or owner? A Owner.

40 Q How long were you there? A I took it in June and stayed until October or November.

*Sol Schlitzie, for Defendant, cross.*

Q Does the owner live there? A Yes.

Q Does he live there now? A I think so.

*By Mr. Kiernan.*

If necessary we will produce the owner.

*By Mr. Marelli.*

10

Q Did you travel from place to place for baseball teams? A Certain days.

Q Did you go out of the State? A New York.

Q Did you play baseball before June 1930? A I did.

Q How many years? A I played professional ball for 8 years.

Q Where did you live before you went to the apartment? A In the south, Florida, and where I traveled. 20

Q Where did you live before that? A Maryland.

Q When did you last live with your parents? A 7 or 8 years before.

Q The time you took the apartment you were not living with your parents? A No.

Q You were engaged to play baseball June 1930? A Yes. 30

Q When did you start? A April or May.

Q Where? A There were so many games.

Q In New Jersey? A Mostly in New Jersey, I traveled to New York and Brooklyn.

Q Where did you live before you took the apartment? A I came back from the south.

Q How long were you in the south? A 6 months.

Q Where did you play? A Cambridge, Maryland. 40

*Sol Schlitzie, for Defendant, cross.*

Q Just before you went to the apartment in Newark, where did you play? A Jersey.

Q How long did you play in Jersey? A April.

10 Q Where did you live from April to the time you took the apartment, you started playing baseball in April, where did you live from April to June? A In Maryland.

Q Where did you live from April to June 1930? A Newark.

Q Where? A In furnished rooms.

Q What street were the rooms on? A Warren street.

Q Near what street? A I really don't know.

20 Q How long have you resided in Newark? A 25 years.

Q Do you know the name of the people you boarded with? A They were Italian people, I didn't board just roomed.

Q When did you come back from Maryland? A After the season 1929.

Q 1930 I take it was the time you came back from Maryland? A Baseball starts one year and stops another.

30 *By the Court.*

Q You started April 1930 when you came back from Maryland? A 1929.

*By Mr. Marelli.*

40 Q My questions were confined to 1930, I asked you where you were before you took the apartment and you said down in Maryland and after you told me you were playing in New Jersey from April? A I didn't understand your question.

*Sol Schlitzie, for Defendant, cross.*

Q When was the last time you played in Maryland? A 1929.

Q When did you return from Maryland? A The end of the season October.

Q Where did you go to live? A In a furnished rooming house.

Q Where? A Warren street. 10

Q October 1929? A Yes.

Q Near what street? A I don't know, I can show you.

Q How long did you stay there? A April.

Q What is the name of the people? A I don't know.

Q You lived there from October to April and you don't know their name? A I know their first name.

20

*By the Court.*

You can give him such information as you can regarding the identity of this person and he will probably go down and look them up.

Q Did you have your meals there? A No.

Q Did you have any one visit you there? A No.

*By Mr. Marelli.*

30

Q Near what street is it? A Plane street.

Q What kind of a house two-story or three-story? A I don't know.

Q You lived there three months, now take time to think?

*By Mr. Kiernan.*

I object.

*By the Court.*

The witness is entitled to every opportunity.

40

*Sol Schlitzie, for Defendant, cross.*

*By Mr. Marelli.*

Q What kind of a house was it? A Wood.

Q Was there a store in it? A No.

Q Was there any store near? A On the corner.

10 Q Corner of Plane street? A I don't know I am not sure, it may have been High street.

Q What floor did you live on? A Second.

Q Do you know who lived on the first floor?  
A No.

Q Were you the only one on the second floor?  
A No.

Q Did you know anyone in the house? A The fellow that rented me the room, Jimmie.

Q You lived there every day from October to  
20 April 1930, you lived there every day and slept there every day? A I can't say I slept there every day, I was there most of the time.

Q Did you live any other place from October to April? A No.

Q Only this place? A Yes.

Q When did you first meet the doctor? A Quite a few years ago.

Q Did you go out and take rides with him, did you associate socially, did you chum with  
30 him? A We were friends.

Q Did you go to the theatre, dinner and dances together? A We had supper together.

Q How many times did you have supper together? A One or two times.

Q Did you ever live at the doctor's house?  
A No, sir.

Q Never? A No, sir.

Q Have you been to school? A Yes.

Q How high did you go in school? A Sec-  
40 ond or third year high school.

*Sol Schlitzie, for Defendant, cross.*

Q You never had a room in the doctor's house? A No.

Q Aren't some of your shirts at the doctor's?

A Yes.

Q How did they get there? A The girl staying there said she would like to press my shirts. 10

Q When did that happen? A I don't know.

Q Did she wash them? A She must have; she pressed them.

Q When did you take the shirts there last? A I don't know.

Q A month ago? A More than that, around September.

Q September of last year? A 1930.

Q Do you remember talking to Mrs. Restaino?

A No. 20

Q Downtown? A No.

Q In the winter time? A No, sir.

Q Didn't you stop her and talk to her? A No, sir.

Q Didn't you have a conversation with her about her husband running around with other women? A No, sir.

Q Did the doctor speak to you about going to your apartment? A Around nine o'clock in the evening. 30

Q When? A The third week, in his office.

Q What led up to his asking you? A He said he had an engagement with his wife.

Q How did it happen that you were in his office? A I asked him if he was going any place; I like to drive around.

Q You hung out around his office? A At the time I was not playing ball.

Q You weren't playing ball in the winter?

A No. 40

*Sol Schlitzie, for Defendant, cross.*

Q Did you hang around? A Not for five months.

Q Have you talked to the doctor since? A No.

Q How did he know you had the apartment?

10 *By Mr. Kiernan.*

I object.

*By the Court.*

Unless he says he told him.

Q Do you know how the doctor knew you had an apartment? A I told him.

*By Mr. Marelli.*

20 Q When? A June or July after I got the apartment.

Q You testified that you hadn't seen the doctor in four or five months? A It was way before that.

Q How long before? A Six months.

30 Q Then you went to his office to see him? A I was around the office and I asked him if there were any calls to make; I said I would like to take a ride with him. He said "No, I have to meet my wife." He said, "I'll tell you what I'll do; I will take you down and bring my wife down later." He said he had to meet his wife and he would drop down later.

Q You didn't tell him where the apartment was? A No.

Q You don't know how he knew where the apartment was?

*By Mr. Kiernan.*

40 I object. This witness said that he told the doctor where the apartment was.

*Sol Schlitzie, for Defendant, cross.*

*By Mr. Marelli.*

A Yes, I do. I told him around June or July where I lived.

*By the Court.*

Q You understand that perfectly, that around 10  
June or July you told him? A Yes.

*By Mr. Marelli.*

Q I ask you again when was the first time  
you saw the doctor after being away from him  
for six months in 1930? A The first time was  
this morning.

Q No, last year, 1930, when after that six  
months' period did you see him? A I don't  
recall. 20

Q Was it in May? A No, I was away.

Q May, 1930? A No.

Q When did you first see the doctor in 1930?  
A At the beginning of the baseball season,  
around April or May.

Q That was the first you saw him? A Yes.

Q 1930, are you sure about that? A Yes.

Q Where were you living then? A Warren  
street. 30

Q Where did you see the doctor the first  
time in 1930? A I couldn't tell; I don't remem-  
ber.

Q How do you know it was around the first  
of April? A It was around the baseball season.

Q When around then? Refresh your memory.

A The first time I saw him I said I started to  
play baseball soon.

Q You had not seen him for six months be-  
fore? A Around then. 40

*Sol Schlitzie, for Defendant, cross.*

Q Up to that time and at that time you were living at Warren street, Newark? A I was.

Q You don't know where you first met the doctor in 1930? A Up around his office.

Q Inside or out? A I couldn't tell you.

10 Q When did you next see him? A Quite often.

Q Where? A Around the neighborhood and the office.

Q You didn't see him often after that; you played baseball? A Yes. If I didn't play baseball I would see him in the afternoon, and if I played I would see him at night.

20 Q Did you see him in his office? A Sometimes outside and sometimes in the office, and sometimes I drove around with him.

Q Why did you go there? A I knew quite a few of the boys.

Q Where did they hang out?

*By Mr. Kiernan.*

I object as irrelevant, immaterial and incompetent, and a general objection to this line of questioning; it not only encumbers the record but is immaterial, incompetent and irrelative.

30 *By the Court.*

Objection noted.

*By Mr. Kiernan.*

We are going to produce the owner of this house.

*By the Court.*

Mr. Marelli has mentioned some boys.

*By Mr. Marelli.*

40 I would like to know the truth now, not tomorrow.

*Sol Schlitzie, for Defendant, cross.*

*By the Court.*

Your mind must be trained; when a man can't tell where he has lived for five or six months, it looks suspicious.

*By the Witness.*

I told him I lived on Warren street.

10

*By the Court.*

A man can't play baseball and not have an alert mind.

*By Mr. Kiernan.*

This witness replied to Mr. Marelli. He said he lived on Warren street, didn't know the adjacent street.

*By the Court.*

Q Do you know the street number? A No. 20

Q Do you know the name of the house? A There was no name.

Q Do you know anybody living in the house?  
A I never talked to anybody.

*By Mr. Marelli.*

Q I want to know where he met the boys near the doctor's home. A I never met them; they would be around the neighborhood and I would talk to them. 30

Q Where did you talk? A Outside.

Q At any club or place? A Outside, sometimes I would go into the barber shop.

Q Can you tell us if in the neighborhood of the doctor's office there are poolrooms? A Not that I know of.

Q Places commonly known as joints?

*By Mr. Kiernan.*

I object.

40

*Sol Schlitzie, for Defendant, cross.*

*By Mr. Marelli.*

I withdraw the question.

Q Coffee houses? A Places to eat.

Q Places to play pool? A No.

Q Did you say that you never lived at the  
10 doctor's house? A No, sir.

Q Never? A No, sir.

Q When was the first time you saw the petitioner at the doctor's home after March, 1930?

A I don't understand the question; what's the petitioner?

*By the Court.*

The petitioner is the doctor's wife.

20 *By Mr. Marelli.*

Q You began to play baseball in April, 1930?

A Yes.

Q April, 1930, you first saw the doctor? A  
Yes.

Q On direct examination, you said you first saw the doctor in March; which is correct? A  
Around that season, baseball season.

Q Was it around March 1st or April 1st? A  
Around the baseball season.

30 Q The first time you saw Mrs. Restaino was after March 1, 1930? A A month or so later.

Q April 1st? A Around that time.

Q Where did you see her? A I don't remember.

Q At her home? A No, I don't believe it was.

Q At the doctor's office? A No.

Q Where? A Walking along Garside street.

40 Q Where did you next see her? A The doctor introduced me.

*Sol Schlitzie, for Defendant, cross.*

Q You knew her before? A No.

Q How did you know it was Mrs. Restaino?

A She was pointed out as the doctor's wife?

Q When was she pointed out? A Around April.

Q What year? A 1930.

Q Who pointed her out? A I don't know. 10

Q Where was she? A Around the neighborhood of the doctor's office.

Q That was the first time you saw her? A Yes.

Q You do know where you saw her? A Yes.

Q You know you saw her around the doctor's neighborhood? A Yes.

Q When did you next see his wife after she was pointed out to you? A I can't tell.

Q You haven't the slightest idea? A No. 20

Q Was it January, 1931, the time after she was pointed out to you? A 1930.

Q August? A Before that.

Q When? A I don't remember the month.

Q Was it July? A I don't know.

Q How many times did you see her between the time she was pointed out to you and the time you saw her at your apartment? A Eight or ten times.

Q Where? A Her house at North Arlington. 30

Q You saw her no other place? A Yes.

Q Where? A My apartment.

Q Besides at your apartment where did you see her? A When we took the trip to Northvale.

Q Any other place? A Around the doctor's office.

Q When? A Around 10 or 11 in the evening.

Q When? A June or July. 40

*Sol Schlitzie, for Defendant, re-direct.*

Q Once? A A couple of times.

Q Twice? A At least a couple of times.

Q What time? A 10 or 11 o'clock.

Q Where were you? A On the corner.

10 Q What were you doing? A Talking to the boys.

Q Each time at 10 or 11 o'clock? A One time it was 12:30.

Q What was you doing there? A Talking to the boys.

Q What boys? A Quite a few; I don't remember their names.

Q Friends of yours? A Yes.

*By Mr. Kiernan.*

20 Q This furnished room, you just slept there?

A Yes.

Q Did you have your meals? A No.

*By Mr. Marelli.*

Q Did you eat your meals at the doctor's house? A Once in a while.

*By Mr. Kiernan.*

30 Q Could you identify this place on Warren street, if someone went with you? A Yes.

*By the Court.*

Q When did you tell the doctor that you had an apartment? A June or July. He asked me where I was living and I said North Broad and I said if you are down drop in, so he dropped down several times and picked me up.

*Jerahnach Maude, for Defendant, direct.*

*By Mr. Kiernan.*

Q When was this? A June or July.

Q What time, night or day time? A Day time.

Q Did you play baseball? A Sometimes.

10

*By the Court.*

Q Had he been in the apartment before he brought his wife? A Yes.

Q How many times? A Twice.

---

JERAHNACH MAUDE, being duly sworn on his oath according to law, deposes and says as follows:

20

*By Mr. Kiernan.*

Q Mr. Maude, where do you live? A 8905 124th street, Richmond Hill, Long Island.

Q What is your business? A Entertainer.

Q What do you do? A Sing and wait on people.

Q Do you know the petitioner and the doctor? A I do.

Q How long have you known them? A The doctor eight years and Mrs. Restaino three years. 30

Q Where did you first meet her? A At the doctor's home.

Q How long ago? A Three years.

Q Do you remember meeting the doctor and Mrs. Restaino at the Catskill mountains? A Yes.

Q What year? A 1930.

Q What month? A July, about the 3rd week.

40

*Jerahnach Maude, for Defendant, direct.*

Q Were you staying there? A Yes.

Q At what place? A Willow Brook Farms.

Q Did you see the doctor when he first came?

A Yes.

Q Was there anyone with them? A The child and Mr. Schlitzie.

10 Q How long did he stay? A Ten hours and left.

Q How long did Mrs. Restaino stay? A Two weeks.

Q Where did Mrs. Restaino stay? A Guthrie's Green Lake Boarding House. I work there.

Q Did you have anything to do about getting their room? A They came up at 9 o'clock and I took them over to Guthrie's and took them to their room and then I went back to my place with

20 Mr. Schlitzie.

Q Did you see the doctor and his wife after you left them? A Not that time; I met them at dinner time; I believe they went to lay down and rest.

Q Where did you go? A Over home to my boarding house.

Q Did you later on see them in the room? A Later on the doctor treated me for my blood; he said I was anemic.

30 Q Where were you supposed to meet him? A In his room.

Q What did you do? A I knocked on the door and the doctor jumped up and asked who was there.

Q Who was in the room? A Mrs. Restaino and the child.

Q Was the doctor dressed? A He was in his B. V. D's.

40 Q Was Mrs. Restaino dressed? A She was in bed.

*Jerahnach Maude, for Defendant, cross.*

*By Mr. Marelli.*

Q You are a singing waiter? A Yes.

Q How long had you been treated by the doctor at that time? A Two months.

Q Did he inject something into your back? A No. 10

Q Where? A In my arm.

Q Was it done in his room? A No.

Q Did you go to the room for the injection? A No.

Q You didn't go to his room for the injection? A No, it took place at my house.

Q Wasn't the injection administered in his room? A No.

Q Why did you have to come and tell him? A I had to wake him up. 20

Q Why did you have to go and get him?

*By Mr. Kiernan.*

I object, that is argumentative.

*By the Court.*

Does the witness know why the doctor met him in pajamas.

*By Mr. Kiernan.*

I believe it was B. V. D's. 30

*By Mr. Marelli.*

Q Isn't it a fact her husband slept on the grass? A Ridiculous, no.

Q Isn't it a fact he didn't eat anything? A No.

Q Didn't he go out and buy sandwiches for himself and the chauffeur? A No.

Q Were you there all morning? A I was over at the homestead. 40

*Jerahnach Maude, for Defendant, cross.*

Q How far was that? A Five minutes' walk.

Q You were at the farm, Willow Brook Farm, how far was that from the hotel? A Five minutes' walk.

10 *By the Court.*

Q Had you ever met the doctor's wife? A Yes, three years ago, before I met her up there.

Q Did you meet her at his office? A The doctor was sick and some of the boys went up to see him.

*By Mr. Marelli.*

20 Q Did this man allow you to go in his bedroom? A I didn't go in.

Q He allowed you to knock on the door? A Yes.

Q What was the arrangement? A He wanted to get up and treat me.

Q What did he say? A He said he was going to lay down for a couple of hours; he said wake me up and I will take care of you.

Q He was with his wife? A Yes.

30 Q After dinner where did you go? A I hung around.

Q Are you sure the doctor ate there? A Sure, I ate with him.

Q Who was the waiter? A Some girl; there was five or six different waitresses.

Q Do you remember the date? A It was a Friday, the third week of July or the last.

Q Who asked you to eat there? A No one.

40 Q You just sat down? A That was my privilege.

*Jerahnach Maude, for Defendant, cross.*

Q How many were there at the table? A Fifteen.

Q Aren't you a waiter there? A Yes.

Q You didn't serve him? A No.

Q Isn't it your duty to wait on the people there? A No, not then.

Q What time did you work? A 8:30 to 1:00 o'clock. 10

Q Did you eat there every day? A No.

Q You went there without an invitation from him? A Yes.

Q Did you watch the hotel when you went to your farmhouse? A No.

Q How far is the farm from the hotel? A From here to the end of that church (indicating a distance of approximately 300 to 400 feet).

Q You don't remember the name of the waitress? A I think it was Loney or Lois. 20

Q Do you know the name of the proprietor that kept the place? A George Guthrie.

Q Where do they live now? A I don't know; I can tell you July 1st.

Q Where do you live? A 8905 124th street, Richmond Hill, Long Island.

Q Do you live with your wife? A Yes.

Q You are married? A Yes, I am.

Q Was your wife stopping with you at the farm house? A Surely. 30

Q You were on your honeymoon? A Yes.

Q Didn't you have the injection made in the doctor's room and say to the doctor that you didn't want her to know about it? A No.

Q What was the real trouble? A I was anemic.

Q That all? A Unless the doctor was holding out on me.

*Mario La Torraca, for Defendant, direct.*

MARIO LA TORRACA, being duly sworn on his oath according to law, deposes and says as follows:

*By Mr. Kiernan.*

10 Q Where do you reside? A 114 7th avenue, Newark.

Q How long have you resided in Newark? A Nineteen years.

Q What is your business? A Hairdresser.

Q Do you know the petitioner? A I do.

Q Do you know her husband, the doctor? A Yes.

Q Did you see Mrs. Restaino after March, 1930? A I did.

20 Q When was the first time? A When the child was sick, in May or June.

Q 1930? A Yes.

Q Where? A At her home.

Q Was there anyone with her? A The doctor.

Q Did you talk to Mrs. Restaino? A Yes.

Q Did she say anything to you about her husband? A She said she liked Carlo but she didn't like to live with his people.

30 Q Did you talk other times to her about that? A Before 1928.

Q During the conversation did she charge her husband with cruel abuse? A No.

Q Did she tell you she was afraid to live with the doctor? A No.

Q Did you have occasion to be at his home? A Yes, I am distantly related.

40 Q Did you see Mrs. Restaino around the home? A The latter part of August or the first of September, 1930.

*Mario La Torraca, for Defendant, cross.*

Q Where did you see her? A Coming out of the office.

Q What time of day was it? A A little after 12.

Q At night? A Yes.

Q What was your occasion for being there?

A I saw them and I said, "I am glad to see you together," and she smiled. 10

Q Was the doctor with her? A Yes.

Q It was about 12 o'clock? A Yes.

Q What month? A The latter part of August or the early part of September.

*By Mr. Marelli.*

Q Where do you work? A No place.

Q When did you have the last job? A 1927.

Q What do you do for a living? A I live with my people. 20

Q What do you do? A Nothing at present.

Q When did you last earn wages? A 1927.

Q Haven't you worked since? A No.

Q Who supports you?

*By Mr. Kiernan.*

I object; that is not material.

*By Mr. Marelli.*

To test his credibility. 30

*By Mr. Kiernan.*

I withdraw my objection.

*By Mr. Marelli.*

Q What do you do for a living? A I have my meals at home; once in a while I get a suit; my only habit is cigarettes.

Q Where do you pass the time? A On the corner or in a coffee place, not a poolroom. 40

*Virginia Laudadio, for Defendant, direct.*

Q Are there many coffee houses? A As far as I know, only one.

Q Are there many? A I refuse to answer. There are quite a few.

Q Where is your home? A 114 7th avenue.

Q How far is that from the doctor's office?

10 A Sixty seconds.

Q Do you pass a lot of time in the doctor's office? A No; I go to the pictures; I don't pass the time there.

Q Do you see the doctor often? A Yes.

Q Do you go to the office often? A Yes.

Q The occasion when you saw his wife you just happened to be there? A Yes.

Q Where had you been? A Coffee house.

Q Do you know where Schlitzie lived? A No.

20 Q Do you know where Warren street, Newark, is? A I don't know.

Q Did you see her husband hit her? A No.

Q Didn't you say, "I am ashamed of the way your husband licks you"? A Never.

Q Did you hear him call her names? A No.

Q Did you hear them quarrel? A Yes, but I never saw him strike her.

Q Did you see her try? A No, I never did.

30

---

VIRGINIA LAUDADIO, being duly sworn on her oath according to law, deposes and says as follows:

*By Mr. Kiernan.*

Q Where do you live? A 376 Roseville avenue.

Q What is your business? A Teacher.

40 Q Where? A Grade school.

*Virginia Laudadio, for Defendant, cross.*

Q Did you have a conversation before him?

A Yes.

Q What was it? A She had a conversation with her husband and he asked her to come back, and she refused because his family was there; she said she had nothing against them, but she wanted a home by herself.

10

*By Mr. Marelli.*

Q Did she ever tell you that he beat her? A No.

Q Did you see any marks? A No.

Q Was she friendly with you? A Yes.

Q She told you she left because he was cruel? A No.

Q You have seen her no time since she separated? A I did.

20

Q Did she say he was cruel to her? A I don't remember.

Q She may have said it and you didn't remember; you wouldn't say she didn't? A I don't remember.

Q She might have said it quite often? A I don't remember.

*By the Court.*

30

Q Are you subpoenaed? A No.

*By Mr. Marelli.*

Q Did you see her cry? A Not that I remember.

Q Your answer is you don't remember? A Yes.

Q Will you tell us the whole conversation? A That is all I remember.

40

*Virginia Laudadio, for Defendant, re-direct.*

Q What did she tell you? A She wouldn't go back unless they lived in a separate house.

Q Did she say that she had decided not to go back? A No.

*By Mr. Kiernan.*

10 Q Did Mrs. Restaino say anything to you about any cruel or abusive treatment, that you remember? A Yes.

*By Mr. Marelli.*

Q You are not sure? A No.

Q Are you related to the defendant? A Yes.

Q What relation? A Niece.

*By Mr. Kiernan.*

20 I would like to produce the owners of both houses if the Court feels that it is essential.

*By Mr. Marelli.*

You can pick out a lot of places.

*By Mr. Kiernan.*

That is not fair.

*By the Court.*

30 The wife has alleged extreme cruelty and the wife has established her prima facie case. He denies it and claims condonation. If the wife gets a divorce he will have to support her. He has shown forgiveness.

*By Mr. Marelli.*

I want to go into these thoroughly on rebuttal.

*By the Court.*

The Storms case gives a great deal on the question of credibility.

*By Mr. Kiernan.*

40 We will produce these witnesses at your discretion.

*Proceedings April 17, 1931.*

*By the Court.*

People become prejudiced, mull over what they are going to say and enlarge on it. I think it would be well to get these witnesses in.

Case will be adjourned until Friday, April 17th, at the Hackensack Court House, at ten o'clock in the forenoon. 10

IN CHANCERY OF NEW JERSEY.

*Between*

IDEA RESTAINO,

*Petitioner,*

*and*

CHARLES F. RESTAINO,

*Defendant.*

20

Hackensack, N. J.,  
Friday, April 17, 1931.

Before Edward Thomas Moore, Esq., Advisory Master.

Appearances:

30

Henry Marelli, Esq., 165 Market street, Paterson, N. J., solicitor for the petitioner.

Nicholas LaVecchia, Esq., 60 Park Place, Newark, N. J., solicitor for the defendant.

*By Mr. LaVecchia.*

When we left off we had permission to put on two witnesses, the owner of the apartment house and the owner of the house on Warren 40

*Patsy Ceglia, for Defendant, direct.*

street. If the Court wants them, I have them here and will put them on the stand.

*By the Court.*

10 On page 188 of the testimony it states, "He has shown forgiveness"; that should have been, he has endeavored to show forgiveness; I made no decision at that time.

Proceed with your witnesses.

PATSY CEGLIA, being duly sworn on his oath according to law, deposes and says as follows:

*By Mr. LaVecchia.*

20 Q Where do you live? A Warren street, Newark.

Q What number? A Sixty-eight.

Q Are you known as Jimmie? A Jimmie, Patsie, Arthur.

Q How long have you lived at 65 Warren street, Newark? A Three years.

30 Q Did Mr. Schlitzie room with you? Mr. Schlitzie in court? Please stand up. Did he room with you? A Yes.

Q When did you meet him? A January, 1929.

Q What do you do? A I have furnished rooms.

Q How long was he with you? A I bought the place from Mr. Rogers and he was there and he continued to live with me; for five or six months he was with me.

40 Q Is that house near Plane street? A Plane street, yes.

*Patsy Ceglia, for Defendant, cross.*

Q Do you know what Mr. Schlitzie's business was? A He told me baseball; I don't know how true or not.

Q Did he eat at your house? A He was very familiar; sometimes he would eat there, but not steady.

10

*By Mr. Marelli.*

Q Do you keep a book of your guests? A No.

Q You never kept a book? A I think I have.

Q Where? A No one ask me bring it.

Q You have a book? A I think so.

Q When did you sell the place? A I bought the place.

Q Do you still run the place? A Yes.

20

Q Who is the manager of the place? A I am the boss.

Q Are you there all the time? A All time.

Q Did Schlitzie have a dog when he was there? A Well, I no remember; I saw him busy with baseball.

Q Did he have a bulldog? A I don't remember.

Q Who collected the rents? A I did.

30

Q How much did he pay? A Once \$3.00; very little room, and once before \$5.00. He asked me for a little room downstairs and I get it for him for \$3.00.

Q Who did you buy the place from? A Mr. Rogers.

Q What day in January did you take charge? A If I am not mistaken, January, 1929.

Q When the place was turned over to you, was there a book? A She no give me book, but I use book.

40

*Patsy Ceglia, for Defendant, cross.*

Q Have you got Schlitzie's name in the book?

A I think so; the first time I bought the place things were not exactly so. After I did.

Q You think his name is in the book? A I think.

10 Q Can you produce the book? A I don't know.

Q You've got the book? A Yes.

Q Can you produce the book? A No answer.

*By the Court.*

Q How big a house was it? A Nineteen rooms.

Q Are all the rooms for one person each?  
A There's a couple of two rooms.

20 Q How many rooms are occupied? A Fifteen.

Q Fifteen different people? A Yes.

Q Did you mark them down? A Yes.

Q Did you collect the rent from them all?  
A Yes.

Q Was he there long? A Five or six months he continued with me. I remember he paid exactly \$3.00.

30 Q How many days during the time you knew him did he occupy his room? A He slept there.

Q Every night or five nights a week? A I don't know; some nights he was absent.

Q Could anyone outside the house see the number? A Sixty-five.

Q Was it a big or little number? A Brass.

Q On the door? A Outside.

40 Q Could anyone enter the house without a key? A Ring the bell; he was quite familiar.

*Patsy Ceglia, for Defendant, cross.*

Q Maybe you can help the Court; why couldn't this man that was there see the number; couldn't he remember the number on the door?

*By Mr. LaVecchia.*

I object. It is almost impossible to testify what is in the mind of the witness; it calls for a conclusion and is not proper cross examination. 10

*By the Court.*

Q Can you give any reason why this man could not remember the number on the door? A Maybe weak memory or negligence; it's a big number; I know it's a big number.

*By Mr. LaVecchia.*

I object when the witness said it may be a weak mind or negligence. 20

*By the Court.*

Q How big was the number? A (Indicating three to four inches.)

Q Where is the number? A Top of the door.

Q A person opening the door, the number would be over him? A Up. 30

*By the Court.*

He can't help the Court.

*By Mr. LaVecchia.*

I object.

*By Mr. Marelli.*

Q Did he receive mail? A I don't know.

*Patsy Ceglia, for Defendant, cross.*

*By Mr. LaVecchia.*

I object as immaterial.

*By Mr. Marelli.*

10 Q Did he receive letters? A There is a box in the corridor and any tenants can see in the morning if there is a letter or not; I never see.

*By the Court.*

There is a distinction between receiving mail and letters.

*By Mr. Marelli.*

20 Q Did he have a mail box of his own? A Any people could see if there was a letter or not.

Q Was there a special box for him or was it one box for all? A One for all.

Q Who took the letters out?

*By Mr. La Vecchia.*

I object as immaterial and not competent and not proper cross examination.

*By Mr. Marelli.*

30 It is cross examination and I am entitled to test his credibility, he is the boss, he has no manager; I am starting to test his credibility as to what was done.

*By the Court.*

It is competent on cross examination to show the man did what he said he did. I sustain the objection as the question was asked.

*By Mr. Marelli.*

40 Q Did you ever yourself open the letter box? A The postman puts the letters on the door or

*Patsy Ceglia, for Defendant, cross.*

on the floor and a lot of people put them in the box.

Q Who received the letters from the box? A Any one letters belong to he take.

Q Each tenant would go to the box and look over all of the letters and take out what belonged to him? A Yes. 10

Q Did any friend of his call on him? A His friend?

Q Yes, his friend? A Some time men friends were there with him not often.

*By the Court.*

Q Did any packages come to this address for the Mr. Schlitzie? A I don't know.

Q Did he have his suit pressed and delivered to him at the house? 20

*By Mr. La Vecchia.*

I object; it is not proper cross examination and the question is immaterial.

*By the Court.*

Your objection is noted. The Court can ask any question.

*By Mr. La Vecchia.*

I know of no case where the Court is not bound by the rules of evidence. 30

*By the Court.*

Do you think there is a rule limiting the Court?

*By Mr. La Vecchia.*

General practice. Rule of evidence.

*By the Court.*

The Court has a perfect prerogative as jury to ask any relevant question. 40

*James Donahue, for Defendant, direct.*

*By Mr. La Vecchia.*

I stand on the record.

*By the Court.*

10 Q Read the question. Question read by the  
stenographer. Did he have his suit pressed and  
delivered to him at the house? A Yes, I saw  
him with a suit taken to the tailor. I saw him  
take it from pressing.

Q You saw nothing stating who the suit was  
for? A No.

---

20 JAMES DONAHUE, being duly sworn on his  
oath according to law, deposes and says as  
follows:

*By Mr. La Vecchia.*

Q What is your full name? A James  
Donahue.

Q Where do you live? A 102 Harrison  
street, Bloomfield.

Q You have lived in New Jersey how long?  
A I was born in New Jersey.

30 Q Mr. Schlitzie, will you stand up; do you  
know him? A Yes.

Q How long? A **15 years.**

Q What is his occupation? A Professional  
baseball player.

Q Is he employed by you? A Yes.

Q When was the first time? A In 1928.

Q Early or late? A The latter part.

Q What is your business? A Sporting goods  
salesman.

40 Q What is his position with you? A Bug-  
gerlugger.

*James Donahue, for Defendant, direct.*

Q Is he on a salary or commission? A Commission.

Q How long did he work for you? A After the baseball season is my busy season.

Q What period did he work for you? A From November right after Thanksgiving.

Q Till when? A Around March. 10

Q Did he work for you in 1929? A I don't recall.

Q 1930? A Yes.

Q Has he worked off and on during his last employment? A Since January of this year.

Q Is he working for you now? A Yes.

Q Did you ever call on him at 65 Warren street? A No.

Q Did you call on him at 92-94 Broad street, Newark? A Yes. 20

Q Can you fix the time? A No, sir.

Q With reference to the year when did you call at 92-94 Broad street? A I should say 1928.

Q 1928 on Broad street? A Yes.

Q 92 and 94? A That's as far as I remember.

Q Do you know Dr. Restaino? A Yes.

Q Do you know Mrs. Restaino? A No.

Q Did you call on Mr. Schlitzie during 1930, last summer? A Yes. 30

Q Where did you call on him? A As far as I remember 92-94 Broad street.

Q How many times did you call there? A I don't know exactly.

Q Approximately? A Four or five times.

Q Do you know if he lived there? A Yes.

Q Were you in his rooms? A No.

Q How did you get word to him? A I knew the man that ran the house.

Q What was his name? A Ralph Tracey. 40

*James Donahue, for Defendant, cross.*

Q You were never up to Mr. Schlitzie's apartment? A No.

Q Do you recollect the month last summer? A No.

*By Mr. Marelli.*

10 Q Schlitzie worked for you on and off? A Yes.

Q Would you be notified when he was to work and when he didn't? A No, sir.

Q Did he work when he was playing? A No.

Q When did he work? A I would notify him.

Q Did you notify him in 1930? A Yes, sir.

20 Q When? A I don't know; probably around or after the Christmas holidays.

Q He didn't begin to work for you until after the Christmas holidays? A Yes.

Q How long before that did he work for you? A I don't understand the question.

Q When did he stop working for you before that? A I don't remember.

Q The year before? A I don't remember.

Q You say he worked for you occasionally, just when did you notify him? A Yes.

30 Q Did you notify him after the Christmas holidays? A Yes.

Q You must have had some idea, you hired him before that? A I hired him off and on.

Q You are not sure of the date? A I am sure of the date that the last time was 1930.

Q Does he work for you now? A Yes.

40 Q He has continued to work for you since the Christmas holidays? A He has worked for me as testified before, he works for me up to March.

*James Donahue, for Defendant, cross.*

Q It is April now. A He is about to be unloaded.

Q Does he report to you every day? A I treat him as a friend.

Q When does he start to go on his work? A We meet in that conspicuous place, Child's Restaurant, where we have breakfast, and if we haven't much money we go to the lunch wagon. 10

Q Who do you work for? A Ivory System, Salem, Massachusetts.

Q Who pays him? A I do.

Q When? A When we do business.

Q What does he get buggerlugging? A I give him \$2.00 every one he packs.

Q Did he pack many this season? A Yes.

Q Do you know where he lives this year? A 37 Salem street, Newark. 20

Q Was he there when you notified him? A I think he was.

Q When did you see him before the Christmas holidays? A I don't know.

Q How did you know he lived on Salem street? A I know his mother and father lived at 37 Salem street, as a matter of fact he told me and I was at his house.

Q When were you at his house before the Christmas holidays? A I don't just remember, I know he lived at 37 Salem street. 30

Q Where did he live before that? A That I don't recall.

Q The only place you visited him was 92 Broad street, besides Salem street? A No, I think I visited him at another address on Broad street, Number 26 or 28.

Q Was that before or after you visited 92 Broad street? A Before.

Q How long before? A I don't know. 40

*Ralph Tracey, for Defendant, direct.*

RALPH TRACEY, being duly sworn on his oath according to law, deposes and says as follows:

*By Mr. La Vecchia.*

Q Mr. Tracey, where do you live? A 92-96  
Broad street.

10 Q Newark? A Yes.

Q How long have you lived there? A A year ago this past February.

Q Mr. Schlitzie, stand up. Do you know that gentleman? A I do.

Q When did you first meet him? A May, 1930.

Q Where did you meet him? A 94 Broad street.

20 Q Did he live there? A Yes, he hired.

Q Did he hire an apartment? A He had a room first.

Q How long was he in the one room? A Two weeks.

Q Then he took an apartment? A Yes.

Q How long did he have the apartment? A Until the latter part of August or the first of September he left.

30 Q Did you talk to him? A He was chummy; he said he was quite a ball player.

Q Do you know Dr. Restaino? A I do.

Q Do you know Mrs. Restaino? A Yes.

Q How long have you known Mrs. Restaino?

A I was introduced to her the summer of 1930.

Q Can you fix the time better, the month, about? A It was real warm weather, around July.

Q Who introduced you? A Mr. Schlitzie.

Q Where? A In front of her mother's house.

40 Q Where was that? A North Arlington.

*Ralph Tracey, for Defendant, cross.*

Q Did you ever see Dr. and Mrs. Restaino come into the house at 92-94 Broad street? A Once.

Q Where did they go? A To Mr. Schlitzie's apartment. I saw them go into the bulding, and I understood where they went.

10

*By Mr. Marelli.*

I object to what he understood.

*By Mr. La Vecchia.*

Q How do you know? A I know the doctor called to see Mr. Schlitzie quite often and he was the only one the doctor knew in the building.

Q Can you fix the month that the doctor and Mrs. Restaino went into the apartment; I don't mean Mr. Schlitzie's apartment; I mean the apartment building? A It was after I had met Mrs. Restaino.

20

Q When did you say Mr. Schlitzie moved? A The latter part of August or the first part of September; I couldn't swear.

Q Have you been subpoenaed by the other side to appear here? A Yes.

*By Mr. Marelli.*

Q Where were you when she went into the apartment?

30

*By the Court.*

Mr. Marelli, use petitioner instead of she.

*By Mr. Marelli.*

Q Where were you when the petitioner went into the apartment? A On the front steps.

Q Was it day or night? A Night.

40

*Ralph Tracey, for Defendand, cross.*

Q How far were you standing from the petitioner? A I was sitting on the front steps and she passed within five feet of me, I judge.

Q She was five feet away? A Yes.

Q Might it not have been some other woman?  
A I don't know.

10

Q Did he visit Mr. Schlitzie there much? A Three times a week.

Q Did he take Mr. Schlitzie away in his automobile? A Yes.

Q Two or three times a week? A Yes.

Q Did you see the doctor there at night? A Only one occasion.

Q You never saw the doctor there with a woman other than his wife? A No.

20

Q How soon after hiring the room did Schlitz hire the apartment? A Three or four weeks.

Q When did he hire the room? A In May.

Q You saw Mrs. Restaino a few days ago?  
A Yes.

Q You saw this lady a few days ago (pointing to Miss Kopp)? A Yes.

Q Do you remember telling them that he came there in March? A No.

30

Q Did you tell them that you never saw the doctor come there with a woman? A No.

Q Did you tell them that you didn't know the doctor well? A I don't know him well enough to ask him to lend me some money.

Q Do you remember that? A No, I don't remember that.

Q Isn't it a fact that when she went to see you, you didn't know who she was? A I knew her.

Q Didn't you say, "I don't know who she is?"

40

A I didn't.

*Ralph Tracey, for Defendant, cross.*

Q Did they talk to you about a bulldog? A Yes.

Q Didn't they ask you where the bulldog was? A I didn't think it was necessary to give them the information; I knew the lady had a dog.

Q Miss Kopp went alone? A With that gentleman (pointing to Mr. Gatti). 10

Q That was the first time? A Yes.

Q You had a conversation with her? A A few minutes.

Q Did you say to her that Schlitzie engaged the apartment on the first of March? A No, sir.

Q Did you tell her that he paid \$75 a month? A No.

Q Did you tell her that he was no account and you didn't know how he made his money? A No. 20

Q Did you tell her that he only played baseball weekends? A That is what they told me.

Q Did she ask you about the bulldog? A Yes.

Q They said they wanted to buy the dog? A Yes.

Q You said you didn't know where Schlitzie was? A I said I hadn't seen him since he left. 30

Q Did you offer to show her a picture of the dog? A I said I had a picture.

Q What time of the day were you introduced to her by Schlitzie? A At her mother's home at night.

Q When was the next time you saw her, when the doctor went to the apartment with her at night? A Yes.

Q You had never seen her in the daytime? A No. 40

*William Mackey, for Petitioner, direct.*

*By Mr. La Vecchia.*

The defense rests. I want to call Gilio Stramese. May I ask that it be noted on the record that the defense has called Gilio Stramese and there was no reply to his name. He was here this morning. And I reserve the right at this  
10 time to bring something to the Court's attention before the close of the case.

*By the Court.*

Mr. Marelli, can you get in touch with Mr. Stramese?

*By Mr. Marelli.*

I will try.

---

20

WILLIAM MACKEY, being duly sworn on his oath according to law, deposes and says as follows:

*By Mr. Marelli.*

Q Where do you live? A 11 Warren Place.

Q Newark? A Yes.

Q How long have you been there?

30

*By Mr. La Vecchia.*

I think Mr. Marelli should be kind enough to the Court to produce this Gilio Stramese.

*By Mr. Marelli.*

You have been insulting all day. I know my duties to the Court. I didn't know that he wasn't here.

*By the Court.*

The Court wanted to ascertain if he could be  
40 gotten.

*William Mackey, for Petitioner, direct.*

*By Mr. Marelli.*

Q How long have you been there? A Four weeks now.

Q Have you with you the registry book? A There was one there in the house when I took it over, one that was left there.

10

Q When this was turned over to you as the register of this boarding house, what did he say to you?

*By Mr. La Vecchia.*

I object to what he said.

*By Mr. Marelli.*

I withdraw the question.

Q When you took over the property was that turned over (indicating the register)? A No; that was in the house when he moved out.

20

*By Mr. La Vecchia.*

I object to the answer as not being responsive.

*By the Court.*

Strike it out.

*By Mr. Marelli.*

Q Did you buy the place? A No, I rented it. 30

Q From who? A Mrs. Mason.

Q Where does she live? A Taylor street, Newark.

Q Did she operate the place before you? A The same one bought the place and sold it out. This book calls back as far as December and January.

*By Mr. La Vecchia.*

I object to hearsay testimony.

40

*Idea Restaino, for Petitioner, direct.*

*By the Court.*

Strike it out.

*By Mr. Marelli.*

10 Q Do you know who ran the place from December, 1930 to January, 1931? A I don't.

Q What is the name of the person who owns the place? A Mrs. Taylor.

Q Do you see her? A Yes.

Q You pay rent for it? A Yes.

Q Do you go there or does she come to you? A She comes around.

Q You don't know who rented the place from December, 1930 to January, 1931? A No.

20 Q Who ran it before you? A The people's name were Uhlrich. They went to California last Sunday.

*By Mr. La Vecchia.*

I think a motion is in order that the entire testimony be stricken out.

*By Mr. Marelli.*

I agree to that.

*By the Court.*

Strike it out.

30

---

IDEA RESTAINO, recalled to the stand.

*By Mr. Marelli.*

Q Did you call your husband on the phone?

A No.

Q After you had left him did you say you wanted to kiss him? A I never called him after

40 I left.

*Idea Restaino, for Petitioner, direct.*

Q Did you go to a dance with the doctor at Dr. Forbe's house? A No.

Q Did he have sexual relations with you since March, 1930, after you left him? A Never.

Q What was the time you left him? A The middle of March, 1930.

Q Did you have sexual relations with the doctor in your home in January of this year? A No. 10

Q Has he been there as late as one o'clock in your mother's home? A No.

Q Has he been there as late as eleven o'clock? A Once it was 11:15 or 11:20.

Q Did he ever, since you last left him, stay with you at your mother's home until one o'clock? A No.

Q Did you go to the Forrest Club with him? A Yes. 20

Q What were the arrangements? A He met me outside. The Forrest Club is close to my home and we drove down; he asked me if I was hungry. I was ill; I had the hives. We went there and I think I had some chicken chow mein and he ate something and drank some beer. We saw the review and he drove me home.

Q Did he come to your house on Christmas Eve? A He helped me bring in the trains for the children and immediately he left. 30

Q Did you go to the Country Club Christmas Eve, 1930? A No, I went down to his office and waited in front of his office; I waited for him to get the trains for the children. I wanted outside of the drugstore for him to get the trains. He got a call and I waited until he got the trains and then he took me home.

Q Did you go to Rut's Hut Christmas Eve? A No. 40

*Idea Restaino, for Petitioner, direct.*

Q Did you go any place with him Christmas Eve? A No.

Q Did you have sexual intercourse with him in his office in 1930? A I have never been in his office.

10 *By the Court.*

Q Never at all? A Never since I left him.

*By the Court.*

Be careful how you answer the questions, take your time and think about the question.

*By Mr. Marelli.*

20 Q Did you meet him around the school at 7 o'clock? A Never.

Q Did you meet him anywhere December 21st or 22nd, 1930? A No.

Q Did you make an appointment by telephone to meet him? A No.

*By the Court.*

Q Has he called you? A Yes.

30 *By Mr. Marelli.*

Q Did you ride with him in his automobile December 21st or 22nd? A I wasn't with him. No.

Q Did you meet your husband June 11th or June 12th at Mount Prospect avenue? A No.

Q Did you drive to Northdale with him? A No.

Q Did you go to his office on these dates? A No.

40

*Idea Restaino, for Petitioner, direct.*

Q Did you have sexual relations with him on these dates? A No.

Q Did you make an appointment to meet your husband December 21st or December 22nd? A No.

Q Did you go with him to Northdale in an automobile driven by Schlitzie? A No. 10

Q Did you ever go to Northdale with him in the auto? A No.

Q Did you ever have sexual relations with him any place after you separated? A No.

Q Did you have sexual relations with him in your room in the Catskills? A No.

Q Do you know Jerahmach Maude? A I saw him three years before I met him in the Catskills.

20

*By the Court.*

Q On any of these dates did your husband have sexual relations with you? A No.

*By Mr. Marelli.*

Q You saw Maude in the Catskills? A The morning I arrived; we drove up and left five in the morning. I was reluctant to go to the Catskills. I was afraid we could not get accommodations and I had a child with the whooping cough. I was disappointed with the accommodations at Guthrie's and Mr. Maude was stopping at the Meadowbrook Farm. My husband or Mr. Schlitzie went in to inquire where Jerahmach Maude was and he got him up out of bed; he works late nights. He came over to Guthrie's Farm and he saw I was disappointed, and he said he would take me to Perling. Mrs. Guthrie arranged for the best room available at 30 40

*Idea Restaino, for Petitioner, direct.*

the Guthrie Boarding House. The housekeeper showed me several rooms and I selected one with three windows. Then Jerahmach Maude, Mr. Schlitzie and my husband went out. I don't know where Jerahmach Maude went.

10 Q Where did Maude live then? A Meadowbrook Farm.

Q How long was he there? A One week, and the following week he took a room next to mine.

Q You were there how many weeks? A Two weeks.

Q Did he eat with you? A I never ate with Jerahmach Maude.

20 Q Did he eat at the same table? A No, it was a long table; I ate at one table and during the second week he ate at a table way over in the corner.

Q Did he ever enter your room, this Maude? A Not while I was there.

Q Did you get in bed in the Catskills while your husband was in the room? A No.

Q Your baby and you were alone; your husband was not there in the room? A No.

Q Did Maude ever open the door while you were in bed? A I kept the door locked; no.

30 Q Did your husband remove all his clothes but his underwear while you were in the Catskills? A No.

Q Did your husband call you on the telephone? A Persistently two times a week.

Q What did he talk to you about? A Signing over the house.

Q Did he ask you to return? A Only the last two times.

40 Q When was the last two times? A March 13, 1931, he came to the house and March 17th I saw him and went to the movies.

*Idea Restaino, for Petitioner, direct.*

Q What year? A 1931.

Q Did you call your husband recently? A Last Saturday.

Q Any other time? A Never.

Q Why did you call him last Saturday? A I had no money and I needed money to support myself and child. I can't work. 10

Q Do you remember going to Schooley's Mountain with Mr. Marino? A Yes, in 1929.

Q Where did you live then? A 454 North Seventh street.

Q When did you move? A August, 1929.

Q To where? A North Arlington.

Q Did you ever live on North Seventh street after that? A I never returned.

Q Did you talk about your husband on the trip to Schooley's Mountain? A Yes, I did. 20

Q Did you say that you adored your husband? A No.

Q Did you say that he was kind to you? A No.

Q Did you say that the only reason you wouldn't live with your husband was because of the doctor's parents? A No.

Q Was there anything about the doctor's parents that caused you to want to live away? A No; they were very kind to me. 30

Q Did Mr. Marino take his children along? A Yes; one could walk and one was at her breast.

Q How far were they from your house? A Not far.

Q How far are you away now? A Quite a distance; you have to take a bus.

Q From where did you start on the Schooley's Mountain trip? A Mr. Varine's house. I walked over to his house and when we got back he left me off at my home. 40

*Idea Restaino, for Petitioner, direct.*

Q Did you dance at the Forrest Club? A No.

Q What time did you go to the Forrest Club? A 9:00 or 9:15.

10 Q Did you talk together? A It was very hard to talk at the club, Mr. Chickene came over and sat at the table and he only left us when he directed the orchestra and with the noise of the music I didn't get a chance to talk.

Q Did you go to his office February 1, 1931? A No.

Q Did you go out riding with him that day? A No.

Q Did you go to the movies March 17th? A Yes.

20 Q Why? A My brother and he do not get along, and when my husband called me he said he wanted a final decision and he said he was coming up and I didn't want him to see my brother, so when he came I ran downstairs with my hat and coat and we drove to Jersey City and I never spoke to him all the way to Jersey City. He said if I take you to the movies it may put you in a better state of mind. We went to the State Theatre, I think, and then he drove me  
30 home, and he decided to come in; it was no invitation of mine, and he stayed 10 or 15 minutes and left.

Q Did you have sexual intercourse with him? A No. He left.

Q Did Schlitzie stop and talk to you on the street? A I was coming from the auxiliary meeting and I saw this man approaching and he had a long rigmarole to tell me about my husband's conduct. I told him I was not interested  
40 in hearing about it.

*Idea Restaino, for Petitioner, direct.*

Q Did the doctor introduce you to Schlitzie?

A No.

Q How did you come to know him? A June 2nd my neighbor asked me if I would like to attend her little girl's birthday party. Schlitzie came in a car with the dog for this woman's little girl. I didn't know Schlitzie but on the way over to the house he told me who he was. 10

Q Did you have any objection to the doctor's family? A His people, no, I have no objection to them.

Q Did you tell Marie Carlo that? A No.

Q What did you tell him? A How cruel and mean he was to me.

*By Mr. Kiernan.*

I object; that is a self-serving declaration. 20

*By the Court.*

There was certain testimony brought out and she is denying what was said. It will be competent not as to what she said, but that she did say something.

*By Mr. Marelli.*

Q What did you tell him? A I told Mario how cruel he was and how he neglected me.

Q Did Mario say he was glad to see you and the doctor together? A I only saw him once in his sister's home and the time he came to see the baby. 30

Q Is Mario a relative of your husband? A A distant cousin.

Q Did Mario say to you, I am ashamed of the way your husband licks you? A Yes.

*By Mr. La Vecchia.*

I object, to what he said. 40

*Idea Restaino, for Petitioner, direct.*

*By the Court.*

Q Was your husband present? A No.

*By Mr. Marelli.*

10 I asked him that question, were you ashamed of the way her husband licked her, and he said no.

*By the Court.*

It is proper rebuttal.

Q Did you say he was present when your husband struck you? A Yes. He was in the car with us and he struck me. I was driving the car and my husband sat besides me, and he was not quite sober.

20 Q Where was Mario? A In the back with a girl.

*By Mr. Marelli.*

I asked him if he said I am ashamed of the way your husband licks you. Then it was testified, she testified that he was present in the automobile, that is competent, and after that it was testified that he said, I am ashamed of the way your husband licks you.

30 Q Did you say to Virginia Laudadio that you had nothing against his people? A Yes, every one.

*By the Court.*

Even though motion has been made to have the pleadings conform to the proof, I have looked up this procedure and you must amend the petition and file it. In case of an appeal it would have to show in the file.

*Idea Restaino, for Petitioner, direct.*

*By Mr. La Vecchia.*

I realize that and it will be done.

*By the Court.*

I have just interrupted here to call your attention to the fact.

*By Mr. La Vecchia.*

I understand the petition is to be amended and I assume Mr. Marelli will amend his petition.

10

*By the Court.*

Mr. Marelli, you have a date in your petition to amend.

*By Mr. Marelli.*

Yes.

Q Did you tell her, Virginia, that you wouldn't go back unless you lived in a separate house from his family? A No, I said even if he would go to a separate house I would not go back; he would be good for a couple of weeks and then he would do the same thing he did the first time I left him.

20

Q Did you tell her what he did to you? A Yes, he hit me and called me bad names, and he never gave me any money.

*By the Court.*

30

Q How long before you left was the last sexual relations? A I left him in March, probably a month before I left him.

*By Mr. Marelli.*

Q Do you remember going with Miss Kopp to the apartment at number 92-94 Broad street, Newark? A Yes.

Q When did you go? A Last Friday night or Saturday.

40

*Idea Restaino, for Petitioner, direct.*

Q Was Tracey there? A Yes, Mr. Tracey.

Q Did Tracey tell you when Schlitzie engaged the apartment? A Yes, from March to the beginning of September, and he had a \$75.00 apartment.

10 Q What did he say about Schlitzie's ball playing? A He played week-ends and he was not a professional.

*By Mr. Kiernan.*

I object and ask that the witness be confined to a direct denial and not a self-serving declaration; he should ask the witness direct questions.

*By the Court.*

The witness may contradict, modify, explain or correct any statement.

20 *By Mr. Kiernan.*

Will you note my objection.

*By the Court.*

Will the stenographer read the objection as noted.

*By the Stenographer.*

I object and ask that the witness be confined to a direct denial and not a self-serving declaration, he should ask the witness direct questions.

30 *By the Court.*

Your objection is on the record.

*By Mr. Marelli.*

Q Will you answer the question? A He also went on to say that Schlitzie put on a big front, that he never had much money. We asked him if he owned a Chrysler or a Pierce-Arrow and he said that Schlitzie drove for the doctor and that he only played ball week-ends. He

40

*Idea Restaino, for Petitioner, cross.*

said specifically that Schlitzie had the apartment from March to September.

Q 1930? A Yes.

Q When you were at the apartment talking to Mr. Tracey, did he recognize you? A No, he didn't. I spoke to him about the bull dog and he knew I had the bull dog and he said it was a fine dog and he had a picture of the dog, if he could find it he would show it to me. 10

Q Was he introduced to you? A One night before going to the Catskill Mountains Mr. Schlitzie came up to the house, probably to bring back the baby, this gentleman was with him. He knew the dog and he got out of the car to pet the dog, I had no hat on and I was on the terrace of the house.

*By Mr. La Vecchia.*

20

Q What is your brother's name? A Gilio Stramese.

Q Will you tell us if you know, if he is married? A Do I have to answer that? He has been married.

Q Is he still married? A I don't know, Mr. La Vecchia.

Q Did anyone advise you to bring this suit? A No. 30

Q You haven't talked it over with anyone? A My mother and immediate family. I know what I wanted to do. I am not under age.

Q Since March 1930 you have been very bitter towards your husband? A Rather.

Q Very bitter? A Yes.

Q You didn't want to meet him? A No, I didn't.

Q You didn't want to have anything to do with him? A No. 40

*Idea Restaino, for Petitioner, cross.*

Q When was the first time after March 1930, that you spoke to your husband? A On the trip to the Catskill Mountains.

Q That is foreign to me, when was it? A July 12, 1930.

10 Q Did you see your husband? A No, I didn't.

Q Did you go out with your husband from March 1930 to July 1930? A No.

Q Did you talk to him from March 1930 to July 1930? A Probably over the phone I did.

Q How long after you left your husband in March did you talk to your husband on the telephone? A I don't remember; you see sometimes he would call up when he wanted the baby.

20 Q If you don't remember? A No, I don't remember how long after he called up for the baby.

Q What caused you to say you don't remember? A He had the baby on the average of once a week.

Q Did he take the baby the first week? A No.

Q How did he get the baby? A He sent not Schlitzie but one of his brothers.

30 Q How did you know that he was going to send some one up? A On the phone.

Q Then you did talk to your husband the first time he sent for the baby? A Yes, but it was not the first week I left.

Q You said he had the baby on the average of once a week? A Yes, but I didn't say the first week he called me.

40 Q How long after you left your husband did he have the baby? A I don't remember.

*Idea Restaino, for Petitioner, cross.*

Q Was it? A I left him in the middle of March and he didn't take the baby until the next month.

Q Did he talk to you that month? A Face to face.

Q Any way you like? A He might have called me on the phone. 10

Q Did he talk to you the first week on the telephone? A No.

Q The second week? A No.

Q Are you sure? A I am almost certain.

Q You are as sure about that as you are about the rest of your testimony? A Yes.

Q Did he call you after that? A Yes, about the baby.

Q How often did he call you? A When he wanted the child. 20

Q How often? A After I had left him for three weeks he took the baby one week.

Q You testified to Mr. Marelli's question that you talked to him? A Sure, I filed a petition for divorce.

Q Did you ever tell your husband since March 1930 that you didn't want to talk to him? A No.

Q Did you tell him to stay away from you? A All the time. 30

Q That you didn't want him near you? A Yes.

Q Notwithstanding you let him take you out riding? A Never, except the time I told you.

Q Why did you go out with him? A Because he always had me believe he had a business proposition.

Q Did the business proposition take long? A I was never out with him long. 40

*Idea Restaino, for Petitioner, cross.*

Q Didn't you go to the Catskills with him?

A Yes.

Q How long did it take you? A Four or five hours.

Q That's a long ride? A Too long.

10 Q Why did you go with him? A It was a complete surprise.

Q Did the surprise continue until you got to the Catskills? A Not surprise; continual argument.

Q Why didn't you get out? A What was I going to do, walk?

Q Why did you accept his invitation to come back? A He wrote and said that his mother and father were coming back. He is the father of my child.

20 Q Do you want us to believe that you were so bitter towards your husband and you accepted the second invitation? A He came up and took me back.

Q Will you explain what it was if it was not an invitation? A He came up of his own accord.

Q Was he the only man in the car driving home? A Yes.

30 Q The day you got to the Catskills what time was it? A 9:30 or 10:00 o'clock.

Q In the morning? A Yes.

Q He hired a room? A Yes.

Q Were you shown the room? A Yes. He also; Mr. Schlitzie, also.

Q I ask you again, please don't volunteer any information. A All right.

Q The doctor went with you to the room? A Yes.

40 Q You kept the room? A One room, yes.

*Idea Restaino, for Petitioner, cross.*

Q What did you do after that? A By the time everything was done it was time for dinner; it was 11:30, and I ate with my little girl.

Q What did your husband do? A He sent Schlitzie for sandwiches and coffee.

Q Do you mean after your husband drove you to the Catskills, he didn't eat with you? A Not that occasion. 10

Q When did he? A The second occasion, when he was up with his brother Aneo.

Q Did you meet your husband that afternoon? A Yes.

Q Where? A Outside by the car.

Q Did you have an appointment to meet him? A No.

Q What made you go outside? A He was there and I met him; he had the little girl. 20

Q I thought you said you had the little girl at the table? A Yes, at lunch; and after she ran out.

Q Did you tell him to go, that he should wait outside? A No.

Q You had no arrangements with your husband to have lunch together? A No.

Q You didn't want him to have lunch with you? A I didn't think of him at all. 30

Q How long did you stay with your husband that afternoon you met him on the grass after lunch? A We didn't stay on the grass; we went to the village. There was a girl that wrote me and asked me to make arrangements for her; she gave me the telephone number to call. On the way down we stopped to get Jerry Maude.

Q You went with your husband? A The four of us. 40

*Idea Restaino, for Petitioner, cross.*

Q How long did the errand take? A All afternoon.

Q From what to what time? A From one to five or six.

Q Did you come back to the hotel? A Boarding house.

10 Q Your husband drove you back? A Schlitzie.

Q In your husband's Pierce Arrow? A Yes.

Q Did you tell your husband you didn't want to ride with him? A No.

Q Did you go back to your room from the errand? A I probably did with the little girl.

Q What time was it? A 5:00 or 5:30.

Q Did you stay there? A I dressed the little girl and got dressed myself.

20 Q Where was your husband? A Out with Schlitzie.

Q How long did it take you to dress? A Half an hour.

Q What time did you meet your husband? A I had dinner at 6 o'clock.

Q Without your husband? A Yes.

Q Didn't you ask him to come in? A No.

30 Q When did he leave, your husband? A He went down to say good-bye to Jerry, probably 7:00 or 7:30.

Q Where did you meet the doctor after dinner? A On the porch.

Q Did you tell him that you would meet him there? A No.

Q How long were you with him? A Half an hour.

40 Q What did you talk about? A I don't remember; do you expect me to tell you what we talked about from 7:00 to 7:30 a year ago? That is impossible.

*Idea Restaino, for Petitioner, cross.*

*By the Court.*

You are arguing with the witness.

*By Mr. LaVecchia.*

Is the Court restraining me from proceeding?

*By the Court.*

The Court objects to arguing the point of the question. 10

*By Mr. LaVecchia.*

I am cross examining and I have the right to ask the witness why she remembers one thing and not another.

Q I ask you this question; don't answer it until the Court advises you: you said you couldn't remember because it was a year ago?

A Yes. 20

Q You told about incidents more than a year back? A Yes.

Q Why? A Certain things stand out years back, but a half-hour conversation is not important; we probably talked about the weather or the grass.

Q Did you say good-bye? A Yes. I guess I did.

Q Did you kiss him? A No.

Q Did you ask him to come to see you again? 30

A No.

Q You didn't want to see him? A No.

Q Did you write him a letter? A Yes.

Q Then you did want to see him? A No.

Q He came up two weeks after? A Yes, he did.

Q He came up to take you home? A Yes.

Q You knew he was coming? A Yes.

Q How long before? A He sent me a night letter. 40

*Idea Restaino, for Petitioner, cross.*

Q You knew you were going to stay two weeks? A I thought I was going to stay more.

Q What changed your mind? A My husband refused to keep me there any longer.

10 Q When did you know that? A When he arrived.

Q Didn't you know you were to stay two weeks when you went? A No.

Q You never knew until he arrived? A I was to stay until the baby's condition was better, until she was well of the whooping cough.

Q Did you tell your husband that you wanted to go to the shore? A I said I didn't like it there.

20 Q It wasn't your husband, it was yourself that suggested leaving? A When he sent up the car I liked it very much.

*By Mr. LaVecchia.*

That answer is not responsive.

*By the Court.*

Strike it out. Answer yes or no when you can.

*By Mr. LaVecchia.*

I simply want an answer.

30 Q You testified that you expected to stay longer than two weeks; you also testified that your husband didn't want to keep you there more than two weeks, and in your letter you stated you wanted to go to the seashore? A No.

Q What did you write? A I said I didn't care to be there at the hotel and have to go back and forwards from the hotel to town with the little girl; preferred to go home and live.

40 Q If it was not your wish to stay, what prevented you of your own volition to return? A

*Idea Restaino, for Petitioner, cross.*

My husband sent Mr. Schlitzie with the little Whippet.

Q Your husband came up two weeks after and brought you home? A Yes.

Q You registered objection and he persisted in taking you home? A Yes.

Q Still you were bitter towards him? A Yes. 10

Q Your brother has a car? A Yes.

Q Did you write to your brother to take you home? A My brother is busy.

Q You were bitter at the doctor and didn't want to be in his company? A Yes.

Q You consented to drive home with the doctor and his brother in his car? A He came up in the Chrysler with my husband.

Q When you were so bitter why did you drive with his brother? A I wouldn't drive that long way in the Whippet. 20

*By Mr. La Vecchia.*

I object to what difference it makes what car she rides in.

*By the Court.*

Counsel can ask if it is so.

*By Mr. La Vecchia.*

Q As a matter of fact, the reason you didn't drive with his brother was because you talked with the doctor and you decided to stay overnight? A He did not; that is not so. 30

Q Didn't you tell Mr. Maude that you were going to stay overnight with the doctor? A I never spoke to Mr. Maude, never spoke intimately; I never spoke of my husband to him; I only spoke to him one night in the cabaret.

Q You never mentioned the doctor's name? A No. 40

*Idea Restaino, for Petitioner, cross.*

Q You roomed next door to Mr. Maude and never mentioned the doctor's name? A No.

Q You never talked to him? A At the cabaret.

10 Q What did you talk about? A I was with his wife, I probably ordered ginger ale or sarsaparilla.

*By Mr. La Vecchia.*

I didn't ask you that.

*By Mr. Marelli.*

I object.

*By Mr. La Vecchia.*

20 Q What you said to Mr. Maude was to order a drink? A Yes.

Q That was all you said? A Yes.

Q You never discussed anything with him? A No.

Q How did you know he had the room next to you? A I spoke to his wife.

Q Did you talk to his wife when Mr. Maude was around? A Sometimes he was, no, he wasn't.

Q Is that right? A Yes.

30 Q When was that? A At night, Jerry Maude was at the cabaret and Mrs. Maude was at home and we used the same bathroom.

Q About this trip to Northvale, you didn't go? A No.

Q June 10, 1930? A I didn't go.

Q See if you can't refresh your recollection. A Yes, try.

40 Q It was on a rainy night the doctor picked you up, pardon me, I mean he met you near your home and you took a ride towards Northvale

*Idea Restaino, for Petitioner, cross.*

and the doctor lost his way, do you recollect? A No.

Q The next day Mr. Schlitzie met you, and you and the baby and the doctor and the dog drove up there? A No.

Q The purpose of the doctor was to visit a woman that had been severely injured in an automobile accident, a Mrs. Mende? A I don't know her at all. 10

Q Do you want to say you don't remember the incident or that it is not a fact? A It is not a fact.

Q This auto ride with Marino took place? A Yes.

Q It was not when Mr. Marino said? A No.

Q When did you say it was? A 1929.

Q Did you hear Mr. Marino testify? A Yes. 20

Q Did you hear him fix the time by the birth of his child? A I heard that.

Q And the age of his auto when he purchased it? A Yes.

Q With all of that you still think it was when you said? A Yes.

Q You heard your husband testify? A Yes.

Q Your husband testified as to the place he met you, that is not a fact? A Except to what I testified to. 30

Q Then it is not a fact that you never had relations with your husband from the time you left in March 1930 up to the present time? A No, I have never had sexual relations with him after I left him.

Q You heard what the other witnesses said about that? A Yes.

Q Will you say that you have not been to the doctor's office since the time you left him? A I was outside once, inside never. 40

*Idea Restaino, for Petitioner, cross.*

Q Do you remember that young man? A Yes.

Q You know Vitello? A I know Bryant.

Q Did you see them there? A I saw Mr. Vitello outside of the office.

10 Q Did you see any other one? A No.

Q When did you meet him? A Mr. Vitello use to drive me home.

Q You never saw him around your husband's office? A I was never at my husband's office.

*By Mr. Marelli.*

Will you fix the time?

*By Mr. La Vecchia.*

20 I don't want to confuse the witness. I take it is 1930.

*By the Court.*

Q Since then? A No.

*By Mr. La Vecchia.*

Q A few days before Christmas, 1930, you were in the office and Mr. De Palma came into the office and spoke to you? A That's a lie.

30 *By the Court.*

Answer yes or no.

*By the Witness.*

A No.

*By Mr. La Vecchia.*

I heard you the first time.

*By the Court.*

Can you get in touch with the petitioner's brother, can you call his house.

40

*Prosper Quatrini, for Petitioner, direct.*

*By the Witness.*

You can't get him at the house; call New York. Mr. Masini knows the number.

*By Mr. La Vecchia.*

No further questions.

---

10

PROSPER QUATRINI, recalled.

*By Mr. Marelli.*

Q Do you recall the Friday before the first hearing in this case? A Yes.

Q Was the doctor at your house that night? A No.

Q If he had been there, would you have known it? A Yes. 20

Q Was he there on the Friday before that; that would be two weeks before the first hearing? A Yes.

Q What time did he come? A Fifteen minutes after nine.

Q How long did he stay? A Twenty after ten.

Q Did you hear him go away? A Yes. 30

Q Did you hear the conversation going on between him and your daughter? A Yes, he came in and I was going upstairs; he was talking angry, and I hear him say come up and sign over the house; he said it would be all right. He asked her why she didn't go back, and he said come back, my people never hated you. She said I have nothing against your mother; told my mother you always beat me all the time.

40

*Prosper Quatrini, for Petitioner, cross.*

Q What did your daughter finally say? A Me and you never get along together; best you be free and I be free myself.

Q You say they were there 20 minutes? A Nine-fifteen to 10:20, little over an hour.

10 Q Did you hear talking all the time? A They stop and talk again.

Q Do you remember when your daughter took a trip to Schooley Mountain with Marino? A Yes. It was when we lived on North Seventh street, two years ago.

Q When did you move from North Seventh street? A August or July that year.

Q Do you remember if your daughter was brought home by Marino? A I didn't see him.

20 Q When did you move away from North Seventh street? A The end of July or the beginning of August.

Q Have you lived at North Seventh street since? A No.

Q Do you know if the doctor has been to your house and stayed until one o'clock in the morning? A No, I don't know.

Q Would you have known if he had? A I guess I would; the last six months I don't feel so good and I hear if anyone goes out.

30 Q Did he stay until one o'clock? A I never saw him.

Q Do you know if he was there from nine o'clock to one o'clock? A No.

Q Would you have known it? A Yes.

*By Mr. LaVecchia.*

Q How would you know? A What?

Q How would you know he had been there?

40 A I can hear from upstairs.

*Prosper Quatrini, for Petitioner, cross.*

Q Suppose they weren't talking? A I could hear my daughter open the door.

Q Did you go downstairs this time? A No.

Q You didn't go down when the doctor went?

A No.

Q The doctor might have gone out at one o'clock and you not know it; you were in bed? 10

A I was not asleep.

Q Do you want us to believe that you were in bed and heard the doctor go out? A I hear everyone that goes out or comes in. I stay awake until my son comes home.

Q You felt good before? A Yes.

Q Before you were ill you would go to bed about nine o'clock? A I would go upstairs, but I wouldn't go to bed.

20

*By the Court.*

Q Are you married? A Yes.

Q You live with your husband? A Yes.

Q Does your husband go upstairs? A Even before me.

Q Do you converse with your husband? A Yes.

*By Mr. LaVecchia.*

30

Q You were not interested in what the doctor said to your daughter? A Yes.

Q Did you make it your business to hear? A Yes.

Q Why? A I didn't like to see the doctor coming in the house.

Q You didn't like to see the doctor come in? A No.

Q Were you sore at the doctor? A Sore!

Q You didn't like him? A No. 40

*Prosper Quatrini, for Petitioner, re-direct.*

Q You didn't advise your daughter? A No; I don't interfere.

Q Did you tell your daughter you liked the doctor? A Yes.

10 Q What did she say? A She liked the doctor once; he no treat her like wife, treat her like slave.

Q You made it your business to hear what was going on between the doctor and his wife so you could come down here and testify? A I was afraid he was going to give her beating downstairs. I like my daughter.

Q If you had fear, why did you permit him to come in the house? A There's lots of things they do I don't like. We were too good.

20 Q The doctor wasn't? A He was good to me.

Q The doctor came to see your daughter? A Yes.

Q You were afraid he would hit your daughter? A Yes.

Q Why did you let him come in? A To talk things over.

30 Q Why did you permit him to enter your home? A I no hate him.

Q You do not love him? A Despise not love; it's different; not dislike.

Q Did your daughter dislike the doctor? A She didn't love.

Q Was your daughter afraid of the doctor; answer yes or no? A No, not afraid.

*By Mr. Marelli.*

40 Q You said you were afraid; what do you mean?

*Prosper Quatrini, for Petitioner, re-direct.*

*By Mr. LaVecchia.*

I object.

*By the Court.*

You opened the door. The question asked was about being afraid, a mental condition entirely; you will have to ask the question a different way.

10

*By Mr. Marelli.*

Q You said she was not afraid? A He was not there to do harm, but if he come to a quarrel, he lose his head.

Q Why was she afraid?

*By Mr. LaVecchia.*

I object.

*By the Court.*

Calls for a conclusion.

20

*By Mr. Marelli.*

There were two things she was afraid of, afraid of being with him and afraid to live with him.

*By the Court.*

You might ask her what way it was manifest?

*By Mr. Marelli.*

Q I ask you about the Friday before the first hearing in this case; do you recollect what you did that night? A Yes; my daughter was preparing to go to Connecticut for three or four days. We washed the dishes and went up to put the baby in bed and after she came down and ironed some clothes and I watched her pack some things in a suit case. Ten-thirty we went to bed.

30

40

*Miss Norma Kopp, for Petitioner, direct.*

*By Mr. LaVecchia.*

Q Who lived with you in 1929? A 1929.

Q Yes; July, 1929? A In my house was me, my daughter, my husband and my son.

Q No one else? A No.

10 Q That was when your daughter went with Marino? A Two years ago, 1929.

Q That was the time your daughter went on the ride with Marino? A Yes.

*By Mr. Marelli.*

Q That was when she first separated? A Yes, she went back.

20

---

MISS NORMA KOPP, being duly sworn on her oath according to law, deposes and says as follows:

*By Mr. Marelli.*

Q What is your business? A Investigator.

Q Were you engaged by me in this case? A I was.

30 Q After I engaged you did you go to Newark? A I did.

Q Did you go to the apartment at 92-94 Broad street? A I did.

Q Did you take anybody with you? A I did.

Q How many times did you go? A Twice.

Q Who was with you the first time? A My driver Mr. Paul Gatti.

40 Q Who did you talk to? A A party by the name of Tracey.

*Miss Norma Kopp, for Petitioner, direct.*

Q Was the gentleman on the stand this morning? A He was.

Q Who did you talk about? A A man by the name of Schlitzie.

Q What did he tell you about Schlitzie?

*By Mr. La Vecchia.*

10

I object leading.

*By Mr. Marelli.*

I withdraw the question.

Q Did he tell you when Schlitzie hired the apartment?

*By Mr. La Vecchia.*

I object.

20

*By Mr. Marelli.*

Q What did he tell you? A That he engaged the apartment from March to September at a rent of \$75.00 a month. He also told me he was a football player, semi-professional.

Q Football? A Baseball. He also told me the man had a bull dog. He told me where I could probably find him, he said I could locate him there Wednesday evenings. I again went down with the petitioner and Mr. Gatti on Friday evening. I repeated the same conversation and was told that Mr. Schlitzie engaged the apartment in March at \$75.00 a month and had the apartment to the beginning of September. He wanted to show us a picture of the bull dog.

30

Q Did he say anything about the doctor? A He said he came there in a Chrysler car.

Q Did you introduce the petitioner, did you ask him if he had seen her before? A No.

40

*Miss Norma Kopp, for Petitioner, cross.*

*By Mr. La Vecchia.*

Q Where is your office? A I have none.

Q How long have you been engaged in investigating? A 15 years.

Q Your office at your home? A Yes.

10 Q Where? A 15 Buna Vista avenue, Hawthorne.

Q Did you make any memorandum of the conversation? A I did.

Q Where is it? A At home.

Q Why didn't you bring them? A I don't need them.

Q Did you give a report to Mr. Marelli? A Yes.

20 Q You don't take your reports with you? A No.

Q Do you investigate a case and go to court a year after and testify from your recollection? A No, you are talking about a year ago, that was only a week ago.

Q Were you paid for doing the work? A What work?

Q This detective work? A Yes.

Q What was the purpose for your going there, Miss Kopp? A Where?

30 Q 92 Broad street? A To find out about Mr. Schlitzie.

Q If he had an apartment there? A One of them.

Q What other purposes? A 3 or 4.

Q What? A I wanted to know when he moved there, how long he had the apartment, how much he paid for it, and to know where he was prior to that and after that.

40 Q Were these instructions given you? A No, they were my own ideas.

*Miss Norma Kopp, for Petitioner, re-direct.*

Q They were conceived in your mind? A  
Must have been.

Q Did you tell Mr. Tracey who you were? A  
My own name?

Q Yes. A No.

Q You didn't tell him you were sent by Mr.  
Marelli? A Hardly. No. 10

*By Mr. Marelli.*

Q Did he say anything to you about the doc-  
tor? A He came there for Schlitzie and went  
off with him in a Pierce-Arrow or a Chrysler.

Q How many times? A Quite a few times.

Q Did he tell you when was the first that he  
saw the doctor there? A He said that Schlitzie  
went out with the doctor from the beginning  
when he rented the apartment. 20

*By the Court.*

Q One question, what was said, repeat the  
exact language, of the time when the petitioner  
was with you? A It was not the first time.

Q The second time, the conversation that  
arose as to if he knew the petitioner? Was there  
any sign of recognition? A No.

Q How did you happen to make the inquiry?  
A I wanted to know if Mr. Tracey knew this  
lady and he said no. 30

Q Was she the only one with you? A Mr.  
Gatti was there.

Q What did you do? A I said, Mr. Tracey  
did you meet this lady before, and he said no. I  
said she was a sister-in-law of mine. He said no,  
I haven't seen her before.

Q Did she hear the conversation? A She  
was right there beside me, she must have.

*Paul Gatti, for Petitioner, direct.*

PAUL GATTI, being duly sworn on his oath according to law, deposes and says as follows:

*By Mr. Marelli.*

Q What is your business? A Driver.

10 *By the Court.*

Do you want to use the petitioner's brother, Mr. La Vecchia?

*By Mr. La Vecchia.*

No.

*By the Court.*

You are entitled to have him.

*By Mr. La Vecchia.*

I don't want to go on record. I assumed he would stay here but he went away, if he comes back all right.

20

*By Mr. Marelli.*

I have tried to get him and Mrs. Restaino has tried to call him up, and Mr. Masini has tried to get him.

*By Mr. La Vecchia.*

The gentleman must have been here for a purpose, I assume as a witness.

*By Mr. Marelli.*

30 I told Mrs. Restaino yesterday that I didn't need him, and the only reason he was here was because he drove them over. I told Mrs. Restaino I didn't need him.

*By Mr. La Vecchia.*

The case is evidently closed now, and I ask the Court that I may reserve the right to permit me to have another day or a morning only, it will only take me fifteen minutes, we want to subpoena one or two people.

40

*Paul Gatti, for Petitioner, direct.*

*By Mr. Marelli.*

I suppose that is a threat.

*By Mr. La Vecchia.*

No, I am telling the Court what we want to do.

*By the Court.*

Where there is a catagorical denial it is entirely a problem of credibility. (Reference made to the Storms case.) This prerogative must be exercised with care and caution, the problem of the Court is to do the fair thing, if counsel thinks that another witness will assist the Court, it is essential that these witnesses be present. Your request is granted. 10

*By Mr. Marelli.*

Q What is your occupation? A Driver. 20

Q For who? A Miss Norma Kopp.

Q Were you out driving with her last Wednesday night? A I was.

Q Where did you go? A Warren street, Newark, we went into a restaurant first and asked if he knew the name of Schlitzie and mentioned that he had a bull dog and he said that he knew him and said that he hadn't seen him in 4 or 5 months. We asked where he lived and he pointed diagonally across Warren Place. The number was 11½. 30

*By Mr. La Vecchia.*

I object to the testimony as hearsay.

*By Mr. Marelli.*

Q Where did you go? A Across the street to Mrs. McCloud and inquired who the last person was that run the rooming house, she said Turillo and we found them on Plane street right 40

*Paul Gatti, for Petitioner, direct.*

back of 11½ Warren Place, we waited for her and she told us that another woman—

*By Mr. Marelli.*

Never mind what she said.

10 Q Did you go on Broad street? A Yes.

Q Did you talk to anyone? A Mr. Tracey. Miss Kopp and I talked to him.

Q What was the conversation? A If he knew Schlitzie, he said he lived there.

Q When did he move in? A The first part of March and remained until the latter part of August or the 1st of September.

Q Did you ask him if he was a professional baseball player? A Yes, he said he was not a  
20 professional, but that he went out week-ends to play. I asked him if he had a dog and he said, yes, and he was going to show us a picture of the dog. I asked him if he knew where he lived and he said, no, but that he knew where he hung out on Market and Broad street.

Q When did you go back to Broad street? A I think the following day, or the day after that. Mrs. Restaino and Miss Kopp and I went back again and asked the same questions and he re-  
30 plied again just as I have testified to.

Q Was there any introduction made? A No.

Q Do you know if the petitioner was introduced? A She was not.

Q Did he make any statement? A No.

Q Where were you? A In the same room.

Q Did you hear everything that was said?

A Yes.

Q Did you hear any reference made to Mrs. Restaino? A No.

40 Q Do you know if he knew Mrs. Restaino?

*Paul Gatti, for Petitioner, cross.*

*By Mr. La Vecchia.*

I object on the grounds that it calls for a conclusion.

*By the Court.*

Objection sustained.

*By Mr. Marelli.*

10

Q Did he speak to Mrs. Restaino? A I think she said something about the dog and he said, yes, I have a picture of the dog around the room some where.

Q Was there anything on this occasion that indicated that he knew her? A No, nothing at all.

Q Was there anything on this occasion that indicated that he didn't know her? A If he had known her he would have spoken to her, there was no indication.

20

Q You were another boy in his room, the second time? A Yes.

Q Did you talk to him? A Yes.

Q While you were talking to this young man could you hear what was going on between Miss Kopp, Mr. Tracey and Mrs. Restaino? A No.

*By Mr. La Vecchia.*

30

Q You are the driver? A Yes.

Q A chauffeur? A Yes.

Q Do you act as an assistant detective? A No.

Q You go right up and detect people the same as Miss Kopp does? A Yes.

Q Why? A Because I am asked to go.

Q By whom? A Miss Kopp.

Q Why? A I don't know.

40

*Paul Gatti, for Petitioner, re-direct—re-cross.*

Q Do you attend all her conferences? A Yes.

Q The reason you attend with her is to see what is going on? A Because I am asked to go.

Q Why? A Because I am asked to go.

10 Q You are used as a witness? A Sometimes.

Q Do you make it your business to try to get the conversation? A No, I don't.

Q You are indifferent? A I don't hear all the conversation, as on that day.

Q Why? A Because I was talking to the other gentleman.

Q You go along with Miss Kopp and try to get all you can? A I was in the same room, yes.

20 Q You try to be of assistance if you can? A Yes.

*By Mr. Marelli.*

Q Often you don't get in on the conversations? A Yes.

Q Sometimes you have to get the car and go some distance? A Yes.

30 Q Are you paid for your detecting services? A No.

Q What are you paid for? A Driving.

Q Do you get a weekly salary? A Yes.

Q No other remuneration? A No.

*By Mr. LaVecchia.*

Q You deliver subpoenas, don't you? A Only lately.

Q You have advanced to subpoenae server? A What's that.

40 Q That's only a remark.

*Paul Gatti, for Petitioner, re-cross.*

*By the Court.*

What day do you want?

*By Mr. LaVecchia.*

Some morning in Paterson. I understand there is no further testimony to be submitted by either side.

10

*By the Court.*

Either side with testimony it is commendable to present it; the case is right on the line of demarcation.

*By Mr. Marelli.*

Does your Honor want us to argue it, then?

*By the Court.*

It might be well to call the Court's attention to points in the testimony, or if you prefer you can write memorandums.

20

*By Mr. LaVecchia.*

I prefer oral argument.

*By the Court.*

How about you, Mr. Marelli?

*By Mr. Marelli.*

All right.

*By the Court.*

Do you want the testimony written up?

*By Mr. Marelli.*

No.

30

*By Mr. LaVecchia.*

The Court's copy should be made.

*By the Court.*

The case is adjourned until Monday, April 20, 1931, at the Chancery Chambers, Paterson Court House, 10:00 o'clock.

40

*Gilia Stramese, for Defendant, direct.*

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i></p> <p style="text-align: center;">IDEA RESTAINO,</p> <p style="text-align: right;"><i>Petitioner,</i></p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">CHARLES F. RESTAINO,</p> <p style="text-align: right;"><i>Defendant.</i></p>	}
----	--	---

Paterson, N. J.,  
Monday, April 20, 1931.

Before Edward Thomas Moore, Esq., Advisory  
Master.

20 Appearances:

Henry Marelli, Esq., 165 Market street, Pater-  
son, N. J., solicitor for the petitioner.

Nicholas LaVecchia, Esq., 60 Park Place, New-  
ark, N. J., solicitor for the defendant.

*By Mr. Marelli.*

30 I would like to introduce to the Court Mr.  
Vinton of the New York Bar and make a motion  
that he be permitted to appear as counsel for  
Mr. Stramese.

*By the Court.*

Mr. Marelli asks permission for Mr. Vinton to  
appear for Mr. Stramese; permission granted.

GILIA STRAMESE, recalled, by the defense.

*By Mr. LaVecchia.*

40 Q Are you a member of the Bar of Passaic  
County? A I am.

*Gilia Stramese, for Defendant, direct.*

Q When were you admitted? A Three years ago.

Q Are you married?

*By Mr. Vinton.*

I object as collateral matters; this witness has been on the stand before. I object to collateral matter, it is immaterial. 10

*By Mr. LaVecchia.*

This is not cross examination; he is my witness and I am examining him to test his credibility.

*By Mr. Marelli.*

You can't impeach his testimony.

*By Mr. LaVecchia.*

He is a hostile witness.

*By the Court.*

I can't tell if he is hostile or not; I question your objection. Here is a witness produced by the defense. 20

*By Mr. Vinton.*

It has no bearing; the testimony is a question of cruelty and if there was condonation.

*By the Court.*

The question may be asked for information, but as a matter of impeachment your objection would be sustained. 30

*By Mr. Vinton.*

We have been informed that they intend to impeach the testimony of the witness. I would ask the counsel for the defense state the reason for the question.

*By Mr. LaVecchia.*

Your Honor has ruled that the question may be asked and answered for information and the Court has also decreed that the question may be asked to test the credibility of this witness. 40

*Gilia Stramese, for Defendant, direct.*

*By the Court.*

There is a limit on collateral matter.

*By Mr. Vinton.*

Such as testing his powers of recollection.

*By Mr. LaVecchia.*

10 I ask for the Court's ruling.

*By the Court.*

As a matter of introduction I will allow it, but not for impeachment. This is under the cases I quoted the other day.

*By Mr. LaVecchia.*

Your Honor sustains the objection?

*By the Court.*

Yes.

*By Mr. LaVecchia.*

20 I ask for an exception.

*By the Court.*

No exceptions; your objection is noted.

*By Mr. LaVecchia.*

Q Do you hold any official position? A Yes, Police Magistrate.

Q You testified as a witness for the petitioner? A Yes.

30 *By Mr. LaVecchia.*

I now ask permission to reopen the cross examination and to continue the cross examination of this witness.

*By the Court.*

Do you want to withdraw the witness as your own witness?

*By Mr. LaVecchia.*

40 No; I want to bring certain things before this Court. I think it is my duty to present all the

*Gilia Stramese, for Defendant, direct.*

facts so that the Court can intelligently test the credibility of this case, so that the Court can tell whether to give credence to this witness. If the Court feels under the circumstances that the testimony is not right, I will withdraw the witness as mine and reopen on cross examination.

10

*By the Court.*

I will allow that, if you have any material matter that was overlooked.

*By Mr. LaVecchia.*

Q Are you married?

*By Mr. Vinton.*

The same objection for the same reason; it is not collateral matter; it doesn't test the witness' credibility. He may have committed adultery, or murder. The only way to impeach is by a false statement. No matter what his previous acts may have been, character is not a test of credibility.

20

*By the Court.*

Have you a case to sustain that?

*By Mr. Vinton.*

McGrath's book on New Jersey evidence, section 404. Character is not admissible grounds to test credibility; only tends to blacken witness.

30

*By the Court.*

What page was that?

*By Mr. Vinton.*

Section 404. I can't see any bearing. Counsel stated the reason for the question. I can't see any bearing on this witness.

*By the Court.*

The Court is in this position, Mr. LaVecchia: if the question is competent and relevant, the

40

*Gilia Stramese, for Defendant, direct.*

10 Court allows the question and the answer may be in the affirmative or negative. If the Court knows the nature of the question, the Court can rule it out. You say we are all Clerks of the Court and should produce all the evidence possible. The Court is trying to rule on the question in advance, so as not to make it part of the record and hurt the witness' reputation.

*By Mr. LaVecchia.*

20 I don't want to state my purpose. I don't understand why counsel is so annoyed unless counsel presumes what I intend to do. I say now, I don't intend to attack this person. I don't see what it matters if I ask him if he is married or not. If the witness thinks or believes that any question will tend to incriminate him, he only reserves the right to avail himself. Counsel can't even suggest it to him. It is the furthest thing from my mind. The Court can conclude if it is material or not and whether it affects his credibility.

*By the Court.*

If he is married he can say yes; if not, no.

*By Mr. Vinton.*

30 The reason I made the motion was because I was informed they were to use this to blacken the character of the witness.

*By the Court.*

They are bound by the answer. Other witnesses can be put on to deny it. I direct the witness to answer the question.

*By the Witness.*

A I thought I was.

*Gilia Stramese, for Defendant, direct.*

*By Mr. LaVecchia.*

I ask you if you are or are not married? A  
I am not positive.

Q Were you married? A I was.

Q You haven't obtained a divorce? A No.

10

*By the Court.*

Q Before you said you were not certain, now  
you answer yes. Did you go through a marriage  
ceremony? A Yes.

*By Mr. LaVecchia.*

Q I ask you the question again; have you got  
a divorce? A No.

Q You have not obtained an annulment of  
your marriage? A I didn't have to.

20

Q You knew as a matter of law, you were  
still married?

*By Mr. Vinton.*

I object. Calls for a conclusion.

*By the Court.*

Yes.

*By Mr. LaVecchia.*

30

Q Didn't you start divorce proceedings? A  
I did.

Q Why did you think you were married  
aminitio?

*By Mr. Vinton.*

Not so stated and calls for a conclusion.

*By the Court.*

I sustain the objection. It calls for a conclu-  
sion.

40

*Gilia Stramese, for Defendant, direct.*

*By Mr. LaVecchia.*

You know as a matter of law the only way to dissolve a marriage is by an annulment or a divorce?

*By Mr. Vinton.*

10 I object. It has no bearing on the case, and he is trying to make trouble for this witness.

*By the Court.*

The witness stated he was not positive.

Q At the time you went through this marriage ceremony did you think?

*By Mr. LaVecchia.*

20 I object on the grounds it calls for a conclusion and it is not a matter for the Court what he thought.

*By the Court.*

Your objection is noted.

30 Q Answer the question? A Seven years ago I was married in Cleveland, Ohio, and when my wife finished menstruating I took her to a doctor and he said she had had a complete hysterectomy. She told me she could not have children and that she had been married before and never divorced.

*By Mr. LaVecchia.*

Q You instituted divorce proceedings on the grounds of desertion? A I did.

Q In the petition you took an oath that your wife deserted you?

*By Mr. Vinton.*

I object. What has this got to do with cruelty.

*Gilia Stramese, for Defendant, direct.*

*By the Court.*

It is new matter, and he is his witness. It might help clear up the matter. Mr. LaVecchia has no purpose in hurting this man. You are instructed by the Court to proceed, Mr. LaVecchia.

10

*By Mr. LaVecchia.*

Q Why did you institute divorce proceedings?  
A I wanted to get it off the record. I didn't know if she was married before; she told me she was.

Q Why did you prosecute your divorce? A To clean up the mess.

*By the Court.*

Q Have you seen or heard of this woman since? A No.

20

*By Mr. LaVecchia.*

Q When did you file the petition? A A couple of years ago.

Q You instituted divorce proceedings and permitted it to lie dormant a year and then asked permission to go on and reopen the case, you have to file an affidavit? A I did.

30

Q Do you know the docket number? A Sixty-three something. I was down to Trenton Friday and they couldn't find the docket and finally they found it.

Q Is your docket number 63-565? A I believe that's it; I had an attorney that took care of it for me.

Q Did I understand you to say that you didn't know if you were married or not? A Yes.

40

*Gilia Stramese, for Defendant, direct.*

Q You don't know your status? A That's it.

Q If that is so Judge, why did you take acknowledgments that you were single and unmarried?

10 *By Mr. Vinton.*

There is some limit how far these people can go.

*By the Court.*

It would not decide the ultimate result of the case. There is a question of doubt in his mind. She had a hysterectomy and it is understood she had previously had sexual intercourse. She lied to him, I don't think it affects his credibility.

*By Mr. La Vecchia.*

20 If it please the Court, this man swore to the fact that he was married and I have the right to find out if he is. He signed a sworn statement that he was not married, I have brought that out and I want to find out why.

*By Mr. La Vecchia.*

30 Q Didn't you on the 29th day of July, Nineteen Hundred and Twenty-nine, take an acknowledgement and swear to the fact that you were unmarried?

*By Mr. Vinton.*

I object as immaterial.

*By the Court.*

Objection sustained. I recall a case heard last year where Vice-Chancellor Backes ruled out the testimony, the man was asked if he was convicted of bootlegging.

*Gilia Stramese, for Defendant, direct.*

*By Mr. La Vecchia.*

Q Did you on March 21, 1927, take an oath that you were not married?

*By Mr. Vinton.*

I object for the same reason.

10

*By the Court.*

Objection sustained.

*By Mr. La Vecchia.*

Q Did you on July 29, 1929, give a mortgage to a man by the name of John Walstrum on which you acknowledged before a Master in Chancery of New Jersey that you were unmarried?

*By Mr. Vinton.*

I object, same reason.

20

*By the Court.*

Objection sustained.

*By Mr. La Vecchia.*

Q Have you conveyed real estate by deeds and in those deeds acknowledged that you were either unmarried or single?

*By Mr. Vinton.*

I object.

30

*By the Court.*

Yes.

*By Mr. La Vecchia.*

I want to show that he deliberately lied, but Your Honor has denied me that privilege by sustaining the objections.

*By the Court.*

You are bound by his answer. The objection was sustained.

40

*Gilia Stramese, for Defendant, direct.*

*By Mr. La Vecchia.*

I now offer in evidence a certified copy of a mortgage made by Gilio Stramese to John Walstrum dated July 29, 1929, and recorded August 1, 1929, Book 1184, page 187.

*By Mr. Vinton.*

10 I object.

*By the Court.*

Objection sustained, it is only documentary proof of a former question that was objected to.

*By Mr. La Vecchia.*

I offer in evidence the file of the Court of Chancery of New Jersey, docket number 63-565, in the matter of Gilio Stramese, complainant, and Elizabeth Stramese, defendant.

20 *By Mr. Vinton.*

I object; has no bearing on this case. I object on ground that it relates to collateral matter.

*By the Court.*

Objection sustained.

*By Mr. Vinton.*

I wish to enter a general objection to all matters relating to collateral matters.

*By the Court.*

30 Yes. Are there any motions?

Is there any re-direct?

*By Mr. Marelli.*

I forgot to ask the brother, Gilio Stramese, one question.

*By the Court.*

Is it something that you left out by mistake? Something you forgot.

*By Mr. Marelli.*

Yes.

40

*Gilia Stramese, for Defendant, cross.*

*By the Court.*

All right.

*By Mr. Marelli.*

Q Did your sister, the petitioner, consult you about her difficulties with her husband? A Yes. 10

Q Did you advise her what she should or should not do? A Yes.

*By Mr. La Vecchia.*

Q Did you advise your sister to institute this suit? A No.

Q Then I misunderstood the previous question. Did you say you advised her to institute this suit? A I did not.

That is all. 20

\* \* \*

*By Mr. Marelli.*

What about alimony?

*By Mr. La Vecchia.*

It is agreed to pay \$35.00 a week alimony commencing today, without a court order.

*By the Court.*

The case is adjourned until Friday, May 8, 1931, at 3:00 o'clock in the afternoon at the Chancery Chambers, Jersey City, for oral argument. 30

I will submit my decision within three days after the argument.



43

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

**New Jersey Court of Errors and Appeals***Between*

IDEA RESTAINO,  
*Petitioner-Respondent,*

*and*

CHARLES F. RESTAINO,  
*Defendant-Appellant.*

*On Petition  
for Divorce.**Decree Nisi  
for Wife.**Appeal of  
Husband to  
Dismiss  
Petition.*

Heard below before Edward T. Moore, Ad-  
visory Master.

**BRIEF FOR APPELLANT.**

The husband appeals from a decree nisi, entered June 3, 1931 (p. 19), divorcing him and his wife from the bonds of matrimony for the cause of extreme cruelty. The petition (p. 1) and the amended petition (p. 10) allege certain specific acts of cruelty, among which are acts supposedly committed in the months of December, 1928; December, 1929 and also March, 1929. The testimony produced in the petitioner's behalf does not disclose proof of any acts committed at those times, although set forth in her petition and amended petition, and it is reasonable to assume therefrom that the petitioner has concluded to abandon the specific acts set forth above.

The only other alleged acts of cruelty with which this Court should now concern itself are the remaining acts alleged in her petition and amended petition (pp. 1 and 10), and with none other. Testimony was offered to prove alleged acts of violence by the husband in the months of February, 1927 (p. 39), September, 1927 (p. 39),

and also February, 1928 (pp. 39-40), but these acts were not set forth or contained in her petition (p. 1) or the amended petition (p. 10), and should therefore be given little consideration in arriving at a just conclusion herein.

From a reading the Advisory Master's conclusions (p. 22), it is at once apparent that the testimony of the appellant and his witnesses was almost totally disregarded, and that the decision below was founded entirely upon the testimony of the respondent and her witnesses, although their testimony is vague, unconvincing and at many points self-contradictory, and is met at every turn by strenuous denials on the part of the husband and his witnesses. In addition to complete denials of cruelty toward the wife, the husband, by way of answer to the acts of cruelty of which he is charged, in his amended answer (p. 14), alleges that even after the last act of cruelty set forth in the petition and amended petition (p. 1 and p. 10), the wife resumed and continued matrimonial cohabitation with him by submitting voluntarily to sexual intercourse. In spite of the fact that this allegation has been overwhelmingly proven by the husband and the witnesses he produced, the court below has entirely disregarded such proofs, and merely states (p. 24), that "There is no credible or convincing testimony offered in support of the contention of the defendant that the alleged cruelty had been condoned by reason of sexual cohabitation since March, 1930." Appellant will herein attempt to show the Court that credible and positive testimony was produced, and that the same must have been disregarded by the Court below in arriving at its conclusions.

**Petitioner-respondent failed to prove that the defendant-appellant was guilty of extreme cruelty.**

Although in her original petition, the wife alleged that the first act of cruelty occurred on the 15th day of December, 1928, the proofs which she proceeded to offer before the court below immediately varied therefrom. She testified (p. 38), that two weeks after their marriage her husband beat her with his fists, calling her a son-of-a-bitch, whore, parasite and bastard, and that her cousin, Delia Bersano, was present at the time. For corroboration of this act, the cousin, Delia Bersano, was called, and her testimony (p. 59) in every respect concurred with the version which was given by the wife. In fact, it concurred too well. Her story and the story of the wife are so identical as to lead one to the conclusion that it is the result of studied discussions of the case before trial. Delia Bersano testified (p. 59), on direct examination, that she was accustomed to visit the married couple week-ends. The impression which was being conveyed by her testimony at that point was intended undoubtedly to indicate that she often was in the company of Dr. Restaino and his wife, and that consequently it was not an unusual coincidence that she was present at the alleged violence which occurred only two weeks after the marriage. Yet, when questioned on cross examination (p. 59), she testified, "After that I visited them very rarely." It is very surprising, to say the least, that Delia Bersano should have visited the married couple "week-ends," and have been present at an alleged act of cruelty, which supposedly took place two weeks after the marriage. The defendant strenuously denied that such violence had ever taken place, just as

he denies all of the other alleged acts. Gilio Stramese, a brother of the petitioner-respondent, was at the time of this alleged act of cruelty, living with the married couple, as is disclosed by his testimony (p. 72), yet strangely enough, a cousin who "rarely visited them after that" (p. 59), is called to corroborate the act. Gilio makes no mention whatsoever thereof—if this beating had in fact been administered to Mrs. Restaino, Gilio would surely have been in a position to testify either to the actual fact or to having seen marks or bruises on his sister. But no such testimony can be found. The entire story is not plausible. An act of violence is alleged to take place but two weeks after the marriage—the petition, even as amended, states the same to have occurred on July 25, 1925, almost three weeks after the marriage—a cousin who very rarely visited the married couple was present and saw the alleged cruel acts—a newly married couple, married but two weeks, and the husband, in the presence of her cousin, administers a severe beating, and calls her vile names—the wife's brother, then a member of their household, makes no mention whatsoever of knowledge of the incident, and last, the husband strongly denies the accusations. It appears to be highly unlikely that these acts could have occurred.

Petitioner next testified (p. 39), that in Christmas of 1925 her husband again beat her severely and again called her vile names. She says that her husband's mother, sister and brother were present at the time. This alleged act of cruelty is not alleged either in the original petition (p. 1) or in the amended petition (p. 10), and is absolutely uncorroborated; in fact, the brother, Salvatore Restaino, declares (p. 122) that he never saw his brother strike his wife. No credence can

be given to this incident. Another act of alleged violence which is absolutely uncorroborated, supposedly occurred in September of 1927 (p. 39). Petitioner testified that her husband beat her so badly that she had to have her wedding ring removed, and her finger became swollen. It is difficult to conceive how a beating would result in the swelling of a finger. The petition and amended petition make no mention of this incident. The next act of cruelty to which Mrs. Restaino testified (p. 39) occurred in September of 1927. There is no mention made of this incident in her pleadings, in spite of the fact that if true it would have been a strong factor in her behalf. She states that, in her mother's presence, the defendant beat her and called her vile names. Her mother (p. 61) testified that on the occasion stated Dr. Restaino "jumped on her and hit her and grabbed her by the hand and threw her to the floor." Apparently, from the mother's rather vivid description of the incident, she stood idly by and served in the capacity of a spectator. It is very difficult to believe their stories. Once again, they are too good to be true, and the apparent result of studied discussion of the case before trial. The normal mother would have run to the rescue of her child from such cruel and inhuman treatment as alleged here, and would have told the Court so in her narration of the facts. Another surprising factor regarding this incident is the accuracy with which both mother and daughter place the time almost four years after it took place. Both are positive in their statements, that it was four months after the baby was born. It is respectfully submitted that had this been a true statement of the facts, the truth would have been more apparent in a variation with regard to the time of the alleged acts.

Once again, a similar situation is encountered in the next act of cruelty alleged to have occurred (pp. 39-40). Petitioner states that she received another beating, and had bruises about her head and body, and that her brother came and took her home to her mother. It is to be noted that the time of this occurrence is again fixed with uncanny accuracy by both the petitioner (p. 40) and by her brother (p. 73). Both of them fix the date as eleven months after baby was born, and then her mother (p. 62) likewise fixes the date as eleven months after the baby was born. It is very important that the testimony of these three witnesses, mother, daughter and son, be closely scrutinized and weighed, for the defendant is placed by their testimony in a position where his only defense can be negative in character. He, of course, denies this act, as he does all others—that is all he possibly can do, and the Court should in such cases, it is submitted, weigh the logic of the entire story before reaching its conclusions.

The husband is again alleged (p. 40) to have administered a beating to his wife on the 11th day of June, 1929. Her testimony is met by a complete denial, and is not corroborated. After this last act of which she complains, a separation of six months appears to have taken place. She went back to live with him again in January of 1930, and stayed until March 20, 1930, when she again left him, never to return. The wife testifies, that during those several months they cohabited he again was cruel to her. On one occasion (p. 40), she says he called her vile names, and told her to "get the hell out," and that several persons were present at the time. None are produced, however, and her husband denies these accusations. This last alleged act caused the final

breach between them. She returned to live with her mother again, and has ever since then remained with her.

The testimony which is outlined above is practically the entire story which was produced on behalf of the petitioner at the trial. As has been pointed out, it is in the main uncorroborated, and where corroboration has been produced, it is only by members of her immediate family. Their stories ring of falsehood and collusion, for, as was said in the case of *Henrikson v. Henrikson*, reported in 3 Misc. Rep. 489, "the manner of the wife and her sisters was convincing as to the necessity of *discounting their testimony.*" Truth is very often narrated inaccurately, but it is seldom that three or four persons are gifted with the ability to state definitely, after a lapse of four or five years from the occurrence of an incident, almost identically, the exact time when it took place. Such testimony must be closely examined, and must necessarily be convincing for the purpose of "discounting their testimony."

The picture which the husband presents to the Court is an entirely different one from that portrayed by the wife. He admits that separations took place between him and his wife, but states that the causes were not the result of his cruelty. The direct examination produced for the wife makes no mention of any difficulties arising by reason of the fact that she was compelled because of circumstances to live in the same house with the parents of her husband, while the husband declares this to be the only reason which she had for leaving him. He states, in fact (p. 80), that his wife stated to him that she would leave him because of the fact that she had to live with his parents, and that she fixed the time when she would leave, when the baby was two years old.

Her mind was made up fully, long before the final separation, and when he told her that he could not afford a separate home, she carried out her threats and separated herself from him. She does not specifically deny the assertion of her intention to leave. His version of the real reason for the parting is not uncorroborated. He produced at the hearing Peter Guarno, who was friendly with both the petitioner and the defendant, and his testimony, which is straightforward and convincing, is a clean-cut declaration of the true situation. He stated (p. 114), that after March, 1930 (which is the date of the final separation), Mrs. Restaino was at his home, and that she told him she loved her husband, and it was because of his parents that they were kept apart. He testified further, that in June or July of 1930, Mrs. Restaino went with him for a ride, and that on that occasion she declared that she adored her husband. She further stated to him that she and the defendant were still living as man and wife, although not under the same roof. This witness is not related to Dr. Restaino. He has no interest in the outcome of this case, and the truth of his story is evidenced by the subsequent actions of the petitioner, and her relations with her husband after their separation.

Still another witness was produced, to bear out the defendant's story, in the person of Mario LaTorraca, also a disinterested witness. His testimony (p. 150) discloses that in May or June of 1930 he visited the wife at *her* home, and there held conversation. That Mrs. Restaino, in the course of discussing her marriage and its status with him, stated, "She said she liked Carlo, but she didn't like to live with his people." Not only does this witness' testimony substantiate

the defendant's story as to the reason for the separation, but, in a negative manner it defends him from the charges made by his wife, for although he was often engaged in conversation with Mrs. Restaino, never did she inform him of the husband's cruelty toward her, and although he often saw the petitioner and defendant together never did he see him strike her. His testimony remained unshaken by the cross examination to which he was subjected, for only one reason—it was the truth.

This case properly analyzed, shows itself to be an old story; the story of the inability of a mother-in-law and her daughter-in-law to get along well together, and the consequent unhappiness of the married couple. The separation, and the husband's subsequent inability to provide a separate home for his wife, probably tended to point out to the petitioner a futility of further matrimonial relations with her husband, and there was born therefrom the thought of a permanent separation by means of divorce. The quickest method by which she could accomplish this was the one which she chose. She could not possibly have charged her husband with infidelity, and accusations of extreme cruelty was the next best and quickest means. But marriage is a sacred institution with the state, through its Courts acting as its guardian, and the whim of one of two married people, or of both, is not enough to sever the bonds of matrimony. It requires positive evidence of a matrimonial offense to accomplish such an end, and it is well established that even in uncontested cases the evidence must be closely scrutinized and essentially corroborated.

The amended answer of the husband (p. 14) denies the cruelty of which he is accused, and as

a separate defense to the petition, sets up condonation of the alleged acts. He never intended by his defense to admit the offenses with which he is charged on the theory that in order for there to be a condonation, an act must have been committed. He merely intended to, and does state, that even after their final separation he and his wife treated each other as such, and she voluntarily gave herself to his embraces. The proof of her condonation is very strong, and is closely interlocked with the denials of the accusations of cruelty—for it is difficult to conceive how a wife who has been compelled by reason of her husband's cruelty to leave him, can thereafter continue habitually to live in intercourse with him, and continue to receive his attentions and go out with him time and time again. The crux of her accusations are founded on the allegation that he had been so very cruel that for her to continue to live with him would have been dangerous to her health—yet this petitioner, after admittedly separating herself from her husband, continued to see him and go out with him. She admits this (p. 176), where she testified that as late as March 13, 1931, and March 17, 1931, *just ten days before the first hearing below*, she accompanied him to a moving picture theatre. This does not bolster up her case, which sadly requires bolstering up, but strongly leans in favor of the picture presented by the husband's proofs.

An examination of the husband's case (p. 80) shows that after their first separation, his wife called him up, and begged him to take her back, and that thereafter they again resumed their married life. He states (p. 80) that his wife stated to him, that when their child arrived at the age of two years she would leave him, be-

cause she was compelled to live with his parents, which situation is the real reason for her departure. When after the separation finally occurred, the husband attempted to effect a reconciliation, she consented thereto, but made her consent conditional upon his parents leaving his household (p. 82). I have been unable to find a specific denial of this on the part of the wife, anywhere in the testimony.

The husband says (pp. 82, 83, 90, 105, 93, 97, 99, 100, 101, 102, 103, 104), that he and his wife often had intercourse after she left him, and that they met as often as two and three times a week. He took her to his office for that purpose, and states without equivocation that they there had sexual relations. Her denials are weak and hesitant and in the face of all the evidence produced are hardly worthy of belief.

There are two occasions on which the husband declares he and his wife had intercourse, which stand out from the others, so far as proof is concerned. The first of these acts took place at a summer resort where the husband had taken his wife. He says that about July, 1930, he drove his wife and child to the Catskill Mountains in New York, for a vacation (p. 90), and there had intercourse with her in her room, both upon their arrival, and later when he called to drive her back to her home (p. 105). His story is credible and worthy of belief. She admits that her husband took her and the baby to the Catskills, although she denies having intercourse with him. However, the husband's story is well corroborated by the testimony of Jeremiah Maude (pp. 145, 146), an entirely disinterested witness. Maude, who was employed as a waiter at a nearby resort to the one at which Mrs. Restaino spent her vacation, testified (p. 146), that he

went to her room to see her husband, knocked on the door and entered. The husband, he says, was in his "B. V. D.'s" and the wife was in bed. The natural presumption to raise from these facts is that the parties to this action either had, or were about to have intercourse, thus verifying the testimony given by the husband.

The second incident took place in August, 1930. Mr. Restaino took his wife to the apartment of one Sol Schlitzie, on Broad street, in Newark, New Jersey, for the express purpose of having intercourse with her. He testified (pp. 101, 102, 103, 104), that he did have intercourse with her there, and he is again corroborated, this time by another entirely disinterested witness. Sol Schlitzie says that he permitted the husband to use his apartment to take his wife there, and that in August, 1930, this incident took place. Schlitzie (p. 125) said he came into the apartment, and he could see Mr. and Mrs. Restaino in bed. Her clothes were on the dresser and the doctor's were on a chair. That the doctor requested Schlitzie to go out for a douche bag, and later on for sandwiches. Schlitzie says he went to *her* home for the sandwiches, *and this is denied*. The wife of course denies these allegations of intercourse, and attempts to discredit Schlitzie by showing, or attempting to show, that he never lived at the places he mentioned, and was not living in the apartment at the time to which he testified. Her attempt failed miserably in the face of the corroboration of Schlitzie's residence. Patsy Ceglia (p. 156) corroborates Schlitzie's testimony that he had lived at Warren street, in the City of Newark. James Donohue (p. 162) corroborates the fact, first that Schlitzie lived at Broad street, Newark (p. 163), and secondly that Schlitzie was in his employ as had

been sworn. And lastly, Ralph Tracey (p. 166), the owner of the Broad street property, testified that Schlitzie had an apartment there from May, 1930, to the latter part of August, 1930, *and that he had seen Dr. and Mrs. Restaino go to the Schlitzie apartment after July, 1930.* This proof is overwhelming. It changes the entire complexion of the case, and so strongly corroborates the husband's story as to leave slight doubt of its veracity.

In addition to these acts, Mrs. Restaino admits having gone out with her husband to a place called the Forest Club, about February, 1931, as stated in the testimony of Joseph Chicene (p. 120), and that she went out with him in Christmas, 1930 (p. 47). She says (p. 57) that her husband in the presence of Dr. and Mrs. Breistadter, called her a whore. Yet this one opportunity to produce some corroborative testimony from someone outside her immediate family is permitted to slip away, and the witnesses are not brought forth. The law has provided a means of compelling witnesses to appear, in the form of subpoena—and when important witnesses are not subpoenaed or otherwise produced, it is but reasonable to infer that the acts complained of never happened.

*Mrs. Restaino* (p. 56) stated that if in March, 1930 (when the final separation occurred), she and her husband had been living alone, she would have continued to live with him. Certainly, this statement, from the lips of a person so alleging cruelty bears out, and lends credence to the husband's version of the causes of the separation and should be borne in mind in concluding this case.

She stated (p. 184) that from March, 1930 to July, 1930, she did not speak with her husband, except over the telephone, but thereafter (p. 185), apparently forgetting her story, states that she spoke with him face to face in April.

She stated (p. 52) that she did not see her husband New Year's Eve, 1929, and then (p. 53) declares that she and her brother Gilio were with him that night, but "I couldn't say he was courting me."

It is also to be noted that no medical testimony was produced by the wife to corroborate her story of the injuries received as a result of the husband's cruel acts, nor of the effect upon her health.

Also (p. 44), in answer to questions concerning the reason for the separation, she admitted that leaving was in her mind at all times, because of his family.

It should also be noted that Mrs. Restaino (p. 47) testified that *after* the final separation in March, 1930, she went to see her husband and begged him to come back. Again it is respectfully submitted that these are not the actions of a wife who has been subjected to the violence of which she complains.

The last argument which the husband presents to this court is that the counsel fee of \$650.00 was excessive.

#### THE LAW.

It has often been held in this State, that marriage is a sacred institution, which should be closely guarded and protected by our Courts, and therefore, before a decree is entered dissolving a marriage, the facts surrounding the case

should be closely scrutinized, and the inferences most favorable to the continuance of the marriage relation are to be raised. In the case of *Pinkinson v. Pinkinson*, 92 N. J. E. 669 (Errors and Appeals), at page 672, the following appears:

“The dissolution of the marriage relation is a proceeding which the law does not favor.”

The fact that a wife is compelled to live with her husband's parents by reason of circumstance in no way justifies her departure from his household; her place is by his side, and unless she is compelled to leave him by reason of his inhuman treatment, her voluntary and wilful separation cannot give rise to a cause of action by her, for a divorce, either absolute or otherwise. That this is true, clearly appears in the case of *Pinkinson v. Pinkinson*, *supra*, at page 671, where will be found the following statement:

“It is the duty of the wife to live with her husband at his home and to give him her services and society. From these obligations she is only relieved if she can show that the conduct of her husband has been such ‘as will reasonably convince the court that her life or health was in danger or her life rendered one of such extreme discomfort and wretchedness as to incapacitate her to discharge the duties of a wife, or that the conduct of the husband, if continued, would have brought about these conditions.’” (Citing *Taylor v. Taylor*, 73 N. J. E. 748.)

Mere discomfort, even though physical; suffering by reason of financial difficulties; mental grievances built up from a desire which the husband is unable to fulfill, are all insufficient to destroy the relationship which they have created under the guidance of the State. In times of stress or hardship, it is the duty of the wife to

cling more closely to her husband and attempt to comfort him if possible—and not to make further demands upon him which he is unable, or even unwilling to perform. The Court has well expressed this thought, in the case of *Shackleton v. Shackleton*, 48 N. J. E. 364, as follows:

“It is the duty of a wife to be loyal to her husband; she must cling to him closer in adversity than in prosperity; believe in him when others doubt; stand by him when every other friend deserts him; defend him against all assailants; and she must be the last person to believe a report tending to disgrace or dishonor him.”

So much, then, for the marriage, its duties, obligations and its ties; they are clearly enough defined. The next question for the Court to consider is what constitutes extreme cruelty within the meaning of our statute. The very words “extreme cruelty” carry with them a significance of torture, inhuman conduct and other such acts, the result of which would be either physical harm to the wife, the undermining of her health, or both. The conduct of the parties, *after the last act of cruelty complained of*, is a very strong indication as to whether or not accusations of such cruelty are true or untrue, for one who is compelled by reason of much suffering to separate herself from her spouse, ordinarily would not be expected to associate with him thereafter, voluntarily. And if she does, a presumption is caused to arise of prior, normal treatment, and a separation due to causes other than cruelty. And so it was held in the case of *McKee v. McKee*, reported in 151 Atl. Rep. 620, at page 622, where this statement can be found:

“Ordinarily, cohabitation is proof that the treatment of the wife by the husband is not cruel, and is usually of itself a contradiction of that which the wife must in such cases

establish, namely, a condition of such extreme discomfort and wretchedness as incapacitates her to discharge the duties of a wife, or seriously endangers her health.  
\* \* \* The aforesaid rule of law has been declared time and again by our courts."

And so it is, bearing in mind this rule of law, that we find what will justify a wife in separating herself from her husband, a question which has been extraordinarily well defined in this State. In the case of *Taylor v. Taylor*, 73 N. J. E. 745 (Errors and Appeals), at page 748, the Court held:

"To justify a wife in separating herself from her husband physical violence need not be proved, but such conduct of the husband must be shown as will reasonably convince the Court that her life or health was in danger, or her life rendered one of such extreme discomfort and wretchedness as to incapacitate her to discharge the duties of a wife, or that the conduct of the husband, if continued, would have brought about these conditions."

See also, *English v. English*, 27 N. J. E. 579; *Black v. Black*, 30 N. J. E. 215; *Close v. Close*, 25 N. J. E. 526, and *Weigel v. Weigel*, 63 N. J. E. 677.

The "extreme discomfort and wretchedness" referred to in the decision above were never intended to apply to a woman suffering from a mental reaction from having been compelled to live under the same roof with her husband's parents. These discomforts fall under the class of cases considered in *Shackleton v. Shackleton*, *supra*, where the duties of a wife to her husband have been so well defined.

We now come to the question of condonation. That acts of sexual intercourse with a husband after he has been guilty of a marital offense may

prove a complete condonation thereof, has been repeatedly held in the decisions of our courts. What condonation is, and its resulting effects, have been defined in the case of *Goeger v. Goeger*, 59 N. J. E. 15, where at page 17 the Court said:

“The language of Sir Cresswell, in *Keats v. Keats*, 28 L. J. (Prob. & M.) 59; S. C., 5 Jur. (N. S.) 176 (1859), which was approved by the court of appeal in *Bernstein v. Bernstein*, Prob. Div. 292, 312 (1893), as an accurate and clear statement of the law as to condonation, defines its effects ‘as a blotting out of the offence so as to restore the offending party to the position which he or she occupied before the offense was committed.’  
\* \* \* An inclination or even an intention to condone is not sufficient if not followed by an actual re-instatement. This is the rule stated in *Keats v. Keats*, 5 Jur. (N. S.) 176, 178 (1819), and seems to me to be the only rule, which is just alike to the injured as well as the offending party in relation to the condonation of this offence.”

If the offense of which the offending spouse had been guilty were that of adultery, the subsequent act or acts of sexual intercourse, with knowledge of the commission of the offense, would certainly be construed to be a complete and absolute condonation thereof. See the case of *Shackleton v. Shackleton*, 48 N. J. E. 364, *supra*, at page 366; *Hart v. Hart*, 99 N. J. E. 373 (Errors and Appeals); *Hann v. Hann*, 58 N. J. E. 211.

It is not even essential to condonation that the wife have a sense of forgiveness at the time she submits to sexual intercourse with her spouse. She has had her opportunity to terminate the marriage relation and to refrain further from partaking thereof, and her subsequent election to submit to the embraces of her husband, condone

fully and absolutely his offense. In the case of *Leech v. Leech*, 82 N. J. E. 472, at page 474, is the following:

“I should have great hesitancy in holding that submission by the wife to sexual intercourse under the circumstances already stated (*referring to a fear on the part of the wife to refuse—italics mine*) constituted condonation if that question could be properly considered as an open question in this court. But in *Rogers v. Rogers*, 67 N. J. E. (1 Robb.) 534, the view is unequivocally adopted that the law placed upon the injured spouse the election to terminate sexual intercourse or forego the remedy which the law gives for the offence, and that forgiveness, in its popular sense, is not a necessary element of condonation. \* \* \* It is of course true that the act of submission by the wife to sexual intercourse through force of duress would not constitute condonation, but continued acts extending over a period of seven months under the circumstances stated cannot be classed as wholly involuntary if the doctrine of election by the injured party to forego the legal remedy is preserved in its fullness as the basis of adjudications in cases of this class.”

See also the case of *Shackleton v. Shackleton*, *supra*.

I have been unable in my research of cases, to find a case in this state squarely upon the point of condonation of extreme cruelty. However, there are one or two cases, which touch upon the point and which seem strongly to raise the inference that extreme cruelty, like any other matrimonial offence is capable of condonation. The first of these cases is that of *McGurk v. McGurk*, 28 Atl. Rep. 510. The petition in that case

alleged extreme cruelty, and the following statement of the court can there be found:

“This is denied by the husband, but, if it was true, the offense was condoned by her returning and resuming her duties as a wife.”

Another case which lends a similar interpretation, is that of *Bridges v. Bridges*, in 93 Atl. Rep. 691, a case decided before the Blackwell Act. There the court said,

“It has been held that *condoned acts of cruelty* (italics mine) may be revived by subsequent adultery.”

Then we come to the case of *Klein v. Klein*, 140 Atl. Rep. 233, a decision by Vice-Chancellor Backes. The petition in this case was for divorce for the cause of extreme cruelty, and the defense was condonation by reason of sexual intercourse during the period of six months, between the last act of cruelty complained of, and the filing of the petition. The syllabus by the court there states,

“In an action under Blackwell Act (P. L. 1923, p. 494) for divorce a vinculo for extreme cruelty, defense of wife’s condonation of offense after leaving husband by having sexual intercourse with him, held not sustained by the evidence.”

The reasonable inference from this statement of law is, that the act of sexual intercourse, after separation, if proved to the court’s satisfaction by the defendant, will be taken as a good defense to an action for divorce a vinculo under the Blackwell Act, being a condonation of the offense.

The reason presumably given, for a lapse of six months between the time of the commission of the last act of cruelty and the time when a petition therefor may be filed under the Blackwell

Act, is for the purpose of permitting the parties if possible, to reconcile. In the *Klein case, supra*, the alleged acts of sexual intercourse occurred during the six months' period, and still the court in effect held, that this would have been complete condonation if proved by the defendant. It therefore follows, *a fortiori*, that an act or acts of sexual intercourse, voluntarily submitted to, after the six months' period has elapsed, must be a complete, absolute and definite condonation of that cruelty last complained of. Certainly it was never intended by the Legislature of our State, that a person could indefinitely indulge in sexual relations with her husband after an act of extreme cruelty, and still, when it pleased her fancies thereafter, merely file a petition for divorce on the grounds of extreme cruelty, and not be in the least affected by her acts. For all of these reasons, it seems quite clear, that the act of a wife in having sexual intercourse with her husband, more than six months after the last act of cruelty by the husband of which she complains has in the eyes of the law condoned his acts, and estopped herself from thereafter suing for divorce on such causes.

The last question of law to be raised, is the presumption of intercourse, arising out of the fact that husband and wife occupied the same room. It is enough to merely cite for this the case of *Hann v. Hann*, 58 N. J. E. 211, where the following appears:

“That the parties occupied the same room and bed is undoubtedly of great significance as an element of proof of condonation and this would, if unexplained, justify a conclusion that there was forgiveness and a restoration of the wife to her former place. But mere physical presence of the wronged husband with the wife after knowledge of

her adultery, though it may justify a strong presumption of condonation, does not so conclusively establish it that it may not be rebutted. If there was in fact no forgiveness and no renewal of sexual intercourse, then there was no condonation."

But, mere physical presence in the same room, of husband and wife who have been separated, coupled with admissions by the wife that she and her husband had occasionally gone out together, and corroborated by other witnesses, is sufficient to raise almost a conclusive presumption of condonation.

### CONCLUSION.

It is respectfully submitted that the Court below erred, upon a consideration of all the testimony, in finding that the appellant had been guilty of extreme cruelty toward the respondent, and had treated her in the inhuman manner charged. That the actions of the parties even after the final separation between them, prove almost conclusively that the real cause of their separation was due, not to extreme cruelty by the husband, but rather, as he states, to her refusal to reside in the same dwelling with his parents; it is further submitted, that if the court should find the appellant guilty of extreme cruelty, then his acts have been condoned by the subsequent sexual intercourse with him, and that consequently the cause of action vested in the wife has been swept away, and the appellant has not been guilty of an offense entitling her to a decree of divorce; and it is further submitted, that the counsel fee of \$650.00 allowed to counsel for the respondent was excessive; and it is further submitted that a decree should have been advised, dismissing the petition of the respondent.

It is respectfully submitted that the decree of the Chancellor should be reversed upon all of the grounds herein argued.

Respectfully submitted,

NICHOLAS LAVECCHIA,  
Solicitor for and of Counsel with Appellant.

JOSEPH BIGEL,  
On the Brief.

157

I am sorry to hear that the horse of  
the General is now in the hands of  
the Government.

Respectfully submitted,

NICHOLAS J. VAN DYKE

Major General, U.S. Army

Washington, D.C.

On the 28th

# New Jersey Court of Errors and Appeals

Between IDEA RESTAINO, Petitioner-Respondent,  and  CHARLES F. RESTAINO, Defendant-Appellant.	}	On Petition for Divorce.  Decree Nisi for Wife.  Appeal of husband to dismiss Pe- tition.
--	---	--

Heard below before EDWARD T. MOORE, Advisory Master.

## BRIEF OF RESPONDENT.

This is an appeal by the husband from a decree of divorce in favor of the wife on the ground of extreme cruelty. The answer denies the cruelty and, by an amendment made during the trial, sets up condonation.

The only issues are those of fact.

The Advisory Master found in favor of the petitioner.

The sole question on this appeal is whether there was sufficient evidence which, if believed, would justify the findings.

The brief of appellant is, substantially, nothing more than an argument that the Advisory Master should have believed defendant and his witnesses and not petitioner and her witnesses. The appeal, therefore, is founded on credibility. The decision

of the Advisory Master conclusively disposed of this issue. His opinion expressly states that he is convinced of the truth of the testimony of petitioner and her witnesses (page 24).

*The Advisory Master was the sole judge of the credibility of witnesses.*

The law is thoroughly established that the decision of the trial court on the credibility of the witnesses will not be disturbed on appeal. The reason for this is that the court below has full opportunity to see the demeanor and mode of testifying of the witnesses and, therefore, is in a position to judge as to the weight to be given to their testimony.

In *Sturm v. Sturm*, 101 N. J. Eq. 313, this court applied the well settled rule that the decision of the court below on a disputed question of fact would not be disturbed. The court said that the question of credibility was pre-eminently one for the trial court. To the same effect is the very recent case of *Rothchild v. Rothchild*, 9 Miscellaneous Reports, 901, Advance Reports, September 5, 1931. Here the cause was tried by the District Court, without a jury. The Supreme Court said:

“Under these disputed facts the trial judge found against the defendant. In such a situation, where there are facts to support the finding, although in dispute, this court will not, upon appeal, reverse or set aside the findings of fact by the court below.”

These cases are on all fours with the present one, and the only question is whether petitioner presented testimony sufficient to justify a finding in her favor.

**There was ample testimony to prove extreme cruelty.**

The petitioner testified that the defendant beat her and called her vile names two weeks after their marriage (page 37, lines 39 and 40) and on February 20, 1927 and many times in that year (page 39, lines 12 to 22) and on September 19, 1927, (page 39, lines 23 to 30) and in February or March, 1928 (page 39, lines 38 to 40 and page 40, lines 1 to 10), and on June 11, 1929, (page 40, lines 12 to 19); that on this last mentioned day, she left defendant and returned to him in January, 1930, and lived, thereafter, with him until a day in March, 1930, when he called her names and told her to get out (page 40, lines 20 to 40) and that she finally left him because her health had become impaired and she had lost weight (page 41, lines 1 to 3; page 57, lines 36 to 38).

Testimony should not be rejected because the dates of proven cruelty do not all conform with the dates on which acts are alleged in the petition to have been committed. The petition, however, does allege that defendant began a course of cruel treatment towards petitioner in July, 1925, and continued the same to June 11, 1929 (page 10, lines 21 to 26). It also alleges that on February 1, 1930, he kicked her and called her vile names and told her that she ought to get the hell out of the house and that thereafter he called her vile and indecent names, impugning her chastity, every day until and including March 20th, 1930 (page 11, lines 32 to 40; page 12, lines 1 to 11). In the petition in the case of *Cook v. Cook*, 11 N. J. Eq. 195, only one date, on which alleged cruelty was committed, was specifically mentioned. In this case, the court said: ~~"The allegations in this~~

“The allegations in this bill, if sustained by the evidence, are sufficient to warrant a decree for divorce. It is true the single act of personal violence, standing alone, would not be sufficient; but the question is, whether the act was committed under circumstances to furnish reasonable apprehension that the continuance of the cohabitation would be attended with further personal injury? It is not the amount or degree of personal violence actually used by which the court is governed in forming its judgment, but it is the apprehended danger, which the actual violence committed may reasonably excite, against which the court will extend its protection to the injured party.”

Appellant's brief refers to statement of respondent on page 47 to the effect that she “was up to see him and begged him to come back” This is an obvious error in the record. What it obviously should read is “He was up to see me and begged me to come back.” This is born out by the next two questions (page 47, lines 3 to 6), which both relate to visits by him to her. This is conclusively shown by appellant's testimony on page 89, lines 35 to 36, where he says that he continued to go to her and urged her to return.

Because some of the acts of cruelty to which she testified were not corroborated by other witnesses is no reason for rejecting her testimony as to these acts.

“If he beat her at the time as to which her testimony is corroborated, her story is acceptable as true that he assaulted her on the occasions as to which corroboration is lacking”. *Winnes v. Winnes*, 97 N. J. Eq. 55.

### Corroboration.

The witness, Delia Bersano, a cousin of the petitioner, corroborated the latter regarding the occurrence two weeks after the marriage (pages 58 to 61). Her testimony is simple and to the point and she made no attempt to exaggerate the facts. Because her story is identical with that of petitioner's is no reason for rejecting it. The comments in appellant's brief on her testimony are purely academic. There is nothing in her testimony to impeach it.

The mother of the petitioner, Prospera Quattrine, told of defendant's cruelty towards petitioner (pages 61 to 72). She said that when petitioner's child was four months old (which would be in September, 1927, as the child was born in May, 1927), she saw defendant throw petitioner to the floor and heard him call her a bastard and a parasite (page 61, lines 25 to 35; page 70, lines 37 and 38); that she saw marks on petitioner's face (page 62, line 4) and on petitioner's face and hands (page 63, lines 15 to 17) and a lump on petitioner's head (page 64, lines 33 and 34) and the rings inside her finger (page 65, line 13 to 14, lines 25 and 26). She said that defendant told her he had given petitioner a beating and that she deserved more (page 63, lines 38 to 39; page 67, lines 11 to 14); that petitioner was sad and depressed (page 65, lines 10 and 11); that in March, 1930, when petitioner came to her home, the latter was crying and was depressed and nervous (page 66, lines 20 to 23) and run down (page 71, lines 1 to 3); that it made petitioner unhappy to be called a bastard (page 70, line 40) and that petitioner's health had improved since she left defendant (page 71, line 20 to 32).

It is clear from all the testimony, including that of the defendant, that petitioner's mother, in testifying regarding New Year's Eve (page 69, lines 23 to 38) referred to the last day of the year 1929.

Appellant's brief suggests that the mother's conduct when she saw defendant beating her daughter was not normal. What could she do? It is difficult to analyze, psychologically, the thoughts a person may have when faced with trouble or to account for one's conduct in an unusual situation. And this is particularly so in regard to a situation like the one in question, as applicable to persons of foreign climes, where laws and customs do not restrict, to the extent they do here, husbands from maltreating their wives.

Petitioner's brother, Giglio Stramese, corroborates petitioner in regard to the conduct of defendant about eleven months after the birth of the child (born in May, 1927) and in June, 1929, and in regard to her condition (pages 72 to 77). Appellant's brief suggests that it is strange that petitioner's brother did not see what the witness, Delia Bersano, said she saw. Nothing strange about it. While Giglio's home was at the home of petitioner and defendant, he was seldom there except to sleep, as he worked for the Western Union Telegraph Company and was, besides, preparing himself for admission to the New Jersey Bar. Naturally, he saw little of petitioner and defendant and he, therefore, had little opportunity, if any, of observing defendant's conduct towards petitioner. Besides, there is no evidence that he was living with appellant and respondent at the time to which respondent's cousin refers. Page 72 shows when the brother left but not when he began to live with them. He testified that petitioner said to him "look what he did to me" and that she had a lump on her head the size of an

egg (page 73, lines 12 to 14); that in June, 1929, she was crying and hysterical and had lost weight and that she had marks on her face (page 73, lines 34 to 37) and that petitioner had told him that the defendant had beaten her and thrown her around and treated her cruelly (page 78, lines 12 to 14). He was extremely cautious in giving his testimony, which discloses scrupulous care on his part not to go beyond the bounds of truth.

There is nothing contradictory in the testimony of the petitioner or of her witnesses.

The petitioner said that around Christmas, 1925, the defendant beat her in the presence of his mother and sister and that the latter fainted (page 38, lines 34 to 39). The failure of the defendant to call his mother and sister as witnesses to testify regarding this occurrence, without explanation for the failure, is a circumstance to be considered strongly against the defendant.

The petitioner testified that the defendant called her a whore in the presence of Dr. and Mrs. Brei-stadter (page 57, lines 32 to 35). Why did not the defendant call to testify, his brother physician to contradict the petitioner if what she said wasn't so? His failure to do so, without explanation, is another circumstance to be taken against him.

Defendant said that before he came into court, she sent word to his people (page 109, lines 25 to 26). Why didn't he call one of his people to corroborate him in this regard?

Defendant admitted that he called respondent a bastard (page 82, line 8; page 89, line 28).

The testimony of the defendant's witnesses is saturated with contradictions and with improbable stories.

For instance the defendant, in one part of his testimony, said that he couldn't get out of his house because he had to support his parents (page

82, lines 20 and 21). In another part he said that, according to an agreement made with them, his parents had to support him and the petitioner (page 87, lines 12 to 15, lines 36 to 38; page 88, lines 11 and 12). He said under existing conditions, his income now was small and that during the last five years, it averaged \$3,500 per year (page 84, lines 2 and 3). He has been practicing only six years (page 85, lines 35 and 36). He said that his income was \$2,000 the first year, \$3,000 the second year, \$4,000 the third year, \$5,000 the fourth year (page 85, lines 37 to 40; page 86, lines 1 to 8) and that now his income is \$5,000 a year (page 89, lines 21 to 23; page 110, line 15). Appellant, in testifying, made the absurd statement that on his present income, he could not afford to keep his wife in a separate home. (page 88, lines 17 to 23).

His witness, Peter Guarno, (page 113 to 120) said that he took petitioner and others on an automobile trip to Schooley's Mountain in the summer of 1930, and that on this trip and on another occasion before that, she told him that she loved her husband and that it was because of his parents that they were kept apart. He may have no interest in this case, but this is significant: There were three other adults on this trip, including Guarno's wife, yet neither was called by appellant to give testimony concerning what was said on the trip. Both respondent and her mother testified that this trip was taken in the summer of 1929, during the first separation, and not in 1930. They fixed the time by the fact that, on the day of trip, they were living at 454 North Seventh Street, Newark, and that they moved from there in August, 1929, to North Arlington, where they have ever since been living (page 177, lines 11 to 18; page

196, lines 11 to 23). Guarno said he did not remember taking respondent, on the return from the mountain trip, to North Seventh Street (page 118, lines 32 to 40). If he had taken her to North Arlington, a considerable distance from North Seventh Street, Newark, he would have remembered it and he no doubt would have driven respondent to her home in North Arlington, on the return trip, if she had lived there then.

In reference to the occurrence in February, 1929, Salvatore Restaino, a brother of appellant, said that he heard hollering upstairs sufficiently disturbing to cause him to go up to see what was the matter and he said they stopped when he went in their room and that he then went right out again (page 123). This, in a sense, corroborates respondent that there was an altercation on this occasion. He is the only witness who, in any sense, corroborates defendant's denial of violence, although as I have already shown, there were other witnesses available to him who were not called, who, if his denial were true, could have corroborated him.

Another witness for appellant, Virginia Laudadio (page 152 to 154), a cousin of his, said that respondent had told her she wouldn't return to her husband's home because his family was there (page 153, lines 3 to 10). Her testimony is not worthy of consideration because, when asked, on cross-examination, if the respondent had talked to her about her husband's cruelty, she answered that she couldn't remember (page 153, lines 22 to 40).

### Condonation.

The defense of condonation was an afterthought and was interposed only after respondent had completed her case (page 82). The first hearing was held on March 27th, 1931, and at that hearing, appellant completed his direct-examination and cross-examination had been commenced (page 84, line 25). Up to this time, no mention had been made by him of alleged sexual relations with his wife at No. 92 and 94 Broad Street, Newark, in the apartment of Schlitzie, and no mention was made by him of these alleged relations until the second hearing. This alleged incident in Schlitzie's apartment was obviously fabricated between the first and second hearings. These are suspicious circumstances as to the truth and good faith of the defense. The Advisory Master did not believe the witnesses for defendant, as he says in his memorandum, page 24. This is not surprising, since the circumstances under which the alleged acts took place were highly improbable. If the defendant told the truth, regarding condonation, there would have been no suit brought by the wife. The Advisory Master was the sole judge of the credibility of the witnesses on this issue also, and his determination of the facts is final.

Defendant said that after March, 1930, he had sexual relations with respondent at her mother's home, at his office, at the Catskills and at 92 and 94 Broad Street, Newark. To corroborate him in this regard, he produced witnesses whose testimony could not be believed.

How could one give credence to what the witness, Schlitzie (page 124 to 144), said? He claimed to be a ball player and he said that he was the property of the Oklahoma City Club of the

Western League and yet he couldn't tell the name of the manager who engaged him (page 126, lines 25 to 39). He said he lived in a house on Warren Street, Newark, for six months and yet he couldn't tell the number of the house or the name of the proprietor, except that he was known as Jimmie (page 135, lines 10 to 40; page 136, lines 17 and 18; page 141, line 20).

The appellant said that he had sexual relations with respondent at Schlitzie's apartment and that the latter saw him do it (page 102, line 10). This is preposterous. So is the statement that he gave Schlitzie the key to the apartment (page 103, line 26). Schlitzie said that the intercourse took place in a bedroom, without a door or a curtain, and that there was an open passageway so that one could see what was going on in the bedroom from the kitchen (page 126, lines 1 to 16). Is it conceivable that persons with any degree of refinement or decency would have sexual intercourse under such circumstances? Schlitzie said that the doctor told him to get a douch bag (page 125, lines 15 to 20). It is significant to note that the appellant made no mention of a douch bag. Is it believable that the doctor would ask this ball player to get him a douch bag? The stories of the appellant and of Schlitzie regarding the alleged affair at the apartment house are so inherently incredible as to be unworthy of any consideration whatever.

The witness, Tracey (pages 166 to 179) said that he saw the respondent go in the apartment at 92 and 94 Broad Street, Newark, where Schlitzie lived, with the appellant at night (page 167, lines 1 to 10, line 40); that he was five feet away from her when she passed him (page 168, lines 1 to 3); that he had only been introduced to her a month before and at night (page 166, lines 25 to 40; page 167, line 49). He admitted that he might be mis-

taken in his identity when, on being asked the question "Might it not have been some other woman?" he answered, "I don't know," (page 168, lines 8 and 9).

How can Mario La Torraca (page 151 to 152) be believed? According to his own testimony, he is a parasite and hasn't worked since 1927. He said that he passed his time on the corner or in a coffee place (page 151, lines 20 to 40). This is the only testimony with which the appellant sought to corroborate his own testimony that the respondent visited him at his office. Appellant said that the respondent visited him frequently at his office, almost every week (page 93, lines 34 to 36; page 107, lines 3 and 4). If that were so, appellant certainly would have produced witnesses, other than La Torraca, with some degree of respectability, to testify to the truth of these visits to his office.

The story of the witness, Jerahnach Maude (pages 145 to 149) is, too, not credible. He was a patient of the appellant (page 146, lines 28 to 29; page 147, lines 2 and 3). He said that in response to the appellant's request to wake him at a certain time, he "knocked on the door and the doctor jumped up and asked who was there" (page 146, lines 33 to 36). How did he know the doctor jumped up? He was on the outside of the door. How could he see inside the room. Is it conceivable that the doctor opened the door to allow Maude to look in? This story, alone, is enough to justify the Advisory Master's disbelief in all of Maude's testimony.

### **Wife's Relations with Husband after Separation.**

Respondent emphatically denied that she had any sexual relations with her husband after the separation in March, 1930. The fact that she saw her husband on a number of occasions is no proof of his innocence of wrong doing. On account of the child and of her financial condition, it was necessary for her to see him. Under the circumstances, it was quite natural that she maintain outwardly pleasant relations with him. Furthermore, he was constantly calling her on the telephone (page 176, lines 33 and 34). Then, too, he was the father of her child and this influenced her attitude towards him (page 186, lines 19 and 20). And, too, she said that he always had her believe he had a business proposition (page 185, lines 36 to 39) and he wanted her to sign over the house (page 176, lines 35 and 36). She no doubt went to the Catskills with him because their child had whooping cough (page 190, lines 13 to 15).

### **Counsel Fee.**

Appellant presents no facts or arguments to maintain his assertion that the counsel fee, which was allowed the solicitor of respondent, is excessive. On the contrary, in view of appellant's income and resources and the amount of work which obviously must have been done by the solicitor of respondent, a counsel fee of \$650.00 is very moderate.

**Conclusion.**

1. By an overwhelming preponderance, of the testimony, cruelty, on the part of the husband is established.

2. His allegations of condonation are emphatically denied by the wife and are not sustained by credible testimony.

3. The Advisory Master was the sole judge of the credibility of witnesses and he, having found in favor of respondent, his decision should not be disturbed.

4. No change should be made in the amount of counsel fee allowed to the solicitor of respondent, because it is not excessive.

**Respondent respectfully submits that the decree of the Chancellor should, in all respects, be sustained.**

Respectfully submitted,

HENRY MARELLI,  
Solicitor for and of Counsel  
with Respondent.

## INDEX.

	PAGE
Bill of Complaint	1
Order Awarding Bill	37
Answer	38
Decree Pro Confesso	43
Order Amending Answer	45
Order Amending Answer and Decree Pro Confesso Against Defendant's Answer and Bill	46
Declaration	47
Verdicts	48
Summons	58
Final Decree	100
Notice of Appeal	137
Form of Appeal	138
Receipt by Clerk of Appeal	139

### TESTIMONY.

#### Complainant's Witnesses:

James F. Nord,	Direct	12
	Cross	17
	Re-direct	21
	Re-cross	25

#### Defendant's Witnesses:

W. Nord, Jr.,	Direct	28
Henry Mitchellband,	Direct	32
	Cross	33

